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Master's Thesis

State Responsibility or Legal Conundrum? Positive Obligations Under Article 8 of the ECHR in Light of Climate Governance

Valstybės atsakomybė ar teisinė painiava? Pozityvios pareigos pagal EŽTK 8 straipsnį klimato valdymo kontekste

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Vilniuss

2025

ABSTRACT AND KEYWORDS

Following research focuses on the evolving obligations of States under Article 8 of the European Convention on Human Rights (ECHR) within the framework of environmental human rights and climate governance. The study encompasses an examination of the evolution of European Court of Human Rights precedents regarding environmental law and climate governance over the past fifty years, emphasizes its integration across various legal domains and its intersection with human rights. A detailed analysis of the Strasbourg Court's jurisprudence, including cases such as Lopez Ostra v. Spain, Fadeyeva v. Russia, Cordella v. Italy, and recent decisions concerning Switzerland and Portugal, is undertaken to discern trends in the positive obligations of States under Article 8. Furthermore, the research investigates the interplay between States legal and conceptual obligations, governance policies, and legal responsibilities. The aim is to assess the relevance of Article 8 in the context of modern climate governance and to develop recommendations that help States effectively protect the rights of citizens from harm resulting from climate change.

Keywords: Article 8; ECHR; Environmental Law; Climate change; Positive Obligations.

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ABBREVIATION

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
ESC	The European Social Charter
GHG	Greenhouse Gas(es)
HUDOC	Database of ECtHR/ECHR case law)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
INC/FCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
RESC	Revised European Social Charter
UN	United Nations
UN/ECE	United Nations Economic Commission for Europe
UNCED	United Nations Conference on Environment and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNECE	Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
WMO	World Meteorological Organization

INTRODUCTION

Relevance of the topic. The scope of environmental deterioration affects our everyday lives, altering the patterns we once took for granted. The environment has become central to ecological, political, social, and economic dynamics. The scale of these issues necessitates a transition from fragmented national initiatives to coordinated, integrated, and legally binding strategies. This raises the question of whether addressing environmental threats is solely a matter of political discretion or if it also involves positive obligations for states under international human rights law, such as Article 8 of the European Convention on Human Rights (ECHR). This scenario presents a legal dilemma: describing the boundary between margin of appreciation of states and legal accountability in environmental governance, especially when climate change impacts citizens' quality of life and personal living environments. Consequently, environmental policy has evolved beyond an ecological concern, becoming a complex legal matter encompassing state responsibility and human rights protection, demanding the effective implementation of international/regional instruments and collaborative endeavours.

Environmental law has undergone substantial development over the last few decades. The 1972 Stockholm conference[1] was cornerstone in integrating environmental considerations into the international legal framework. Since then, environmental thoughts have been increasingly incorporated into diverse areas such as human rights, humanitarian law, maritime and air law, trade and investment law, and etc. As a result, international environmental law has emerged as a distinct, yet interconnected, discipline, firmly established within both international treaty and customary law.

Despite these advancements, novel legal complexities have emerged, particularly regarding the description and enforcement of state responsibilities when environmental hazards directly infringe upon fundamental human rights. Within this framework, Article 8 of the European Convention on Human Rights, which safeguards private and family life, home, and correspondence, holds considerable significance. The jurisprudence of the Strasbourg Court has progressively affirmed that environmental threats can undermine the fulfilment of these rights, thereby establishing both negative and positive obligations for states.

Consequently, the significant historical evolution of international environmental law is currently transitioning into a new stage, characterized by the close integration of climate

[1] United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm

governance and human rights protection. A critical inquiry emerges: does this legal advancement signify an enhanced accountability of states, or does it, conversely, engender a complex legal challenge where environmental policy and human rights obligations are frequently confronted? This underscores the topic's significance: in the present context, it is unarguable to address environmental law without considering human rights jurisprudence, just as it is impossible to evaluate human rights protection mechanisms without accounting for the complexities of climate governance.

The jurisprudence of the European Court of Human Rights (ECtHR), through its historical developments, demonstrates an evolving paradigm of state responsibility. *Lopez Ostra v. Spain (1994)*[2] recognized the direct impact of industrial or environmental damage on human rights, as protected by Article 8. *Fadeyeva v. Russia (2005)*[3] established a positive obligation for the state to implement concrete, effective measures to safeguard citizens' living environments. Moreover, *Cordella v. Italy (2019)*[4] emphasizes the state's accountability regarding global climate challenges, a matter of increasing importance in the current environment. Furthermore, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)*[5] is a case that became the cornerstone of the precedent-setting decision of the European Court of Human Rights, according to which Article 8 of the Convention was interpreted more broadly and discussed the positive responsibility of states to ensure that citizens have the opportunity to live in a clean and healthy environment.

Climate change is recognized as a critical global challenge, extending beyond the European continent to encompass the entire world. Climate, fundamentally representing average weather patterns, denotes a sustained alteration in the Earth's or a specific region's long-term weather conditions.[6] The ultimate consequence of climate change is global warming, characterized by a gradual increase in the Earth's average surface temperature. This phenomenon originated during the pre-industrial era, approximately in the 18th century, and has significantly accelerated since the latter half of the 20th century. Climate change is defined as a long-term shift in the average weather patterns of the Earth or a particular area.[7]

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[2] López Ostra v Spain (1994) App no 16798/90, (1995) 20 EHRR 277.
[3] Fadeyeva v. Russia (2005). App no. 55723/00, Eur. Ct. H.R. 2005-IV, [2005] Eur. Ct. H.R. 376.
[4] Cordella et al. v. Italy, Application Nos. 54414/13 and 54264/15, (ECtHR) (January 24, 2019). 2019 ECtHR 029.
[5] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application No. 53600/20, ECtHR (Grand Chamber), 9 April 2024.
[6] https://science.nasa.gov/climate-change/what-is-climate-change/ (Last accessed 12/03/2025)
[7] IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core

Recent decisions and advisory opinions from the European Court of Human Rights in Strasbourg have significantly addressed climate change, emphasizing its direct influence on fundamental human rights, particularly those protected under Article 8, which includes the right to private and family life, housing, and health. The Court's reasoning suggests that state obligations extend beyond merely enacting norms or general policies, necessitating proactive, effective, and timely measures to protect citizens' living environments and mitigate climate-related threats to their quality of life.

Modern environmental law surpasses traditional regulatory frameworks, imposing an affirmative duty on states to proactively mitigate environmental damage and uphold human rights. This paradigm shift introduces a complex legal dynamic where state obligations regarding human rights protection and climate governance are intrinsically linked. The importance of this subject is highlighted by the direct impact of environmental crises on public health, living conditions, and overall quality of life, requiring a continuous balance between state responsibilities and established international legal principles.

Aims and objectives. This thesis aims to analyze the evolving obligations of States under Article 8 of the European Convention on Human Rights (ECHR) within the context of environmental law and climate governance. The core research question investigates the influence of environmental threats, particularly climate change, on the rights to private and family life, home, and correspondence, and assesses the degree to which States have met their positive obligations to mitigate environmental damage. Furthermore, it examines how the European Court of Human Rights (ECtHR) has interpreted and applied Article 8 in cases involving environmental and climate-related harm over time (chronologically), and identifies the primary tensions and limitations in utilizing Article 8 as a foundation for climate accountability, especially considering the margin of appreciation. The central legal challenge lies in reconciling the broad margin of appreciation afforded to states in socio-economic and environmental policymaking with the ECtHR's mandate to ensure the effective protection of rights guaranteed by the European Convention. This tension raises fundamental questions regarding the scope and limits of judicial intervention in climate governance, where democratic legitimacy, scientific uncertainty, and urgent rights-based claims converge.

Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001

https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature (12/03/2025)

This research will thoroughly investigate the jurisprudence under Article 8 pertaining to climate change and environmental damage. The objective is to delineate the capacity of human rights law to serve as a normative framework for accountability regarding state inaction. Also, chronologically, make distinction between cases and decisions regarding historical phase. Because chronological order is a cornerstone of this research, as it allows for a systematic tracing of the European Court of Human Rights' evolving interpretation of Article 8 in environmental and climate contexts. After collecting and coding all relevant judgments and admissibility decisions, cases will be depicted as organized by date of decision to construct a diachronic framework that captures doctrinal development over time. This approach enables the identification of distinct phases, from early cases addressing localized pollution and nuisance, through periods of consolidation in which positive obligations and procedural safeguards were clarified, to the most recent decisions explicitly or implicitly engaging climate-related harms. By analyzing the progression of reasoning across these phases, thesis aims to detect patterns in the Court's recognition of positive obligations, the narrowing or widening of the margin of appreciation, the balance struck between individual rights and state discretion, and the role of procedural duties. There are three conceptual timelines: Phase I _ 1990s- early 2000; Phase II _ Mid-2000s-2010s; Phase III _ late 2010s-2020s.

The study will include an examination of the progression of international environmental law over the last five decades, highlighting its integration across diverse legal spheres and its intersection with human rights. A comprehensive analysis of the Strasbourg Court's jurisprudence, including cases such as *Lopez Ostra v. Spain,*[8] *Fadeyeva v. Russia,*[9] *Cordella v. Italy,*[10] and the recent decision concerning V*erein KlimaSeniorinnen Schweiz and Others v. Switzerland*,[11] will be conducted to identify trends in the positive obligations of States under Article 8. Additionally, the research will explore the interaction between States' legal and conceptual obligations, governance policies, and legal responsibilities. The goal is to evaluate the pertinence of Article 8 within the context of contemporary climate governance and to formulate recommendations that will assist States in effectively safeguarding citizens' rights from the adverse impacts of climate change.

[8] Lopez Ostra v. Spain, App No 16798/90, ECtHR, Judgment of 9 December 1994.
[9] Fadeyeva v. Russia, App No 55723/00, ECtHR, 2005.
[10] Cordella and Others v. Italy, App Nos 54414/13 and 54264/15, ECtHR, Judgment of 24 January 2019.
[11] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, App No 53600/20, ECtHR (Grand Chamber), Judgment of 9 April 2024.

The tasks include 1. To assess the extent to which Article 8 imposes positive obligations on states in relation to climate change, focusing on the duty to take effective measures to prevent and mitigate environmental harm that interferes with private and family life; 2. To analyze how the European Court of Human Rights has interpreted and applied Article 8 in its environmental and climate-related jurisprudence, highlighting key cases that expand the Article 8's scope to encompass environmental protection; and 4. To evaluate the main tensions and limitations of relying on Article 8 as a basis for climate accountability, particularly in light of the wide margin of appreciation afforded to states and the Court's cautious approach to balancing individual rights with broader policy considerations.

Research Methodology. This thesis uses a doctrinal, comparative, and contextual approach.

The doctrinal (black letter) method serves as the foundation for this research. The study commences with a comprehensive overview of environmental law and its developmental trajectories. It will explore how the legal approach to this matter has evolved over several decades, as a thorough investigation of the issue necessitates an examination of its origins from the outset to yield comprehensive insights.

The subsequent analysis extends to Article 8 of the European Convention on Human Rights. This approach entails compiling case law and admissibility decisions from the European Court of Human Rights (ECtHR) where Article 8 has been invoked in connection with environmental or climate-related damages. Cases will be meticulously filtered based on four primary criteria: 1) Subject Matter Relevance, focusing exclusively on cases where environmental or climate concerns are central to the claim; 2) Engagement with Positive Obligations, prioritizing judgments where the Court deliberates on the state's duty to prevent or mitigate environmental risks; 3) Doctrinal Significance, emphasizing cases that advance the development of legal principles such as proportionality, the margin of appreciation, and the balancing of rights; and 4) Jurisprudential Continuity, tracing the evolution of the Court's interpretation of Article 8 of ECHR over time.

The comparative method will be utilized to analyze and contrast the Court's rationale across various cases. This comparison will be structured around doctrinal, procedural, and substantive criteria. From a doctrinal perspective, the analysis will evaluate the Court's interpretation of positive obligations, its application of the margin of appreciation, and its approach to balancing individual rights against public interest. Procedurally, emphasis will be placed on admissibility decisions, standing, and victim status to ascertain whether the Court employs restrictive or expansive criteria. Substantively, the analysis will concentrate on how

the Court determines if environmental or climate harm meets the threshold of seriousness under Article 8 of ECHR, how it assigns state responsibility, and whether consistent or divergent patterns emerge over time. These findings will be encapsulated in a comparative table, illustrating trends such as the expansion of positive obligations, the continued application of a wide margin of appreciation, the frequency of inadmissibility decisions, and the evolving recognition of environmental harm as an infringement on private and family life.

The analysis will incorporate a chronological structure, examining cases across three distinct phases. Phase I (1990s–early 2000s) will focus on the initial recognition of environmental harms under Article 8. Phase II (mid-2000s–2010s) will explore the development of procedural safeguards and structured tests. Phase III (late 2010s–2020s) will address the explicit integration of climate-related risks and accountability into the Court's reasoning. A conceptual timeline will visually represent this evolution, highlighting key doctrinal shifts and landmark cases such as *López Ostra v. Spain (1994)*, *Fadeyeva v. Russia (2005)*, *Dubetska v. Ukraine (2011)*, and *KlimaSeniorinnen v. Switzerland (2024)*.

The contextual (socio-legal) methodology establishes a connection between legal determinations and the broader discourse surrounding climate governance. It evaluates the potential of the European Court of Human Rights' (ECtHR) interpretations of Article 8 of ECHR to influence, restrict, or fail to impact state obligations in climate policy. This stage involves correlating doctrinal advancements concerning positive obligations and the margin of appreciation with the practical complexities of implementing climate action at a national level. The analysis will additionally pinpoint any deficiencies, uncertainties, or areas where the Court's rationale appears inconsistent or unresolved.

Ultimately, this research will synthesize all findings to ascertain the realistic viability of Article 8 as a framework for accountability in instances of climate inaction. This will encompass identifying where the jurisprudence bolsters environmental human rights protection, where it exhibits caution or fragmentation, and the subsequent implications for the future of climate litigation within the European Convention on Human Rights (ECHR) system.

Originality. The originality of this thesis resides in its systematic and conceptually sound examination of how Article 8 of the European Convention on Human Rights can serve as a legal framework for addressing climate-related damages. Although existing scholarly works extensively explored human rights and the environment, few studies have provided a comprehensive, jurisprudence-based analysis of the European Court of Human Rights' reasoning under Article 8 in this context.

The following work draws extensively from the scholarship of esteemed academics such as A. R. Mowbray, whose "The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights" is foundational, alongside Klatt M.'s "Positive Obligations under the European Convention on Human Rights," Ulrich Beyerlin and Thilo Marauhn's "International Environmental Law," Dinah Shelton's "Human Rights and the Environment: Substantive Rights," George Letsas's "The ECHR as a Living Instrument: Its Meaning and Legitimacy," and numerous other significant contributions to international environmental law such as Margaret DeMerieux and Kirstof Hectors who claimed that Lopez Ostra case was a cornerstone which lead to domino effect of environmental cases through the ECtHR. This work, however, offers a synthetic discussion of these theories and ideas, establishing connections between them while simultaneously introducing novel perspectives on specific issues.

It is important to note that, in contrast to other works, the preparation of this document involved a comprehensive review of not only the Court's Landmark case-law but all decisions of the European Court of Human Rights which are connected to environmental/climate change law and Article 8. These decisions were meticulously searched within the HUDOC system using the keywords "environmental protection," "climate change," and "Article 8." Consequently, the discussion presented in Chapter 3 is grounded in thoroughly comprehensive findings and conclusions. The entirety of this work further includes a chronology of environmental and climate change developments, illustrating the evolution of a legally foreseeable and significant legal reality from its nascent stages. Additionally, the decisions of the European Court of Human Rights are examined chronologically, demonstrating the dramatic shift in the Court's approach and assessment over several decades, from inadmissible cases to the landmark judgment of 2024. In this pivotal judgment, the Court unequivocally affirmed that states bear a positive obligation to ensure their citizens reside in a healthy environment. For enhanced clarity, the paper presents the cases, their admissibility, and the Court's decisions and reasoning regarding positive responsibility and the margin of appreciation in a tables format.

This research distinguishes itself by mapping and analyzing all pertinent ECtHR decisions chronologically, thereby identifying doctrinal patterns and shifts in the Court's interpretation of positive obligations and the margin of appreciation. Through this methodology, the thesis develops novel analytical framework that positions Article 8 within evolving forms of climate governance, emphasizing both its normative potential and structural limitations. By critically evaluating the tension between individual rights and collective environmental interests, and

between judicial oversight and state discretion, the study offers an original contribution to the understanding of how human rights law may influence, and be influenced by, the evolving legal response to climate change.

1. HUMAN RIGHTS AND ENVIRONMENTAL LAW

In the legal doctrine, human rights and freedoms are categorized differently based on their historical emergence. Three generations of human rights have been identified. The concept of these three generations of fundamental human rights and freedoms was initially articulated by the Czech French scholar Karel Vašák.[12] According to him the first generation encompasses civil and political rights, which originated from bourgeois revolutions. The second generation pertains to socio-economic rights, rooted in socialist ideologies. The third generation of rights refers to collective rights, which align with the demands put forth by developing nations. In recent times, there has been increasing recognition of the perspective that these collective rights belong to peoples and nations and should be incorporated into their respective rights.[13]

In the development of human environmental rights, various approaches have been identified regarding the methods of defining these rights and the attribution of them to specific groups. Scientists generally hold the view that environmental rights should be interpreted as either civil or political rights or as economic, cultural, and social rights.[14] Civil and political rights, by their inherent nature, also play a role in regulating environmental policy. The implementation of fundamental rights, such as those concerning public associations, freedom of expression, personal liberty, equality, and fair compensation for damages, directly empowers

[12] Vašák. K (1977) Human Rights: *A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights.* UNESCO Courier, 11:29–32.

Vašák's differentiation between the three generations quite neatly fits into the three dichotomies based on the major approaches to human rights categorization: 1) Negative (first generation) and positive (second and third generations); 2) Individual (first and second generations) and collective (third generation), and 3) national (first and second generations) and international (third generation) liability.

Ultimately, the third generation of rights assumes that they are positive, in terms of requiring active participation of duty-bearers; Collective, in terms that focus on people or collectivities instead of individuals, and international, that they operate within the international relations *Erga Omnes* instead of the sole relationship between the state and the individual.

