

Judge Linos-Alexandre Sicilianos
President of the European Court of Human Rights

Judge Ksenija Turković
President of the Section I

c/o Mr. Abel Campos, Section Registrar, Section I

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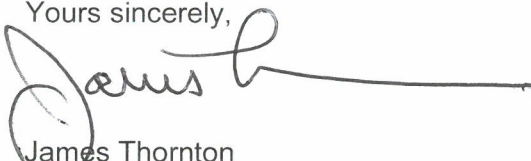
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2 September 2019

Subject: Third party submission in case DiCaprio and others against Italy (39742/14, 51567/14, 74208/14, 21215/15)

Pursuant to the letter of the Court of 10 July 2019, please find enclosed the submission of written comments on behalf of ClientEarth¹ and ClientEarth AISBL² (jointly "ClientEarth"), in case Di Caprio and others against Italy (39742/14, 51567/14, 74208/14, 21215/15).

Yours sincerely,



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DI CAPRIO AND OTHERS

**- against -
ITALY**

CLIENTEARTH'S WRITTEN COMMENTS

I. INTRODUCTION

1. ClientEarth is grateful for the opportunity to submit written comments in accordance with the letter of the European Court of Human Rights (“**the Court**”) of 10 July 2019. These proceedings provide the Court with an opportunity to consolidate and expand upon its jurisprudence concerning human rights violations in the context of environmental pollution. The proceedings concern: (i) the scope of the “*victim*” requirement in the context of transboundary and diffuse environmental pollution; and (ii) positive obligations of the State to identify, address and react to environmental pollution which severely impacts life, health and private life and the home of their citizens.
2. In view of the particular issues that arise in the context of environmental pollution and established principles of environmental law, ClientEarth respectfully invites the Court to recognise that:
 - (1) applicants who live outside of a public authority’s administrative area, but are affected by significant levels of environmental pollution, can claim to be victims of a violation of Articles 2 and 8 ECHR;
 - (2) applicants who are not affected by illness, but are exposed to significant levels of environmental pollution that creates a risk to their life and health, can claim to be victims of a violation of their right to respect for life;
 - (3) non-governmental organisations who pursue the objective of protection of the environment can claim to be victims of the violation of the Convention within the meaning of Article 34 of the Convention;
 - (4) there is a positive obligation on States under Articles 2, 8 and 10 ECHR:
 - i. systematically to monitor levels of environmental pollution and assess its potential harmful impacts on health and life of people, with additional care when faced with specific threats to human life and health,
 - ii. actively and systematically to disseminate information on environmental pollution and the related health threats, with increased urgency when faced with specific threats to human life and health, and
 - iii. to adopt all possible measures to avoid, prevent or reduce harmful effects on human life and health caused by environmental pollution, as required under Articles 2 and Article 8 ECHR.

II. CONTEXT

3. Environmental pollution is one of the most pressing issues of our times and is the largest environmental cause of disease and premature death in the world.¹ It is estimated that pollution was responsible for 9 million premature deaths in 2015 “16% of all deaths worldwide—three times more deaths than from AIDS, tuberculosis, and malaria combined and 15 times more than from all wars and other forms of violence”.²
4. Scientific evidence increasingly informs our understanding of the risks to life and health caused by environmental pollution. However, individuals affected by such pollution face several challenges when seeking legal redress, such as:
 - (1) detecting its existence and measuring pollution levels – for instance, air pollution is commonly referred to as the “invisible killer”³
 - (2) identifying its sources – often there is combination of point sources (industrial plants) and diffuse sources (traffic, domestic heating) that may be close or far away (transboundary pollution)
 - (3) establishing causal links between pollution and health impacts – pollution is one of many factors contributing to the development of diseases (multi-factor causality).
5. By the time the health impacts of pollution materialise or reveal themselves, it is often too late for victims to obtain any effective remedy. The nature of pollution, coupled with related scientific uncertainties, have therefore been addressed by legal concepts enshrined in the environmental legal framework, requiring lawmakers and courts to take a proactive and protective approach.

