

Policy paper

Intergenerational rights, including children rights and the environment

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HUMAN RIGHTS AND THE ENVIRONMENT
IN THE EU // TOWARDS AN INCLUSIVE DEBATE

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Human Rights and the environment in the EU. Towards an inclusive debate.

Intergenerational rights, including children rights and the environment – Policy Paper 3

Ivana Savic focused on intergenerational rights and their significance, addressing the interlinkages between children and the environment. She introduced such linkages noting that intergenerational rights underscore the importance of equity and fairness between different generations and the need for sustainable development solutions and practices, which include addressing environmental degradation.

She emphasized that environmental problems, including climate change, are complex and interconnected, affecting various aspects of life on the planet. She discussed the interconnectedness between sociopolitical and economic issues, and environmental protection, noting that environmental degradation can negatively affect individuals and the society.



Figure 1. Seminar's poster

Savic focused on potential tensions between present and future generations due to competing priorities, interests, and timeframes. She discussed choices and trade-offs between immediate needs and the desires of future generations, which are linked to short-term versus long-term benefits, immediate gratification versus deferred reward, and current desires versus long-term needs. She pointed to uncertainty intertwined to decision making and concerns regarding discounting the future, stressing that intergenerational justice and equity are at the heart of the discussion.

Noting that different age cohorts exist within present generations with different interests and priorities, she pointed

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towards children as positioned at the "transitioning space" between current and future generations. She underscored that long-term planning for development needs to entail such considerations, and pointed to intergenerational rights as an ethical imperative, quoting from the World Conservation Strategy that "we have not inherited the planet and resources from our parents, we borrow it from our children."

Savic deliberated on the legal and policy frameworks, highlighting its function on empowering as well as the European Union as a significant actor in the interlinkages between children rights and environmental protection, both within the member states and through international development cooperation. She summarized the policy landscape on human rights and the environment, highlighting the Paris Agreement under the UN Framework Convention on Climate Change (UNFCCC) and the historic ruling on the harmful effects of climate change on children's rights by the Child Rights Committee, which notes that a state party can be held responsible for the negative impacts of its carbon emissions on the rights of children both within and outside its territory.

On specific rights, Savic highlighted the rights to life, survival, and development, health, education, and to an adequate standard of living. She emphasized that without environmental protection that guarantees a life-supporting system, many rights are compromised. She focused on challenges linked with implementation of procedural rights, including access to information, participation, and access to justice. She explained that, regarding access to information, a narrow interpretation through an obligation of conduct may lead to omitting significant data, for instance due to commercially sensitive information. She added that an obligation of result leads to full publication and is important for conducting environmental impact assessments (EIAs) and for applying the precautionary principle. She further addressed substantial rights, such as the right to a clean, healthy, and safe environment, noting that such rights have been often derogated from other rights and pointing to the need for a unified approach.

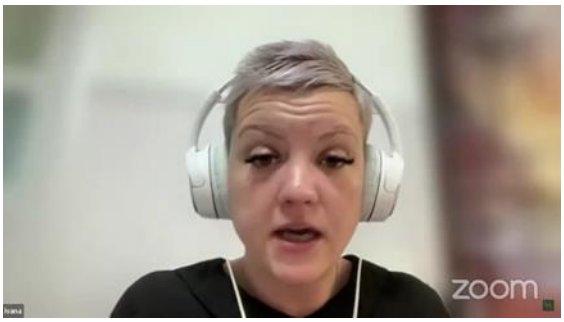


Figure 2. Ivana Savic addressing her speech online

Savic highlighted the importance of EIAs for environmental protection and transparency in decision making as well as the need to include a children's rights imperative in EIAs as a step in addressing practical challenges, and noted that the EU is at the forefront of recognizing such links through various legal instruments and policy initiatives. She further highlighted the precautionary principle as contained in Article 191 of the Treaty on the Functioning of the European Union, aiming at ensuring a higher level of environmental protection through

preventative decision-making in the case of risk. She discussed main challenges linked to implementation, including scientific uncertainty.

Savic further discussed the potential of formulating new policies taking into account the increased vulnerability of children to environmental degradation, including by modifying relevant standards using the average child as the baseline. On future challenges, she focused on implementation both regarding children's rights and the environment, the need for policy coherence to address fragmentation, and the need to balance environmental and socioeconomic considerations. She highlighted the need for cross-sectoral collaboration and consistent implementation, including to address emerging challenges. On future developments, she underscored the need for: strengthening the legal and policy frameworks; integrating the rights of children in environmental law and policies; advancing access to justice; leveraging technological innovation; and strengthening international cooperation.

In the ensuing discussion, participants focused on the level of implementation of children's rights related to participation and access to information through existing mechanisms, the links between environment-centered and economy-centered children's rights and the need to put life-supporting systems at the heart of any discussion; and ways to integrate considerations on children's rights in EIAs.

Manos Kalaintzis focused on intergenerational justice as an emerging concept through the lens of the international and supreme courts. He introduced the Human Rights Council Resolution on the right to a safe, clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights, as well as similar provisions in the Aarhus Convention (United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) and regional instruments such as the African Charter on Human and Peoples' Rights, the Arab Charter of Human Rights, and the Protocol of San Salvador (the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights). He noted that 156 states around the world have enshrined the right to the environment, or elements of it, in their constitutions.

He focused on the European context, discussing Article 37 of the Charter of Fundamental Rights on environmental protection, which notes that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development. He also noted that the European Parliament, while discussing the biodiversity strategy to 2030 in June 2021, stressed that the right to a

healthy environment should be recognized in the EU Charter and the that the EU should take the lead on the international recognition of such a right. He added that the European Convention on Human Rights contains no formal recognition of a right to a healthy environment, which is understandable since it was drafted in the 1950s, pointing to the relevant recommendation by the Parliamentary Assembly of the Council of Europe in September 2021 regarding the drafting of an additional protocol in this respect.