[13] *"There are three overarching types of human rights norms: civil-political, socio-economic, and collective-developmental"* (Vašák 1977. pp.29-32).

The first generation regards negative rights and corresponds to civil and political liberties. The second generation presumes a positive action of the state and includes social, economic, and cultural rights. The first two generations of rights have their corresponding covenants signed in 1966: the ICCPR for the first and ICESCR for the second. Vašák's third generation of human rights is referred to as "rights of solidarity." They require collective action of individuals as well as states and other political units. The third generation of human rights is the most recent and vague in content. Those rights include right to self-determination, economic and social development, healthy environment, natural resources, and participation in cultural heritage. Hence, such rights are positive and collective and demand responsibility, which lies beyond the nation-state. They have been expressed largely in documents advancing aspirational *"soft law,"* such as the 1992 Rio Declaration on Environment, Stockholm Declaration (UN General Assembly 1972) and Development, and the 1994 Draft Declaration of Indigenous Peoples' Rights.

[14] Hennebel, L. and Tigroudja, H. (2025) '*Economic, Social, Cultural, and Environmental Rights', in International Human Rights Law: A Treatise*. Cambridge: Cambridge University Press, pp. 918–995.

interested individuals or groups to undertake appropriate actions to address environmental harm.

Therefore, it can be concluded that while civil and political rights directly facilitate human participation in environmental protection processes, second-generation rights, in the form of economic, social, and cultural rights, effectively underscore the necessity of environmental protection for ensuring human well-being.

Among the environment related conventions elaborated within the framework of the Council of Europe[15], only one endeavours to define the scope of the concept "environment". The following broad definition can be found in the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment[16] which provides that:

"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.*
- ✓ *The characteristic aspects of the landscape.*[17]

At the time of the elaboration of the European Convention on Human Rights and the European Social Charter[18] the environment was not a concern and therefore they do not contain a definition of the environment. However, the question of the precise definition of the environment is not of vital importance to understanding the case-law of the Court and the decisions of the Committee.

Environment and environmental protection have only recently become a concern of the international community. After World War Two, the reconstruction of the economy and lasting peace were the first priorities. This included the guarantee of civil and political as well as social and economic human rights. The classification of environmental rights into economic, social and cultural rights makes their realization easier, taking into account the minimum standards that arise in the economic, social and cultural spheres of public relations. It must be said that the existing international documents in the field of human rights protection are vague in relation

[15] Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No 150); Convention on the Protection of Environment through Criminal Law (ETS No. 172); European Landscape Convention (ETS No. 176).

[16] Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 21.VI.1993.

[17] Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 21.VI.1993. Article, 2 (10).

[18] The European Social Charter 1961 (ESC/the Charter) was established as the sister instrument to the European Convention of Human Rights. Revised European Social Charter 1996 (RESC/the Revised Charter) – an instrument that 'updates' and expands significantly upon the rights set out in the original Charter.

to the human right to environmental protection and regulate it in a somewhat indirect, implicit way. However, in the subsequent half century the environment has become a prominent concern, which has also had an impact on international law. Although the main human rights instruments[19] are all drafted before full awareness of environmental issues arose, do not refer to the environment, today it is commonly accepted that human rights and the environment are interrelated.[20]

As recently as 1972, the first UN Conference on the Human Environment, which took place in Stockholm, shed light on the relationship between respect for human rights and the protection of the environment. The preamble to the Stockholm Declaration proclaims that *"both aspects of man's environment, the natural and manmade, are essential to his well-being and to the enjoyment of basic human rights, even the right to life itself.* "[21] Further on, *Principle I* of the Stockholm Declaration stressed that "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*".[22]

The 1992 Rio de Janeiro Conference on Environment and Development (UNCED) focused on the link that exists between human rights and the environment in terms of procedural rights.[23] Procedural rights should govern human environmental rights at both international and national legal levels. This category ought to encompass rights such as the right to access information, including prior notification of environmental threats, the right to engage in decision-making processes concerning environmental matters at international and national levels; the right to environmental impact assessment, the right to receive compensation for environmental harm; and the right to a fair hearing. The procedural approach provides optimism that human environmental rights will be safeguarded through transparency and

[19] The 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights, the 1961 European Social Charter, the 1966 International Covenants.
[20] Even to the point that it is suggested that environmental rights belong to a "third generation of human rights". See Karel Vasak, *"Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights"*, UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.
[21] Declaration of the United Nations Conference on the Human Environment, June 5-6, 1972. Preamble.
[22] Declaration of the United Nations Conference on the Human Environment, June 5-6, 1972, Principle 1.
[23] Principle 10 of the Declaration adopted during the Rio Conference provides that: Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

democratic principles.[24] According to Robert Paul Churchill, the essence of this argument is that the democratic decision-making process itself will give impetus to the development of the desired environmental policy, that is, direct participation in the process of making environmental decisions will, to some extent, satisfy the interests of society and maximally protect the rights of a category of people whose existence is almost entirely connected with the consumption of natural resources. Thus, if the society that will participate in the process of making environmental decisions will be the same as those who will pay for the use of natural resources and who will directly reap the ecological consequences, then complete protection of the environment will become quite realistic.[25]

However, currently, no comprehensive legally binding instrument for the protection of the environment exists globally. Meanwhile, various specific legally binding instruments and political documents have been adopted at the international and European levels to ensure environmental protection. For instance, at the European level the right to a healthy environment has been recognised for the first time in the operative provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)[26]. However, the scope of the Aarhus Convention is the guarantee of procedural rights, but not the right to a healthy environment as such. The substantial right is presumed to exist by the Convention. Recently, the Almaty Guidelines and the Protocol on Pollutant Release and Transfer Registers have enhanced protection of the Convention.[27] The group of substantive rights should encompass those rights that are indispensable for the practical development of democratic ecological law. These are the rights without which an individual cannot fully exist as a person.[28]

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[24] Pickering, J., Bäckstrand, K. and Schlosberg, D. (2020) *'Between environmental and ecological democracy: theory and practice at the democracy-environment nexus'*, Journal of Environmental Policy & Planning, 22(1), pp. 1–15.

[25] Churchill, R. Paul (2006). *Human Rights and Global Diversity*. Routledge.

[26] The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998) was elaborated within the United Nations Economic Commission for Europe (UN/ECE). It has been ratified to date (31 December 2010) by 42 of the Council of Europe member States as well as Belarus. The European Union has also ratified it. The Aarhus Convention entered into force in 2001.

[27] The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998).

Almaty Guidelines on promoting the application of the principles of the Aarhus Convention in International Forums, Annexed to Report of the Second Meeting of Parties, UN Doc. ECE/ MP. PP/2005/2/Add.5 of 20 June 2005.

Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed 21 May 2003, entry into force 8 October 2009. Currently, 26 Council of Europe member states have become parties to it.

[28] Pepper, R.; Hobbs. H. (2020) *"The Environment Is All Rights: Human Rights, Constitutional Rights and Environmental Rights"*, 44(2) Melbourne University Law Review.

Furthermore, it must be said that human rights treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter have been interpreted as including obligations pertaining to the protection of the environment, even though none of them contain a right to the environment explicitly. However, several cases raising environmental issues have come before the Court (ECtHR) which consequently pronounced on them. It referred to rights included in the 1950 Convention on which issues, such as noise levels from airports, industrial pollution, or town planning, undeniably had an impact.[29]

1.1. Climate Change as a Human Rights Challenge

Climate change has evolved beyond ecological and economic concerns, emerging as a critical global challenge that jeopardizes fundamental human rights and freedoms. The impacts of global warming are far-reaching, affecting individuals' well-being, health, living standards, and personal lives. Consequently, human rights legal frameworks have gained significant importance, providing avenues for individuals and groups to hold states accountable for insufficient climate change policies.

The Earth's climate is primarily influenced by the presence of natural greenhouse gases in the atmosphere, such as water vapor, carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), and tropospheric ozone (O_3). While a portion of short-wave solar radiation enters the atmosphere, long-wave radiation is subsequently absorbed and retained by the Earth's surface.[30] The increasing concentration of these greenhouse gases in the atmosphere, largely due to various human activities, is a matter of concern. This phenomenon ultimately contributes to an amplified "greenhouse effect" and global climate change. Carbon dioxide, originating from sources such as fossil fuel combustion, cement production, agriculture, and deforestation, represents the most significant contributor to climate change. However, global emissions of CFC-11 and 12,[31] as well as methane and nitrous oxide, also present considerable challenges.

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[29] Shelton.D,L. (2017) *"Human Rights, Environmental Rights, and the Right to Environment",* George Washington University Law School.

[30] https://scied.ucar.edu/learning-zone/how-climate-works/greenhouse-effect (Last accessed 12/04/2025)

[31] CFC-11, or R-11 (CFC) _ Trichlorofluoromethane, a liquid at room temperature, was used as a refrigerant and in foam insulation. CFC-12 (also known by the trade name Freon or Freon-12) _ Dichlorodifluoromethane, a gas, was used as a refrigerant, most notably in air conditioning systems.
They were widely used as refrigerants and propellants but are now banned or heavily restricted under the Montreal Protocol because they deplete the ozone layer. When they rise to the stratosphere, UV radiation breaks them down, releasing chlorine atoms that catalyze the destruction of ozone. Both are also potent greenhouse gases with high

In response to these concerns, the Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) to offer scientific guidance for future action plans.

The treaties pertaining to climate change and its subsequent effects have received formal approval and have been implemented by the UN General Assembly and its specialized agencies. During the period of 1988–1989, the UN General Assembly recognized that "*climate change is a common problem of all mankind*" and urged governments, intergovernmental bodies, and non-governmental organizations to collaborate in the urgent preparation and adoption of a framework agreement on climate change. The negotiations and political processes that led to the adoption of legal instruments were significantly advanced by the Declaration of the Second World Conference on Climate Change in 1990.[32] This conference was convened with the objective of adopting an effective framework agreement on climate change, which would outline immediate actions for the Parties to undertake. In December 1990, the UN General Assembly initiated a joint intergovernmental negotiation process under its auspices, with support from UNEP and WMO. The purpose of this process was to prepare the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC). The INC/FCCC conducted five sessions, and the Convention was adopted at the conclusion of its fifth session in May 1992. The UN Framework Convention on Climate Change (1992 Climate Change Convention) was signed by 155 Member States and the European Commission in June 1992 at the UN Conference on Climate Change in Rio de Janeiro.[33] This agreement represents a comprehensive package that incorporates the interests of all negotiating parties, though it does not fully satisfy any single one. Furthermore, the agreement served as a compromise between parties advocating specific emission reduction methods and those who viewed it primarily as a framework for future protocols, such as the

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global warming potentials. Both are potent greenhouse gases with high global warming potentials (GWPs), contributing to climate change. CFC-12 has a GWP of \ (8,500\). CFC-11 has a GWP of \ (5,000\).

[32] The Ministerial Declaration of the Second World Climate Conference (1990) recognized that human activities are increasing greenhouse gas concentrations and cause global warming, but it did not set specific emission reduction targets due to political negotiations. Instead, it called for taking steps to reduce greenhouse gas sources and increase sinks, emphasizing the need for scientific research and a future global convention on climate change, as outlined in the Final Conference Statement and the Ministerial Declaration. It welcomed efforts to protect the ozone layer under the Montreal and Vienna Conventions and urged cooperation on research and monitoring of other greenhouse gases.

[33] The United Nations Framework Convention on Climate Change (UNFCCC). 1992.

The UNFCCC provides the foundation for subsequent agreements like the Kyoto Protocol (1997) and the Paris Agreement (2015), which built on its principles to set specific goals for emissions reduction and global temperature increase.

1985 Vienna Convention.[34] In 1997, the Kyoto Protocol[35] was adopted, which established more detailed commitments for developed countries during its initial period.

International recognition of climate change's effects on human rights is well-established. The UN Human Rights Committee, the Human Rights Council, and other relevant entities have highlighted the climate crisis's direct impact on the rights to life (ICCPR Article 6), health (ICESCR Article 12), housing and an adequate standard of living (ICESCR Article 11), and private life (ECHR Article 8).

In 2021, the UN Human Rights Council initiated a special mandate concerning climate chang, [36] and in 2022, the UN General Assembly passed a landmark resolution [37] acknowledging a clean, healthy, and sustainable environment as a fundamental human right. Concurrently, the International Court of Justice (ICJ) has commenced preparations for an advisory opinion on the obligations of states regarding climate change within the framework of human rights.[38]

This evolving landscape indicates a shift towards the legal enforcement of environmental responsibility, moving beyond mere political pronouncements.

The European Court of Human Rights (ECtHR) marked a significant shift in climate law with its April 2024 ruling in *VereinKlimaSeniorinnen Schweiz and Others v. Switzerland*, representing a pivotal moment within the European context.[39] For years, the ECtHR had approached the legal evaluation of environmental matters with considerable circumspection. The 2024 ruling in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, however, marked the first instance where the Court directly attributed state liability for inadequate climate change mitigation efforts. The case was initiated by a group of elderly women and their association, who contended that Switzerland's climate policies were insufficient and posed a threat to their health and well-being. The Court determined that Switzerland had not implemented adequate measures to mitigate global warming, thereby contravening Article 8 of the Convention, which pertains to the right to private and family life.

Climate change is progressively recognized as a human rights concern. The European Court of Human Rights' ruling in the *VereinKlimaSeniorinnen* case established a novel legal

[34] The Vienna Convention for the Protection of the Ozone Layer (Ozone Treaty), 1985.
[35] The Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change.
[36] UN Human Rights Council Resolution 48/13 (2021).
[37] UN General Assembly Resolution 76/300 (28 July 2022) — "The human right to a clean, healthy and sustainable environment."
[38] Advisory Opinion and responds to the questions posed by the General Assembly before the ICJ "Obligations of States in respect of Climate Change" _ No 2025/36, 23 July 2025.
[39] European Court of Human Rights, VereinKlimaSeniorinnen Schweiz and Others v. Switzerland, Application no. 53600/20, Judgment of 9 April 2024.

precedent, wherein governmental inaction or inadequate measures regarding climate issues may constitute a human rights violation.

This paradigm extends beyond Europe. The involvement of the United Nations, the International Court of Justice, and other regional bodies indicates that the legal and human rights dimensions of climate change will be a prominent legal focus in the 21st century. Consequently, addressing the climate crisis has evolved from a purely environmental or political-economic challenge to an imperative to safeguard fundamental human rights.

1.2. The Role of International Human Rights Law in Environmental Protection

Over the past few decades, the intersection of environmental protection and international human rights law has undergone a substantial transformation. Initially, environmental matters were primarily addressed through non-binding agreements and specialized treaties centered on pollution control, biodiversity preservation, and resource management. As environmental degradation increasingly impacted fundamental aspects of human life, including health, livelihoods, and security, it became evident that environmental harm transcends ecological or technical considerations and constitutes a human rights issue.[40]

International human rights law offers a robust structure for individuals and communities to seek redress for environmental damages. Core rights, encompassing the right to life, health, privacy, family life, and property, are directly impacted by environmental degradation and climate change. [41] Within the United Nations framework, human rights entities have increasingly recognized environmental protection as a critical component for the realization of fundamental human rights. The Human Rights Committee has interpreted Article 6 of the ICCPR, pertaining to the right to life, as encompassing environmental conditions vital for human survival.[42] The UN Human Rights Council, in its landmark *Resolution 48/13*, formally recognized the human right to a clean, healthy, and sustainable environment.[43] This recognition

[40] Boyle, A. (2012). *Human Rights and the Environment: Where Next? European Journal of International Law*, 23(3), P. 613–642.
[41] UN Human Rights Council. (2021). Resolution 48/13: The human right to a clean, healthy and sustainable environment.
[42] UN Human Rights Committee. (2018). General Comment No. 36 on Article 6: Right to Life.
[43] UN Human Rights Council. (2021). Resolution 48/13: The human right to a clean, healthy and sustainable environment.
The HRC resolution is not legally binding, but it "invites the United Nations General Assembly to consider the matter" (i.e. the human right to a clean, healthy and sustainable environment).

was further strengthened when the UN General Assembly, through *Resolution A/RES/76/300*, declared the right to a healthy environment as universal.[44]

Regional human rights systems have played a crucial role in implementing these principles in the legal reality. The European Court of Human Rights (ECtHR), through its jurisprudence under Article 8 of the European Convention on Human Rights (ECHR), has determined that significant environmental damage can infringe upon the right to private and family life, as well as the enjoyment of one's home. Landmark cases, such as *Lopez Ostra v. Spain (1994)*, acknowledged that severe environmental pollution constituted a violation of Article 8.[45] In *Fadeyeva v. Russia (2005)*, the Court held that states have a positive obligation to take effective measures to reduce environmental harm affecting individuals.[46] *Cordella v. Italy (2019)* further confirmed that inadequate action on industrial pollution constitutes a violation of Article 8.[47] Most recently, in *VereinKlimaSeniorinnen Schweiz v. Switzerland (2024)*, the Court explicitly found that Switzerland's failure to take sufficient climate action violated Article 8, underscoring that states must adopt effective measures against foreseeable climate harms.[48]

Other regional systems echoed this development too. The Inter-American Court of Human Rights, in *Advisory Opinion OC-23/17*, recognized the autonomous right to a healthy environment and clarified states' extraterritorial obligations to prevent significant environmental harm.[49] Moreover, international human rights law strengthens environmental protection through procedural rights: access to information, participation in decision-making, and access to justice. These procedural elements, codified in instruments like the Aarhus Convention [50] and the Escazú Agreement empower communities to hold governments accountable and enhance environmental governance.[51]

The growing wave of climate litigation further illustrates the convergence of human rights and environmental protection. In *Duarte Agostinho and Others v. Portugal and 32 Others*, six Portuguese youths challenged states' inadequate climate action as a violation of their rights

[44] UNGA. (2022). Resolution A/RES/76/300: The Human Right to a Clean, Healthy and Sustainable Environment. The right creates an obligation of the state to regulate and enforce environmental laws, control pollution, and otherwise provide justice and protections for communities harmed by environmental problems. The right to a healthy environment has been an important right for creating environmental legal precedents for climate change litigation and other environmental issues.
[45] Lopez Ostra v. Spain, Application No. 16798/90.
[46] Fadeyeva v. Russia, Application No. 55723/00.
[47] Cordella and Others v. Italy, Applications Nos. 54414/13 and 54264/15.
[48] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application No. 53600/20.
[49] Advisory Opinion OC-23/17 on the Environment and Human Rights.
[50] Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. (1998). UNECE.
[51] The Escazú Agreement, March 4, 2018, treaty for environmental protection and human rights in Latin America and the Caribbean

under Articles 2, 8, and 14 of the ECHR.[52] Although dismissed on procedural grounds, the case reflects a global trend of using human rights law to address climate inaction.