III. RELEVANT PRINCIPLES OF INTERNATIONAL AND EU ENVIRONMENTAL LAW MATERIAL

6. The principle of prevention enshrines a duty to prevent, reduce, and control pollution and environmental harm. It is based on the awareness that harm caused by pollution to human health and environment is often irreversible.
7. The precautionary principle is a tool used to overcome scientific uncertainty about risks to human life and health or the environment. It is strictly linked to the latter principle. Its importance is to provide protection at an early stage and lower the standard of proof of risk.⁴

¹ Special Rapporteur on human rights and hazardous substances and wastes in his first report to UN General Assembly in 2018, A/73/567, 15 November 2018; <https://undocs.org/A/73/567>

² *Lancet* Commission on pollution and health, Volume 391, ISSUE 10119, P462-512, February 03, 2018, [https://doi.org/10.1016/S0140-6736\(17\)32345-0](https://doi.org/10.1016/S0140-6736(17)32345-0)

³ See G. Fuller, *The Invisible Killer. The Rising Global Threat of Air Pollution- and How We Can Fight Back's*,

⁴ See P. Birnie, A. Boyle and C. Redgwell, *International Law & the Environment* (2009, OUP), page 157.

8. Both principles are recognised in UN declarations and customary international law.⁵ Further, they are enshrined in various international conventions signed or ratified by Italy, concerning air pollution,⁶ water pollution⁷ and waste management.⁸
9. At the EU level, the principle of prevention and precautionary principles are set out in Article 191(2) of the Treaty on the Functioning of the European Union. The scope of the precautionary principle in the EU goes beyond environment and covers other policies, including, notably, human health issues.⁹ Both principles have been applied in several pieces of secondary EU legislation binding on Italy.¹⁰
10. The Court of Justice of the European Union (“**the CJEU**”) has applied the precautionary principle more than 140 times.¹¹ This case law includes matters related to risks to human health.¹² In its recent ruling in Case C-723/17 *Craenyest* on 26 June 2019 (“*Craenyest*”), the CJEU clarified that EU rules “*on ambient air quality put into concrete terms the EU’s obligations concerning environmental protection and the protection of public health*” and underlined their footing “*on the precautionary principle and on the principle that preventive action should be taken*”.¹³
11. These principles of environmental law have clear implications on the application of human rights in matters concerning environmental pollution. As stated by the Human Rights Committee (the “**HRC**”) in the General Comment No. 36 (2018) on article 6 (right to life) of the International Covenant on Civil and Political Rights,¹⁴ environmental degradation constitutes one of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Accordingly, “[o]bligations of

⁵ As regards the principle of prevention, see Principle 21 of the 1972 Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration, A/CONF.48/14/Rev.1) and Principle 2 of the Rio Declaration on Environment and Development (1992) (the Rio Declaration, A/CONF.151/26 (Vol. I)) available at: <http://legal.un.org/avl/ha/dunche/dunche.html>; see also ICJ *Advisory Opinion on the Threat of Nuclear Weapons*, (Advisory Opinion, 1. C.J. Reports 1996, p. 226) para. 29 describing the principle as a part of general international law. As regards the, the precautionary principle, see Principle 15 of the Rio Declaration; see also ICJ, *Pulp Mills*, (Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14) para. 164 and ITLOS, *Southern Bluefin Tuna* case (Southern Bluefin Tuna (New Zealand v. Japan, case 3 & 4)

⁶ Article 2 of the 1979 Convention on Long-range Transboundary Air Pollution (LRTAP) with its 1998 Protocol on POPs and on Heavy Metals (see preamble) that is in depositary the United Nations Economic Commission for Europe (UNECE); Article 1 and Article 8 of the 2001 Stockholm Convention on persistent organic pollutants (POPs) that is in depositary Secretary-General of the United Nations (UN Environment).

⁷ Article 2(5) of the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourse and International Lakes.

⁸ Article 4(2)(c) of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; depositary Secretary-General of the United Nations (UN Environment).

⁹ European Commission’s Communication on the precautionary principle (COM (2000) 1) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0001&from=EN> p. 9.

¹⁰ Examples relevant for these proceedings include Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (Recital 30 and Articles 4 and 23) and Directive 2008/50/EC on ambient air quality and cleaner air for Europe (Recital 2).

