Intergenerational Justice: an emerging concept through the lens of the international and supreme courts

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

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1. Introduction

Intergenerational justice concerns the extent and the character of moral relations among different generations. A theory of intergenerational justice attempts to show why particular moral responsibilities and obligations apply. What is more apt for analysis during the time of climate crisis that we are experiencing is whether the moral imperative can be transposed into a legal one. Moral ‘’rights’’ is a central topic in ethics and some philosophers view rights as the foundation of political morality and possibly of morality in general[1]. It is undisputed, or at least it should be according to the best available scientific knowledge, that the climate crisis degrades human welfare and poses a gross threat to the full enjoyment of human rights. Environmental justice is an evolving concept understood as seeking “equitable treatment and involvement of people of all races cultures, nations and socioeconomic backgrounds in the development implementation and enforcement of environmental programs, laws and policies”[2]. Climate justice lacks a fixed definition but is understood as including “three principles: distributive justice which refers to who decides and participates in decision-making; and recognition which entails basic respect and robust engagement with and fair consideration of diverse cultures and perspectives”[3]. Despite environmental and climate justice having been elucidated to encompass a horizontal and vertical inclusivity that transcends cultural, racial, or socioeconomic backgrounds in decision making when it comes to environmental preservation, intergenerational justice still perplexes theoreticians and practitioners on its full extend.

To what extent are we liable to protect and preserve the environment for the enjoyment of future generations? Does the innate inter-temporal character of climate change places a legal duty upon current generations vis-à-vis their successors? Can those legitimate demands and expectations of future generations be raised and litigated through the lens of positive statal obligations? Can we confer rights upon unborn people and, if, yes to what extent?[4] Can we contextualize and bring about a fully-fledged notion of intergenerational justice going beyond philosophical concerns to a tangible invocable and justiciable standard? Or can the same outcome

[1] Dworkin R., *Law’s Empire*, 80 et seq., (Belknap Press, 1986).
[2] UNDP “Environmental Justice: Securing our right to a clean, healthy and sustainable environment”, (2022) p. 13.
[3] IPCC Report, p. 7. Available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (2022).
[4] Beckerman W., The impossibility of a theory of intergenerational justice in *Handbook of Intergenerational Justice* (ed. Joerg Chet Tremmel), 69 et seq., (Edward Elgar, 2006).

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be achieved by reference to other principles, i.e. principle of equality or a right to the environment? If a right to the environment exists, who are the right holders and duty bearers? Is the right pertinent to future generations? We shall attempt to examine the status quo of intergenerational justice through the case law of international (and regional) and supreme courts.

2. The human right to the environment (for future generations?)

2.1 The United Nations Systems

The human right to a safe, clean, healthy, and sustainable environment was recognized politically via a very important resolution of the Human Rights Council (HRC) in 2021. The HRC recognized the right to a safe, clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights. It further noted that the right to safe, clean, healthy, and sustainable environment is related to other rights that are in accordance with existing international law. Following the HRC Resolution On 28 July 2022, the UN General Assembly (GA) adopted a landmark resolution recognizing the human right to a healthy environment[5]. The resolution was an unprecedented decision, adopted with unparalleled support (161 votes in favor, no votes against, and eight abstentions). The GA resolution sends a powerful message that there is widespread, worldwide support for this right[6]. Since the early 70s, the UN attempted to bring the spotlight to environmental preservation. A definition is not provided although the HRC has identified vital, integral elements, such as clean air, clean water and adequate sanitation, healthy and sustainable food, a safe climate, and healthy biodiversity and ecosystems.

In 1972, the first global environmental conference was held in Stockholm, where the Stockholm Declaration on the Human Environment[7] was adopted, in which the first principle states that each one 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 (…) bears a solemn responsibility to protect and improve the environment for present and future generations". The conference led to the creation of the United Nations Environment Program (UNEP).

At the regional level, the right was included in the African Charter on Human and Peoples' Rights (1981)[8] and the Maputo Protocol (2003)[9], the San Salvador Protocol to the American Convention on Human Rights (1988)[10], the Convention on Access to Information, Public Participation in Decision-Making and Access to

[5]UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).
[6] Ibid.
[7] Report of the United Nations Conference on the Human Environment, Stockholm, 5 -16 June 1972. Available at : https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/PDF/NL730005.pdf?OpenElement (1973).
[8] Organization of African Unity, African Charter on Human and Peoples' Rights, Available at : https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (1981). In particular article 24 stipulates all peoples shall have the right to a general satisfactory environment favorable to their development".
[9] The Protocol grants women ''the right to live in a healthy and sustainable environment" and the ''the right to fully enjoy their right to sustainable development''.
[10] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Protocol of San Salvador, available at : http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf (1988). See article 11 that reads as following: Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation and improvement of the environment.

Justice in Environmental Matters (Aarhus Convention (1998))[11], the Arab Charter on Human Rights (2004)[12], the ASEAN Declaration on Human Rights (2012)[13], and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean (Escazú Agreement (2018))[14], among others.

Intergenerational equity or justice reemerges and starts to gain flesh and bones within the UN system gradually. Principle 3 of the Rio Declaration on Environment and Development (1992) states that the right to development must be fulfilled in a manner that is equitable as per the needs of present and future generations[15]. References can be found in the UN Framework Convention on Climate Change (1992)[16] and the Convention on Biological Diversity (1992)[17], as well as the United Nations Convention to Combat Desertification (1994)[18] and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (1997)[19], which are prominent in highlighting the needs of future generations.

Other international agreements and declarations that refer to future generations and common heritage are the International Convention for the Regulation of Whaling (1946)[20]; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)[21]; the African Convention on the Conservation of

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[11] Convention on access to information, public participation in decision – making and access to justice in environmental matters – Declarations, OJ L 124, 17.05.2005; 2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision – making and access to justice in environmental matters, OJ L 124, 17.05.2005.

