

# Guaranteeing the access to healthy and sustainable food for present and future generations

The role of the EU legislative framework for sustainable food systems

---

## Contents

<b>Executive Summary .....</b>	<b>2</b>
<b>1 Our food systems must provide access to healthy and sustainable food for all .....</b>	<b>3</b>
<b>2 The EU legislative framework for sustainable food systems: the key to fulfilling the right to healthy and sustainable food .....</b>	<b>5</b>
<b>3 Legal analysis .....</b>	<b>6</b>
3.1 What is the right to healthy and sustainable food? .....	6
3.2 Is the EU obligated to guarantee the enjoyment of the right to healthy and sustainable food? .....	7
3.2.1 International recognition of the right to a healthy environment .....	8
3.2.2 European recognition of the right to a healthy environment .....	9
<b>4 Recommendations to guarantee the access to healthy and sustainable food for all .....</b>	<b>13</b>

## Executive Summary

- While food availability is not currently at stake in the EU, the degradation of ecosystems by intensive agri-food models and fisheries and the increase of climate-induced events are already impacting food production within and outside the EU, as well as exposing people to harmful living conditions and pollutions. With these risks worsening, a lack of sufficient action to tackle the degradation of natural resources, the biodiversity crisis and the changing climate may well affect our future capacity to access quality food in satisfactory quantities.
- The capacity of current and future generations to access healthy and sustainable food has been recognised as a human right. The Special Rapporteur on Human Rights and the Environment, David R. Boyd, has recognised healthy and sustainable food as one of six substantive elements of the right to a safe, clean, healthy and sustainable environment. The right to healthy and sustainable food finds itself at the intersection of the right to food, the right to health and even the right to life.
- The right to a healthy environment enjoys wide recognition, including by the Council of Europe, the EU and its Member States. Substantive as well as procedural elements of the right to a healthy environment have made their way into EU human rights law – notably, through the ratification by the EU of the Aarhus Convention, the constitutional traditions of Member States and/or their ratification of the same treaty, the case law of the European Court of Human Rights as well as that of the Court of Justice of the EU.
- EU authorities have a responsibility to respect, protect and fulfil the right to a healthy environment in all its substantive elements, including in relation to healthy and sustainable food. Although the right to healthy and sustainable food is clearly embedded in the right to a healthy environment, additional efforts are required at EU level to support the full enjoyment of this right.

### Recommendation

The EU must guarantee the full enjoyment of the right to healthy and sustainable food for current and future generations in its Legislative Framework for Sustainable Food Systems (FSFS). Making access to healthy and sustainable food for all one of the **core objectives** of the FSFS would set a clear pathway towards developing the social-health and environmental sustainability of food systems in the EU.

# 1 Our food systems must provide access to healthy and sustainable food for all

Food systems are undergoing a series of shocks, which jeopardises the capacity of current and future generations to access sufficient and healthy food. Climate change, the loss of terrestrial and aquatic biodiversity, the degradation of natural resources such as water and soil, along with the development of antimicrobial resistance, the spread of zoonoses, as well as conflicts and increasing costs of living, are all posing threats to our food security. Impinging on the full enjoyment of human rights,<sup>1</sup> these system failures call for urgent action by the world's decision-makers. The transformation of food systems is also critical to achieving the United Nations Sustainable Development Goals.<sup>2</sup>

According to the 1996 World Food Summit, “**food security** exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”<sup>3</sup>

The implications of food systems failures are already being felt worldwide, affecting people's livelihoods, physical and mental health and well-being. Today, a record 349 million people are facing acute food insecurity, with conflicts and climate change being identified as leading causes.<sup>4</sup> In the EU, studies have shown that the population is most affected by diet-related diseases.<sup>5</sup> Moreover, over the past few years, lower-income households have been particularly hit by the drastic surge in food prices. **Consequently, unhealthy diets and diminished food affordability stand as major food challenges for the Union.** Beyond the implications linked to consumption, operations across food value chains can also have negative effects on people's health, including workers who can be overly exposed to chemicals like pesticides, toxic air, persistent stench and noise. The same is true for populations living close to industrial installations.<sup>6</sup>

---

<sup>1</sup> Report of the Special Rapporteur on human rights and the environment, *Healthy and sustainable food: reducing the environmental impacts of food systems on human rights*, A/76/179, 19 July 2021 (available [here](#)). As the Special Rapporteur notes, the failures of food systems negatively impact the rights to life, health, water, food, a healthy environment, development, an adequate standard of living, cultural rights, the rights of the child and Indigenous rights.