¹¹ Health Council of the Netherlands, “Prudent Precaution”, publication no. 2008/18E https://www.sustainable-design.ie/arch/Prudent-Precaution_Netherlands-Health-Council_September-2008.pdf

¹² See for instance Cases C-157/96 (ECLI:EU:C:1998:191) and C-180/96 of 5 May 1998 (ECLI:EU:C:1998:192), §§ 63-64.

¹³ Case C-723/17, *Craenyest*, §33.

¹⁴ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

*States parties under international environmental law should (...) inform the contents of article 6 of the Covenant.”*¹⁵

12. This approach is expressly recognised in the preamble to the Aarhus Convention.¹⁶ According to recital 6, “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself” (emphasis added).
13. The close relationship between human rights and environmental protection is also recognised in the special procedures under the UN Human Rights Council, including the Special Rapporteur on human rights and environment¹⁷ and the Special Rapporteur on the implications for human rights of the environmental of hazardous substances and wastes.¹⁸
14. Additionally, ClientEarth draws the Court’s attention to the recent work of the Inter-American Court of Human Rights (“**the IACtHR**”) and its advisory opinion on environment and human rights OC-23/17.¹⁹ The IACtHR applied the principle of prevention and the precautionary principle to interpret the concept of jurisdiction and States’ obligations in the area of human rights violations caused by environmental pollution.²⁰
15. This Court has already identified the precautionary principle as a source of relevant international law and applied it to its legal analysis in cases involving environmental pollution (*Tatar v. Romania* 67021/01)²¹ or where there was a risk to human health (*Vilnes and Others v. Norway* 52806/09 and 22703/10).²²
16. ClientEarth invites the Court to take a proactive and protective approach in relation to the interpretation of the concepts of “victim status” and “State positive obligation”. This is consistent with the jurisprudence of other international bodies and the recognition of

¹⁵ General Comment 36 to the right to life, para 62.

¹⁶ The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“Aarhus Convention”), <https://www.unece.org/env/pp/introduction.html>. Italy is a party to the Aarhus Convention.

¹⁷ See Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 24 January 2018, in particular, Framework principle 1: “States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights” (available at <https://undocs.org/A/HRC/37/59>). See also Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - right to breath clean air - A/HRC/40/55, 8 January 2019, in particular Section III Effects of air pollution on the enjoyment of human rights and Section IV Human rights obligations relating to clean air (available at <https://undocs.org/A/HRC/40/55>)

¹⁸ See Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, A/HRC/30/40, 8 July 2015, <https://undocs.org/A/HRC/30/40>

¹⁹ http://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

²⁰ See paragraphs 106, 116 and 127 and next and 175 and next of the IACtHR’s opinion OC-23/17.

²¹ Case *Tătar v. Romania*, application number 67021/01, Judgment 27 January 2009, see in particular section II.B.

²² *Vilnes and Others v. Norway*, application numbers 52806/09 and 22703/10, Judgment 5 December 2013 § 244, which concerned the adverse health effects suffered by former divers engaged in diving operation.

the importance of protecting human rights affected by environmental pollution, even when faced with scientific uncertainty.

IV. VICTIM STATUS

17. Under the Convention, the concept of victim is liable to evolve in the light of conditions in contemporary society and it must be applied without excessive formalism. Given the particular issues presented by environmental pollution, the Court's application of victim status must be nuanced and pragmatic, in order to ensure effective vindication of human rights. ClientEarth submits that the Court should recognise all the categories of applicants identified in its questions 2, 6 and 7 as "*victims*".

Victim status of applicants who do not reside in a specific, designated administrative area (Question 2 of the communication).