[12] League of Arab States, Arab Charter on Human Rights, 15 1994, available at: https://www.refworld.org/docid/3ae6b38540.html (1994)

[13] ASEAN Human Rights Declaration, available: https://asean.org/asean-human-rights-declaration/ (2012). The Declaration stipulated that "Every person has the right to an adequate standard of living for himself or herself and his or her family including: (…)f. The right to a safe, clean and sustainable environment".

[14] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, available at : https://repositorio.cepal.org/bitstream/handle/11362/43583/S2300531_en.pdf?sequence=4&isAllowed=y (2018). As the Aarhus Convention, the Escazú Agreement protect the procedural elements of the right to a healthy environment. Both multilateral environmental agreements stem from the Rio Declaration of 1992.

[15] Report of the UN Conference on Environment and Development, Rio Declaration on Environment and Development, A/Conf.151/26 (Vol. I), 12 August 1992.

[16] UN Framework Convention on Climate Change, New York, 9 May 1992.

[17] Convention on Biological Diversity, United Nations, 1992. The Convention states in its preamble: ''Determined to conserve and sustainably use biological diversity for the benefit of present and future generations". While article 2 defines sustainable use are the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations".

[18] UN Convention to Combat Desertification in those countries experiencing series drought and/or desertification particularly in Africa, 1994. Convention stipulates: "determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations".

[19] Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, INFCIRC/546, 24 December 1997. One of the objectives of this convention is particularly to ensure that "during all stages of spent fuel and radioactive waste management there are effective defenses against potential hazards so that individuals, society and the environment are protected from harmful effects of ionizing radiation, now and in the future, in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations" while all contracting parties ought to avoid imposing undue burdens on future generations.

[20] International Convention for the Regulation of whaling, Washington, 2nd December 1946.

[21] Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973, Amended at Bonn on 22 June 1979, Amended at Gaborone on 30 April 1983. The Convention recognizes that : "that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come".

Nature and Natural Resources (1968); the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) (1977)[22]; the Convention on the Conservation of Migratory Species of Wild Animals (1979); the Convention on the Conservation of European Wildlife and Natural Habitats (1979)[23]; the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)(1992)[24]; the Convention on the Transboundary Effects of Industrial Accidents (UNECE Convention) (1992)[25]; the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) (1992)[26]; the Stockholm Convention on Persistent Organic Pollutants (POPS) (2001)[27]; the WHO (World Health Organization) Framework Convention on Tobacco Control (2003)[28]; the Vienna Declaration and Programme of Action (1993)[29]; the Universal Declaration on Bioethics and Human Rights (2005)[30]; the Antarctic Treaty (1959)[31]; the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979)[32]; the United Nations Convention on the Law of the Sea (1982).

[22] Convention on the prohibition of military or any other hostile use of environmental modification techniques, New York, 10 December 1976.
[23] Convention on the conservation of migratory species of wild animals, Bonn, 23 June 1979. Parties to the convention highlight their awareness that "that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely".
[24] Convention for the Protection of the Marine Environment of the North- East Atlantic, OSPAR Convention, 1992.UNTS 2354, p. 67. The parties recognize that "concerted action at national, regional and global levels is essential to prevent and eliminate marine pollution and to achieve sustainable management of the maritime area, that is, the management of human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations".
[25] Convention on the Transboundary Effects of Industrial Accidents, Helsinki, 17 March 1992 as amended on 15 December 2015. Parties state that are "Mindful of the special importance, in the interest of present and future generations, of protecting human beings and the environment against the effects of industrial accidents".
[26] Convention on the Protection and Use of Transboundary Watercourses and International Lakes as amended along with decision VI/3 clarifying the accession procedure, Helsinki 17 March 1992, UNTS, vol. 1936, p. 269. The Convention included general obligations for states to prevent, control and reduce any transboundary impact including the management of water resources in a manner so that the "needs of the present generation are met without compromising the ability of future generations to meet their own needs".
[27] Stockholm Convention on Persistent Organic Pollutants (POPS), Text and Annexes, Adopted in 2001, Revised in 2019, UNTS vol. 2256, p.119. Convention recognizes the "health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations".
[28] WHO Framework Convention on Tobacco Control, Geneva, 21 May 2003. UNTS, vol. 2303, p.166. More interestingly the objective of the Convention is" to protect present and future generations from the devastating health, social, environmental, and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke".
[29] Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993. Although not a legally binding text it contains a solid political commitment of states as per the right to development which should be "fulfilled so as to meet equitably the developmental and environmental needs of present and future generations".
[30] Universal Declaration on Bioethics and Human Rights, Resolution adopted on the report of Commission III at the 18th Plenary meeting on 19th October 2005.
[31] Antarctic Treaty, 1 December 1959, UNTS 402, p. 71.
[32] Agreement governing the Activities of States on the Moon and Other Celestial Bodies, New York 5 December 1979, UNTS Vol. 1363, p.3. The Convention declares the moon as a province of all mankind and any exploration should be carried out for the benefit and in the interests of all countries, irrespective of the degree of economic or scientific development. Particularly "Due regard shall be paid to the interests of present and future generations as well as to the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations".

More recently the Paris Agreement (2015)[33] has expressly recognized "that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity". Intergenerational equity has been defined "as the issue of sustainable development referring, within the environmental context, to fairness in the intertemporal distribution of the endowment with natural assets or of the rights to their exploitation, while intergenerational justice encompasses apart from distributive dimensions, procedural, restorative and retributive dimensions"[34].

The most prime example of an endowment to the future generations is a Declaration by the UN Educational, Scientific and Cultural Organization (UNESCO)[35]. The Declaration on the Responsibilities of the Present Generations towards Future Generations, adopted by the General Conference of UNESCO in 1997, puts forward the idea that present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded[36]. Future generations should be granted the opportunity to benefit of the Earth's ecosystems and, for that reason, present generations should strive to protect the environmental quality and integrity, while ensuring that their descendants won't be exposed to pollution that could be harmful to their health and welfare. The Declaration introduces the idea that each generation inherits the Earth temporarily and thus "should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems, and that scientific and technological progress in all fields does not harm life on Earth"[37].