Hence, in conclusion, international human rights law has emerged as a crucial legal instrument for environmental protection. By characterizing environmental degradation as a breach of fundamental rights, it elevates environmental protection from a policy objective to a legally binding obligation[53]. This paradigm shift underscores the interconnectedness of human dignity, health, and survival with a healthy environment. As climate change accelerates, human rights law will assume a progressively significant role in influencing environmental governance and ensuring state accountability.

1.3. The Emergence of Positive Obligations in Human Rights Jurisprudence

The primary objective of international instruments for the protection of human rights is to establish rights, and their effectiveness hinges onto the obligations of the state parties, in addition to the established guaranteed mechanisms. Consequently, international control bodies prioritize the identification, delineation, and scope of these obligations. This focus is particularly pronounced in the human rights domain, considering the applicable principles, especially the principle of effectiveness. Control bodies utilize various methods to define the extent and scope of states' commitments. A notable approach[54] involves categorizing each right into three types of obligations: the "obligation to respect," which mandates that state entities and personnel refrain from committing violations, the "obligation to protect," which requires the state to safeguard rights holders from third-party interference and to penalize perpetrators, and the "obligation to implement," which necessitates specific positive measures to fully realize and give effect to the right.[55] Indeed, this methodology aligns with the preferences of entities tasked with monitoring the effective implementation of economic, social, and cultural rights

[52] Duarte Agostinho and Others v. Portugal and 32 Others, Application No. 39371/20.
[53] Boyle, A. (2020*). Climate Change, the Paris Agreement and Human Rights. International and Comparative Law Quarterly*, 69(4), P. 759–777.
[54] Hakimi. M. (2010) *"State Bystander Responsibility",* The European Journal of International Law Vol. 21 no. 2. Pp.342-344.
[55] "*Paras 68–69 arguing that a framework based on capacity improperly assumes that 'can implies ought', though it may be undesirable for the duty-holding entity to exercise its influence*" (Ruggie.J (2008) Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, UN Doc A/HRC/8/5)
Committee on the Elimination of Racial Discrimination, Concluding Observations: United States, UN Doc CERD/C/USA/CO/6 (2008).
Ziegler. J. (2006) Commission on Human Rights, Report of the Special Rapporteur on the Right to Food, UN Doc E/CN.4/2006/44
Ruggie. J. (2009) Human Rights Council, Business and Human Rights: Towards Operationalizing the 'Protect, Respect and Remedy' Framework, UN Doc A/HRC/11/13.

instruments, contrasting with the European Court of Human Rights, whose purview primarily encompasses civil and political rights.

The European Court of Human Rights has adopted a streamlined, dual-faceted framework, categorizing state obligations into 1. Negative obligations and 2. Positive obligations.[56] Consequently, the Court currently provides more extensive protection for the rights enshrined in the Convention, acting as its ultimate guarantor.[57] The European Convention has historically recognized negative obligations, which mandate that states refrain from interfering with the exercise of rights. However, positive obligations, requiring proactive measures by states, have a more recent history.[58] While some positive obligations are explicitly outlined within the Convention's text, the broader concept and its associated mechanisms emerged in the late 1960s, notably influenced by the Belgian linguistic case.[59] Following that landmark ruling, the European Court of Human Rights has consistently expanded this category by incorporating new elements, resulting in nearly all the Convention's standard-setting provisions now possessing a dual aspect in their requirements: one negative and one positive. This development has yielded a primarily judicially constructed framework, a significant undertaking that has been appropriately recognized as a "decisive weapon"[60] in enforcing the Convention's rights. The concept of positive obligation has empowered the Court to reinforce, and occasionally broaden, the substantive requirements of the European text, linking them to procedural obligations that are independent of, and in addition to, those outlined in Articles 6 and 13. The overarching objective is to ensure individuals can effectively exercise the rights guaranteed.

Considering that positive obligations generally expand the requirements states must fulfill, their legal foundation is of paramount significance. Due to the principle of attribution, which restricts the Court's jurisdiction to rights grounded in the Convention, European judges have sought to connect each positive obligation to a specific Convention clause, resulting in an

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[56] Garciandia, R. (2020) *'State responsibility and positive obligations in the European Court of Human Rights: The contribution of the ICJ in advancing towards more judicial integration'*, Leiden Journal of International Law, 33(1), pp. 177–187.

[57] The following are two important studies on the subject: Sudre Frédéric, "*Les obligations positives dans la jurisprudence européenne des droits de l'homme*", Revue trimestrielle des Droits de l'homme, 1995, pp. 363.; Mowbray. A.R. *The development of positive obligations under the European Convention on Human Rights by the European Court of Human Rights,* Hart Publishing, Oxford, Portland, Oregon, 2004.

[58] Stoyanova, V. (2022) *"Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries, Forthcoming, Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries"*, Oxford University Press, Available at SSRN: https://ssrn.com/abstract=4146695 (Last accessed 12/04/2025).

[59] "Relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium, Nos. 1474/62 et al., ECtHR (Plenary), 23 July 1968.

[60] The term was coined by Professor. Marguénaud J.P. in "*La Cour européenne des Droits de l'Homme, Dalloz"*, Paris, coll. Connaissance du droit, 2nd edition, P. 36

evolution of case law. Positive obligations, as defined, complement negative obligations. The key distinction lies in the requirement for positive state intervention in the case of the former, contrasting with the latter's demand for state restraint. Non-compliance with the Convention arises from inaction by national authorities in the former instance, and from their active obstruction or limitation of rights in the latter. Positive obligations encompass the responsibilities of states to not only refrain from infringing upon rights but also to proactively implement measures to ensure their effective safeguarding. Historically, human rights treaties were primarily construed as imposing negative obligations, obligating states to abstain from impeding individual freedoms. However, international and regional human rights entities have increasingly acknowledged that the meaningful guarantee of numerous rights necessitates affirmative state intervention.[61]

The genesis of this legal framework can be attributed to cases from the 1970s and 1980s, wherein the Court initiated the interpretation of positive obligations within Convention rights.[62] A seminal early case*, Marckx v. Belgium (1979)*, established that Article 8 mandates states to not only refrain from arbitrary interference but also to implement measures enabling individuals to effectively enjoy their family life.[63] This rationale represented a significant transition from a purely negative understanding of state obligations to one where states bear an active responsibility for safeguarding rights within their legal frameworks.[64] Article 8 (right to private and family life) has arguably been the most active area for the development of positive obligations. In *Lopez Ostra v. Spain (1994),* the Court determined that significant environmental pollution from a waste treatment plant infringed upon the applicant's right to private and family life, and that the state had failed to enact sufficient protective measures.[65] This case is particularly noteworthy for illustrating the convergence of positive obligations and environmental protection, a domain of increasing relevance in the context of climate change. Subsequent rulings, including *Fadeyeva v. Russia (2005)* and *Cordella v. Italy (2019)*, have underscored the necessity for states to establish regulatory and administrative structures designed to safeguard individuals from anticipated environmental damage.[66]

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[61] Mowbray, A. (2004). *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*. Hart Publishing.
[62] Council of Europe, (2016) *"European Court of Human Rights & Inter-American Court of Human Rights. Dialogue Across the Atlantic: Selected Case-Law of the European and Inter-American Human Rights Courts",* Wolf Legal Publishers.
[63] Marckx v. Belgium, ECtHR, Application no. 6833/74, ECHR 2 (13 June 1979)
[64] O'Cinneide, C. (2011). *Human Rights and the Elusive Universal Subject: Positive Duties and Negative Rights.* Northern Ireland Legal Quarterly, 62(3), P. 335–356.
[65] López Ostra v Spain (1994) App no 16798/90, (1995) 20 EHRR 277.
[66] Fadeyeva v. Russia (2005). App no. 55723/00, Eur. Ct. H.R. 2005-IV, [2005] Eur. Ct. H.R. 376.

Within the context of the European Convention on Human Rights, the safeguarding of private and family life is primarily addressed through two key Articles: Article 8 and Article 12. Article 8, paragraph 1, establishes the right to respect for private and family life, home, and correspondence. Article 12 affirms the right of men and women of marriageable age to marry and found a family, subject to national laws governing this right. In both theoretical and practical applications, Article 8 holds a central position.[67] The Court's interpretation of "respect" within the first paragraph of this Article, as established in the *Marckx v. Belgium* judgment, implies positive obligations for states, extending beyond mere non-interference in private and family life. However, it is crucial to acknowledge the distinct perspective compared to Articles 2 through 4. Article 8's specific nature has granted states a considerable margin of appreciation. This stems from the Convention's provision for restrictions on the right to private and family life (Article 8, paragraph 2) and the inherent ambiguity of "respect," particularly concerning its positive obligations. Consequently, the application of these requirements will vary significantly depending on the practices and circumstances within each Contracting State, as highlighted in the relevant case law.[68] Ultimately, within the context of Article 8, the signatory states, and subsequently the Court, are obligated to mediate between the rights of the applicant and those of other parties. As a result, the European Court's approach, while not necessarily less assertive, is demonstrably less prescriptive. Typically, the Court will determine whether a state's deficiency contravenes the Convention by failing to achieve a fair equilibrium among the competing interests. Only in rare instances does the Court delineate specific affirmative actions.[69]

Recent developments in environmental and climate-related litigation have significantly advanced the concept of positive obligations. The European Court of Human Rights (ECtHR) case of *VereinKlimaSeniorinnen Schweiz v. Switzerland (2024)* established that inadequate climate action contravenes Article 8, thereby affirming states' positive obligation to implement effective measures to mitigate climate change and safeguard individuals from its anticipated effects.[70] This ruling demonstrates the Court's adaptability in applying established human rights principles to novel and intricate global issues.

Cordella v. Italy, (2019) Application nos. 54414/13 and 54264/15, (ECtHR) (January 24, 2019). ECtHR 029.

[67]Akandji-Kombe. J.F. (2007), *Positive obligations under the European Convention on Human Rights, A guide to the implementation of the European Convention on Human Rights*, Human rights handbooks, No. 7, Directorate General of Human Rights Council of Europe, Council of Europe, 1st printing, January 2007 _Printed in Belgium. P. 36-47.

[68]Ibid. P. 36-47.

[69] Ibid. P. 36-47.

[70] VereinKlimaSeniorinnen Schweiz and Others v. Switzerland, Application No. 53600/20.

The theoretical underpinnings of positive obligations stem from the understanding that human rights are not self-executing, necessitating institutional frameworks and proactive governance for their realization.[71] Legal scholars have suggested that "effective protection of rights often depends not on state abstention, but on state action".[72]Consequently, positive obligations serve a transformative function in human rights law, operationalizing rights and bridging the divide between theoretical assurances and practical protection.[73]

Hence, in summary, the development of positive obligations represents a significant evolution in human rights jurisprudence. This shift reconfigures the interaction between individuals and the state, transitioning from a limited approach to rights protection to one emphasizing proactive state responsibility. As novel challenges, including environmental concerns, technological advancements, and climate change, arise, positive obligations will remain instrumental in defining state responsibilities and ensuring the practical fulfillment of human rights.

2. ARTICLE 8 OF THE ECHR AND THE DOCTRINE OF POSITIVE OBLIGATIONS

"Article 8

1. Everyone has the right to respect 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." **European Convention on Human Rights (1950)**

On November 4th 1950 Article 8 and some other Articles which guarantees civil and political rights of the Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) were formally born.[74] The right to respect for private and family life is a broad-ranging

[71] Stoyanova. V., (2023) Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete. Human Rights Law Review 23(3).

[72] O'Cinneide, C., (2011). *Human Rights and the Elusive Universal Subject: Positive Duties and Negative Rights.* Northern Ireland Legal Quarterly, 62(3), P. 335–356.

[73] Klatt. M., (2011) *"Positive Obligations under the European Convention on Human Rights",* Zeitschr. ausl. öff. Recht Völk

[74] Simpson, A.W.B., (2004) *Human Rights and the End of Empire. Britain and the Genesis of the European Convention*, Oxford, UK.

right which can be at stake in various contexts and situations of everyday life, from secret surveillance and monitoring of communication to assisted parenthood and right to live in the healthy environment. It is protected by Article 8 of the European Convention on Human Rights, which covers four spheres of protection: private life, family life, home and correspondence. The exact definition and scope of these spheres have not been precisely identified by the European Court of Human Rights, instead, the ECtHR takes a case-by-case approach in deciding whether a particular issue falls within the scope of Article 8 or not.

2.1. Scope and Content of Article 8

Apparently, Article 8 is divided into two parts. The first part, Article 8 para. 1, sets out the precise rights which are to be guaranteed to an individual by the State, the right to respect for private life, family life, home and correspondence. The second part, Article 8 para. 2, makes it clear that those rights are not absolute in that it may be acceptable for public authorities to interfere with Article 8 rights in certain circumstances. Article 8 para. 2 also indicates the circumstances in which public authorities can validly interfere with the rights set out in Article 8 para. 1, only interferences which are in accordance with law and necessary in a democratic society in pursuit of one or more of the legitimate aims listed in Article 8 para. 2 will be an acceptable limitation by the State of an individual's Article 8 rights.[75]

The right to respect for private and family life can be subject to lawful and proportionate restrictions, which serve a legitimate aim. The obligation of the State under Article 8 is to refrain from interfering with the right itself and to take some positive measures, such as, to criminalize extreme breaches of the right to respect for private life by individuals. Given that the right to respect for private and family life concerns a vast variety of situations, the ECtHR case law on Article 8 is immense. To be able to ensure compliance with the Article 8 standards, domestic legal professionals must have knowledge of the concepts covered by this Article, as well as an understanding on the approach taken by the ECtHR in its analysis on Article 8 issues.[76]

While Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and ensure due respect for the interests

[75] Kilkelly. U., (2001) *"The right to respect for private and family life" A guide to the implementation of Article 8 of the European Convention on Human Rights,* Council of Europe, PP.8-12

[76] Lavrysen. L., (2014) "*The scope of rights and the scope of obligations: Positive obligations*. In: Brems E, Gerards J, eds. *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights*. Cambridge University Press, PP. 162-182.

safeguarded by Article 8.[77] The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority.[78] This obligation is of the classic negative kind, described by the Court as the essential object of Article 8.[79] However, Member States also have positive obligations to ensure that Article 8 rights are respected even as between private parties.[80]In particular, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life.[81] These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.[82]

For the scope and content of Article 8 ECHR I consider that it is crucial to analyze step by step every protected area by this Article.

To begin with, right to respect for one's private life covers the physical and psychological integrity of a person.[83] Private life also embraces aspects of an individual's personal and social identity. Since both one's name and surname constitute a means of personal identification, the right to a personal identity may come into play in cases in which state regulation interferes with their use by individuals.[84] Especially when they discriminate between people without any legitimate objective or rational justification. Right to private life, furthermore, covers a right to personal development through securing for the individual a private, internal sphere within which he or she can freely pursue the development and fulfilment of his personality.[85] Hence it guarantees respect for individuals to shape and define who they are through their own personal choices. This aspect of Article 8, however, can only be taken so far and does not, for example, incorporate an individual's choice to go on living. Thus, while accepting that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 and that it is under that provision that the notion of the equality of life

[77] Fernández Martínez v. Spain, ECtHR, 12 June 2014, Application no. 56030/07, §147.
[78] Libert v. France, ECtHR, February 22, 2018, application no. 588/13, §§ 40-42.
[79] Kroon and Others v. the Netherlands, ECtHR, October 27, 1994, Application no. 18535/91. § 31.
[80] Bărbulescu v. Romania, ECtHR, September 5, 2017, Application no. 61496/08, §§108-111.
[81] Lozovyye v. Russia, ECtHR, April 24, 2018, Application no. 4587/09, § 36
[82] See Evans v. the United Kingdom [GC], § 75, although the principle was first set out in Marckx v. Belgium.
[83] X and Y v Netherlands (App no 8978/80) (1986) 8 EHRR §235.
[84] Daróczy v Hungary, ECtHR, App no 44378/05, (authorities' refusal to allow the applicant to keep her birth name after her husband's death).
[85] Waddington, L. (2012) 'Unravelling the knot: Article 8, private life, positive duties and disability: rewriting Sentges v. Netherlands', in E. Brems (ed.) Diversity and European Human Rights: Rewriting Judgments of the ECHR. Cambridge: Cambridge University Press, pp. 329–351.

that on significance, in the case of mercy killing *Pretty v United Kingdom*, the ECtHR pointed out that the more serious the harm involved, the more heavily would weigh in the balance considerations of public health and safety against the countervailing principle of personal autonomy, i.e. the wider margin of appreciation afforded to a State.[86]

Connecting the right to private life with the presented research, it is reasonable to conclude that a healthy and clean environment is directly linked to the right to privacy. As consistently highlighted in this research, every individual possesses the right to develop, reside, and conduct their personal life within a healthy, clean environment, safeguarded from risk factors stemming from climate change. Consequently, states are obligated to facilitate the full realization of this right for their citizens.

The situation regarding a definition of what family life under Article 8 is, is very similar to the one concerning the definition of private life discussed in the above "Right to private life". For the purposes of this paper, I will not dwell on a detailed breakdown of this topic and will move directly to the "Home", the judicial definition of which may be more closely related to the topic of my research.