18. The fact that an applicant's place of residence is outside a specific administrative area should not be sufficient to rule out his or her victim status *in limine*. Pollution does not stop at administrative borders. This understanding lies at the heart of international environmental law and has led to the adoption of various Treaties.²³ The decisive question is rather whether an individual has been exposed to significant levels of pollution. An individual who is directly affected by an alleged violation of the Convention should not be precluded from bringing a claim on the basis of their postcode.
19. This principle has been recognised in other legal instruments. For example, the Aarhus Convention grants rights to the public to have access to justice in environmental matters without discrimination as to "*citizenship, nationality or domicile*" (Article 3(9)). This provision ensures that persons are not given any less favourable treatment merely because they live across a national or sub-national boundary or administrative district from a given activity, even though they are nonetheless potentially affected by an activity.²⁴ The relevant test under the Aarhus Convention is whether the person is part of the "*public concerned*", with the broad meaning that he/she is "*affected or likely to be affected by, or having an interest in*" the matter concerned.²⁵
20. This approach is also reflected in Advisory Opinion OC-23/17, of the IACtHR, which addressed the problem of locally created pollution having impacts beyond the local area.²⁶ Within the context of transboundary pollution, the IACtHR held that States must guarantee access to justice for people affected by environmental damage originating from their territory without discrimination, including persons living abroad.²⁷

²³ For instance, the UNECE LTRAP Convention and the Espoo Convention.

²⁴ See ACCC/C/2012/71 (Czech Republic), ECE/MP.PP/C.1/2017/3, para. 107 and ACCC/C/2013/91 (United Kingdom), ECE/MP.PP/C.1/2017/14, para. 69 for an application of this requirement by the Compliance Committee in the transboundary context.

²⁵ Article 9(2) in conjunction with article 2(5) of the Aarhus Convention. This access to justice right is also reproduced in EU law in article 11(3) in conjunction with article 2(2)(e) of the EIA Directive; article 3(17) in conjunction with article 25(1) of Directive 2010/75/EU on industrial emissions [2010] OJ L 334/17 (Industrial Emissions Directive) and article 23(b) in conjunction with article 3(18) of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances [2012] OJ L 197/1 (Seveso III Directive).

²⁶ http://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

²⁷ *Ibid*, para. 240.

Victims status of applicants who are not affected by illness under Article 2 (Question 6 of the communication).

21. While finding a violation will inevitably depend on the specific circumstances of each case, ClientEarth submits that, pursuant to the environmental law principles, the admissibility of claims under Article 2 ECHR should not be ruled out *in limine* just because applicants have not yet developed a specific illness, provided that they can show an increased risk of developing a life threatening condition.
22. The Court has already established that Article 2 covers not only situations where certain actions or omissions on the part of the State led to a death, but also situations where, although an applicant survived, there clearly existed a risk to his or her life.²⁸ The Court has also examined, on the merits, allegations made under Article 2 by persons claiming that their life was at risk, although no such risk had yet materialised, when it was persuaded that there had been a serious threat to their lives.²⁹ In *Kolyadenko*, the Court found that, although the applicants survived a flood and did not suffer any injuries, their lives were endangered as a result of the events. Their presence in their homes at the material time was sufficient to create an imminent risk to their lives.³⁰ The Court therefore recognised that, in relation to Article 2, it is sufficient that the State has failed to take appropriate steps to safeguard an applicant from a threat to life, whether or not that threat indeed resulted in any injury or death.
23. This approach should be applied in the context of environmental pollution within the scope of Article 2. Applicants who are exposed to significant levels of environmental pollution are exposed to a “*threat to life*” for the purposes of Article 2, even if the threat has not yet materialised. Individuals should be able to invoke protection of their right to life when the failure of the State to prevent, reduce and control environmental pollution has resulted in a significant risk of that person of developing serious illnesses, even if there is still scientific uncertainty on if and when this risk will materialise.
24. Taking into account the principle of prevention and precautionary principle, the exceedance of relevant environmental quality standards for instance the WHO Air quality guidelines³¹ provides a clear indication that environmental pollution is causing an actual and serious risk to life and health.
25. This approach has been adopted by other international bodies and legal instruments. By way of example:

²⁸ See, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI, and *Budayeva and Others*, 15339/02, § 132 and § 146.

²⁹ *Kolyadenko and Others v. Russia*, 17423/05 and 5 others, §§ 150-156; see also *.R.R. and Others v. Hungary*, §§ 26-32 concerning risk to life coming from exclusion from the witness protection program and *L.C.B. v. the United Kingdom*, 23413/94, § 36 where the Court, although did not find the violation, accepted applicability of Article 2 to situations where life was at risk coming from radiation.