2.2 The European Union

At the level of the European Union, the Charter of Fundamental Rights stipulates in its preamble that the enjoyment of the rights contained in the instrument entails "responsibilities and duties with regard to other persons, to the human community, and to future generations". Article 37 demands that "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development"[38]. The notion of 'intergenerational equity or justice' has been absent from most EU environmental policy documents. When the European Commission proposed their 2005 Draft Declaration on Guiding Principles for Sustainable Development, it used the term 'intra- and inter-generational equity'. Upon comparison with the final strategy

[33] UN Framework Convention on Climate Change – Conference of the Parties, Paris Agreement, 12 December 2015, UNTS vol. 3156.
[34] Glossary of Environment Statistics, Studies in Methods, Series F, No. 67 (United Nations publication, Sales No. E.96.XVII.12).
[35] Declaration on the Responsibilities of the Present Generations Towards Future Generations, Paris France, 12 November 1997.
[36] Article 1 of the Declaration.
[37] Article 4 of the Declaration.
[38] European Union: Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C, 303/01), 14 December 2007, C 303/1.

adopted by the Council in 2006, the text was amended to drop the term. The European legislator opts rather for the term 'sustainable development', which undoubtedly engrains elements of intergenerational equity.

In May 2020, the European Commission published the EU Biodiversity Strategy 2030 a series of commitments to be fleshed out in the EU Nature Restoration Plan through legally binding measures, including the restoration of degraded areas, reversal of the pollinators declines, reduction of chemical pesticides, restoration of free-flowing rivers, and reduction of by-catch of species[39]. Recently, the European Parliament in its Resolution of June 2021 on the Biodiversity Strategy for 2030 considers that the right to a healthy environment should be recognized in the EU Charter and that the EU should take the lead on the international recognition of such a right[40].

2.3 Council of Europe

The Council of Europe has taken significant steps in recognizing the importance of environmental protection through a series of regional treaties, not all of which were met with the anticipated success. Notably the Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979)[41], the Granada Convention for the Protection of the Architectural Heritage of Europe (1985)[42], the Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (1993)[43], the Strasbourg Convention on the Protection of the Environment through Criminal Law (1998)[44], and finally the Florence Landscape Convention (2000)[45] and its Protocol (2016)[46].

The European Social Charter (revised) and the European Convention on Human Rights (ECHR) (1953)[47] are not designed "to provide a general protection of the environment as such and they do not expressly guarantee a right to a sound, quiet, and healthy environment"[48]. On 29 September 2021, the Parliamentary Assembly of

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[39] Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030, Brussels 20.05.2020, COM (2020), 380 final.

[40] European Parliament Resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (2020/2273(INI)), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0277_EN.html (2021).

[41] The convention's aim is to conserve wild flora and fauna and their natural habitats. It has 51 ratifications. The EU is also a party to the convention. Convention on the Conservation of European Wildfire and Natural Habitats (ETS No. 104) (1979).

[42] Convention of the Protection of the Architectural Heritage of Europe, European Treaty Series No. 121, Granada 3.X. 1985. Article 15 par. 1: "Each party undertakes the responsibility to develop public awareness of the value of conserving the architectural heritage, both as an element of cultural identity and as a source of inspiration and creativity for present and future generations".

[43] No ratifications, thus has not entered into force. Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150) (1993). This instrument is important since it provides a broad definition of environment that includes natural resources booth abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage and the characteristic aspects of the landscape.

[44] One ratification, thus has not come into force yet. Convention on the Protection of the Environment through Criminal Law (ETS. No. 172) (1998).

[45] 40 ratifications. Council of European Landscape Convention (ETS No. 176) (2000).

[46] 39 ratifications. Protocol amending the European Landscape Convention (CETS No. 219) (2016).

[47] Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005) (1950).

[48] Council of Europe, Manual on Human Rights and the Environment (3rd Edition), Principles emerging from the case law of the European Court on Human Rights and the conclusions and decisions of the European Committee of Social Rights, available at: https://rm.coe.int/manual-environment-3rd-edition/1680a56197 (2022).

the Council of Europe (PACE) recommended (yet again) the drafting of an additional protocol in this respect to supplement the ECHR[49]. The Assembly recognized that "environmental pollution, loss of biodiversity, and the climate crisis are (…) leading to premature deaths among the current generation and stealing viable living space from future generations, therefore the current generations bear a particular responsibility towards future generations". In an unprecedented statement the PACE considered that in order "to entrench the principle of transgenerational responsibility, equity and solidarity, new rights, and duties are needed, (…) thus supports recognizing the right of future generations to a healthy environment"[50].

2.4 National Constitutions

Throughout the 1970s, the right to a healthy environment began appearing in national constitutions, e.g. in Portugal (1976), Spain (1978), and Peru (1979), as well as in legislation, and policy documents. The right is legally recognized in more than eighty percent of UN Member States, either through the ratification of international law instruments (126 states) or in national constitutions (110 states) or national legislation (156 out of 193 States – more than 80% of UN Member States)[51].