<sup>2</sup> Specifically, SDGs 1, 2, 3, 6, 8, 10, 12, 13 and 15 related to poverty, hunger, health, water, decent work, inequality, responsible production and consumption, climate action and biodiversity.

<sup>3</sup> World Food Summit, *Rome Declaration on World Food Security*, 13-17 November 1996 (available [here](#)).

<sup>4</sup> World Food Programme (2023), *A global food crisis* (available [here](#)); IPCC (2022), AR6, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Summary for Policymakers, p. 9 (available [here](#)).

<sup>5</sup> WHO Regional Office for Europe, *European Regional Obesity Report 2022* (available [here](#)).

<sup>6</sup> G. Gržinić, A. Piotrowicz-Cieślak, A. Klimkowicz-Pawlas, et al. (2023), *Intensive poultry farming: A review of the impact on the environment and human health*, *Science of the Total Environment* 858 (3), 160014 (available [here](#)).

As recognised by the European Commission, food availability is not currently at stake across the bloc.<sup>7</sup> However, **the degradation of ecosystems by intensive agri-food models and fisheries and the increase of climate-induced events are already impacting food production within and outside the EU.** The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services indicates that, globally, the increase of the agricultural crop production value since 1970 has relied on the unsustainable use of resources, to the effect that land degradation has already reduced productivity in 23% of the terrestrial area, while pollinator loss puts crop output at risk for a value of up to \$577 billion annually.<sup>8</sup> Agricultural soils in the EU are also rapidly degrading, with a quarter already affected by high erosion rates,<sup>9</sup> which have significant impacts on agricultural production. Meanwhile, about a third of our pollinators are in decline.<sup>10</sup> These trends are exacerbated by climate change, which further contributes to extreme events like droughts, floods and cold-spells. In the past 50 years, crop losses caused by drought and heat have tripled in Europe.<sup>11</sup> In 2022 alone, severe droughts caused crop losses worth hundreds of millions of euros.<sup>12</sup>

Marine resources are also at stake: in the North East Atlantic, where about two hundred fish stocks are commercially exploited, around 30% of the assessed fish stocks are still overfished.<sup>13</sup> In the Mediterranean, where around a hundred fish species are commercially exploited, approximately 75% of assessed fish stocks are currently fished at biologically unsustainable levels. In EU Mediterranean waters in particular, 91% of assessed fish stocks are overfished.<sup>14</sup>

**With these risks worsening, a lack of sufficient action to tackle the degradation of natural resources, the biodiversity crisis and the changing climate may well affect our future capacity to access quality food in satisfactory quantities.**<sup>15</sup> Decision-makers have a responsibility to ensure that people can fill their plates with sufficient, nutritious and sustainably produced food, so as to preserve the livelihoods and well-being of current and future generations. In fact, **the capacity of current and future generations to access healthy and sustainable food has been recognised as a human right.** The

---

<sup>7</sup> European Commission, *Safeguarding food security and reinforcing the resilience of food systems*, [COM\(2022\) 133 final](#), 23 March 2022.

<sup>8</sup> IPBES (2019), *Summary for policymakers of the global assessment report on biodiversity and ecosystem services* of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (available [here](#)).

<sup>9</sup> P. Panagos, C. Ballabio, J. Poesen, *et al.* (2020), *A soil erosion indicator for supporting agricultural, environmental and climate policies in the European Union*. *Remote Sensing* No 12 (9), 1365 (available [here](#)).

<sup>10</sup> European Commission, *Pollinators* (available [here](#)).

<sup>11</sup> IPCC (2022), AR6, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Full Report, p. 729 (available [here](#)).

<sup>12</sup> E. Nadeu (2022), *Nature Restoration as a driver for Resilient Food Systems*. Policy Report, IEEP (available [here](#)).

<sup>13</sup> JRC Scientific, Technical and Economic Committee for Fisheries (STECF) (2022), *Monitoring the performance of the Common Fisheries Policy (STECF-Adhoc-22-01)*, doi:10.2760/566544.

<sup>14</sup> FAO (2022), *The State of Mediterranean and Black Sea Fisheries 2022*, General Fisheries Commission for the Mediterranean, Rome, <https://doi.org/10.4060/cc3370e>.