The Convention organs have developed an autonomous notion of home under Article 8 in the same case-by-case way as they did with the notions of private and family life. Similarly, as in the case of private and family life, there is no such thing as one definition of the notion of home under Article 8. Notwithstanding a prima facie broad scope of the term "home", from relevant case law, one can deduce that the following meanings of home fall outside Article 8's scope as interpreted by the ECtHR.[87]

Pursuant to ECtHR's case law, for premises to be a home, it is not necessary for a person to have a proprietary interest in them.[88] Nor are such interests, however, sufficient of themselves to constitute a home. For a place to be considered someone's home, the existence of sufficient continuing links between the person and the place must be clearly present. The ECHR's home is an autonomous concept which does not depend on classification under domestic law.[89] Hence, it should have a broad definition regarding meaning. Which may be connected to the state's responsibility to help persons enjoy this life in the clean and healthy environment,

[86] Pretty v United Kingdo, ECtHR, (n 54) [74] - [76].
[87] Fomina L.Yu., (2016) *"Protection of the Right to Respect for Private and Family Life in European Court of Human Rights",* European Research Studies, Volume XIX, Special Issue 3, Part B. pp. 97-110.
[88] However, that where a person enjoys a property right in relation to a house, any possible interference with that right will (also) be considered under Article 1 of the first Protocol ECHR, which guarantees the right to peaceful enjoyment of possessions.
[89] Mowbray A., *Cases and Materials on the European Convention on Human Rights* (2nd ed. OUP, Oxford 2007); Feldman D., '*The Developing Scope of Article 8 of the European Convention on Human Rights'* (1997)

without any fear of hazardous climate actions or infringement from several companies, which pollute air, soil and water.

2.2. Positive Obligations Under the ECHR

The concept of positive obligations is rooted in the case law of the European Court of Human Rights.[90] Since then, the ECtHR has developed a doctrine of positive obligations in its case-law, involving different types suggestions, particularly substantive and procedural positive obligations. [91] The concept is generally considered as a means of ensuring effective fundamental rights protection. The ECtHR tends to refrain from granting a margin of appreciation for the States when it comes to procedural obligations.[92] Also, Member States are required to set measures to ensure fundamental rights protection. These may be on the one hand of substantive nature, such as considering the special situation of parents of twins in legislation or imposing the establishment of a working time recording system. On the other hand, they may have procedural character, for instance when a remedy must be provided.[93]

Starmer identified five broad positive obligations under the Convention:[94]

1. *"A duty to put in place a legal framework which provides an active protection for Convention rights.*
2. *A duty to prevent breaches of Convention rights.*
3. *A duty to provide information and advice relevant to a breach of Convention rights.*
4. *A duty to respond to breaches of Convention rights.*
5. *A duty to provide resources to individuals to prevent breaches of their Convention rights."*[95]

With his categorization, Starmer has succeeded in covering most areas of the Court's positive obligations case law, and therefore his categorization is a useful starting point for the

[90] "*Nevertheless, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective "respect" for family life."*(Marckx v. Belgium, ECtHR, June 13, 1979, Application No. 6833/74, Para. 31.)

[91] Lavrysen L., (Intersentia, 2016), Human *Rights in a Positive State,* p. 47–78.

[92] Akandji-Kombe J.-F., (2007) *'Positive Obligations under the European Convention on Human Rights. A Guide to the Implementation of the European Convention on Human Rights'*, Human Rights Handbooks 7, https://rm.coe.int/168007ff4d , P. 20.

[93] Lavrysen L., *Human Rights in a Positive State*, P. 326.
Mowbray A., *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, 2004), P. 221.

[94] Starmer K., *"Positive Obligations under the Convention"* in Lowell J. and. Cooper J. (eds.), *Understanding Human Rights Principles* (Portland, Hart Publishing, 2001), P. 146–147.

[95] Ibid. P. 139

present discussion.[96] However, in developing his categorization Starmer seemed to have been more concerned with clustering cases for the purpose of providing a descriptive account of positive obligations, rather than with developing "neat" analytical distinctions. As a result, categories that are not properly discussed together, because they are either too broad, or too narrow, are placed on the same footing, obscuring the differences and similarities between different types of positive obligations within and across these categories.[97]

The Court itself has never attempted to develop a particular classification of positive obligations but has nonetheless regularly distinguished between two types of positive obligations: substantive and procedural ones.[98] The Court increasingly but far from consistently uses these labels explicitly when analyzing a case in terms of positive obligations. The typical areas in which the Court has recourse to these labels are Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment or punishment) and, to a lesser extent, 8 (the right to respect for private life).[99]

Article 8 is the area which the Court is most consistent in explicitly distinguishing between substantive and procedural obligations is cases concerning environmental protection. In the Hatton case, the Court, for example, held that:

"In a case such as the present one, involving State decisions affecting environmental issues, there are two aspects to the inquiry which may be carried out by the Court. First, the Court may assess the substantive merits of the government's decision, to ensure that it is compatible with Article 8 (i.e. the substantive aspect). Secondly, it may scrutinize the decision-making process to ensure that due weight has been accorded to the interests of the individual)i.e. the procedural aspect)"[100]

Stoyanova and Akandji-Kombe both quote the Asanidze case[101], in which the Court allegedly held that positive obligations aim to "prevent or remedy" violations of the

[96] Russell, D., (2010) *Supplementing the European Convention on Human Rights: legislating for positive obligations*. Northern Ireland Legal Quarterly, 61(3), P. 281–294.
[97] Lavrysen L. (2016) *Typologies of Positive Obligations. In: Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights*. P. 45-130.
[98] Stoyanova V., *Human Trafficking and Slavery Reconsidered* (PhD dissertation, Lund University, 2015), P.449.
[99] Peters, A., Altwicker-Hámori, S., & Altwicker, T. (2016). *Measuring violations of human rights: An empirical analysis of awards in respect of non-pecuniary damage under the European Convention on Human Rights*. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, (1), P.1-51.
[100] Hatton and Others v. the United Kingdom, ECtHR (Grand Chamber), 8 July 2003, ap.no. 36022/97, §99.
[101] The core idea is that the ECtHR's approach to positive obligations involves a distinction between two main functions, which map onto the distinction between substantive and procedural obligations:

1. Preventive function (substantive obligations): This involves the state's duty to take action to prevent a violation of Convention rights from occurring in the first place (e.g., protecting an individual from harm by a third party).

Convention, and that this distinction between preventive and remedial functions underlies the distinction between substantive and procedural obligations respectively.[102]However, in doing so, they both misquote the Court, since the quote does not concern positive obligations but rather the fact that Georgia was held to be under an obligation to "prevent or remedy" any human rights violations committed by subordinate State authorities – in particular the authorities of the Autonomous Republic of Adjara – which are directly imputable to the Georgian State.[103]

In any event, while many substantive obligations have a preventive function and many procedural obligations a remedial one, the distinction in functions only to some extent aligns with the distinction between both types of obligations, and cannot therefore justify the latter distinction.[104] Stoyanova has moreover held that some procedural obligations have both a remedial and a preventive function, the latter being related to the deterrent effect of such investigations. In addition, several procedural obligations recognized by the Court are ex ante ones[105] that by definition have a preventive function since they must be complied with before the substance of a human right is affected. A good example is the already-mentioned case of *Hatton*, where the Court held that*: "a governmental decision-making process concerning complex issues of environmental and economic policy such as in the present case must necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake."*[106]

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2. Remedial function (procedural obligations): This involves the state's duty to provide a remedy after a potential violation has occurred, primarily through conducting an effective official investigation into the matter (e.g., investigating an alleged instance of ill-treatment).

This analytical framework is used by the scholars to examine the nuances and complexities of how the ECtHR applies positive obligations in specific cases, including the 2004 Grand Chamber judgment in *Assanidze v. Georgia.* The Assanidze case itself primarily concerned the arbitrary and unlawful detention of an individual by local authorities despite a court order for his release, leading to a finding of violations of Article 5 § 1 (right to liberty) and Article 6 § 1 (right to a fair trial) of the ECHR. The scholars likely reference this case to illustrate how the Court's reasoning on state responsibility for omissions (failure to act) can be framed within their proposed distinction.

[102] Stoyanova V., *Human Trafficking and Slavery Reconsidered* (PhD dissertation, Lund University, 2015). Akandji-Kombe J.-F*,* (2007) *Positive obligations under the European Convention on Human Rights – A guide to the implementation of the European Convention on Human Rights* (Human rights handbooks, No. 7, Strasbourg, Council of Europe), quoting Assanidze v. Georgia, ECtHR (Grand Chamber), 8 April 2004, app. no. 71503/01, §146.

[103] Lavrysen, L. (2016) 'Typologies of Positive Obligations', in *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights*. pp. 45–130.

[104] Akandji-Kombe J.-F., *Positive obligations under the European Convention on Human Rights – A guide to the implementation of the European Convention on Human Rights* (Human rights handbooks, No. 7, Strasbourg, Council of Europe, 2007),

[105] Stoyanova V., *Human Trafficking and Slavery Reconsidered* (PhD dissertation, Lund University, 2015).

[106] Hatton and Others v. the United Kingdom, ECtHR (Grand Chamber), 8 July 2003, , no. 36022/97, §128.

It must be said that the principles applicable to assessing a State's positive and negative obligations under the Convention are similar. Regard must be had for the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance.[107] Where the case concerns a negative obligation, the Court must assess whether the interference was consistent with the requirements of Article 8 paragraph 2, namely in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society.

In the case of a positive obligation, the Court considers whether the importance of the interest at stake requires the imposition of the positive obligation sought by the applicant. Certain factors have been considered relevant for the assessment of the content of positive obligations on States. Some of them relate to the applicant. They concern the importance of the interests at stake and whether "fundamental values" or "essential aspects" of private life are in issue or the impact on an applicant of a discordance between the social reality and the law, the coherence of the administration and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8. Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question is whether the alleged obligation is narrow and precise or broad and indeterminate.[108] The scope of its application in the context of environmental protection and/or climate change mitigation will be thoroughly examined in the third chapter of the forthcoming paper.

3. THE JURISPRUDENCE OF THE COURT ON ENVIRONMENT AND CLIMATE

Jurisprudence has endeavored to define the concept of environmental law and environmental rights for decades, yet these efforts have not yielded a definitive outcome. The development of the concept of environment and human rights about it faces a particular objective challenge. As Friedrich Nietzsche suggested, it is easier to define something that lacks history. Without history there would be no law. Generally, any kind of law can be understood as a cultural and historical phenomenon, not a universal, time and space free concept. It evolves over time and adapts to changing circumstances, leading to ongoing debates about its definition and content.[109] I personally believe that the jurisprudence of the ECtHR on Environment and

[107] Hämäläinen v. Finland [GC], § 65; Gaskin v. the United Kingdom, § 42; Roche v. the United Kingdom [GC], § 157.
[108] Hämäläinen v. Finland [GC], § 66
[109] Rüthers B. Fischer C. Birk A. (2011) *Rechtstheorie*; P.35

Climate is a clear example of it. As per individual perspective, it may not be necessary to place significant emphasis on the precise definition of environmental law and environmental rights. The concept of it serves primarily to differentiate it from events that fall outside the legal realm.[110] At this moment, when there are dozens of cases of ECtHR and not only, about environmental rights, environmental degradation, climate change law, etc. supposedly it is not the responsibility of lawyers to establish the concept of environmental or climate change law, rather, we must derive the concept of it from case law and jurisprudential philosophy.[111]

Therefore, to get back to the Friedrich Nietzsche, everything has history, even words. Language changes over time, since law is phenomena that is expressed in linguistic form, it also changes over time. According to Nietzsche, a single word can possess its entire etymology, and with every definition, a bit of its history is lost. Defining a term means assigning it an unalterable meaning. Therefore, Nietzsche claims „only that which has no history can be defined'. A word's context, on the other hand, is more important than definitions.[112] Therefore, from my personal point of view, I consider that when we think/talk about environmental/climate change law and ecological issues of our planet it might be true that sometimes we must "pollute" law by scientifical definitions. It is crucial to be able to understand environmental law as it is, without any philosophical or judicial additives. Tho, from my perspective, the reason why we cannot define environmental/climate change law precisely yet is because we still cannot define and understand what it is precisely and what case law (in the concept of my research ECtHR) says about it. This is a question full of oxymorons and debatable. Every single person defines environmental/climate change law as it should be and finding one true answer is impossible.

The last few decades environmental law expands rapidly. It is evident that the evolution of law follows a domino effect within the context of interactions. Previously unregulated or insignificant areas, often confined to a single country without broader implications, are now subject to regulation. The actions of international organizations, particularly the United Nations, contribute to the growing complexities of law, making it challenging to grasp the intricate semantic meaning of law in its essence. As new regulations are being introduced, it becomes increasingly difficult to determine whether law serves as a regulatory framework for social relations, governing interactions between individuals or if it encompasses a broader, boundless realm that continuously expands and evolves alongside global development. While

[110] Röhl K. (2008) Allgemeine Rechtslehre, P.67
[111] Rüthers B. Fischer C. Birk A. (2011) Rechtstheorie; P.36
[112] Nietzsche, F. (2012), The Genealogy of Morals. P.53

the question may appear valid at first glance, it is important to recognize that anything that expands is composed of matter. If we consider law as a distinct entity, akin to a separate universe, and contemplate its existence in relation to the universe, we can draw parallels to the concept of spacetime. According to the principles of physics, the universe itself constitutes spacetime, encompassing both matter and energy within its vast expanse. Accordingly, it appears that the environmental law's inherent characteristics include growth, development, and the additions of definition.

When examining the European Convention on Human Rights, a thorough analysis of the Convention's and the European Court's roles in safeguarding human environmental rights is warranted. Initially, the Court did not entertain claims asserting environmental rights violations, as it was understood that the Convention lacked specific provisions for such rights, rendering these claims unsubstantiated. Naturally, discussions regarding climate change-induced violations were absent, as this issue was not recognized as a significant concern at the time. It is important to reiterate that even currently, neither the European Convention on Human Rights nor its additional protocols explicitly guarantee the protection of human environmental rights. Nevertheless, by categorizing the Convention's protected rights into substantive and procedural norms, a wider interpretative scope emerges, which the European Court of Human Rights leverages in the context of environmental rights protection. The substantive provisions of the Convention encompass Articles 2 (right to life), 3 (physical integrity), 5 (right to liberty and security), and 8 (right to private and family life) of the Convention, in addition to Article 1 of the First Protocol (right to peaceful enjoyment of possessions) and Article 10 (freedom of expression). It is important to note that European jurisprudence concerning human environmental rights is founded upon the interpretation of these Articles, and it is through their multifaceted interpretations that the Court has rendered its established, precedent-setting decisions.

3.1. Foundations: Environmental Jurisprudence under Article 8

The evolution of the European Court of Human Rights' jurisprudence, coupled with global economic advancements and heightened environmental consciousness, has demonstrated the multifaceted interpretability of the Convention's provisions, particularly in environmental contexts. By the latter half of the 20th century, it became evident that an environmental interpretation of the Convention's provisions could yield beneficial outcomes, and a broad interpretation of these norms is crucial for their practical implementation. Presently,

environmental protection and climate change mitigation are paramount global concerns, underscoring the clear nexus between human rights and environmental safeguarding. It is noteworthy that international legal frameworks, national constitutions, and case law are increasingly prioritizing the actualization of human environmental rights.

The right to respect for private and family life and the home are protected under Article 8 of the Convention. This right implies respect for the quality of private life as well as the enjoyment of the amenities of one's home. Environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to environmental protection or nature conservation. However, environmental factors must directly and seriously affect private and family life or the home. Hence, there are two issues which are addressed by the court, whether a causal link exists between the activity and the negative impact on the individual and whether the adverse have attained a certain threshold of harm. The assessment of that minimum threshold depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects, as well as on the general environmental context.

While the objective of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also imply in some cases an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in this Article. This obligation does not only apply in cases where environmental harm is directly caused by State activities but also when it results from private sector activities. Public authorities must make sure that such measures are implemented to guarantee rights protected under Article 8. Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private sector activities properly. The applicability of Article 8 has been determined by a severity test.[113] In *Hudorovič and Others v. Slovenia,* the Court made clear that even though access to safe drinking water is not, as such, a right protected by Article 8, "a persistent and long-standing lack of access to safe drinking water" can have adverse consequences for health and human dignity effectively eroding the core of private life. Therefore, when these stringent conditions are fulfilled, a State's positive obligation might be triggered, depending on the specific circumstances of the case. The Court has furthermore explicitly recognized that public authorities may have a duty to inform the public about environmental risks. Moreover, the

[113] Uliussen, B. A. (2025) '*Monitoring, governmental data access and the invocation of Article 8 ECHR by legal persons'*, The International Journal of Human Rights, 29(7).

Court has stated[114] regarding the scope of the positive obligation that it is generally irrelevant of whether a situation is assessed from the perspective of paragraph 1 of Article 8 which, inter alia, relates to the positive obligations of State authorities, or paragraph 2 asking whether a State interference was justified, as the principles applied are almost identical.[115]

Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private or family life or the home, they must accord with the conditions set out in Article 8 paragraph 2. Such decisions must thus be provided for by law and follow a legitimate aim, such as the economic well-being of the country or the protection of the rights and freedoms of others. In addition, they must be proportionate to the legitimate aim pursued: for this purpose, a fair balance must be struck between the interest of the individual and the interest of the community. Since the social and technical aspects of environmental issues are often difficult to assess, the relevant public authorities are best placed to determine what might be the best policy. Therefore, they enjoy in principle a wide margin of appreciation in determining how the balance should be struck. The Court may nevertheless assess whether the public authorities have approached the problem with due diligence and have taken all the competing interests into consideration.[116]

It must be said that Court has recognized the preservation of the environment, in the framework of planning policies, as a legitimate aim justifying certain restrictions by public authorities on a person's right to respect for private and family life and the home.

Legal basis for interpreting right to private and family life as containing certain procedural elements lies in the concept of State's positive obligations. However, as opposed to the concept of positive obligations in general, which does not relate exclusively to Article 8 of the Convention but also to other rights guaranteed by the Convention.[117] the Court seems to have

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[114]Çiçek and others v. Turkey (dec.), § 32 and §§ 22-29 for a summary of the relevant case-law in the context of air pollution.
Fadeyeva v. Russia, §§ 68-69, where the Court stated that a certain minimum level of adverse effects of pollution on the individual's health or quality of life must be demonstrated to engage Article 8

[115] Stoyanova, V., (2023) *Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete*, Human Rights Law Review, Volume 23, Issue 3.

[116] Buys, E., and Lewis, B., (2022) 'Environmental protection through European and African human rights frameworks', The International Journal of Human Rights, 26(6), pp. 949–977.

[117] Akandji Kombe, J. F., (2007) *Positive Obligations under the European Convention on Human Rights*, Council of Europe.
Cullen, H., (2006) *"Siliadin v. France: Positive Obligations under Article 4 of the European Convention on Human Rights*", Human Rights Law Review.
Kilkelly, U., (2010) *"Protecting Children's Rights under the ECHR: the Role of Positive Obligations"*, Northern Ireland Legal Quarterly 61(3).
Xenos, D., (2012) *The Positive Obligations of the State under the European Convention on Human Rights,* Routledge.

established through its case law the existence of State's positive obligations in a specific, environmental context.