A number of countries have gone as far as to incorporate references to future generations in their constitutions. For instance, Bolivia (Plurinational State of), Ecuador, Germany, Kenya, Norway, and South Africa. In accordance with Article 9 of the Constitution of the Plurinational State of Bolivia, the responsible use of natural resources, the promotion of industrialization and the conservation of the environment for the welfare of current and future generations are among the purposes and functions of the State[52]. In its Article 317, the Constitution of Ecuador provides that, in the management of non-renewable resources, the State shall give priority to responsibility between generations, the conservation of nature, and the charging of royalties or other non-tax contributions and corporate shares[53]. Article 400 states that the State shall exercise sovereignty over

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[49] Efforts trace back to 1973 to the Council of Europe Ministerial Conference on the Environment in Vienna in 1973. The PACE in recommendation 1431(1999) for instance the Assembly asked the committee of Ministers to: "11.2 instruct the appropriate bodies within the Council of Europe to examine the feasibility of (…) drafting an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment''. The Committee of Ministers considered that the recognition of such a right produces difficulties both procedural and legal. See Committee of Ministers, Doc. 8892, Reply to Recommendation 1431 (1999) – Future action to be taken by the Council of Europe in the field of environment protection, 20 November 2000. PACE Resolution 2396, Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe, (2021).
The same recommendation was stated in 2009 with Recommendation 1885 (2009) entitled "Drafting an additional protocol to the European Convention on Human Rights Concerning the right to a healthy environment" with the same reply from the Committee of Ministers.
Committee of Ministers, Reply to Recommendation 1883, Doc. 12298, "The challenges posed by climate change", 19 June 2010.

[50] Ibid.

[51] Human Rights Council, Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of safe, clean, healthy and sustainable environment, A/HRC/43/53, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/355/14/PDF/G1935514.pdf?OpenElement (2019).

[52] Bolivia (Plurinational State of)'s Constitution of 2009. This one of the newest and largest constitutions therefore there are three references to future generations in three different provisions. Most prominently Article 33 that guarantees the right to the environment states: Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way.

[53] Constitution of the Republic of Ecuador 2008, as amended to 2021.

biodiversity, the administration and management of which shall be conducted on the basis of responsibility between generations.

Article 110 (b) of the Constitution of Norway provides that every person has a right to an environment that is conducive to health and that natural resources are to be managed on the basis of comprehensive long-term considerations, with this right safeguarded for future generations as well[54]. Article 20 (a) of the Basic Law of Germany provides that the State should take responsibility for protecting the natural foundations of life and animals in the interest of future generations, with the phrase "foundations of life" understood to embrace all components of the environment necessary for the maintenance of life over long periods; thus, the provision places responsibility for protection of the natural environment on the State[55]. The Constitution of South Africa states that everyone has the right to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures[56]. Similarly, the Constitution of Kenya provides for the right to a clean and healthy environment, which includes protection of the environment for the benefit of present and future generations through legislative and other measures[57].

3. Jurisprudential Approach

3.1 The International Court of Justice

The International Court of Justice (ICJ) in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons went as far as to recognize that "the environment is not an abstraction but represents the living space, the quality of life, and the very health of human beings, including generations unborn"; it therefore highlighted the existence of "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment''[58]. A conclusion reiterated again in its 1997 Gabčíkovo-Nagymaros judgment[59], where the Court summarized the development of international environmental law positioning at the same footing the present and the future generations[60]. In a separate opinion in the case Pulp

[54] Constitution of the Kingdom of Norway, as laid down on 17 May 1814 by the Constituent Assembly at Eidsvoll.
[55] Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 28 June 2022 (Federal Law Gazette I p. 968)
[56] The Constitution of the Republic of South Africa, Act 108 of1996, As adopted on May 1996 and amended on 11 October 1996 by the Constitutional Assembly, Substituted by s/1(1) of the Citation of Constitutional Laws, 2005 (Act No. 5 of 2005).
[57] For more examples see Report of the Secretary – General, Intergenerational solidarity and the needs of future generations, 15 August 2014, A/68/322.
[58] ICJ, Legality of the Threat or Use of nuclear weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, p. 226.
[59] ICJ, Case Concerning the Gabcikovo – Nagymaros Project (Hungary/Slovakia), Judgement of 25 September 1997, I.C.J. Reports 1997, p.7.
[60] The Court states that "Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development".

Mills on the River Uruguay, Judge Trindade argued: "Nowadays, in 2010, it can hardly be doubted that the acknowledgment of intergenerational equity forms part of conventional wisdom in International Environmental Law." What is though the most significant development is the decision of the General Assembly of the UN on the initiative of small island states to request from the ICJ an Advisory Opinion requesting to know: "(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for present and future generations; and (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (…) (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"[61].

3.2 European Court of Human Rights (ECtHR)

3.2.1 Normative content of the Convention

Despite lacking an explicit provision with normative content that protects the environment, the mechanisms behind European regional treaties, especially the European Court of Human Rights (ECtHR), have utilized their interpretative authority to give new momentum to provisions that do not expressly guarantee a right to a safe, clean, healthy, and sustainable environment[62]. The Court has expressly stated that "[n]either Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect"[63]. In principle, environmental protection is confined to consideration of damage to human health as a result of environmental degradation. Nonetheless, the Court has already identified in its case law issues related to the environment which could affect the right to life (Article 2), the right not to be subjected to inhuman or degrading treatment (Article 3), the right to respect for private and family life as well as the right to home (Article 8), the right to a fair trial and to have access to a court (Article 6), the right to receive and impart information and ideas (Article 10), the right to respect the freedom of peaceful assembly and freedom of association (Article 11), the right to an effective remedy (Article 13), and the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1).

The progress of jurisprudence can be elucidated via three examples. In the *Heathrow case*[64], residents of the nearby area to the airport complained about the noise pollution and the decision to expand the airport with a new runway. The Court replied to the applicants that there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other kind of pollution,

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[61] General Assembly, Resolution on the request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, A/77/L.58, 1 March 2023.

[62] Not without criticism. The Court has been criticisized for lacking ambition and courage in those matters. See Cournil C. , 'Verdissement' des systèmes régionaux de protection des droits de l'homme : circulation et standardisation des normes, *European Journal of Human Rights* No. 1, p. 8. (2016); Heiskanen H.-E., Towards greener human rights protection: Rewriting the environmental case-law of the European Court of Human Rights, academic dissertation, *University of Tampere*, 11 May 2018, 204 pp. (2018).

[63] ECtHR, Kyrtatos v. Greece, No. 41666/98, 22 May 2003, para. 52.