<sup>15</sup> IPCC (2019), *Climate change and land: An IPCC Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, p. 142-143.

right to healthy and sustainable food is at the intersection of the right to a healthy environment, the right to food, the right to health and even the right to life.

The FAO defines **healthy and sustainable food** as “*having low environmental impact, protecting biodiversity, ecosystems and the climate; contributing to food security and meeting the health and nutritional needs of current and future generations through culturally acceptable, accessible and affordable food.*”<sup>16</sup>

## 2 The EU legislative framework for sustainable food systems: the key to fulfilling the right to healthy and sustainable food

In May 2020, the European Commission published its Farm to Fork Strategy for a fair, healthy and environmentally friendly food system.<sup>17</sup> This EU Green Deal initiative “*recognises the inextricable links between healthy people, healthy societies and a healthy planet,*” and establishes a political programme to address the multiple challenges caused by and affecting our food systems. Importantly, the Farm to Fork Strategy announces the adoption of an EU legislative framework for sustainable food systems (FSFS) to “*promote policy coherence at EU and national level, mainstream sustainability in all food-related policies and strengthen the resilience of food systems.*”

**The FSFS, the proposal of which is expected in autumn 2023, must ensure the protection of the right of every person to healthy and sustainable food.** The transformation of EU food systems<sup>18</sup> must be centred around health, moving us away from practices that are harmful to both human beings and the planet and towards ones that secure our long-term food security. This necessity is made apparent in the goals of the Farm to Fork Strategy, where the Commission commits to “*ensuring food security, nutrition and public health – making sure that everyone has access to sufficient, nutritious, sustainable food that upholds high standards of safety and quality, plant health, and animal health and welfare, while meeting dietary needs and food preferences.*”

---

<sup>16</sup> FAO (2010), *Sustainable Diets and Biodiversity: Directions and Solutions for Policy, Research and Action* (available [here](#)).

<sup>17</sup> European Commission, COM(2020) 381 final (available [here](#)).

<sup>18</sup> According to scientists, “*a sustainable food system for the EU would be one that provides and promotes safe, nutritious and healthy food of low environmental impact for all current and future EU citizens in a manner that itself also protects and restores the natural environment and its ecosystem services, is robust and resilient, economically dynamic, just and fair, and socially acceptable and inclusive. It does so without compromising the availability of nutritious and healthy food for people living outside the EU, nor impairing their natural environment.*” (Science Advice for Policy by European Academies).

**For this to be achieved, the FSFS proposal must aim to secure every person's access to healthy and sustainable food, setting it as one of the future legislation's core objectives.** It should further establish general principles to guide policy-making on food across the Union, including a "One Health" principle.<sup>19</sup> It is also imperative that the FSFS organises the phase-out of subsidies that support practices harmful to the climate, environment and people's health,<sup>20</sup> notably by requesting the Common Agricultural Policy to align with the objectives of the FSFS. On the other hand, it must create a foundation on which to build enabling food environments,<sup>21</sup> including by proposing a framework for the mandatory public procurement of sustainable food at all levels of governance.<sup>22</sup> Finally, the FSFS must guarantee the environmental procedural rights of the public to access information, to participate in decision-making processes across governance levels and to access effective remedies.

The EU and its Member States have clear legal obligations to ensure the protection and full enjoyment of fundamental rights and freedoms,<sup>23</sup> including the right to a healthy environment of which healthy and sustainable food is a key component. The following section sets out a legal analysis of the EU's responsibility to guarantee the enjoyment of a healthy environment for current and future generations. Our present-day food systems are not resilient, operating outside of planetary boundaries and thus failing to ensure that the right to healthy and sustainable food can be enjoyed now and in the future. Therefore, we call on EU legislators to draft the FSFS proposal with these challenges in mind and adopt a Sustainable Food Systems Law that is firmly and intrinsically rooted in human rights.

## 3 Legal analysis

### 3.1 What is the right to healthy and sustainable food?

In a report from July 2021, the Special Rapporteur on Human Rights and the Environment, David R. Boyd, recognised healthy and sustainable food as one of six substantive elements of the right to a safe, clean, healthy and sustainable environment, the others being clean air,<sup>24</sup> a safe climate, safe water and adequate

---

<sup>19</sup> World Health Organization (2022), *A health perspective on the role of the environment in One Health* (available [here](#)).