³⁰ *Kolyadenko and Others v. Russia*, 17423/05 and 5 others, §§ 153-156.

³¹ whether under national laws or guidelines published by reference scientific bodies; <http://www.euro.who.int/en/health-topics/environment-and-health/air-quality/publications/pre2009/air-quality-guidelines.-global-update-2005.-particulate-matter,-ozone,-nitrogen-dioxide-and-sulfur-dioxide>

- (1) The UN Human Rights Committee, in a recent decision concerning pollution from pesticides,³² accepted that when there is evidence of pollution that affects water, soil and air in the area where the applicants were living, their right to life is applicable and has been violated, irrespective of any lack of clarity on the exact effect of these pollution on the individuals' life and health.³³
- (2) Under the Aarhus Convention, States must take into account the precautionary principle when determining who is affected by a polluting activity.³⁴
- (3) The CJEU has consistently held that persons must be able to assert their rights in courts, whenever the failure of national authorities to comply with the requirements of a Directive setting environmental quality standards designed to protect public health could endanger human health.³⁵ As recently clarified by Advocate General (“AG”) Kokott in *Craenyest*, this approach is “based on the assumption that exceedance of the limit values leads to a large number of premature deaths.”³⁶

Victim status of NGOs (Question 7 of the communication).

26. The Court has consistently held that the Convention does not provide for an *actio popularis*. This is not disputed. The Court has, nevertheless, found that NGOs, including environmental NGOs, can be victims within the meaning of Article 34.³⁷
27. In view of the complexity of environmental matters, and the expertise required to grapple with environmental issues, national, EU and international jurisdictions recognise the privileged status and standing of environmental NGOs, because of their valuable “watchdog” function. NGOs are essential to give a voice to individuals affected by environmental pollution who do not necessarily have the technical, financial or legal capacity to protect their rights. Individuals may also fear retaliation from the polluter, especially in the context of illegal activities.³⁸
28. The importance of such an approach has been recognised in other contexts. Under the Aarhus Convention, NGOs promoting environmental protection “shall be deemed to have an interest” and must accordingly be given standing to challenge specific decisions that impact the environment³⁹ and other violations of environmental law.⁴⁰

³² *Portillo Caceres and others v. Paraguay*, 25 July 2019, CCPR/C/126/D/2751/2016.

³³ *Portillo Caceres and others v. Paraguay*, § 7.2.

³⁴ Decision VI/8k of the Meeting of the Parties, ECE/ MP.PP/2017/2/Add.1, para. 8(b).

³⁵ See, among others: as regards air quality standards, Case C- 361/88 *Commission v Germany*, [16]; Case C- 59/89 *Commission v. Germany*, [19]; Case C-237/07 *Janecek v Freistaat Bayern*, [39]; Case C-404/13 *ClientEarth*, [55-56]; Case C-723/17 *Craenyest*, [32-33]; as regards water quality standards, Case C- 58/89 *Commission v Germany*.

³⁶ Opinion of Advocate General Kokott delivered on 28 February 2019 in case C-723/17, *Craenyest*, [53].

³⁷ Among others, cases *L'Erablière A.S.B.L. v. Belgium* no. [49230/07](#), *Gorraiz Lizarraga and Others v. Spain* no. [62543/00](#), *Vides Aizsardzības Klubs v. Latvia* no [57829/00](#), *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. [47848/08](#) §§ 96-103.

³⁸ The Special Rapporteur on the situation of human rights defenders' report on the situation of environmental human rights defenders, A/71/281, 3/08/2016 <https://undocs.org/A/71/281>

³⁹ Article 9(2) in conjunction with article 2(5) Aarhus Convention.

⁴⁰ Article 9(3) in conjunction with article 2(4) Aarhus Convention.