[64] Hatton and Others v. The United Kingdom GC 36022/97 – 2003.

an issue may arise under Article 8. In the *Kyrtatos v. Greece*[65], two building permits were quashed by the Council of State, but the Greek state refused to comply with the judgement. The ECtHR confirmed that severe environmental pollution may affect an individual's well-being and prevent him enjoying his home in such a way as to affect his private and family life; the crucial element being the existence of a harmful effect on a person's private and family sphere. A general deterioration of the environment is not sufficient: neither Article 8 nor any other provision of the Convention is specifically designed to provide general protection of the environment. Finally in *Hamer v. Belgium*[66], the ECtHR affirmed that while none of the Articles of the European Convention on Human Rights is specifically designed to provide general protection of the environment as such, in today's society the protection of the environment is an increasingly important consideration. The case law accepts that a violation of an article might arise from omissions of state organs to intervene. Such was the case of *Cordella and others v. Italy*[67] relating to the Taranto steel producing area[68]. The Court had the opportunity to recall its consolidated case-law and underline two sets of obligations on the State: on the one hand, a negative obligation, that is, not to arbitrarily interfere with the individual's right to private and family life, home, and correspondence; and, on the other hand, a positive one, consisting in the adoption of any reasonable and adequate measure to protect individuals from others' arbitrary interference with their right. The Court utilized scientific data in order to evaluate the "high environmental risk'' that the steel producing activity posed for people living nearby, therefore found a violation of Article 8 by the Italian state's omission to proactively ensure their protection.

In those cases of environmental protection, the Court has traditionally recognised a - gradually retreating - margin of appreciation to state parties to draw the fair balance between competing interests between the individuals' rights and community's right to the economic activity. In a recent case *Kotov and Others v. Russia*[69], Judge Serghides dissented with a position worth presenting as he argued that "all human rights are vulnerable to environmental degradation, in that the full enjoyment of all human rights depends on a supportive environment (…)taking into account the object and purpose of the Convention, in particular of Article 8, and which right also necessitates and entails the implicit sub-right to a healthy environment which is indispensable for the exercise and enjoyment of the right to respect for one's private life (…) this sub-right of Article 8 is an implied or implicit or "emergent human right" of an environmental character".

All in all, there is no doubt that the environment is not protected as such by the Convention. But at the same time there is no doubt that a degradation of the environment could amount to a violation of a specific right recognised by the Convention.

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[65] ECtHR, Case of Kyrtatos v. Greece - 41666/98, Judgment 22.5.2003.
[66] ECtHR, Case of Hamer v. Belgium, Application no. 21861/03, Judgement, 27 November 2007.
[67] ECtHR, Case Cordella et autres v. Italy, Application nos. 54414/13 et 54264/13, 24 January 2019.
[68] Longo A., Cordella et al v. Italy: Industrial Emissions and Italian Omissions under scrutiny, European Papers, Vol. 4, 2019 No. 1 pp. 337-343.
[69] ECtHR, Case of Kotov and Others v. Russia, Applications nos. 6142/18 and 13 others, Judgement, 11 October 2022. Applicants lived in the town located near a quarry, used as a landfill site for solid household waste Applicants alleged that the company had been depositing large amounts of solid waste in the landfill site, without the required control and/or protective measures by the authorities to minimize or eliminate the effects of the resulting environmental nuisances. The Court found a violation due to the failure of the state to take adequate protective measures to reduce effects of pollution emanating from a landfill so as to prevent applicant's exposure to related health risks, additionally non-negligible pollution levels affecting adversely and to a sufficient extent applicant's private life.

3.2.2. Pending cases

In three very seminal cases *Duarte Agostinho and Others v. Portugal and Others (Portuguese Youth Case)*[70], *Verein Klimaseniorinnen Schweiz and Others v. Swiss Confederation*[71], and *Careme v. France*[72] chamber relinquished jurisdiction to the Grand Chamber.

In *Verein KlimaSeniorinnen*, the applicants, a group of older women concerned with the consequences of global warming on their living conditions and health, claim that the Swiss Confederation failed to observe climate obligations, focusing, in particular, on the adequacy of Swiss government's climate change mitigation targets and implementation measures and possible infringement on human rights[73]. They allege a violation of Articles 2 and 8 ECHR due to the failure of the state to put in place legislative and administrative measures (framework) to provide effective protection against threats to the right to life. That is due to the extended heatwaves, which cause deaths as the average annual temperature increased by 2.1 degrees Celsius since 1864 creating high mortality risk and related illnesses. They invoked Article 8 as pertaining to their right to "age in dignity''. The Swiss government argued that this was an *actio popularis* and should be declared inadmissible as the Convention is not a suited regime to accommodate climate litigations.

First hearing before the Grand Chamber was held without any indications of the potential outcome but what emerged as the spearhead in the case was the innate difficulty of calculating Switzerland's remaining emissions budget and corresponding obligations for reduction, taking into consideration international law principles, such as common but differentiated responsibilities. Although Verein KlimaSeniorinen seems to be headed towards a direction that should not produce any breakthroughs in the jurisprudence, the Claudia Duarte Agostinho case is a much different story. The applicants allege a violation of Article 14 in combination with Articles 2 and/or 8 of the Convention, arguing 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.

Five other cases were communicated but were adjourned until the Grand Chamber decides the aforementioned cases. To begin with *Greenpeace Nordic and Others v. Norway*[74] was brought by two non-governmental organisations (NGOs) and six affiliated individuals, who complain, relying on Articles 2, 8, 13, and 14 of the Convention, about the judicial review-proceedings in which the applicant NGOs did not succeed

[70]ECtHR, Duarte Agostinho and Others v. Portugal and Others (communicated case), Application No. 39371/20, December 2020. (Notice of Communication)

[71]ECtHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (relinquishment), Application No. 53600/20, April 2022. (Notice of Communication)

Arling H., Taghavi H., KlimaSeniorinnen v. Switzerland – A New Era for Climate Change Protection or Proceeding for Climate Change Protection or Proceeding with Status Quo?, EJIL:Talk!, 6 April 2023.