<sup>20</sup> ClientEarth (2021), *The Special Status of Agriculture: Why is the CAP an exceptional policy?* (available [here](#)); ClientEarth (2021), *The recovery budget for agriculture. How the EU disguised a missed opportunity* (available [here](#)).

<sup>21</sup> See Food environments & EU Food Policy, *Discovering the role of food environments for sustainable food systems*, October 2021 (available [here](#)).

<sup>22</sup> See Policy recommendations: Using procurement for a systemic food transformation, December 2021 (available [here](#)).

<sup>23</sup> These obligations stem from the Charter of Fundamental Rights of the European Union, as well as the European Convention on Human Rights, to which all EU Member States are already parties and to which the EU itself is currently discussing accession.

<sup>24</sup> ClientEarth (2021), *Individual right to clean and healthy air in the EU* (available [here](#)).

sanitation, non-toxic environments, and healthy ecosystems and biodiversity.<sup>25</sup> The report comes as a response to the compelling evidence that present-day food systems are unsustainable, which the Special Rapporteur describes as “*encourag[ing] the dominance of large monocultures that decrease agricultural biodiversity, reduce the resilience of food systems and jeopardize food security.*”<sup>26</sup> According to the Special Rapporteur, “*the environmental impacts caused primarily by industrial food systems interfere with the enjoyment of a wide range of human rights, including the rights to life, health, water, food, a healthy environment, development, and adequate standard of living, cultural rights, the rights of the child and Indigenous rights.*”<sup>27</sup>

Of particular interest is the causal link between unsustainable food production practices and their interference with the right to a healthy environment – an individual human right that has been recognised across regional and national legal systems, and now also by the UN Human Rights Council<sup>28</sup> and the UN General Assembly at the international level.<sup>29</sup> This link has been confirmed by courts around the world: in Mexico in 2021, the Supreme Court found a large hog facility to be in violation of the right to a healthy environment,<sup>30</sup> while in Chile the same violation was recognised in relation to harmful aquaculture activities.<sup>31</sup> In Greece, a ruling found a violation of the right to a healthy environment in relation to the diversion of the Acheloos River for irrigation purposes.<sup>32</sup> Likewise, in Uganda, a court ruling revoked a sugar cane license in a protected forest reserve on the basis of a violation of the right to a healthy environment.<sup>33</sup> These examples indicate a general consensus that sustainable food systems are key to the enjoyment of a healthy environment.

## 3.2 Is the EU obligated to guarantee the enjoyment of the right to healthy and sustainable food?

The question arises whether the EU is under an obligation to guarantee the enjoyment of the right to healthy and sustainable food. As the previous paragraphs explain, healthy and sustainable food is a key

---

<sup>25</sup> Report of Special Rapporteur on human rights and the environment, *Right to a healthy environment: good practices*, A/HRC/43/53, 30 December 2019 (available [here](#)).

<sup>26</sup> Special Rapporteur, A/76/179, *op. cit.*

<sup>27</sup> *Ibid.*

<sup>28</sup> UN Human Rights Council, *The human right to a clean, healthy and sustainable environment*, A/HRC/RES/48/13, 18 October 2021 (available [here](#)).

<sup>29</sup> UN General Assembly resolution, *The human right to a clean, healthy and sustainable environment*, A/RES/76/300, 1 August 2022 (available [here](#)).

<sup>30</sup> See Appeal for Review, 6/2020, Supreme Court, 19 May 2021.

<sup>31</sup> Supreme Court of Chile, 22 May 2018.

<sup>32</sup> Greece, Council of State decisions 2759-2760/1994, 3478/2000, 3054/2009 and 26/2014.

<sup>33</sup> See *Advocates Coalition for Development and Environment v. Attorney General* (2004), High Court. Miscellaneous Cause No. 0100 of 2004.



component of the right to a healthy environment. Therefore, answering this question requires exploring the recognition that the EU gives to the right to a healthy environment.