As previously noted, the European Convention on Human Rights and its additional protocols do not contain provisions for the protection of environmental human rights. During the Convention's adoption in the 1950s, environmental protection was not a prominent concern, leading to the inadmissibility of all claims submitted to the Court regarding violations of environmental human rights. For instance, the claims of *Dr. S. v. the Federal Republic of Germany* and *X and Y v. the Federal Republic of Germany* were both rejected.

The Court subsequently recognized that detrimental environmental conditions adversely impact human health and jeopardize life, thereby infringing upon fundamental human rights. Consequently, the Commission, following these determinations, deemed environmental protection claims admissible. Illustrative cases include: *Arrondelle v. the United Kingdom*;[118] *Bagges v. the United Kingdom*[119] (concerning noise pollution); *Powell and Rayner v. the United Kingdom*[120] (also concerning noise pollution. These claims were predominantly presented to the Court alleging violations of Articles 8 and 10 of the Convention and Article 1 of Protocol No. 1. Of note among the cases adjudicated by the European Convention is *Hakasson and Sturesson v. Sweden (*4 December 1979), which involved an alleged violation of Article 1 of Protocol No. 1 to the Convention, stemming from the applicant's claim of land seizure. In this case, the Court determined, within the framework of an environmental human right violation, that Article 1 of Protocol No. 1 to the Convention could be subject to restrictions, considering the public interest. A comparable ruling was rendered in the case of *Fredin v. Sweden*.[121] The applicant asserted a violation of his property rights under Article 1 of Protocol No. 1 to the Convention; however, the Court determined that no such violation occurred, as the applicant had exploited a natural resource on his property in a manner proscribed by national law for nature conservation purposes. A similar determination was reached in the case of *Pine Valley Development Ltd and others v. Ireland*.[122] Consequently, European case law (through the ECtHR) established an indirect mechanism (par ricochet) for safeguarding human environmental rights.

See also the relevant jurisprudence of the European Court of Human Rights: X and Y v. The Netherlands, App. No. 8978/80, Judgment of 26 March 1985, par. 23; Marckx v. Belgium, App. No. 6833/74, Judgment of 13 June 1979; Airey v. Ire land, App. No. 6289/73, Judgment of 9 October 1979, par. 32.

[118] Arrondelle v. United Kingdom, App No 7889/77, ECtHR, Commission Decision, 13 May 1982.

[119] Baggs v. the United Kingdom, ECtHR, Application no. 9310/81, 16 October 1985.

[120] Powell and Rayner v. United Kingdom, App No 9310/81, ECtHR, Judgment of 21 February 1990.

[121] Fredin v. Sweden, Application no.12033/86, ECtHR, 18 February 1991

[122] Pine Valley Development Ltd and others v. Ireland is App No 12742/87 (A/222), [1991] ECHR 55, (1992) 14 EHRR 319, IHRL 3297 (ECHR 1991)

However, this was not precisely what environmental law, as a distinct legal field, required. Instead, it necessitated a comprehensive elucidation of both the positive and negative obligations of states, a development that could be said to have been realized through a cascading effect, following the admission of the initial case. Thus, it can be observed that the legal avenues for safeguarding environmental rights within the framework of the European Convention have evolved in two distinct ways: firstly, the protection of fundamental human rights enshrined in the Convention frequently necessitates the provision of a healthy environment for their fulfilment; and secondly, the European Convention on Human Rights allows for legitimate state-imposed restrictions on the rights and freedoms it establishes, considering the interests of a democratic society. Specifically, based on the jurisprudence of the European Court of Human Rights, it is permissible to restrict Articles 8, 9, 10, 11, and others of the Convention to ensure a healthy human environment.

A clear example of the restriction of rights protected by the Convention is the decision of the European Court of Human Rights in the case of *Muriel Herrick v. the United Kingdom*.[123] The case concerned the prohibition of the plaintiff from using a warehouse belonging to him, which was located on the island of Jersey. The plaintiff was prohibited by the local government (and subsequently by the decision of the European Court of Human Rights) from using this warehouse because it was considered that it was in one of the most prominent places in Jersey, the so-called "green belt", and this violated the interests of society.

The *Muriel Herrick* case clearly shows how and in what form environmental protection issues are considered under the European Convention on Human Rights. In this case, the Court found that the issues of landscape development and environmental protection in Jersey were of relevance to the interests of the local population and tourists. The Commission therefore considered it appropriate to restrict the rights guaranteed by Article 8 of the Convention to indirectly protect the environment. The Court considered that, although the right to a healthy environment is considered an individual right, it nevertheless remains an object of collective protection and, therefore, a restriction of the right under Article 8 of the Convention is justified.

It should be considered that the European Court grants states a margin of appreciation, which is a degree of latitude, to determine whether a restriction of a particular human right is necessary within a democratic society. It is important to note that, in accordance with Article 8 of the European Convention, states are permitted to restrict the rights and freedoms outlined in this Article solely for the purpose of achieving legitimate objectives explicitly stated in the

[123] Muriel Herrick v. the United Kingdom is Application No. 11185/84, ECtHR, March 10, 1985.

second paragraph of that Article (such as the protection of health and morals or the rights and freedoms of others).[124] Similar rulings to the *Muriel Herrick* case have been observed in the cases *of Gillow v. the United Kingdom*[125] and *Sporrong and Lonnorth v. Sweden*.[126]

The case of *López Ostra v. Spain*, which is discussed below, served as a significant impetus for the application of the rights guaranteed by the Convention to the protection of environmental rights. This particular case has subsequently contributed to a strengthening of legal precedent in this area, and later cases have affirmed that the Convention possesses sufficient flexibility to indirectly safeguard human environmental rights.[127]

3.1.1 Early Recognition of Environmental Harm as a Human Rights Issue

The ECtHR began to acknowledge the connection between environmental conditions and human rights in the 1990s. According to the ECtHR, the ability to enjoy the majority of human rights is dependent upon the existence of an undamaged environment.[128]

The cases of *López Ostra v. Spain*[129] and *Powell and Rayner v. the United Kingdom*[130] represent the initial applications submitted to the European Court of Human Rights, alleging infringements of rights under Article 8 of the Convention. These alleged violations were attributed by the applicants to environmental degradation. The applicants believed that the environmental deterioration adversely affected their private lives and impeded their ability to enjoy the rights safeguarded by the Article 8. Through these cases the Court started to explore how detrimental environmental factors could affect individuals' quality of life. Even though the *Powell and Rayner* case didn't find a rights violation, it established the crucial point of balancing individual and community interests.[131] It's important to note that for a case to be valid, it must fall within the scope of Article 8 of the ECHR, which protects rights related to

[124] Kratochvíl. J., (2011) *"The Inflation of the Margin of Appreciation by the European Court of Human Rights."* Netherlands Quarterly of Human Rights, vol. 29, no. 3, P. 324-357
[125] Gillow v. the United Kingdom, Application no. App No 9063/80, ECtHR, November 24, 1986.
[126] Sporrong and Lönnroth v. Sweden, Application nos. 7151/75 and 7152/75, ECHR 1982, 23 September 1982.
[127] Examples of such cases include Powell and Rayner v. the United Kingdom, Anna Maria Guerra and others v. Italy, L.C.B. L.C.B v. the United Kingdom, Hatton and Others v. the United Kingdom, McGinley and Egan v. the United Kingdom, Oneryildiz v. Turkey, and Moreno Gomez v. Spain.
[128] Braig, K. F.; Panov, S., (2020) *The Doctrine of Positive Obligations as a Starting Point for Climate Litigation in Strasbourg: The European Court of Human Rights as a Hilfssheriff in Combating Climate Change? Journal of Environmental Law and Litigation*, Vol. 35, 261, P. 270.
[129] López Ostra v. Spain, Aapplication no. 16798/90, Judgment of 9 December 1994.
[130] Powell and Rayner v. the United Kingdom, Application no. 9310/8121, Judgment of 21. February 1990.
[131] Raisz, A.; Krajnyák, E., (2022) *Protection of the environment in the European human rights framework: a central European perspective, in: Constitutional Protection of the Environment and Future Generations. Studies of the Central European Professors' Network.* Central European Academic Publishing, Miskolc, Budapest, P. 77.

private life, family home, and correspondence. For various environmental disturbances to be deemed a violation of Article 8 rights an ECHR causal link is needed to connect environmental harm to a breach of Convention rights and the state's actions or inactions. This determination, made on a case-by-case basis, rests on two key criteria.[132] First, environmental pollution must be severe enough to significantly impair an individual's enjoyment of their private and family life,[133] and second, the State must have either failed to implement necessary measures to mitigate the pollution or have taken inappropriate actions.[134] Essentially, the Court assesses if the State's actions or inactions contributed to environmental pollution reaching a level that violates Article 8.

In the case of *Powell and Rayner v. the United Kingdom*, the applicant asserted that the intensity and duration of aircraft noise at Heathrow Airport violated his right to respect for private and family life. Mr. Richard John Powell, one of the applicants, resided in an area categorized as low risk according to the Noise Index (NNI). Conversely, Mr. Michael Anthony Rayner, the other applicant, lived in an area classified as high-risk by the Noise Index. The application was submitted to the Court alleging violations of Articles 6, 8, and 13 of the Convention, as well as Article 1 of the Additional Protocol. The Court determined that, *"In view of the varying degrees of harmful effects, the applicants' private lives were infringed by the noise caused by the operation of Heathrow Airport.*" However, the Court's final judgment distinguished between individual and public interests, concluding that the applicants' rights were of less priority when weighed against the public interest (the necessity of airport operations). The European Court stated that in this case Articles 8 and 13 of the Convention had not been violated.

The case of *López Ostra v. Spain* involved a complaint regarding air pollution, specifically odors, noise, and smoke, emanating from a waste treatment plant situated near the applicant's residence. The applicant contended that these environmental nuisances infringed upon their right to respect for their home, private, and family life, thereby constituting degrading treatment, as stipulated in Articles 8 and 3 of the Convention. The Court determined that establishing actual health damage was not a prerequisite. Relying on Article 8 of the Convention, the Court observed that: *"It is inherent that substantial environmental pollution*

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[132] Theil, S. (2021) *'The Environmental Minimum under the ECHR', in Towards the Environmental Minimum: Environmental Protection through Human Rights*. Cambridge: Cambridge University Press, P. 119–200.
[133] Jurić, A.; Mijatović, M., (2022) *Protection from Noise in the Context of Article 8 of the European Convention with Special Reference to Civil Law Protection, Proceedings of the Conference Current Issues of Civil and Commercial Legislation and Legal Practice*, no. 19, Mostar, 2022, P. 215.
[134] Ibid. P. 215.

can impact the well-being of individuals and impede their enjoyment of their homes, which will consequently have an adverse effect on their private and family life, irrespective of whether their health was severely jeopardized." The Court further concluded that, in this instance, it was unnecessary to assess the balance between public and individual interests, given that the detrimental environmental pollution originating from the factory inflicted irreparable harm to human health, for which no adequate compensation could be provided.

Based on the analysis and comparison of the aforementioned cases, several conclusions can be drawn. In the *Powell and Rainer case*, the Court dismissed the complaint, citing a violation of Article 8 of the Convention. The Court determined that the British authorities had implemented appropriate measures that partially mitigated the applicants' situation, thereby maintaining a balance between public and individual interests. Conversely, the Court's approach to *the Lopez Ostra* case was distinctly different. In this instance, the Court affirmed the culpability of the Spanish authorities, attributing it to their failure to fulfill their positive obligations. Consequently, it is evident that the Court, when adjudicating the *López Ostra and Powell and Rainer cases*, considered the degree of potential and actual danger, leading to divergent decisions regarding public and individual interests under Article 8 of the Convention.

In the case of *Fadeyeva v. Russian Federation*,[135] the Court once more determined that there had been a violation of Article 8 due to environmental pollution. The applicant resided in Cherepovets, approximately 450 meters from a private steel plant. She contended that the plant's operations adversely affected the environment and led to pollution, specifically noise, dust, and toxic emissions, which were detrimental to her health. The applicant asserted that the State had not adequately protected her private and family life from these harmful effects. In this case, the Court granted the application and concluded that the State should have ensured the protection of the applicant's rights and, to mitigate such negative impacts, the State should have offered her alternative housing or reduced the extent of environmental pollution. This case clearly underscores the necessary preconditions, specifying that for an environmental pollution complaint to fall under Article 8 of the ECHR, it must demonstrate an infringement on an individual's private and family life and home, reaching a certain threshold of seriousness. The minimum threshold of severity required for the application of Article 8 is „inherently relative" and depends on the data set of the case, in particular the intensity and duration of the nuisances, their physical and psychological effects,[136] as well as the determination of whether

[135] Fadeyeva v. Russia, App No 55723/00, ECtHR, Judgment, 9 June 2005.
[136] Krajnyák, E., (2023), *Protection of the Environment in National Constitutional Law in Light of the Jurisdiction of the ECtHR – A Hungarian Perspective* CENTRAL EUROPEAN ACADEMY LAW REVIEW, P. 151-177.

the damage caused in the specific case is comparable to that which could arise in connection with environmental risks.[137]

While the objective of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also imply in some cases an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in Article 8. This obligation does not only apply in cases where environmental harm is directly caused by State activities but also when it results from private sector activities. Public authorities must make sure that such measures are implemented to guarantee rights protected under Article 8. The Court has furthermore explicitly recognized that public authorities may have a duty to inform the public about environmental risks. Moreover, the Court has stated with regard to the scope of the positive obligation that it is generally irrelevant of whether a situation is assessed from the perspective of paragraph 1 of Article 8 which, inter alia, relates to the positive obligations of State authorities, or paragraph 2 asking whether a State interference was justified, as the principles applied are almost identical.[138] An interesting case in this regard is *Hatton and Others v. United Kingdom*. This case also concerned a violation of Article 8 due to air traffic at Heathrow Airport. In this case, a violation of Article 8 § 1 was found, but no violation of Article 8 § 2 was found. Although the Court initially found a violation of Article 8, the case was appealed to the Grand Chamber of the Court, which acquitted the State in terms of positive responsibility.

The development of the European Court of Justice's case law has been significantly influenced by global economic and industrial processes. Initially, the Court did not entertain cases concerning environmental rights protection. However, in later periods, it began to uphold such rights through the application of the "par ricochet" principle. By broadly interpreting and clarifying the Articles of the European Convention on Human Rights, the Court has been able to indirectly safeguard the right to a healthy environment, which is a crucial element in fostering democracy. Adhering to the principle of balancing public and individual interests, the European Court has successfully delineated the boundary between potential and existing environmental threats and the establishment of a democratic society. Currently, Article 8 of the European Convention serves as a powerful instrument for the European Court in protecting environmental rights, and its interpretation, as evidenced by case law, is quite varied.

[137] Chiş v. Romania, Application no. 36129/15, Judgment of April 27. 2017, paras. 31-32.
[138] Council of Europe *"Manual on Human Rights and Environment"* Second edition, 2012 Printed at the Council of Europe. P.20

Hence, in conclusion, as the global effort to combat climate change intensifies, the European Court of Human Rights is increasingly scrutinizing cases concerning environmental rights. This has led to an expansion of the causal link and an increased attribution of responsibility to states regarding positive obligations. Nevertheless, the evolution of jurisprudence and the broad interpretation of Article 8 of the Human Rights Convention have presented significant challenges, requiring decades to achieve the current outcomes. The practical efficacy of these outcomes, particularly given the reliance on state goodwill for enforcement, remains a topic for further discussion.

3.1.2. Consolidation of Environmental Protection through Article 8

The ECtHR interprets conventional human rights in a way that the circle of legally protected goods under the Convention Articles includes those violated by negative human impact on the environment. This process is theoretically called the "greening" of explicitly established human rights. Instead of recognizing an independent right to live in a healthy environment, the "greening" of human rights process emphasizes the ecological dimension of already existing rights and protects the environment as a prerequisite for the enjoyment of human rights such as, for example, the right to life, health, privacy of personal and family life, home, and correspondence. Over the past decades, UN bodies, national courts, and other huma rights mechanisms have interpreted the human right to a healthy environment in a similar way, but authors argue that the ECtHR has been the most advanced in "greening" their rights.[139]

In the Case *Olujić v. Croatia*[140] the Court held that although the ECHR does not contain an explicit right to a clean and quiet environment, noise or other pollution that directly and seriously affects an individual may constitute a violation of the right to respect for private and family life, guaranteed by Article 8 of the ECHR. In other words, although the ECHR does not explicitly protect the right to a healthy environment, pollution that seriously impairs a person's quality of life may be the basis for a lawsuit before the Court. The Court safeguards the right to a healthy environment by using specific interpretive, evolving methods for the ECHR which include, the "living instrument" principle, ensuring dynamic interpetation of the convention rights, which, in turn, facilitated the "greening" of the ECHR a limited scope for national governments to interpret and apply the ECHR („the margin of appreciation") and a focus on

[139]Pedersen, W. O., (2010) "T*he Ties That Bind: The Environment, the European Convention on Human Rights and the Rule of Law,* Vol. 16 (4), European Public Law, P. 594.
[140] Olujić v. Croatia, Application no. 22330/05, Judgement of 5. February, 2009, Para. 45.

ensuring ECHR rights are practically enforceable („the principle of effectiveness“). The principle of evolutionary and dynamic interpretation of conventional principles is one of the foundations that enabled the 'greening' of the ECHR.[141] Drawing on the principle of the "living instrument" emerging in the 1970s in Strasbourg jurisprudence[142] the idea that the ECHR should be interpreted dynamically considering present day conditions, meaning conventional rights evolve with societal progress. This principle, central to the European Court of Human Rights environmental case-law, allows the Court flexibility to ensure protected rights are adapted to social changes. This approach, which involves an evolutive interpretation of ECHR rights, was notably applied by the Court in its judgment in *Marckx v. Belgium.*[143] The principle of effectiveness is applied because rights guaranteed by ECHR require real, effective protection, not just theoretical. The Court demands evidence of a causal connection to link environmental dangers with possible violations of human rights, and its emphasis on a state's role highlights this developing perspective. This, in turn, imposes positive duties on States, to address environmental pollution that harms individuals' private lives and homes. The margin of appreciation doctrine is a judicial tool giving States leeway in limiting rights. This assumes national bodies are best placed to judge necessary restrictions.