29. These requirements have been further clarified in the practice of the Aarhus Convention Compliance Committee,⁴¹ have been implemented in EU law,⁴² are reflected in the CJEU's case law,⁴³ and have led to the adoption of relevant national laws and court decisions within and outside of the EU.
30. This doctrine is often referred to as *de lege* standing⁴⁴ because NGOs do not have the possibility to represent simply anyone or challenge the violation of any law, which would amount to an *actio popularis*, but only obtain additional rights under those laws that aim to protect human life, health and the environment. We invite the Court to take into account the rules and practice under the Aarhus Convention when deciding on the victim status of associations in the context of environmental pollution.

V. STATE POSITIVE OBLIGATION (Questions 8, 9, 10, 12 of the communication)

31. The challenges posed by environmental pollution requires States to assume a greater role in proactively protecting people's life and health. This should be reflected in the scope of the State positive obligations under Article 2, 8 and 10 ECHR.

State's obligation to monitor environmental pollution, assess the risks to health and life and disseminate information to the public

32. Collecting information about environmental pollution is the first, essential, step effectively to protect life and the health of the population. Once this information is collected, it must be made available to the public. These principles are already reflected in earlier judgments of the Court, particularly in the context of decision-making procedures impacting the environment⁴⁵ and for persons living in the vicinity of a polluting industrial activity.⁴⁶ ClientEarth invites the Court to confirm this jurisprudence.
33. The State's obligation to collect and disseminate applies continuously and independently of a specific decision-making procedure. If environmentally harmful developments are undertaken without an official permitting procedure, as in the present case, the State's positive obligation to monitor and inform its population about information relevant to the protection of their health is all the more important.
34. This is reflected in Article 5(1) of the Aarhus Convention, which requires its State Parties to "ensure" that (a) "*public authorities possess and update environmental information*"⁴⁷

⁴¹ See the *Aarhus Convention Implementation Guide*, in particular Section on Access to Justice, pages 187-207 (https://www.unece.org/env/pp/implementation_guide.html).

⁴² See for instance, footnote 25 above [referring to EIA, IED, Seveso]

⁴³ See for instance, C-165 to C-167/09 *Stichting Natuur en Milieu*, C-240/09 *Lesoochranárske zoskupenie*, (*Slovak Bears*), C-404/13 *ClientEarth*, C-243/15 *Lesoochranárske zoskupenie VLK* (*Slovak Bears II*), C-664/15 *Protect*. See also the *Commission Notice on Access to Justice in Environmental Matters*, available at: https://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf, paras 37-43.

⁴⁴ See for instance, *Commission Notice on Access to Justice in Environmental Matters*, available at: https://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf, para. 43 etc.

⁴⁵ See, among others, *Taskin*, para. 119; *Hatton and Others*, para. 128.

⁴⁶ See, among others, *Guerra and Others*, para. 60.

⁴⁷ The Convention provides a non-exhaustive, very broad definition of "environmental information" in Article 2(3). The definition encompasses any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape etc as well as

which is relevant to their function” and (b) “mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment.”⁴⁸ This obligation not only requires dissemination of that information that an authority holds but requires public authorities to collect information proactively. According to the Aarhus Convention Implementation Guide: “[t]he requirements for active collection and dissemination of information imply a sense of urgency and importance that certain types of information should reach the public.”⁴⁹ The Guide recommends *inter alia* that Parties establish monitoring and research systems that gather this information.⁵⁰ Once information has been collected the information must be disseminated. While the basic obligation is to make environmental information “progressively” available,⁵¹ the Aarhus Convention imposes a clear obligation to “disseminate immediately and without delay” all information “which could enable the public to take measures to prevent or mitigate harm arising” from “any imminent threat to human health or the environment”, whether it is caused by human activities or due to natural causes.⁵² This provision seeks to ensure that persons are informed of any risks to their health arising from polluting activities, so they can take necessary precautions and/or appeal to the relevant authorities for urgent measures.

35. Within the European Union, these principles are also given shape in specific sectoral areas. In the context of air quality, Directive 2008/50 on ambient air quality enshrines the obligation to collect and disseminate information.⁵³ In recent Case C-723/17 *Craeynest*, the CJEU granted access to justice to citizens to enforce rules on air quality monitoring and assessment, recognising their importance to protect human health and life.⁵⁴
36. The principle of collection and dissemination of environmental information is also reflected in the work of the UN Special Rapporteurs⁵⁵. Principle 7 of the Framework principles on human rights and environment provides that “States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon

factors, including substances, affecting or likely to affect these elements of the environment. See the Aarhus Convention Implementation Guide, available at: <http://www.unece.org/index.php?id=35869>, pp. 50-55 for a more detailed explanation of the elements of this definition.