### 3.2.1 International recognition of the right to a healthy environment

In July 2022, the United Nations General Assembly adopted a resolution recognising the human right to a clean, healthy and sustainable environment.<sup>34</sup> This landmark declaration follows decades of political and legal developments linking the protection of human rights with a healthy environment, including a previous recognition of the right to a healthy environment by the UN Human Rights Council in October 2021.<sup>35</sup> Although there is no single definition of the right to a healthy environment used across legal systems or at the international level, a core element of this right is the recognition that the full realisation of human rights is inextricably linked to the state of the environment. There is also a general understanding that this right entails both substantial and procedural elements.<sup>36</sup>

Early human rights law paid limited attention to the relationship between human rights and the environment. It was the 1972 Declaration of the UN Conference on the Human Environment (Stockholm Declaration) that highlighted this nexus and laid the foundation for the development of the right to a healthy environment when it stated 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 responsibility to protect and improve the environment for present and future generations.”*<sup>37</sup>

The notion of “environmental rights” has developed since then, coinciding with a general rise in environmental awareness. Environmental considerations slowly made their way into the human rights sphere, bringing greater attention to the inseparable link between environmental protection and human well-being. Over the past several decades, international human rights bodies have increasingly emphasised the importance of a healthy environment as a precondition for the enjoyment of human rights, such as the right to life, health, food, water, property, home and private life. This practice of relying on codified rights and freedoms to protect the otherwise implicit right to a healthy environment has been described as the “greening” of human rights.<sup>38</sup>

---

<sup>34</sup> UN General Assembly, A/RES/76/300, *op. cit.*

<sup>35</sup> UN Human Rights Council resolution, *The human right to a clean, healthy and sustainable environment*, A/HRC/RES/48/13, 18 October 2021 (available [here](#)).

<sup>36</sup> I. Kotiuk, A. Weiss and U. Taddei (2022), *Does the European Convention on Human Rights guarantee a human right to clean and healthy air? Litigating at the nexus between human rights and the environment – the practitioners’ perspective*, *Journal of Human Rights and the Environment*, no. 13, p. 122-151, <https://doi.org/10.4337/jhre.2022.00.04>.

<sup>37</sup> United Nations, *Report of the United Nations Conference on the Human Environment (Stockholm Declaration)*, 5-16 June 1972, Principle 1 (available [here](#)).

<sup>38</sup> Report of the Special Rapporteur on human rights and the environment, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/73/188, 19 July 2018 (available [here](#)).

The creation of a UN mandate for an Independent Expert on human rights and the environment<sup>39</sup> in March 2012 – later the title was changed to Special Rapporteur – was a further indicator of the growing relationship between human rights and the environment, and of the importance of the right to a healthy environment to the international community as a whole.<sup>40</sup> As confirmed by the first mandate holder, John Knox: “*Human rights and environmental protection are inherently interdependent,*” and “*the realization of [fundamental human attributes such as dignity, equality and liberty] depends on an environment that allows them to flourish.*”<sup>41</sup>

The right to a healthy environment has been explicitly recognised around the world: environmental rights have emerged in many national legal frameworks, with more than 80% of States recognising a right to a healthy environment through their constitutions, national legislation, regional or international treaties.<sup>42</sup> This trend has also been reflected at the regional level, with instruments like the 1988 Additional Protocol to the American Convention on Human Rights recognising that “*everyone shall have the right to live in a healthy environment*” and that “*States Parties shall promote the protection, preservation, and improvement of the environment.*”<sup>43</sup> Similarly, this right is established in the 2004 Arab Charter on Human Rights, which recognises that “[e]very person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including [...] the right to a healthy environment,”<sup>44</sup> as well as in the 1991 African Charter on Human and Peoples’ Rights, which provides “*the right to a general satisfactory environment.*”<sup>45</sup>

### 3.2.2 European recognition of the right to a healthy environment

Across Europe, the right to a healthy environment also enjoys wide recognition. Adopted at a time when environmental considerations were not yet fully integrated into the human rights corpus, neither of the two Council of Europe human rights treaties – namely, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) – recognise the right to a healthy environment explicitly.<sup>46</sup> Nonetheless, the protection of the right to a healthy environment has emerged through the developing

---

<sup>39</sup> UN Human Rights Council resolution, *Human rights and the environment*, A/HRC/RES/19/10, 19 April 2012 (available [here](#)).

<sup>40</sup> UN Human Rights Office of the High Commissioner, *Special Rapporteur on human rights and the environment* (available [here](#)).

<sup>41</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Preliminary Report*, A/HRC/22/43, 24 December 2012, p. 4, para. 10 (available [here](#)).

<sup>42</sup> Special Rapporteur, A/76/179, *op. cit.*

<sup>43</sup> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* “*Protocol of San Salvador*,” 17 November 1988, Article 11.

<sup>44</sup> *Arab Charter on Human Rights*, May 2004, Article 38.