3.2. Transitional Jurisprudence: From Environmental Harm to Climate-Related Risks

The UN's landmark resolutions in 2021 and 2022 established a clean, healthy, and sustainable environment as a universal human rights, reinforcing its connection to existing international law. This recognition directly addresses the reality that climate change, pollution, and the destruction of natural resources impede the exercise of this fundamental right. Climate change can negatively affect many rights protected by the ECHR. This includes the right to respect for private and family life, home and correspondence (Article 8 ECHR). The ECtHR has recently broadened its approach concerning the method of causation and the doctrines of State's positive obligations and the margin of appreciation, notably through the Grand Chamber's decision in

[141] Müllerová, H., (2014) "*Environment Playing Short-Handed: Margin of Appreciation in Environmental Jurisprudence of the European Court of Human Rights, Review of European, Comparative & International Environmental Law"*, P.84.
[142] van Dijk, P.; Godefridus J.H.; van Hoof, G. J.H., (1998) *Theory and Practice of the European Convention on Human Rights*, The Hague-Boston-London: Kluwer Law International, P. 74.
[143] Marckx v. Belgium, Application no. 6833/74, judgment of 13 June 1979

Klima Seniorinnen v. Switzerland. The Court dismissed two of the claims *Carême v. France*[144] and Duarte Agostinho v. Portugal and 32 Others.[145]

3.2.1. Recent Climate-Related Cases

In 2024, the European Court of Human Rights issued several significant decisions concerning environmental protection and climate change, offering crucial clarifications on these matters. Three cases stand out: *KlimaSeniorinnen v Switzerland*, *Carême v. France*, and *Duarte Agostinho and Others v. Portugal and 32 Other States*. The Court noted that these cases presented unprecedented issues, indicating that from an environmental perspective, each was distinctly different from previous cases in this domain. Prior cases considered by the Court typically involved specific sources of environmental damage, whereas the cases under review addressed a much broader and global scope. Consequently, the Court determined that its previously established environmental standards were no longer applicable in similar cases and that new approaches needed to be developed.

Initially, I want to examine the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland.* This case, was decided by the Grand Chamber, holds significant precedential value for both EU member and non-member states due to its content, the approaches developed, and the explanations provided by the Court. The applicant in this case was KlimaSeniorinnen, a Swiss-based association dedicated to the care and promotion of the climate, as outlined in its statutes. The association comprised over two thousand elderly women, the majority of whom were over 70 years of age.

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[144] Carême v. France, Application no. 7189/21, Decision of 9 April 2024.
.In Carême v. France A former French mayor, sued France for insufficient climate action, challenging the government's refusal to meet 2030 emissions targets. The applicant argued the Council of State wrongly dismissed his case, claiming he was directly affected by inadequate climate action, thus violating his right to privacy (Article 8 ECHR). The application was declared inadmissible by the European Court on April 9, 2024, because the applicant's change of residence meant they could no longer claim to be a victim as required by the Convention.

[145] Duarte Agostinho and Others v. Portugal and 32 Other States, Application no. 39371/20, Decision of 9 April 2024.
In Duarte Agostinho and Others v. Portugal and 32 Other States six young Portuguese people in 2020 sued 33 countries at the ECtHR, arguing that their inadequate response to climate change violates their fundamental rights to life under Article 2 ECHR, privacy under Article 8 ECHR, and freedom from discrimination under Article 14 ECHR. The case centers on the applicants' claim that 33 nations are responsible for climate change through their greenhouse gas emissions, which in turn are causing heatwaves that threaten their health and living conditions. The ECtHR ruled the climate change application inadmissible. The court declined to recognize the requested extraterritorial jurisdiction, thus dismissing the case against most of the respondent countries. The case against Portugal was also dismissed, as the applicants had not utilized all available legal avenues within Portugal before bringing their case to the European Court.
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Since 2016, the applicant has consistently appealed to local authorities regarding their perceived inaction on climate protection, urging Swiss authorities to earnestly address the environmental and sustainability objectives outlined in the Swiss Federal Constitution. In their view, the CO2 emission reduction targets set by the Swiss authorities were insufficient to restrict global warming to a maximum of 1.5°C. Consequently, the association has called upon Swiss authorities to uphold their environmental responsibilities and intensify their efforts, particularly in reducing greenhouse gas emissions. They have implored Swiss authorities to take prompt action to achieve the goals stipulated in the Paris Climate Agreement and to fulfill their international environmental commitments. The state's response to the appeal indicated that the request lacked specificity and did not pertain to a controversial act. Instead, it broadly sought a policy change regarding climate protection. The state explained that Switzerland alone could not effectively reduce CO2 emissions, emphasizing the need for global involvement. This decision was subsequently challenged in a Swiss court, with the plaintiff appealing to the Swiss Federal Supreme Court, though ultimately without success.

In late 2020, the plaintiff petitioned the court, alleging that the Swiss state had violated rights protected under Article 2 (right to life), Article 8 (right to respect for private and family life), and Article 6 (right to a fair trial) of the European Convention on Human Rights. Regarding Articles 2 and 8, the plaintiff asserted that Switzerland had failed to adequately protect them from the adverse effects of climate change, specifically global warming, which negatively impacted the lives, living conditions, and health of the plaintiffs (female members of the association). The plaintiff further contended that the state had neglected to enact relevant legislation, implement sufficient and appropriate measures to combat climate change, and fulfill its international environmental protection obligations. The state, it was argued, had not undertaken the necessary actions to mitigate the detrimental consequences of climate change.

In this case, the Court determined that Articles 8 and 6 of the Convention had been violated. Of relevance to our objectives are the Court's elucidations concerning environmental protection and climate change, as well as the fundamental standards it established.

Initially, it is crucial to underscore the Court's perspective regarding its function in addressing climate change. The Court's decision explicitly states that climate change represents one of the most pressing, intricate, and multifaceted challenges of our era. Scientific evidence confirms humanity's imperative to combat climate change and mitigate its adverse effects. Nevertheless, the Court clarifies that it can only adjudicate matters pertaining to climate change in accordance with Article 19, strictly within its granted jurisdiction. This entails assessing the extent to which Contracting Parties uphold their obligations under the Convention. The Court

further elucidates that it cannot usurp the role of the legislature in this domain, as the latter is responsible for establishing both a comprehensive legislative framework to combat climate change and more granular regulations in specific sectors. However, given the insufficient action by States in addressing climate change, this situation, among other factors, jeopardizes the future enjoyment of fundamental human rights. Specifically, the Court identifies a direct correlation between the adverse impacts of climate change and the exercise of other fundamental human rights. Consequently, the Court recognizes its imperative role as a judicial body responsible for safeguarding human rights. Furthermore, it is crucial that the Court highlights the necessity of protecting the rights of both current and future generations. The Court underscores that the current reality, characterized by States' inaction on climate change, will impose a significantly greater burden on future generations, thereby emphasizing the critical importance of intergenerational burden sharing in this context.

In the aforementioned decision, the court introduced a noteworthy and innovative standard for assessing one of the admissibility criteria for climate change litigation: the presence of direct and immediate harm or the risk thereof to the plaintiff. I concur with the court's astute observation that in matters concerning environmental protection and climate change, all individuals are susceptible to direct or indirect harm or the risk of such harm. Consequently, any individual could potentially initiate legal action regarding environmental protection and climate change, demonstrating a legitimate personal interest, thereby facilitating "popular lawsuits." Therefore, in environmental and climate change claims, the Court deviates from conventional admissibility criteria and proposes an entirely new standard for identifying direct and immediate harm or the risk of such harm when evaluating the admissibility of such claims. Specifically, it outlines two primary prerequisites that must be cumulatively met for an individual's environmental and climate change claim to be deemed admissible:

1. The claimant must experience substantial adverse effects from climate change, and the magnitude and severity of these effects (risks) stemming from the State's actions or inactions in addressing climate change must be demonstrably significant.
2. There must be an urgent imperative to provide individual protection to the claimant and mitigate damages, particularly in the absence of reasonable measures taken by the State.

Therefore, in the context of environmental and climate change claims, direct and immediate harm to the claimant must be evident, the State's conduct must have a significant impact on the claimant, the adverse effects of climate change must be substantially experienced, and there must be an urgent need for individual protection.

The Court addressed the critical matter of state responsibility for climate change and its adverse effects. The Court unequivocally determined that the argument asserting that individual state efforts to mitigate climate change are merely a "drop in the ocean," and that individual states lack the capacity to influence global climate change, is unacceptable. While climate change is undeniably a global phenomenon requiring a collective response from the international community, this does not negate the differentiated responsibility of states. Specifically, each state bears the responsibility to contribute to combat climate change and to implement appropriate measures to prevent or minimize its causes and reduce its negative consequences. Consequently, the Court proposes the following model of state responsibility: a country should be held accountable if it failed to take reasonable measures to mitigate climate change when there was a genuine prospect of altering the outcome or reducing the damage.

The Court determined that Article 8 of the Convention encompasses an individual's right to effective protection by public authorities against the detrimental impacts of climate change. This ruling, in my assessment, represents a significant clarification that further compels states to address environmental concerns and climate change. Consequently, this clarification establishes a positive obligation for states to safeguard individuals from the adverse effects of climate change. In that case, the Court identified a violation, nothing but that Switzerland had not met its positive obligation due to deficiencies in its legislative framework concerning climate change. Based on the Court's clarification, it is evident that state possess discretionary authority to establish mechanisms and measures for mitigating and preventing climate change-related risks. However, governmental actions must be both timely and commensurate with the emerging threats. A state's failure to implement adequate measures to combat climate change within a reasonable timeframe constitutes a breach of Article 8 of the Convention.

In summary, the aforementioned decision not only addressed numerous inquiries and established critical practices and approaches concerning environmental protection and climate change, but it also has the potential to significantly influence environmental protection. This is because the decision has, in effect, set a precedent affirming citizens' right to request a review of their country's climate change legislation, aligning with the principles and approaches defined by the court, and to ensure that threats stemming from climate change are mitigated to the greatest possible.

Regarding the subsequent case, *Duarte Agostinho and Others v. Portugal and 32 Other States,* it did not advance beyond the admissibility stage and was deemed inadmissible by the Grand Chamber of the Court. Consequently, with respect to environmental protection and climate change, the Court did not delve into the substantive merits or address the critical issues

previously discussed. This decision primarily centered on procedural matters. Specifically, six Portuguese citizens petitioned the Court, alleging violations of Articles 2, 3, 8, and 14 of the Convention by Portugal and 32 other States. They contended that climate change, particularly phenomena such as heatwaves, forest fires, and smoke in their home country and the other 32 affected States, was impacting their lives, well-being, mental health, and the amenities of their residences. The applicants asserted that the respondent States bore a positive obligation to implement sufficient measures to mitigate climate change. It is important to note that the applicants directly approached the Court without exhausting any domestic remedies in the respondent States.

As previously stated, the Court deemed the application inadmissible due to a procedural matter, emphasizing the necessity of exhausting domestic remedies, even in cases pertaining to climate change. The Court expressed reservations regarding the applicants' assertion that it possessed the authority to adjudicate climate change issues prior to national courts having the opportunity to do so. In the Court's view, such a stance directly contravenes the principle of subsidiarity, as it does not function as a court of first instance and lacks the resources to consider cases requiring the establishment of primary facts, given its caseload. This falls within the purview of domestic jurisdiction. Consequently, this clarification offers crucial procedural guidance for future applicants intending to bring climate change-related cases before the Court. The Court's explicit directive is that all domestic legal remedies must be exhausted before an individual can apply to it, even on matters concerning climate change. This perspective and approach are widely supported, as it is neither feasible nor appropriate for the Court to supersede national courts and infringe upon their jurisdiction, which would contradict the fundamental purpose and functions of the Court.

Regarding the third case, *Carême v. France*, the Court did not delve into the specifics as the Grand Chamber deemed it inadmissible, thus precluding the recognition of direct and immediate harm. In the present case, the applicant, a politician born in 1960, served as the Mayor of Grande-Synthe from March 23, 2001, to July 3, 2019. He subsequently became a Member of the European Parliament on May 26, 2019. Following his election to the European Parliament, the applicant relocated from Grande-Synthe to Brussels. In 2022, the applicant petitioned the Court, contending that France's measures to address climate change were inadequate, thereby infringing upon his rights under Articles 2 and 8 of the Convention.

As previously discussed, the court places significant emphasis on the existence of a legitimate interest when initiating legal proceedings, which is demonstrated by direct and immediate harm to an individual or the risk thereof. This principle is precisely what the court

underscored in the aforementioned ruling. It is determined that environmental protection and climate issues possess a unique characteristic, allowing for a broad interpretation of interest. Consequently, to prevent what might be termed "popular lawsuits," the court has developed specific guiding criteria. In the present case, the court applied the admissibility criterion established in the initially considered case and concluded that the plaintiff did not satisfy the aforementioned criteria. As of 2019, the plaintiff no longer resided in Grande-Synthe nor owned property in that area, thereby severing any connection. Therefore, the court determined that neither the severity and intensity of climate change nor the necessity for individual protection were present, leading to the inadmissibility of the claim. This case further illustrates the Court's approach, highlighting the considerable attention it dedicates to the admissibility stage and the recently developed admissibility criteria.

In summary, the most significant clarifications were provided by the Court in the landmark case of *KlimaSeniorinnen v Switzerland*, where it effectively addressed key problematic areas and resolved critical inquiries. This ruling comprehensively covers nearly all essential aspects pertinent to environmental protection and climate change, clearly demonstrating the Court's evolving approaches and principles concerning this matter.

Table I (Chronological order of the ECtHR Environmental/Climate cases and their doctrinal significance)

Case (Year)	Environmental Issue	Art. 8 Engagement	Positive Obligations	Doctrinal Significance	Notes
Arrondelle v. UK (1980)	Aircraft noise	Central	Implicit	Early admissibility recognition for noise pollution.	Commission decision.
Powell & Rayner v. UK (1990)	Aircraft noise	Central	Implicit (regulatory measures)	First major recognition that environmental nuisance may fall under Art. 8.	No violation; margin of appreciation.
Zander v. Sweden (1993)	Water contamination;	Central	Explicit procedural	Recognized obligation to provide	Pre-Guerra precursor.

	access to information			environmental information.	
López Ostra v. Spain (1994)	Industrial odor, fumes, noise	Central	Explicit	Transformative case introducing pollution threshold test.	Violation.
Guerra v. Italy (1998)	Chemical plant risks; failure to warn	Central	Explicit (information duties)	Landmark for environmental-information duties.	Violation.
Hatton v. UK (2003, GC)	Night flight noise	Central	Explicit but limited	Grand Chamber affirmed wide margin of appreciation.	No violation.
Kyrtatos v. Greece (2003)	Wetland destruction	Peripheral	Implicit	environmental harm alone is insufficient.	No violation.
Öneryıldız v. Turkey (2004)	Methane explosion at waste tip	Central	Explicit	Linked environmental risk and right to life; reinforced Art. 8 duties.	Violation.
Moreno Gómez v. Spain (2004)	Urban noise	Central	Explicit	Expanded Art. 8 to chronic noise disturbances.	Violation.
Fadeyeva v. Russia (2005)	Industrial pollution	Central	Explicit	Key severity-threshold and proportionality case.	Violation.
Giacomelli v. Italy (2006)	Toxic waste facility	Central	Explicit	Strengthened EIA obligation.	Violation.

Tătar v. Romania (2009)	Cyanide pollution from mining	Central	Explicit	Introduced precautionary principle.	Violation.
Dubetska v. Ukraine (2011)	Coal mining pollution	Central	Explicit	Duty to relocate or mitigate toxic living conditions.	Violation.
Di Sarno v. Italy (2012)	Waste crisis (Naples)	Central	Explicit	Systemic waste mismanagement under Art. 8.	Substantive violation.
Vilnes v. Norway (2013)	Diver decompression risks	Central	Explicit	Expanded positive obligations to occupational environmental hazards.	Violation.
Brincat v. Malta (2014)	Asbestos exposure	Central	Explicit	Strongest statement on duty to regulate toxic exposure.	Violation.
Dzemyuk v. Ukraine (2014)	Landfill near home	Central	Explicit	Reinforced duty to prevent hazardous siting.	Violation.
Cordella v. Italy (2019)	Ilva steel plant emissions	Central	Explicit	Persistent widespread pollution = Art. 8 violation.	Violation.
Hudorović v. Slovenia (2020)	Lack of drinking water access	Central	Explicit	Long-term deprivation may erode core private life.	Landmark socio-environment case.
Greenpeace Nordic v. Norway (2021)	Arctic oil exploration	Central	Implicit	Precedent-setting climate	Transitional.

				admissibility case.	
Müllner v. Austria (2021)	Climate change effects	Central	Implicit	Early climate-risk application.	Struck out.
Duarte Agostinho v. Portugal (2024, GC)	Climate change (fires, heat)	Central	Implicit	Subsidiarity landmark: domestic remedies must be exhausted.	Inadmissible.
Carême v. France (2024, GC)	Climate inaction	Central	Implicit	Clarified standing and immediate risk test.	Inadmissible.
KlimaSeniorinnen v. Switzerland (2024, GC)	Climate inaction / heatwaves	Central	Explicit	recognized duty of effective climate protection.	Violation.

(The table is prepared by the author of the paper based on data from the HUDOC database, utilizing the sources and research results indicated within the paper.)