⁴⁸ This obligation is implemented by EU law, under article 7(1) of Directive 2003/4/EC on public access to environmental information.

⁴⁹ See Aarhus Convention Implementation Guide, p. 95.

⁵⁰ *Ibid*, pp. 97, 98 and 100.

⁵¹ Article 5(3) Aarhus Convention, Article 7(1) Directive 2004/3, third indent.

⁵² Article 5(1)(c) Aarhus Convention, Article 7(4) Directive 2004/3.

⁵³ Articles 5, 6 and 7 and Annexes II, III and V.

⁵⁴ Case C-723/17, *Craeynest and Others*, ECLI:EU:C:2019:533, § 33.

⁵⁵ SR on human rights and environment and SR on hazardous substances and wastes

*request” and “have a duty to investigate the actual and potential human rights impacts of hazardous substances and wastes”.*⁵⁶

State’s obligation to take all possible measures to avoid, prevent or reduce environmental pollution to levels that do not pose a risk to life and health

37. The State’s positive obligations under both Articles 2 and 8 ECHR in the context of environmental pollution require it to take positive steps to avoid, prevent, reduce and/or eliminate environmental pollution that threatens human health and life.
38. ClientEarth submits that, pursuant to the prevention principle, as soon as there is a substantial body of scientific evidence that supports the existence of a threat to human life and health, States are obliged to take active steps to prevent and mitigate environmental pollution. While what constitutes such scientific knowledge will depend on the specific facts and circumstances of the case, guideline documents prepared by authoritative scientific bodies (such as the WHO)⁵⁷ constitute a strong indication of when action is certainly needed. Moreover, in accordance with the precautionary principle, even if the existence or extent of certain risks are not certain, this does not justify inaction but requires States to err on the side of caution if human life and health is at stake.
39. Exceedance of legally fixed environmental quality standards, therefore, should trigger under Articles 2 and 8 of the Convention the obligation of States urgently to take all possible measures to reduce pollution below legal limits in the shortest time possible.
40. Such approach is properly exemplified by the EU Air Quality Directive 2008/50/EC.⁵⁸ The EU rules on air quality constitute “*an obligation of result (obligation de résultat)*”⁵⁹ and that “[t]he high importance of ambient air quality for the protection of life and health leaves only very little room for consideration of other interests. It therefore also requires a strict review of the assessment made.”⁶⁰
41. Following a similar approach, the IACtHR recently clarified that “*In order to respect and guarantee the rights to life and integrity of persons under their jurisdiction, States have the obligation to prevent significant environmental damage, within or outside their territory.*”⁶¹

Therefore, we invite the Court to reach the conclusions set out in paragraph 2 above.

⁵⁶ Report A/HRC/37/59. See also, in the context of air quality, Report A/HRC/40/55, §§ 61, 63 and 67, and, in the context of hazardous substances and waste, Report A/HRC/30/40, § 50.

⁵⁷ See, for instance, the WHO Air quality guidelines.

⁵⁸ The Court may also find it useful to consider the positive obligations to control environmental pollution set under several other EU laws, including Directive 2008/98/EC on waste, the Water Framework Directive 2000/60/EC and the Industrial Emissions Directive 2010/75/EU.

⁵⁹ Opinion of AG Kokott in Case C-488/15 *Commission v. Bulgaria*, §§ 69-70.

⁶⁰ Opinion of AG Kokott in Case C-488/15 *Commission v. Bulgaria*, § 96.

⁶¹ IACtHR Opinion OC 23/17, para. 5 conclusion. In particular, the IACtHR clarified that such positive obligation includes the following aspects: “*regulate and supervise activities under their jurisdiction that may produce significant damage to the environment; carry out environmental impact studies when there is a risk of significant damage to the environment; establish a contingency plan, in order to have safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate significant environmental damage that may have occurred.*”