<sup>45</sup> *African Charter on Human and Peoples’ Rights*, June 1981, Article 24.

<sup>46</sup> Council of Europe, *Manual on Human Rights and the Environment (3rd edition)*, February 2022 (available [here](#)).

case law<sup>47</sup> of the European Court of Human Rights (ECtHR), which ensures compliance with the ECHR, and through the decisions of the European Committee of Social Rights (ECSR), which correspondingly monitors compliance with the ESC.<sup>48</sup> Both bodies have increasingly considered environmental factors that directly affect individual rights recognised in the two treaties, and the ECHR has often been referred to as a “*living instrument*” that “*must be interpreted in the light of present-day conditions.*”<sup>49</sup> Interpretation of the ESC has also evolved over time: in a 2006 decision, the ECSR notably interpreted the right to protection of health as including the right to a healthy environment.<sup>50</sup>

Through its jurisprudence, the ECtHR has *de facto* recognised the right to a healthy environment.<sup>51</sup> The Court has established that rights protected under Article 2 (right to life) and Article 8 (right to private and family life) of the ECHR may be affected where an individual is “*directly and seriously affected*” by pollution.<sup>52</sup> This recognition places positive obligations on States, including, amongst others: the obligation to put in place preventive regulations to shield individuals from the harms of environmental damage and pollution;<sup>53</sup> the obligation to provide access to information, enabling members of the public to assess the risk to which they are exposed;<sup>54</sup> and the right to appeal any decision, act or omission where the public considers that its interests have not been considered in the decision-making process.<sup>55</sup> As the link between human well-being and the state of the environment is central to the right to a healthy environment, and the above considerations as developed by the ECtHR also form part of the right to a healthy environment, it can be concluded that the right to a healthy environment has been *de facto* recognised by the Court.<sup>56</sup>

Next to case law, there is a clear “European consensus” among States parties to the ECHR that such a right exists.<sup>57</sup> According to a 2019 study by the UN Special Rapporteur on human rights and the environment, nearly all of the 46 Member States of the Council of Europe recognise the right to a healthy environment through their constitutions, national legislation or ratification of international treaties.<sup>58</sup> In an

<sup>47</sup> See European Court of Human Rights (2020), *The Convention as a Living Instrument at 70* (Background Document, Judicial Seminar 2020), Chapter B, p. 13 (available [here](#)).

<sup>48</sup> International Justice Resource Center, *European Committee of Social Rights* (available [here](#)).

<sup>49</sup> *Tyrer v United Kingdom* [1978] § 31; See also *Marckx v. Belgium* [1979] § 41; *Dudgeon v United Kingdom* [1981] § 60; *Demir and Baykara v. Turkey* [GC] [2008] § 146.

<sup>50</sup> Council of Europe, *Manual on Human Rights and the Environment*, *op. cit.*; *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the merits) Collective Complaint No. 30/2005 [6 December 2006]: “*The Committee has therefore taken account of the growing link that states party to the Charter and other international bodies (see below) now make between the protection of health and a healthy environment, and has interpreted Article 11 of the [European Social] Charter (right to protection of health) as including the right to a healthy environment.*”

<sup>51</sup> *Tătar v Romania* [2009]; *Di Sarno and Others v Italy* [2012]; *Băcilă v Romania* [2010].

<sup>52</sup> European Court of Human Rights (2022), *Guide to the case-law of the European Court of Human Rights: Environment* (available [here](#)); see e.g. *Hatton and Others v. United Kingdom* [GC] [2003] § 96; *Fägerskiöld v. Sweden* (dec.) [2008]; *Tătar v. Romania* [2009] § 86; *Greenpeace E.V. and Others v. Germany* (dec.) [2009].

<sup>53</sup> *Boudayeva and Others v Russia* [2008]; *Kolyadenka and Others v Russia* [2012]; *Brincat and Others v Malta* [2014].

<sup>54</sup> *Guerra and Others v Italy* [1998]; *Roche v United Kingdom* [GC] [2005]; *Tătar v Romania* [2009] §§ 88 and 113; *Di Sarno and Others v Italy* [2012] § 107.

<sup>55</sup> *Taşkın and Others v Turkey* [2004] § 119; *Tătar v Romania* [2009] § 88; *Zammit Maempel v Malta* [2011] § 62.

<sup>56</sup> Kotiuk, Weiss and Taddei, *op. cit.* p. 122-151.

