

## CCBE Statement on the Study from the Council of Europe's Steering Committee for Human Rights (CDDH) on the need for and feasibility of a further instrument or instruments on human rights and the environment

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries and, through them, more than 1 million European lawyers. The defence of the rule of law, the protection of fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of democratic values inextricably associated with such rights, are among the main missions of the CCBE.

The CCBE welcomes the recent adoption by the Steering Committee for Human Rights (CDDH) of its [Study](#) on the need for and feasibility of further instruments on human rights and the environment. The CCBE acknowledges the decisive importance of this Study and commends the CDDH for its thorough analysis and key findings.

Among the various legal instruments proposed in the CDDH Study, the CCBE supports the adoption of an additional protocol to the European Convention on Human Rights guaranteeing the human right to a healthy environment. A protocol would address the current legal gap and provide legal certainty for both applicants and States parties to the Convention. This would lead to coherent and consolidated case law that is in line with unprecedented present-day conditions, including the triple planetary crisis of climate change, biodiversity loss, and pollution. Relying solely on reactive case law is particularly risky for environmental cases, where damage can be irreversible and irreparable. An external oversight by the European Court of Human Rights (ECtHR) could facilitate more effective prevention.

The CCBE particularly favours the model III of an additional protocol to the European Convention on Human Rights (ECHR) as outlined in the Study. This model suggests the adoption of an additional protocol to the ECHR specifically guaranteeing the human right to a healthy environment. This protocol would delineate the constituent elements of this right, while incorporating additional elements relating to the operation of the Convention's procedural requirements and the application of its substantive standards in cases brought under the protocol, such as provisions on jurisdiction, victim status/ NGO standing before the Court, the assessment of evidence, and/or environmental human rights defenders. Individual elements, a combination of elements, or all of the elements may be considered for an additional protocol.

The CCBE believes that this proposed model would be the most effective and comprehensive approach to ensure the protection of the right to a healthy environment. Explicitly guaranteeing this right within the ECHR framework would provide a robust legal basis for seeking redress for environmental harms. Moreover, identifying the constituent elements of the right to a healthy environment would offer much-needed clarity and guidance for the States, the public and the judiciary.

A central advantage of this Model III is that it would ensure adequate access to justice and legal assistance. Ensuring that individuals and communities can effectively bring their cases before the Court is crucial for the enforcement of environmental rights. The exact scope of the Protocol needs further deliberation. A suitable reference point could be the Parliamentary Assembly *Recommendation 2211 (2021)*<sup>1</sup>.

The provisions should also address the fact that environmental cases often involve complex scientific data and long-term impacts that are not immediately apparent. By establishing clear guidelines for evaluating such evidence, the protocol would facilitate more effective legal assistance in environmental cases, leading to better-informed and more just decisions.

In this regard, the recent judgment in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* by the ECHR offers valuable insights for the development of this additional protocol. The additional protocol should take into account the lessons learned from this judgment, particularly in terms of standing, the burden of proof, and the need for a holistic approach to environmental rights.

The provisions of an additional protocol should also not give rise to limitless rights but carefully take into consideration relevant limitations resulting from public interests or individual rights.

In conclusion, when considering the need for a further instrument on human rights and the environment, the CCBE favours the adoption of an additional protocol to the European Convention on Human Rights guaranteeing the human right to a healthy environment, of course subject to discussions on how to specify its constituent elements, with additional elements including provisions on substantive and procedural rights. This instrument would consolidate the Court's achievements in environmental matters and codify the protection of the right to a healthy environment.

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<sup>1</sup> For comprehensive details, please refer to the adopted text available on the Council of Europe's website, available [here](#).