3.2.2. Expanding the Causal Link

The European Court of Human Rights (ECtHR) recognized that the KlimaSeniorinnen claim represents a significant evolution in its environmental jurisprudence, transitioning from cases addressing specific sources of harm to the more expansive and diffuse challenge of climate change. As articulated by the Court in paragraph 455, *"failure by the Court to maintain a dynamic and evolutive approach of interpretation would risk rendering it a bar to reform or improvement."* Unlike the more readily identifiable impacts of specific toxins, greenhouse gas emissions are not limited to a few distinct hazardous practices, rather, they originate from a multitude of common activities. The Court characterizes climate change as a polycentric problem and states that effective resolutions require a comprehensive and interconnected array of actions, extending beyond localized or single-sector initiatives. The intricate nature of climate change's adverse effects introduces complexities in directly attributing specific harms to a nation's actions, primarily due to the global dispersion of greenhouse gas emissions. Consequently, in this particular case, the Court has significantly focused on the concept of

causation, marking a notable shift from its prior environmental jurisprudence. As acknowledged by the Court it is "*neither adequate nor appropriate*" to directly apply principles from established environmental case law to the climate change context, a consideration highly pertinent given the emphasis on causation in this recent ruling. The Court considered it appropriate to adopt an approach which both acknowledges and takes into account the particularities of climate change and is tailored to addressing its specific characteristics.[146] These complexities of causation in climate change disputes should, according the ECtHR, involve: establishing the scientific link between emissions and climate change.[147] The legal link between climate impacts and human rights, the causal link between state actions and individual harm, and the attribution of responsibility among multiple emitters.[148] The Court considered the impact of climate change effects on the enjoyment of Convention rights as the second part of the causation question. Shortly, the Court expanded the concept of harm to include also the risk of harm in climate change cases. This required "sufficiently severe risks", by a high intensity of exposure or significant consequences and a pressing need for individual protection, which determines victim status.[149] This second dimension, is not considered alone, but is linked to States' obligations and their scope, merging the questions of whether a positive obligation exists, its extent, and if it has been breached. There are clarified three points about this dimension: assessing sufficiently close risk to the applicant, applying a severity threshold for risks to lives, health, and well-being.[150]

The KlimaSeniorinnen judgment is notable for extensively addressing causation up front, marking the first time the Court dedicated whole sections to it. However, somehow the Court's reasoning on causation is somewhat confusing and unclear, particularly regarding the

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[146] *„In the present case, therefore, while drawing some inspiration from the principles set out in the Court's existing case-law, the Court will seek to develop a more appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change*. " (KlimaSeniorinnen v. Switzerland, Para. 422.).

[147] *But the proof linking greenhouse gas emissions to climate change phenomena in human rights law isn't solely a scientific matter. The ECtHR, in the process of assessing State's positive obligation has relied on domestic and international legal standards of Paris Agreement, Aarhus convention, Intergovernmental Panel on Climate Change etc. as substitutes for scientific proof*. (Stoyanova, V.*, (2024) KlimaSeniorinnen and the Question(s) of Causation*, [https://verfassungsblog.de/klimaseniorinnen-and-the-questions-of-causation/])

[148] The Court further explained that the fourth dimension of causation in climate change cases should concern attributing responsibility for climate change effects to a specific State, given the fact that multiple actors contribute to overall emissions.

[149] "*Direct and immediate link" between the issue and the applicant's home/private/family life. Environmental damage only triggers Article 8 if it has a direct impact or repercussions on these aspects, not just a general environmental decline"* (Carême v. France the ECtHR explained the application of Article 8, requiring a (Paras. 83-87)).

[150] Further guidance on the severity threshold is provided in Paras. 513 and 519, where the ECtHR defines the scope of Articles 2 and 8 respectively. Under Article 8, the severity threshold is defined as "serious adverse effects of climate change" on the applicants' "life, health, well-being and quality of life."

application of the 'real prospect' test[151] for finding a breach due to State's omissions. To establish a direct link between the State's omissions in mitigating adverse effects of environmental pollution and its harmful impact on personal life, the Court uses the doctrine of the margin of appreciation, which allows the Court to navigate between deferring to national governments and exercising its judicial oversight. In response to the effects of climate change on rights protected by the Court, the Court has evolved this doctrine, used in environmental case-law, only to create a differentiated margin of appreciation, appropriate to assess the State's positive obligations related to climate change.

3.3. Analytical Framework: Positive Obligations and the Margin of Appreciation

It is widely acknowledged that human rights do not only provide protection for individual freedom against an intrusive state but may also require the state to take positive action.[152] The ECtHR has increasingly recognized implied positive obligations of Member States as arising from the rights in the European Convention on Human Rights. Positive obligations have a "growing importance" in the jurisprudence of the ECtHR's environmental and climate cases.[153] There is increasing evidence that not only environmental but literally all human rights involve both negative and positive duties.[154]

Hence, the request to elaborate the duties embodied in human rights comes as no surprise, "*Identifying the multiple duties that may be relevant to any one right sharpens an understanding of what is distinctive to and necessary to realize that right*".[155] Ever since positive obligations have been recognized by the ECtHR, the Court has held that the Member States must be allowed a margin of appreciation which is particularly wide.[156] In *Powell and Rayner*, for example, the Court asserted: *" It is certainly not for the commission or the Court to substitute for the assessment of the national authorities any other assessment of what might*

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[151] This test for breaching a positive obligation requires demonstrating that the measure the State should have taken had „a real prospect of altering the outcome or mitigating the harm. "
[152] Fredman, S., (2008) *Human Rights Transformed. Positive Rights and Positive Duties*, 1 et seq.
[153]. Mowbray, A. R. (2004) *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, P. 229.
[154]. Shue, H. (1996) *Basic Rights. Subsistence, Affluence, and U.S. Foreign Policy,* P. 155.
Ibid. Mowbray. A. R., P.224.
Ibid. Fredman, S., P. 65.
[155] Steiner. H. J., (2007) *International Human Rights in Context. Law, Politics, Morals*, P. 186.
[156] Gerards J. / Senden, H. (2009) *The Structure of Fundamental Rights and the European Court of Human Rights, International Journal of Constitutional Law* 7, P.619
For a different view, see. Ovey, C., (1998) *The Margin of Appreciation and Article 8 of the Convention*, HRLJ 19.

be the best policy in this difficult social and technical sphere. This is an area where the Contracting States are to be recognized as enjoying a wide margin of appreciation."[157] Hence, as far as positive obligations are concerned, it is particularly important to identify the criteria to establish the exact scope of the margin of appreciation.[158] One important objection against positive obligations is the problem of overdetermination. The problem of overdetermination stands from the fact that, at least in a complex legal order, protecting one principle means interfering with a different principle. This gives rise to the opinion that the Member States may be caught between the prohibition of excessive means and the prohibition of insufficient means. Since both the negative and the positive obligation must be optimized according to the proportionality test, there may be only a single right solution, leaving the Member States no margin of appreciation at all.

Some scholars tend to solve this problem by dispensing with the proportionality test and substituting it with a sort of minimum protection standard.[159] The highest point problem played a significant role in the Hatton case. The majority of the Chamber considered *that States are required to minimize, as far as possible, the interference with these rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way as regards human rights*.[160] This passage could be interpreted as a maximum point theory, leaving no room for any margin of appreciation. Hence, it received severe criticism by two dissenting judges. Judge Kerr argued: *" I am not aware of any other convention case in which such a test has been applied. Indeed, it is difficult to see how it can be reconciled with the principle that States should have a margin of appreciation in devising measures to strike the proper balance between respect for Article 8 rights and the interests of the community. The test enunciated by the majority denies to States any discretion as to how they wish to address socio-economic issues, and instead requires that all policy decisions be dictated by a strict "minimum interference with fundamental rights" rule".*[161] In the same line, Judge Greve stated that *the*

[157] Powell and Rayner v. the United Kingdom, para 45; See also Hatton and Others v. the United Kingdom (Grand Chamber) Para. 100

[158] Alexy, R. (2009), *On Constitutional Rights to Protection, Legisprudence*

1. On an earlier reception of Alexy's principles theory, albeit not referring to his analysis of the structure of positive obligations in detail, see. Fredman S., (2008) *Human Rights Transformed. Positive Rights and Positive Duties*, P. 65 and Rivers, J. (2007) *Proportionality and Discretion in International and European Law,* in: Tsagourias N. (ed.), *Transnational Constitutionalism: International and European Perspectives*, P. 107.

[159] Klatt. M. (2011) *"Positive Obligations under the European Convention on Human Rights",* Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, P. 712

[160] Para.97

[161] Hatton and Others v. the United Kingdom, at Dissenting Opinion of Judge Sir Brian Kerr.

standard relied on by the majority is ... incompatible with the wide margin of appreciation left by the European court to Contracting States in other planning cases.[162]

From the standpoint of the principle's theory, however, this debate can be clarified by the norm-theoretic distinction between rules and principles. Rules are norms that require something, given that certain conditions for their applications are fulfilled. If a rule is valid and applicable, it is then definitely required to do exactly what it demands. Thus, rules are norms that are either fulfilled or not. By contrast, principles are norms requiring that something be realized to the greatest extent possible, given the factual and legal possibilities.[163] As optimization requirements, principles can be satisfied to varying degrees. Thus, principles demand something prima facie, while rules demand something.[164] This norm-theoretical distinction helps to untangle the irritation which was caused by the quoted passage from the Chamber Judgment in Hatton. That states are "required to minimize, as far as possible, the interference" with human rights is a reasonable statement if it is understood as referring to the prima facie character of rights. As optimization requirements, human rights indeed require the states prima facie "to achieve their aims in the least onerous way". In this sense, human rights have an overshooting character. According to the prohibition of insufficient means, protective rights prohibit the Member States from going below the level at which disproportionality begins.[165]

As for the resent cases, for instance In KlimaSeniorinnen v. Switzerland, the Court stressed States' duty to establish effective environmental protections, especially risk-specific regulations, drawing on its existing environmental law.[166]The Court said that although climate change is a global issue, the significance of different emission sources and the appropriate mitigation and adaptation strategies can differ between countries, influenced by factors like economic structure, geography, demographics, and societal conditions.[167] In Klima Seniorinnen the Court for the first time, found a state in violation of Articles 8 for failing to adequately address climate change because no specific limits for national greenhouse gas

[162] Hatton and Others v. the United Kingdom, at Partly Dissenting Opinion of Judge Greve.
[163] Klatt. M. (2012*) "Positive Obligations under the European Convention on Human Rights",* Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, P. 715
[164] R. Dworkin's somewhat simplistic model. In fact, rules also have a prima facie character, for it is always possible to include an exception clause into rules. Still, the prima facie character of both rules and principles is fundamentally different, and this justifies the simplification made here
[165] Klatt, M. (2011) *'Positive Obligations under the European Convention on Human Rights'*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. P.715
[166] Klima Seniorinnen v. Switzerland, Para. 538.
[167] Klima Seniorinnen v. Switzerland, Para. 421

emissions were established or calculated.[168] The ECtHR held that the State's positive obligations were not met because the Swiss government did not act in a timely, appropriate, and consistent manner in creating and implementing the necessary legal and administrative framework.[169]Countries are obligated to establish plans for greenhouse gas reduction and to define their path towards achieving climate neutrality within thirty years.[170]

As for the margin of appreciation used a somewhat nuanced approach to the question of it.[171] The Court, building from existing environmental case law, emphasized, once again, the principle of effectiveness, meaning that states have a primary duty to enact and effectively implement regulations and measures to mitigate climate change's present and potential irreversible future effects, ensuring Convention rights are practical, not just theoretical. This requires States to implement necessary actions to limit increases in atmospheric greenhouse gas concentrations and global temperature rises, to prevent serious harm to human rights, particularly the right to private and family life and home under Article 8. In other words, the Court in KlimaSeniorinnen granted State a wide margin of appreciation in selecting climate policy and implementation. As to the content of climate-related obligations under Article 8, ECHR the Court outlined the specific criteria used to review how countries set their climate change mitigation goals.[172] Concerning what states are required to do, the Court emphasized that States must implement effective regulations to mitigate climate change's current and future impacts, ensuring practical human rights protections, not merely theoretical ones. In doing so, the Court stressed the importance of State's duty to cut emissions significantly and reach net neutrality within 30 years to uphold Article 8 rights, acting, even more importantly, promptly

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[168] Klatt, M. (2011) *'Positive Obligations under the European Convention on Human Rights'*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht.

[169] Para 579

[170] Wiśniewski, A., (2021) *The European Court of Human Rights and Climate Change, Law & Social bonds* no. 6 (53), P. 1373.

[171] "*While states have a margin of appreciation, their commitment to climate action is separate from the means they select*". (Para. 543)

[172] *„When assessing whether a State has remained within its margin of appreciation the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to:(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments; (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets;(d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures."* (Klima Seniorinnen v. Switzerland, Para. 550)

and consistently.[173] To ensure states properly use their discretion in climate policy, the ECtHR considered public access to relevant studies and meaningful participation in decision-making as essential procedural safeguards.[174]

Hence, to make a conclusion, the European Court of Human Rights gently balances state discretion against the imperative of effective climate action for human rights protection, emphasizing that states must act effectively within their capabilities and international commitments, notably The Paris Agreement[175] and UNFCCC[176] as guided by the doctrine of the margin of appreciation. Also the grand chamber particularly noted the necessity to consider international pollution standards and the need to rely on international reports, particularly on the Intergovernmental Panel on Climate Change (IPCC),[177] for scientific guidance on climate change impacts on individuals when assessing affected rights in the context of climate change. In the context of climate change, the KlimaSeniorinnen v. Switzerland judgment, therefore, signifies a considerable extension of what Article 8 require national governments to actively do.

3.4. Identifying Patterns and Doctrinal Shifts

There is scarcely an area of law without landmark cases and its basic defining characteristics are intuitively recognized amongst lawyers: landmark cases are major doctrinal developments that significantly shape lawyers understanding of the law and leave their mark on future cases. First of all, I have to mention *López Ostra* case, a well-known environmental decision that arose under the European Convention on Human Rights (ECHR). Over the years an almost universal view emerged that it was a pivotal decision for the development of environmental human rights under the ECHR, especially with respect to Article 8 ECHR. However, the data analysis highlights the broader context and impact of the decision in *López Ostra*. While the

[173] Klima Seniorinnen v. Switzerland Para 547-548
[174] Ibid. Para 554
[175] The Paris Agreement, a legally binding climate treaty adopted by 196 nations in 2015 and effective since 2016, aims to limit global temperature rise. Originally targeting "well below 2°C," recent scientific consensus, particularly from the IPCC, has emphasized the critical need to cap warming at 1.5°C to avoid catastrophic climate impacts. This necessitates peaking greenhouse gas emissions before 2025 and achieving a 43% reduction by 2030. https://unfccc.int/process-and-meetings/the-paris-agreement
[176] Established in 1992 and operational since 1994, the United Nations Framework Convention on Climate Change (UNFCCC) aims to stabilize greenhouse gas concentrations in the atmosphere, thereby mitigating human-induced climate change. As one of the key outcomes of the 1992 Rio Earth Summit, it has achieved almost global participation, with 198 member countries. https://www.eesc.europa.eu/pt/initiatives/un-framework-convention-climate-change.
[177] The United Nations body for assessing the science related to climate change.

case certainly has its place in the canon of environmental human rights law, significant doctrinal developments in other cases precede *López Ostra* by almost a decade and foreshadow much of the substantive cases: *Dr S v. Germany (1960*), *X and Y v. Germany (1976), Arrondelle v. United Kingdom (1982), Baggs v. United Kingdom (1985) and G and E v. Norway (1983).* Upon closer analysis the impact of *López Ostra* is more evolutionary rather than revolutionary.

The more persuasive doctrinal view suggests that a multitude of diverse cases collectively shaped the contemporary approach of the European Court of Human Rights to environmental matters. I will be examining the frequently proposed landmark status of two additional cases that have significantly influenced the dataset: *Guerra and Hatton* and of course last landmark cases from 2024, *Klima Seniorinnen, Duarte Agostino and Careme.* This case study effectively demonstrates how data and doctrinal analysis can optimally collaborate, operating within overlapping yet distinct domains. Ultimately, however, the determination of whether any of the cases under review qualify as landmark cases is secondary to showcasing the innovative methodology that integrates data with doctrinal analysis.

3.4.1. Methodological Patterns

The initial dataset was acquired from the *Hudoc database*, provided by the European Court of Human Rights. This database encompasses all Court judgments and screening panel decisions as well as all judgments and admissibility decisions from November 1970s to the present, 2025.

The provided list encompasses all cases accessible via the search engine as of July 19, 2025. However, it is imperative to exercise a degree of prudence when evaluating cases initiated less than eight years prior. As will be elaborated upon further, the Court currently necessitates a timeframe ranging from a minimum of four to a maximum of eight years to render a decision on nearly 70 percent of environmental applications submitted annually.[178] This observation is particularly pertinent for the period after 1990s, during which the duration from initial application to final decision experienced a substantial increase.

Hence, in my opinion and through my research I am able to come to conclusion that it all started with *Lopez Ostra* case with *Hutton* and *Guerra* and it is going on with *KlimaSeniorinnen* case and so on. Legal scholars widely acknowledge the profound significance of the López Ostra decision, recognizing it as a groundbreaking case for environmental protection under the

[178] Theil, S. (2019). *Excavating landmarks – empirical contributions to doctrinal analysis. Journal of Environmental Law*, 32(2), 221–252.

Convention, particularly regarding the doctrine of Article 8 ECHR. [179] Prominent environmental and international law scholars, including Jorge Viñuales, Pierre-Marie Dupuy, and Philippe Sands, identify it as the seminal ruling for environmental human rights.[180]

Ulrich Beyerlin and Thilo Maueruhn recognize this as the "first genuinely green decision,"[181] and it receives considerable attention within specialized environmental human rights scholarship. Prominent legal scholars such as Dinah Shelton, Alan Boyle, and Chris Hilson cite this case as a leading authority for establishing environmental protection under the Convention.[182] These assertions are indeed valid, as López Ostra represents a significant contribution to the contemporary doctrinal framework, particularly as it was the initial case to identify a violation of the Convention due to environmental pollution.[183] Admittedly, however, there were independent reports in these cases that confirmed the degradation and its impact on wellbeing, which were never contested by respondent states. Overall, the significance of López Ostra lies chiefly in making explicit what was tentatively accepted and assumed in previous decisions. In short, it is possible to say that this case was and is turning point/cornerstone of the evolution/revolution of ECtHR environmental cases.

The Convention entities issued 32 decisions in environmental cases until the end of 1990s. The first environmentally themed case under the Convention was *Dr S v. Germany* in 1960. From this decision it is not immediately clear on which grounds the Commission dismissed the application. One possibility is to interpret the decision as a comment on the applicant's victim status under Article 34 of the Convention. Had that been the case, however, the Commission would have at least accepted that there was a case to answer under the Convention. The question of victim status can logically only arise if it is acknowledged that, for instance, improper handling of nuclear waste engages the Convention in the first place. Instead, the

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[179] Theil, S. (2019). *Excavating landmarks – empirical contributions to doctrinal analysis. Journal of Environmental Law*, 32(2), 221–252.