<sup>57</sup> *Ibid.*

<sup>58</sup> Special Rapporteur, A/HRC/43/53, *op. cit.*

attempt to formalise this consensus, the Parliamentary Assembly of the Council of Europe (PACE) passed a resolution in September 2021 recommending that the “[M]ember States of the Council of Europe build and consolidate a legal framework – domestically and at European level – to anchor the right to a safe, clean, healthy and sustainable environment, based on the UN guidance on this matter.”<sup>59</sup> To achieve this, it proposed “legally binding and enforceable instruments” in the form of additional protocols to the ECHR and the ESC on the right to a safe, clean, healthy and sustainable environment. Notably, the resolution also brought attention to the responsibility of present generations towards future ones, “support[ing] recognising the right of future generations to a healthy environment and humanity’s duties towards living things.”<sup>60</sup> A draft protocol to the ECHR has been presented to the Council of Europe’s Committee of Ministers and is awaiting its decision.<sup>61</sup>

At EU level, environmental rights are protected in their procedural dimension since the ratification – by the EU and its 27 individual Member States – of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).<sup>62</sup> Although the Aarhus Convention does not guarantee a *substantive right* to a healthy environment, it sets out basic *procedural rights* to ensure that such a right is protected.<sup>63</sup> The procedural environmental rights enshrined in the Aarhus Convention have mostly been transposed into EU law and thus made their way into the jurisprudence of the Court of Justice of the European Union (CJEU).<sup>64</sup> The substantive dimension of the right, on the other hand, is subject to implicit recognition. “[A] high level of protection and improvement of the quality of the environment” is established as one of the EU’s objectives in Article 3(3) of the Treaty on European Union (TEU) and echoed in similar wording in Article 37 of the Charter of Fundamental Rights of the European Union (CFR). The CFR – the EU’s main human rights instrument that was heavily influenced by the Council of Europe’s ECHR and ESC – recognises the principle of environmental integration in EU policy-making<sup>65</sup> but does not set out an individual right to a healthy

---

<sup>59</sup> Parliamentary Assembly of the Council of Europe, *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*, Resolution 2396, September 2021, p. 2-3, para. 14 (available [here](#)).

<sup>60</sup> *Ibid.*

<sup>61</sup> Parliamentary Assembly of the Council of Europe, *The right to a healthy environment: PACE proposes draft of a new protocol to the European Convention on Human Rights* [Press release], 29 September 2021 (available [here](#)).

<sup>62</sup> UN Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*, 25 June 1998: Article 1 of the Aarhus Convention recognises “the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

<sup>63</sup> European Commission, *The Aarhus Convention and the EU* (available [here](#)).

<sup>64</sup> See e.g. Case C204/09 *Flachglas Torgau* on access to environmental information; C182/10 *Marie Noelle Solvay and Others* on effective judicial review.

<sup>65</sup> Article 37 of the CFR merely provides 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.” Article 37 CFR finds a counterpart in the “integration principle” of Article 11 of the Treaty of the Functioning of the EU (TFEU): “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.”

environment as such.<sup>66</sup> Importantly, however, the Charter's preamble acknowledges the principle of subsidiarity, particularly where rights result from common international obligations of the Member States and the case law of the ECtHR. The international obligations of the Member States and the jurisprudence of the ECtHR thus inform the rights guaranteed by the Charter.

An informal consensus on the right to a healthy environment can also be observed across the Union: all 27 EU Member States recognise such a right, either directly in their national constitutions or laws, or indirectly through their participation in the Aarhus Convention.<sup>67</sup> As the above demonstrate, EU law is not applied in a legal vacuum. Article 6 of the TEU recognises three sources of EU human rights law: the Charter of Fundamental Rights of the European Union (CFR), the ECHR,<sup>68</sup> and the constitutional traditions common to EU Member States, the latter two constituting general principles of EU law.<sup>69</sup> Thus, the CJEU regularly uses the ECHR and ECtHR rulings as sources of inspiration and also relies on the Aarhus Convention to enforce and protect procedural environmental rights. Similarly to the ECtHR, the CJEU has provided for links between existing Charter rights and the environment. In a previous judgment, for example, it emphasised that the right to an effective remedy is particularly important where environmental pollution affects and puts human health at risk.<sup>70</sup>

All in all, it is clear that substantive as well as procedural elements of the right to a healthy environment have made their way into EU human rights law: through the ratification by the EU of the Aarhus Convention, the constitutional traditions of Member States and/or their ratification of the same treaty, the case law of the ECtHR as well as that of the CJEU. Reinforcing this, there have been calls from within the EU to formally recognise the right to a healthy environment, with the European Parliament passing a resolution on 9 June 2021 on the EU Biodiversity Strategy for 2030, in which it "*consider[ed] that the right to a healthy environment should be recognised in the [CFR],*" as part of Article 37, mentioned above.<sup>71</sup> The Parliament is the only EU institution that is directly elected by EU citizens; thus, its resolutions and general positions are representative of European society as a whole.