[72] ECtHR, Careme v. France, Application No. 7189/21, June 2022. (Notice of Communication)

[73] The applicants submit in particular that the respondent State has failed to fulfil its positive obligations to protect life effectively (Article 2 of the Convention) and to ensure respect for their private and family life, including their home (Article 8 of the Convention). They further complain that they have not had access to a court within the meaning of Article 6 (right to a fair trial) of the Convention, and of a violation of Article 13 (right to an effective remedy) of the Convention, arguing that no effective domestic remedy is available to them for the purpose of submitting their complaints under Articles 2 and 8.

[74] ECtHR, Greenpeace Nordic and Others v. Norway, Application no. 34068/21, 2021. (Notice of Communication)

in obtaining a judgment declaring invalid a decision made by the Norwegian Government to grant petroleum exploration licenses for the Norwegian continental shelf.

In *Müllner v. Austria*[75], a person with disability complained about the rising temperatures relying on Articles 2, 6 (right to a fair trial), 8, and 13 of the Convention, that Austria has not put in place an adequate measure to comply with the Paris Agreement temperature target. In *Soubeste and 4 other applications v. Austria and 11 other States*[76], brought by five individuals[77] complaining that the Energy Charter Treaty inhibits the respondent States from taking immediate measures against climate change, making it impossible for them to attain the Paris Agreement temperature goals. In *Engels v. Germany* the applicants complain, relying on Articles 2 and 8 of the Convention, that the new objectives of the German Climate Protection Act are insufficient to reduce greenhouse gas emissions to the level necessary for meeting the Paris Agreement temperature goals.

3.3 European Committee on Social Rights

Likewise, the Committee has considered issues related to the environment which could affect the right to just conditions of work (Article 2), the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), and the right to housing (Article 31). It is noteworthy that in the Committee of Social Rights only two complaints have been lodged regarding the right to a "healthy environment", both concerning Greece, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*[78], and International *Federation for Human Rights (FIDH) v. Greece*[79]. The former case challenged the Greek Government's failure to take steps to protect workers and local residents from pollution caused by lignite mines[80]. In *FIDH v. Greece*, the complainants alleged that pollution of the water of the River Asopos was having harmful effects on local residents[81].

3.4 Court of Justice of the European Union (CJEU)

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[75] ECtHR, Müllner v. Austria, No. 18859/21, March 2021. (Notice of Communication)

[76] ECtHR, Soubeste and four other applications v. Austria and 11 Other States (Belgium, Cyprus, Denmark, France, Germany, Greece, Luxembourg, the Netherlands, Sweden, Switzerland, and the United Kingdom), Application (nos. 31925/22, 31932/22, 31938/22, 31943/22 and 31947/22, June 2022 (Notice of Communication).

[77] Originating from France, Cyprus, Belgium, Germany and Switzerland.

[78] ECSR, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the Merits, 6 December 2006.

[79] ECSR, International Federation for Human Rights (FIDH) v. Greece, Complaint No. 72/2011, Decision on the Merits, 23 January 2013.

[80] Having stated that the Charter was a living instrument that must be interpreted in the light of current conditions, the Committee noted that Article 11 on the protection of health must be construed as including the right to a healthy environment, in line with the approach adopted by many states party to the Charter and by other international bodies. It went on to say that it was guided in its interpretation of this right by the principles established by the European Court of Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights, the UN Committee on Economic, Social and Cultural Rights and the Court of Justice of the European Union. The Committee then referred to studies by WHO and "independent researchers" on the harmful effects of lignite on human health.

[81] The Committee noted that the right to a healthy environment was included in the Social Charter, as acknowledged in that previous decision, and that the right to protection of health under Article 11 of the Charter complemented Articles 2 and 3 of the European Convention on Human Rights (para. 50) – given that health care was a prerequisite for human dignity – as well as Article 8 of the Convention (para. 51). The Committee emphasized a government's duty to take preventive measures and held that lack of scientific certainty should not be used as a reason for postponing measures (para. 145). While the duty of states to ensure "a healthy environment" and access to healthy food is clearly part of the Committee's practice on the basis of Article 11.3 of the Charter, there remains the question of its resources for proper monitoring. As shown by the Conclusions, monitoring is not thorough enough.

The CJEU dealt with the concept of intergenerational equity but not in an environmental context. Due to the reluctance of the European legislator to depict the term in a general context, the demands to establish *locus standi* before the CJEU it is highly unlikely that we will soon see any climate litigation cases pending before the Court. Either by preliminary reference of Article 267 of the Treaty on the Functioning of the EU (TFEU) or by means of action for damages a leeway might exist. For the time being, the Court dealt with the balance among generations in pension cases on the basis of Directive 2000/78/EC[82] in the case *Georgiev v. Tehnicheski universitet* C-250/09 and C- 268/09[83], which deals with the allocation of positions in teaching staff in universities. Another case, *Petersen v. Berufungsausschuss fur Zahnarte fur de Bezirk Westfalen-Lippe* C- 341/08[84], addressed employment opportunities among generations based on a provision of national law setting a maximum age of 68 for practice as a panel dentist. Finally, *European Commission v. Hungary* C-286/12[85] dealt with the access of younger generations to a profession in tandem with, and as a ground for, a national scheme requiring compulsory retirement of judges, prosecutors, and notaries on reaching the age of 62.

Most recently in the *Armando Ferrao Carvalho and Others v. The European Parliament and the Council*[86], ten families, including children, from Portugal, Germany, France, Italy, Romania, Kenya, Fiji, and the Swedish Sami Youth Association Sáminuorra, brought an action in the EU General Court seeking to compel the EU to take more stringent greenhouse gas emissions reductions, as current policies result in discriminating against younger generations in favor of older generations. The lawsuit has two major components[87]. The European General Court did not rule on the merits, but dismissed the case on procedural grounds, finding that the plaintiffs could not bring the case since they are not sufficiently and directly affected by these policies ("direct and individual concern" criterion). On 25 March 2021, the CJEU upheld the General Court's order and held the plaintiff's claims inadmissible on standing grounds for failing to demonstrate that they were individually impacted by Europe's climate policy.