Kalaintzis addressed a number of prominent cases from the European Court of Human Rights relevant to the right to the environment, including:

- Hatton and Others v. the UK on a decision regarding the expansion of Heathrow airport;
- Kyratos v Greece on building permits;
- Hammer v Belgium where the Court recognized that general protection of the environment in today's society is considered increasingly important;
- Cordella and others v Italy on steel-producing activities and relevant environmental risks to neighboring communities; and
- Tătar v Romania, involving the precautionary principle as the Court noted that in cases of serious threats or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

He stressed that the Court accepted, in principle and in legal theory, that responsibility might arise from omissions of state organs, further noting that Article 8 (right to respect for private and family life) may apply in environmental cases where pollution is directly caused by the state or when states' responsibility arises from failure to regulate private industry properly.

He further drew attention to a recent 2023 case (Cotov and others v Russia) on quarry used as a landfill site for solid household waste, and specifically to a judge's dissenting opinion noting that all human rights are interdependent and should be viewed as being vulnerable to environmental degradation. Judge Serghides noted that "the principle of effective protection of human rights which is the overarching principle of the Convention underlying all convention provision safeguarding human rights is not only a method or tool of interpretation but also a norm of international law embodied in each of those provisions." He added that "the sub-right of Article 8 is an implied or implicit or emergent human right of an



Figure 3. Manos Kalaintzis addressing his speech online

environmental character. It is an implied right in the same way as the right to access to a court is an implied, ancillary, or secondary right in relation to the right to a fair trial under Article 6 of the Convention."

Kalaintzis then focused on the notion of intergenerational justice, addressing questions such as whether and how can equality be perceived in an intertemporal manner, also discussing the type of positive or negative obligations that an equitable result over the future would entail. He noted that the European Court of Human Rights considered age as a relevant ground for discrimination as children are vulnerable to climate harm and will be increasingly impacted, including for a longer time, by the effects of current emissions.

He discussed philosophical depictions of the concept of intergenerational equity in famous works, including Garrett Hardin's Tragedy of the Commons, Club de Rome's The Limits to Growth, Elinor Ostrom's Governing the Commons, and Roman Kznariv's The Good Ancestor. He drew attention to Article 4 of the World Heritage Convention, Article 3 of the UN Framework Convention on Climate Change, the Council of Europe Statues, the UN Charter, and the Sustainable of Development Goals, containing elements or traces of the concept.

He discussed relevant cases addressed by the International Court of Justice, mainly on climate risk, including:

- Pulp Mills on the River Uruguay (Argentina v Uruguay) for the construction of pulp mills;
- The Urgenda (Urgent Agenda) climate case where the Dutch Court of Appeal and the Supreme Court ordered the Dutch state to reduce greenhouse gas emissions;
- Milieudefensie et al v Royal Dutch Shell; and
- Neubauer et al v Germany.

Kalaintzis also discussed cases from Norway, Ireland, Chechia, the United Kingdom, Belgium, and France, before moving on to an overview of interesting cases from supreme courts outside Europe, including from:

- Pakistan, D.G. Khan Cement Company Ltd v Government of Punjab, regarding a ban of industrial activity in the area that affected a big cement company, where the Court noted that "the tragedy is that tomorrow's generations are not here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice";

- Nepal, Advocate Padam Bahadur Shrestha v Prime Minister, noting that "only if we embrace the principle of sustainable development and the allied principle of intergenerational equity, and formulate a law to conserve biodiversity and ecosystem we can establish an edifice of climate justice for present and future generations";
- Canada, La Rose v Canada and Mathur et al v Ontario;
- Colombia on Amazonian deforestation, noting that the need for intergenerational equity also exists between those taking decisions today and the generation of younger people who will face the effects of such decisions in the future; and
- New Zealand, Australia, and the United States.

He then refocused on Europe, discussing pending cases under the European Court of Human Rights, including.

- Duarte Agostinho and others v Portugal and others also known as the Portuguese youth case where the young applicants argue that global warming affects their generation in particular and that, given their age, the interference with their rights is more pronounced than that with the rights of previous generations, in view of the deterioration of climatic conditions, which will continue over time;
- Verein Klimaseniorinnen Schweiz and others vs the Swiss Confederation, where a group of older women filed a case regarding the consequences of global warming on their living conditions and health; and
- Careme v France.

He outlined cases under the Court of Justice of the EU, including Armando Ferrao Carval and others v the European Parliament and the Council on emission targets and discrimination against younger generations. He also discussed cases addressed by:

- the Inter-American Court of Human Rights, including a request by Colombia and Chile to clarify the individual and collective dimension of obligations in the context of the climate emergency;
- the International Court of Justice (ICJ), where the UN General Assembly requested an advisory opinion to clarify the obligations of states under international law to ensure emission reductions for present and future generations; and
- and the International Tribunal on the Law of the Sea (ITLOS) where a similar request to the ICG has been submitted by a group of states targeting the marine environment.

In concluding remarks, Kalaintzis noted that despite the fragmentation of judicial approaches, there is a growing consensus in increasing efforts towards strategic litigation. He noted that it is not certain whether intergenerational justice and equity will emerge as an independent concept and added that the ICJ will provide a launching board for the emergence of the notion, should it clarify its status in international law. He added that whether we can conceptualize intergenerational equity as a legal obligation or not, the moral obligation remains, stressing that "intergenerational equity is a source of hope."

In the ensuing discussion participants focused on non-national obligations arising in marine areas beyond national jurisdiction in relation to the rights of future generations as well as to whether final verdicts constitute legal precedents.

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