---

<sup>66</sup> G. Marin-Duran and E. Morgera (2013), *Commentary on Article 37 of the EU Charter of Fundamental Rights - Environmental Protection*, Edinburgh School of Law Research Paper No. 2013/20, Europa Working Paper No. 2013/2, <http://dx.doi.org/10.2139/ssrn.2267402>.

<sup>67</sup> Special Rapporteur, A/HRC/43/53, *op. cit.*, Annex II.

<sup>68</sup> Article 52(3) of the CFR also provides that: "*In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.*"

<sup>69</sup> *Treaty on European Union*, 13 December 2007, Art. 6.

<sup>70</sup> Judgement of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114 (available [here](#)).

<sup>71</sup> *European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives*, P9\_TA(2021)0277 (available [here](#)).

## 4 Recommendations to guarantee the access to healthy and sustainable food for all

The EU and its Member States are obligated to ensure that our food systems do not interfere with the enjoyment of human rights of current and future generations. In light of the adverse impacts that industrialised food systems generate on climate, biodiversity, natural resources and human health, EU authorities hold a particular responsibility to respect, protect and fulfil the right to a healthy environment in all its substantive elements, including in relation to healthy and sustainable food. **Although the right to healthy and sustainable food is clearly embedded in the right to a healthy environment, additional efforts are required at EU level to support the full enjoyment of this right.** Without a transition to healthy and sustainable food systems, the capacity of current and future generations to enjoy and thrive in a healthy, resilient environment that provides access to adequate and sufficient food is jeopardised.

For the Union and Member States, this notably means applying a rights-based approach to all food-related laws and policies, with a view to minimise negative impacts on the environment and the related enjoyment of human rights. According to the Special Rapporteur, such a rights-based approach “*clarifies the obligations of States and responsibilities of businesses; catalyses ambitious action; emphasizes the need for capacity-building; prioritizes the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.*”<sup>72</sup> As mentioned above, the ECtHR has clarified through its jurisprudence that the right to life and the right to private and family life place an obligation on States to put in place preventive and deterrent legislative and administrative frameworks, addressing factors such as licensing, operating, supervision and guaranteeing access to information for the public.<sup>73</sup> Thereby, it has recognised the important role such frameworks play in protecting human health and well-being from polluting activities. This could arguably be extended to legislative frameworks that link the right to healthy and sustainable food to human health and well-being.

The FSFS presents the perfect opportunity for a coordinated approach at EU level, setting a clear road map with legally binding objectives to help the Union and Member States comply with their obligations to guarantee the enjoyment of fundamental rights and freedoms, and the right to healthy and sustainable food in particular. **Making access to healthy and sustainable food for all a key objective of the FSFS would set a clear pathway towards developing the social-health and environmental sustainability of food systems.** Striving to put healthy and sustainable food on people’s plates entails redefining our food systems, ensuring that operations across agri-food and aquatic food value chains do not have negative impacts on health, while rebuilding the resilience and health of the planet on which the livelihoods of economic actors and consumers alike depend.

---

<sup>72</sup> Special Rapporteur, A/76/179, *op. cit.*, p. 17.

<sup>73</sup> *Öneriyildiz v Turkey* [2004]; *Boudayeva and Others v Russia* [2008]; *Brincat and Others v Malta* [2012].

**Gabriela Kołpak**

Legal & Policy Researcher – Clean Air, Water & Soil  
[GKolpak@clientearth.org](mailto:GKolpak@clientearth.org)  
[www.clientearth.org](http://www.clientearth.org)

**Sarah Martin**

Legal expert – Agriculture and Food  
[SMartin@clientearth.org](mailto:SMartin@clientearth.org)  
[www.clientearth.org](http://www.clientearth.org)



**Brussels    Beijing    Berlin    London    Warsaw    Madrid    Los Angeles    Luxembourg**

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.