3.5. National Courts

Climate litigation is significantly rising before national lower and supreme courts. To begin with, in the *Urgenda (Urgent Agenda*) case, the Dutch Court of appeal and the Supreme Court ordered the Dutch state to reduce the emission of greenhouse gases by 25% in 2020 compared to the 1990 level. Despite not referring to future generations the Dutch Courts decided on the basis of the threat that climate change presents to the current

[82] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.
[83]CJEU, Judgement, Vasil Ivanov Georgiev v. Tehnicheski Universitet, Joined Cases C-250/09 and C-268/09.
[84]CJEU, Judgment of the Court (Grand Chamber) of 12 January 2010, Domnica Petersen v Berufungsausschuss, Case C-341/08.
[85] CJEU, Judgement of the Court of 6 November 2012, European Commission v. Hungary, Case C-286/12.
[86] CJEU, Judgement of the Court of 25 March 2021, Armando Carvalho and Others v. European Parliament and Council of the European Union, Case C-565/19 P.
[87] First, plaintiffs bring a nullification action, asking the court to declare three EU legal acts as void for failing to set adequate GHG emissions targets. The three EU legal acts are: Directive 2003/87/EC governing emissions from large power generation installations (ETS); regulation 2018/EU on emissions from industry, transport, buildings, agriculture, and etc. (ESR); and regulation 2018/EU on emissions from and removals by land use, land use change, and forestry (LULUCF). The second action concerns non-contractual liability. Article 340 of the TFEU provides a mechanism for injunctive relief when three conditions are met: 1) there is an unlawful act by the EU institution(s), 2) the unlawful act is a serious breach of a law that protects individual rights, and 3) there is a sufficient causal link between the breach and the damages.

generation[88]. In *Milieudefensie et al v. Royal Dutch Shell*, the Hague District Court found that there was a duty of care emanating from Articles 2 and 8 of the ECHR. As a result, "[T]he CO2 emissions for which Royal Dutch Shell (plaintiff) can be held responsible by their nature pose a very serious threat, […] with serious human rights impacts. This applies to both current and future generations"[89].

In Neubauer, the German Constitutional Court (Bundersverfassungsgericht) found that the state's duty of protection arising from Article 2(2) first sentence of the Basic Law also encompasses the duty to protect life and health against the risks posed by climate change, and it can furthermore give rise to an objective duty to protect future generations[90]. If there is scientific uncertainty regarding causal relationships of environmental relevance, a special duty of care imposed upon the legislator by Article 20a of the Basic Law, also for the benefit of future generations. The Article entails an obligation to take account of sufficiently reliable indications pointing to the possibility of serious or irreversible impairments. Therefore, the Bundesverfassungsgericht found that the plaintiff violated the constitutional freedoms of future generations.

The Supreme Court of Norway considered that, in line with this and case law from the ECtHR, the authorities cannot be passive witnesses to major environmental damage but must implement measures that may contribute to securing a healthy environment for current and future generations[91]. There are obvious rule-of-law considerations suggesting that the courts must be able to protect effectively constitutionalised values, such as environmental protection. On the other hand, decisions involving basic environmental issues often require political balancing of interests and broader priorities. Democracy considerations also suggest that such decisions should be made by popularly elected bodies, and not by the courts. The applicants submitted an application to the ECtHR following the decision of the Supreme Court.

In the same vein, the Supreme Court of Ireland rejected the existence of an implied right to the environment, a notion that, as it states, should arise from political debate. The Court nonetheless quashed the National Mitigation Plan as too vague, lacking specificity and legal certainty[92]. *ClientEarth, the Good Law Project, Friends of the Eart*h, and climate activist Joanna Wheatley challenged the UK's inadequate efforts to reduce emissions. The UK High Court sided with the claimants and established that the government's strategy lacked legally required information, making it impossible to understand and to assess the risk of missing domestic mitigation goals[93].

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[88] Supreme Court of the Netherlands, Civil Division, Judgement, The State of the Netherlands and Stichting Urgenda., Nr 19/00135, 20 December 2019. They ruled that there was a violation of art. 2 and 8 of the ECHR.
[89] The Hague District Court, Judgment, Association Milieudefensie et al vs. Royal Dutch Shell PLC, Case Nr. C/09/571932 / HA ZA 19-379, 26 May 2021.
[90] BVerfG, Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 -, paras. 1-270.
[91] Supreme Court of Norway, Nature Youth Noway, Greenpeace Nordic et al (intervening) v. the State, Judgement, 22 December 2020, HR-2020-2472-P, (case no. 20-051052SIV-HRET).
[92] High Court of Ireland, Friends of the Irish Environment CLG and The Government of Ireland, Ireland and the Attorney General, IEHC 747 (2019).
[93] High Court of Justice, Queen's Bench Division, Administrative Court, Friends of the Earth Ltd. Clientearth, Good Law Project and Joanna Wheatley and Secretary of State for Business, Energy and Industrial Strategy Claims Nos CO/126/2022, CO/163/2022, CO/199/2022

Czechia's court of first instance in the *Klimatická žaloba ČR* case opined that "mitigation measures cannot be postponed" because of the irreversible nature of climate change[94] and ordered the government to take immediate steps. Similar to the Urgenda case in the Netherlands, the *Klimaatzaak* -- "climate case" -- was brought by an organization of concerned citizens, and 58,000 citizen co-plaintiffs, arguing that Belgian law requires the Belgian government's approach to reducing greenhouse gas emissions to be more robust[95]. The Court found that the Belgian government(s) breached its duty of care by failing to take necessary measures to prevent the harmful effects of climate change but declined to set specific reduction targets on separation of powers grounds[96]. A monumental decision was *L'affaire du Siécle* where a number of NGOs applied before the Administrative Court of Paris, recognizing for the first time the legal responsibility of the French state for its contribution to the climate crisis[97]. In another French case *Grande – Synthe v. France,* the Mayor of Grand-Sythe and the Municipality brought action against the state arguing that it failed to effectively reduce emissions[98].