[180] Dupuy. P-M., and Viñuales. J.E., (2015) *"International Environmental Law",* Cambridge University Press, P. 307.

Philippe Sands. P. and others, (2012), *"Principles of International Environmental Law",*3rd edn, Cambridge University Press, P. 783.

[181]Beyerlin. U. and Marauhn. T., (2011) *International Environmental Law*, Hart - C.H.Beck.

[182]Shelton, D., *'Human Rights and the Environment: Substantive Rights'* in Fitzmaurice, M. DM Ong and Merkouris P (eds),(2010) *Research Handbook on International Environmental Law* (Edward Elgar), P.275-6; Boyle, A., *'Human Rights and the Environment - Where Next?*' in Boer B (ed), (2015) "*Environmental Law Dimensions of Human Rights"* (Oxford University Press), P.204;

Hilson, C., (2013) '*The Margin of Appreciation, Domestic Irregularity and Domestic Court Rulings in ECHR Environmental Jurisprudence: Global Legal Pluralism in Action'* Global Constitutionalism P. 262, 270

[183] Rayner v United Kingdom App no 9310/81 (Commission Decision, 16 July 1986), Baggs v United Kingdom App no 9310/81 (Commission Decision, 16 October 1985),; Arrondelle v United Kingdom App no 7889/77 (Commission Decision, 13 May 1982).

Commission is stating that the facts as stated cannot give rise to a Convention violation under any circumstances.

Almost all the cases in the 1st phase of evolution connect Article 8 to the environmental rights held Article 8 ECHR admissible and accepted, to varying degrees, that infringements could arise from environmental degradation. Even if no violations were ultimately found, these unprecedented decisions opened the door to modern environmental protection under the Convention. Notably absent from all the rulings was any requirement for the applicants to demonstrate specific health detriments as a result of the environmental degradation.

As previously mentioned, most commentators base arguments in favor of the significance of *López Ostra* on doctrinal considerations, with only occasional empirical claims. Margaret DeMerieux for instance states that 'the Commission was, subsequent to its admission of López Ostra, bombarded with applications from two types of applicants, a few of whose claims have reached the Court in quite significant litigation',[184] and Kirstof Hectors claims that 'after this judgment, a lot of nuisance cases followed'.[185] At least with respect to absolute and relative increases in environmental cases filed, decisions issued and violations found, these claims are contradicted by available data. This goes as much for the Commission decision in López Ostra in 1993 as it does for the subsequent Court decision in 1994.[186]

There is no significant rise in the number of environmental cases filed in the following years: from 1995-2001 there are only modest fluctuations. Much the same can be said for number of violations found in the same time, which remain largely consistent. By contrast, a significant spike in applications filed, decisions issued and violations occurs in 2002. The number of applications filed reaches an unprecedented level and leads to a higher sustained level for a longer period. Moreover, in the years immediately after the end of the 1st (2005) phase there is a sustained increase in the number of violations found.

In the third phase, after 2020 there are significant changes and tangible, observed strengthening of the definition. In the *Klimaseniorinnen* case, the Court directly emphasized the positive obligation of States and the importance of its implementation in practice, that States, within the framework of the social contract, are obliged to ensure and promote the full realization of personal and family rights of individuals, with the guarantee of living in a healthy

[184] DeMerieux M., (2001) '*Deriving Environmental Rights from the European Convention for the protection of Human Rights and fundamental freedoms"* Oxford Journal of Legal Studies P. 521.
[185] Hectors K., (2008) '*The Chartering of Environmental Protection: Exploring the Boundaries of Environmental Protectio as Human Right'* European Energy and Environmental Law Review PP165-169
[186] Theil, S. (2019). "*Excavating landmarks – empirical contributions to doctrinal analysis*", Journal of Environmental Law, 32(2), 221–252.

and clean environment. The *KlimaSenioren* case is truly the light and particle that contributes to the practical, direct application of Article 8 of the Convention in environmental law, not only for the member states of the Council of Europe.

3.4.2. Doctrinal Shifts and Substantive Patterns

When considering the doctrinal and substantive shifts of subsequent decisions in the process of researching it is quite possible to be faced with a dilemma. A straight-forward data evaluation has not given research much evidence of a spike in environmental applications or their success rate, but that is in and of itself a poor measure of the doctrinal shifts.

The nature of the Convention system is such that it requires the exhaustion of domestic remedies before any application. Depending on the domestic legal system in question, this can take several years in addition to the time taken up by the Convention entities before a final decision. The dataset gathered for the Article 8 can only partially address these concerns, namely by calculating and accounting for the time required by the Convention entities in environmentally themed cases. At least, this yields a reasonable understanding of the time that it would take for a doctrinal innovation to be applied at the Convention level.

Another remark concerns the status of procedural environmental considerations in the Court's reasoning. Not only does the Court use the procedural elements to establish violation of appropriate positive obligations and thus the breach of the right to private and family life, which may be qualified as their primary function,[187]it uses environmental due process for other, accessory purposes as well.[188]

[187] Budayeva and Others v. Russia, App. Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgment of 20 March 2008, paras. 136–137, reaffirmed in Brin-cat and others v. Malta, Para. 101

[188] Krstic, I. & Čučković, B. (2015). *Procedural aspects of Article 8 of the ECHR in environmental cases: The greening of human rights law*. Anali Pravnog fakulteta u Beogradu. 63. 170-189. 10.5937/AnaliPFB1503170K. P.186-187

Table II. Article 8 Environmental/Climate Jurisprudence. Analytical Matrix

Case	Positive Obligations (Did Court demand proactive measures?)	Margin of Appreciation (Wide/Limited)	Admissibility (Admissible/Inadmissible)	Threshold of Harm (Met/Not met)	Procedural Duties Emphasised	Doctrinal Significance
Powell & Rayner v. UK (1990)	Avoided imposing duties; accepted existing regulation.	Wide	Admissible	Met but justified	Limited procedural review	Early balancing framework for environmental nuisances.
López Ostra v. Spain (1994)	Court demanded active regulation.	Limited	Admissible	Met	Some – effective remedies	Foundational case for environmental protection.
Guerra v. Italy (1998)	Obligation to provide environmental risk info.	Limited	Admissible	Met	Strong information duties	Landmark procedural rights case.
Hatton v. UK (2003, GC)	Avoided strong substantive duties.	Wide	Admissible	Met but outweighed	Procedural safeguards sufficient	Grand Chamber limited environmental expansion.
Kyrtatos v. Greece (2003)	No proactive duties; environmental harm insufficient.	Wide	Admissible	Not met	Minimal	Clarified limits of Art. 8 (ecosystem damage insufficient).
Öneryıldız v. Turkey (2004)	Yes, duty to prevent known risks.	Limited	Admissible	Met	Procedural + informational duties	Linked environmental danger to Art. 2 and 8.
Moreno Gómez v. Spain (2004)	Yes, regulate and enforce noise limits.	Limited	Admissible	Met	Procedural enforcement duties	Expanded chronic noise jurisprudence.
Fadeyeva v. Russia (2005)	Yes, mitigation/relocation required.	Limited	Admissible	Met	Failure of monitoring and enforcement	Core threshold-of-harm and proportionality case.

Giacomelli v. Italy (2006)	Yes, proper environmental assessment required.	Limited	Admissible	Met	Strong EIA-related duties	Key procedural duties case.
Tătar v. Romania (2009)	Yes, precautionary principle imposed.	Limited	Admissible	Met	Risk assessment duties	Introduced precautionary principle.
Dubetska v. Ukraine (2011)	Yes, relocation or mitigation required.	Limited	Admissible	Met	Moderate procedural duties	Strengthened chronic pollution doctrine.
Di Sarno v. Italy (2012)	Yes, waste management duties.	Limited	Admissible	Met	Organisational/procedural failures	Systemic mismanagement under Art. 8.
Vilnes v. Norway (2013)	Yes, duty to warn about risks.	Limited	Admissible	Met	Access to risk information	Expanded workplace environmental risk jurisprudence.
Brincat v. Malta (2014)	Yes, regulate asbestos; protect workers.	Limited	Admissible	Met	Strong procedural duties	Deepened toxic-exposure obligations.
Dzemyuk v. Ukraine (2014)	Yes, prevent hazardous siting.	Limited	Admissible	Met	Some procedural focus	Reinforced zoning compliance.
Cordella v. Italy (2019)	Yes, address chronic pollution.	Limited	Admissible	Met	Weak procedural compliance criticised	Strong affirmation of positive obligations.
Hudorović v. Slovenia (2020)	Yes, ensure essential services (water).	Limited	Admissible	Met	Procedural but secondary	Expanded Article 8 into dignity-related environmental harm.
Greenpeace Nordic v. Norway (2021)	No climate duties imposed.	Wide	Inadmissible	Not assessed	Minimal	Transitional climate admissibility case.
Duarte Agostinho (2024, GC)	No, focused solely on procedural admissibility.	Wide	Inadmissible	Not assessed	Strong exhaustion-of-remedies emphasis	Major subsidiarity limit on climate litigation.

Carême v. France (2024, GC)	No, claim failed due to lack of immediate personal risk.	Wide	Inadmissible	Not met	Standing test emphasised	Clarified direct-and-immediate harm requirement.
KlimaSeniorinnen (2024, GC)	Yes, Court imposed far-reaching proactive climate duties.	Limited	Admissible	Met	Strong procedural duties (monitoring, legislation, timelines)	Historic judgment establishing right to effective climate protection.

(The table was prepared by the author of the paper based on data from the HUDOC database, utilizing the sources and research results indicated within the paper.)

3.5. OPEN QUESTIONS

In the context of Environmental and Climate Change Law, adaptation of legal norms to the novel international challenges is very important and crucial in the novel legal reality. Adaptation delves into the manner in which legal frameworks adjust and respond to societal transformations, encompassing shifts in environmental circumstances, technological innovations, and political influence. Law possesses the remarkable ability to adapt, leading to its development, expansion, or contraction. Among the notable German authors who have delved into the historical process of law's evolution is Friedrich Karl von Savigny. Notably, he viewed law as a product of the social and cultural progression of the people. Savigny astutely observed, *"Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its individuality."* Law in its proper sense is identical with the opinion of the people in matter of right and justice. In the words of Savigny, *,,In the earliest times to which authentic history extends the law will be found to have already attained a fixed character, peculiar to the people, like their language, manners and constitution. Nay, these phenomena have no separate existence, they are but the particular faculties and tendencies of an individual people, inseparably united in nature, and only wearing the semblance of distinct at-tributes to our view. That which binds them into one whole is the common conviction of the people, the kindred consciousness of an inward necessity, excluding all notion of an accidental and arbitrary origin''*[189]

[189] Savigny F. (1831) "*Of the Vocation of Our Age for Legislation and Jurisprudence",* Translated from the German by Abra-ham Hayward. London: printed by Littlewood & Co. Old Bailey, P.24

Therefore, in Savigny's perspective, law, similar to language, is not a result of an arbitrary and deliberate decision, but rather a gradual, organic development over time. The law is not a separate entity, but an integral part of the collective life and experiences of a nation. Hence, environmental law with the Climate Change Law developed through international problematic

The legal system possesses an inherent adaptability, enabling it to respond to societal changes, both positive and negative. Similar to the organic evolution of language, the law evolves in conjunction with the life and characteristics of the people over time. This dynamic process is driven by an internal necessity, resulting in continuous movement and development of the law. The growth, expansion, and eventual demise of the law are intricately linked to the nation's trajectory, reflecting its distinctive attributes.

For 30 years, the European Court of Human Rights has explained and answered in detail almost every question that could be raised in the field of environmental law, as well as how broadly the Articles of the Convention (in our case, Article 8) should be interpreted in order to clearly demonstrate the state's obligation to promote the creation of a healthy and clean environment for people. However, it does not mean that there are all the answers and no open, hard questions left. For the analysis of this I will analyze step by step.

Positive Obligations of States _ the court ruled that Article 8 imposes a positive obligation on states to take effective measures for the substantial reduction of greenhouse gas (GHG) emissions to reach net neutrality within a specific timeframe and states should take effective measures to promote healthy and clean environment for the citizens. This solidified that climate inaction can be a human rights violation.

As for the Margin of Appreciation before 2024-year central open question was the extent to which national authorities have discretion (known as the "margin of appreciation") in their climate policies. The Court determined that states have a wide margin in choosing specific policy measures, but a reduced margin when setting national GHG emission reduction targets and timelines. The targets must be aligned with scientific evidence to meet the goals of the Paris Agreement.

Standing (Victim) status is and was one of the major issues in the environmental cases. The Court's decision made it easier for associations to bring climate cases on behalf of their members, provided they are lawfully established and genuinely represent the interests of those affected. However, the bar for individual applicants remains very high, requiring a demonstration of a high intensity of exposure to specific climate harms and a pressing need for government protection.

Article 8 offers a more accessible path than Article 2 (right to life) for environmental cases, issues proving a direct causal link between a single state's emissions and specific harm to a claimant remain complex due to the global nature of climate change.

A significant ongoing inquiry has been whether the 2024 judgment will establish a precedent for similar cases in other jurisdictions, and how national courts and other regional human rights bodies will interpret and apply these new legal frameworks. Will Article 8 of the Convention serve as a foundational document that will facilitate future environmental law cases? In this regard, I believe the answer is affirmative. From theoretical, practical, sociological, and philosophical perspectives, the European Court of Human Rights (ECtHR) possesses substantial influence in today's world to shape states' positive obligations and the political decisions of governing bodies. This influence, however, is contingent on courage, yet there remains considerable optimism.

CONCLUSION

1. Landmark case law trajectory of the ECtHR, which are connected to the Article 8 and Environmental/Climate Change Law, has been neither simple nor direct. Asserting that the Court abruptly altered its approach and stance would be inaccurate and illogical. No prior decision by the Court, preceding the *KlimaSeniorinnen* case, has been disconnected from the established legal framework. European Convention on Human Rights and its supplementary protocols do not explicitly address the protection of human environmental rights which lead inadmissibility of all claims related to the violation of these human rights on their merits (before Phase I in 1980s). Nevertheless, despite the inadmissibility rulings, litigation has persisted. Consequently, in response to global developments, the Court has been compelled to address the matter of human environmental rights. The Landmark cases and its discussions established by the Court, as detailed in Table I (Chapter 3.2.1. Page 51) and Table II (Chapter 3.4.2. Page 65), from the *López Ostra* case through *the Klimaseniorinnen* case, reflect fundamental global, European, and national shifts. Each decision demonstrates a logical progression, contributing to legal predictability and transparency. The European Court of Human Rights jurisprudence on the positive obligations of States, a topic extensively debated by scholars and widely discussed within the legal community, is the culmination of a multi-year domino effect. Consequently, through the evolution of law and the interpretation of legal norms, Article 8 of the European Convention on Human Rights may ultimately serve as the foundational legal standard ensuring the comprehensive fulfilment of member states' positive obligation to provide a healthy, clean, and climate-change-protected environment for their citizens. Furthermore, thorough examination of the European Court of Human Rights' practices, including their interpretations and the strengthened causal link, indicates that Article 8 holds considerable potential to serve as a primary tool in combating climate change in the future, particularly within the framework of positive obligations. Far from being a legal impasse, it could be instrumental, as the comprehensive fulfillment of personal and family rights is justifiably regarded as a fundamental principle of contemporary human rights law.
2. The evolving environmental challenges on Earth have prompted the justice system to take necessary actions. At the international and local levels, new norms, legal instruments, agreements, and recommendations have emerged, contributing to a deeper understanding of the nature of law and influencing public consciousness and

perception. Since the 1990s, the European Court of Human Rights has progressively broadened the scope of Article 8 of the ECHR. Initially, its jurisprudence evolved from standards established in cases involving severe pollution (*e.g. López Ostra, Guerra*) to the explicit articulation of positive state obligations, demanding realistic risk assessments, preventative regulation, and effective oversight (*e.g. Fadeyeva, Dubetska*). In its most recent developmental phase (2020s), the *KlimaSeniorinnen v. Switzerland* case marked a pivotal moment. The Court determined that governmental inaction on climate change, when it exposes individuals to severe, foreseeable, and life-threatening risks, could itself constitute a violation of Article 8. Notwithstanding this advancement, the Court maintains considerable discretion, which frequently restricts the admissibility of complaints and underscores its institutional prudence in directly influencing extensive climate policy. Such rulings do not significantly impact state policy making and do not impose disproportionate burden on decision-makers. Such a cautious action by the Court does not create a legal conundrum but rather establishes the concept of a positive obligation of the State in a purely legal sense, does not unduly interfere with domestic decisions, nor does it present itself as the creator of a legal norm.

3. The application of Article 8 of the European Convention on Human Rights to climate change and environmental rights presents several inherent structural tensions and limitations. While the Court recognizes the adverse effects of environmental and climate threats on private and family life and is willing to extend positive obligations to a certain degree, its jurisprudence is notably shaped by a strong sense of margin of appreciation. This broad approach permits States to determine the scope, pace, and instruments of climate policy, thereby constraining the Court's capacity to clearly define minimum standards of action or to articulate substantive requirements. Furthermore, the stringent admissibility criteria, which include the necessity of a close link and a "threshold of seriousness" demonstrating individual harm, significantly reduce the number of cases that the Court will subject to a substantive examination. Consequently, Article 8 theoretically provides an avenue for climate accountability, but its practical effectiveness is considerably constrained by the court's institutional limitations, doctrinal obstacles, and the inherent dualism between the individual focus of human rights protection and the systemic character of climate issues.

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SUMMARY

The Master's thesis, "State Responsibility or Legal Conundrum: Positive Obligations Under Article 8 of the ECHR in Light of Climate Governance," meticulously examines the developing responsibilities of States under Article 8 of the European Convention on Human Rights (ECHR) within the context of environmental human rights and climate governance. This study includes an analysis of the progression of European Court of Human Rights jurisprudence concerning environmental law and climate governance over the last five decades, highlighting its integration across diverse legal fields and its convergence with human rights. A comprehensive, chronological, and in-depth analysis is conducted to identify patterns in the positive obligations of States under Article 8. Additionally, the research explores the interaction between States' legal and conceptual obligations, governance policies, and legal responsibilities. The primary objective is to evaluate the pertinence of Article 8 in contemporary climate governance and to formulate practical recommendations to assist States in effectively safeguarding citizens' rights from the adverse impacts of climate change in the future.