Apart from European courts, worldwide there have been quite a few examples of courts utilizing notions and variations of intergenerational equity. In the *D.G. Khan Cement Company Ltd v. Government of Punjab*, the Supreme Court of Pakistan in a passionate reasoning stated that "another important dimension of climate change is intergenerational justice and the need for climate democracy. The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them"[99].

Likewise, in *Advocate Padam Shrestha v. Office of the Prime Minister et al.,* the Supreme Court of Nepal ruled that if "only we embrace the principles of sustainable development and allied principles of intra- and inter-generational equity, and formulate a law to conserve biodiversity and ecosystem, we can establish an edifice of climate justice for present and future generations"[100].

The Supreme Court of Colombia considered that the "the environmental rights of future generations are based on the (i) ethical duty of the solidarity of the species and (ii) on the intrinsic value of nature" and therefore they have claims against any transgressions of the status of the environment[101]. Plaintiffs in the case argued that intergenerational equity can be encompassed to include people between the present generation and a future

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[94] Judgment No. 14A 101/2021 of the Municipal Court in Prague from 15 June 2022

[95] Specifically, plaintiffs called for reductions of 40% below 1990 levels by 2020 and 87.5% below 1990 levels by 2050.

[96] Tribunal de premiére instance francophone de Bruxelles, Section Civile, Jugement, 4eme chambre affaires civiles, 2015/4585/A, 17 Juin 2021.

[97] Paris Administrative Court, Notre Affaire à Tous and Others v. France ('L'affaire du siècle'), Decision of 3 February 2021, Nos. 1904967, 1904968, 1904972, and 1904976/4. Paris Administrative Court, Notre Affaire à Tous and Others v. France ('L'affaire du siècle'), Decision of 14 October 2021, Nos. 1904967, 1904968, 1904972, and 1904976/4.

[98] Conseil d'État N° 427301, La commune de Grande-Synthe.

[99] Supreme Court of Pakistan, C.P.1290-L/2019, Against the Order of Lahore High Court, Lahore dated 31.01.2019, passed in W.P. No. 5898/2019. D. G. Khan Cement Company Ltd. Versus Government of Punjab through its Chief Secretary, Lahore, etc.

[100] Decision no. 10210, Supreme Court, Division Bench Hon. Chief Justice Om Prakash Mishra Hon. Justice Tej Bahadur K.C., Order 074-WO-0283 Published in: NKP, Part 61, Vol. 3.

[101]Corte Supremo De Justitia (Republica de Colombia) (Future Generations v. Ministry of the Environment and Others) "Demanda Generaciones Futuras v. Minambiente", , Reporter Info: 11001 22 03 000 2018 00319 00 2018.

generation of people who do not yet exist, but also between those who make decisions today and the generation of younger people, who face the effects of those decisions made in the present. The Supreme Court of Colombia applied the principle of intergenerational equity to "future generations, including the children who brought the action".

Finally, in *Juliana v. United States*[102], in a litigation that began in 2015 and is still ongoing and could potentially reach the Supreme Court of the United States, the plaintiffs, a number of young people, argued that the Government has actively contributed to causing climate change and that, in doing so, it has violated the youngest generation's constitutional rights to life, liberty, and property, as well as failed to protect essential public trust resources. This case is innovative since it pushes the boundaries of judicial power over and beyond, trying to invoke the judiciary's constitutional obligation to hold the executive branch of the government accountable when its actions destroy natural resources essential to life.

4. Conclusions

Despite constantly facing political short-termism, intergenerational equity will gradually gain greater recognition and depiction in texts around the globe. The future generations are in a considerable handicap when it comes to the current ones: they are unborn thus not present and unable to speak for themselves. Whatever bone their predecessors want to throw at their direction, they will be forced to take it.

Despite the fragmentation of judicial approaches, we see a growing consensus in increasing efforts towards strategic litigation and what is expected to happen is a cross-fertilization in case and approaches. It is not certain whether inter-generational justice and equity will emerge as an independent concept, even ancillary, on the basis of Article 14 of the ECHR and the principle of non-discrimination. The International Court of Justice will provide surely a launching board for the emergence of the notion, should it clarify its status in international law. Judge Staton writes in her dissent in the Juliana case: "Where is the hope in today's decision? . . .When the seas envelop our coastal cities, fires and droughts haunt our interiors, and storms ravage everything in between, those remaining will ask: Why did so many do so little?" Claimants and applicants (both states and individuals) will seek to rely upon it because, regardless of whether we can conceptualize it as a legal obligation, intergenerational equity is a moral obligation and above all intergenerational equity is a source of hope.

[102] The Government attempted to have the case thrown out of court at an early stage. In a landmark opinion and order, the Federal District Court of Oregon held that "the right to a climate system capable of sustaining human life is fundamental to a free and ordered society," and rejected the Government's motions to dismiss the case. Since then, the Government has made several applications to suspend the trial, which the Ninth Circuit Court of Appeals and the Federal Court of Oregon have repeatedly denied. In January 2020, the Ninth Circuit Court of Appeals ruled on the Government's latest appeal and dismissed the case, ruling that the plaintiffs lacked standing since the relief they sought was beyond judicial power. After the Court of Appeals refused to rehear the case, the plaintiffs filed a motion to amend the case before the District Court – which allowed them to amend the case.
See Kelsey Cascadia Rose Juliana et al. Plaintiffs v. United States of America, United States District Court for the District of Oregon Eugene Division, Oct 15, 2018, 339 F. Supp. 3d 1062 (D. Or. 2018).