

IN BETWEEN AMBITION AND CAUTION: ASSESSING THE EUROPEAN COURT OF HUMAN RIGHTS' INTEGRATION OF SOFT LAW

EBRU DEMIR¹ and ELIF NAZ NEMEC²

Abstract: The European Court of Human Rights consistently and systematically integrates soft law instruments into its case law. However, the Court's approach, and as a result its broader legitimacy, has been heavily scrutinized by member states. Member states question the Court's interpretive practices and examine whether the Court creates new obligations for them that are not contained in the European Convention on Human Rights. This article analyses the Court's use of soft law by scrutinizing its case law. The article explores the use of soft law in human rights adjudication within the framework of the European Convention on Human Rights, and uses the recent, controversial environmental rulings of the Court as the ultimate test case to evaluate member state criticisms. The article argues that the Court uses soft law instruments to concretize the member states' obligations under legally binding instruments, without creating non-Conventional obligations.

Keywords: Soft Law, Hard Law, European Court of Human Rights, European Convention on Human Rights, International Law.

Summary: 1. INTRODUCTION. 2. THE ROLE OF SOFT LAW IN INTERNATIONAL LAW. 3. THE ECtHR's MOTIVATIONS FOR USING SOFT LAW. 4. SYSTEMIC INTEGRATION OF SOFT LAW IN THE ECtHR's INTERPRETIVE PRACTICE. 5. THE COURT'S USE OF SOFT-LAW INSTRUMENTS IN ENVIRONMENTAL AND CLIMATE RELATED CASES. 6. CONCLUSION. BIBLIOGRAPHY. CASE LAW.

1. INTRODUCTION

The use and role of soft law in the European human rights system have been a highly contested subject, with discussions tracing back several decades. However, it warrants a reconsideration and must once again become the subject of scholarly debate following the open letter issued on 22 May 2025 by nine European states (Austria, Belgium, Czechia, Denmark, Estonia, Italy, Latvia, Lithuania, and Poland). In this letter, the countries stressed that the European Court of Human Rights (ECtHR or the Court) has interpreted and applied the European Convention on Human Rights (ECHR or the Convention) in an extensive manner which goes beyond the letter of the Convention and the original intentions of the Contracting Parties (Open Letter to the ECtHR, 2025).³ The ECtHR often relies on soft law in its interpretation of the Convention, but this is the first occasion on which the Court has received such heavy criticism directed against its interpretive methods.

¹ Assistant Professor at Ankara Yildirim Beyazıt University, Faculty of Law. E-mail: ebrudemir@aybu.edu.tr. ORCID: <https://orcid.org/0000-0003-2529-3383>

² PhD Researcher at Charles University, Faculty of Law. E-mail: elif.arikan@prf.cuni.cz. ORCID: <https://orcid.org/0000-0002-5247-1328>

The ECtHR's first climate change judgment issued recently (April 2024), namely *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, also created discussions on the use of soft law and the expansion of the letter of the Convention. With *Verein KlimaSeniorinnen*, for the first time the Court found a State Party in violation of its obligations under the Convention in the context of climate change. Whereas the judgment was celebrated by human rights and climate activists, the response of the Swiss Government to the case has cast a shadow over the initial enthusiasm surrounding the judgment. The Swiss Government criticised the Convention's broad interpretation by the Court and stressed that the case law must in no way lead to an extension of the scope and framework of the Convention (McGowan, 2024). The Government reacted to the judgment by rejecting it and declaring that the judgment would not be implemented by the Swiss Government (McGowan, 2024).

In such a context, the use of soft law by the ECtHR becomes a considerably timely and significant issue to shed light on. This article aims to elucidate and reconsider the role that soft law plays in the jurisprudence of the Court. The article aims to question the validity of the criticisms that the Court has gone beyond the scope of the ECHR. In section 2, the role of soft law in international law is examined. It is demonstrated that the non-binding instruments play a significant role in the development of international law and in concretising the states' obligations under binding legal instruments. Section 3 sheds light on the ECtHR's use of soft law and engages with relevant literature to concretise the ways in which soft law constitutes a significant part and parcel of the ECtHR's case law. Section 4 further analyses the reasons and the underlying motivations for the Court's engagement with soft law instruments. Section 5 specifically focuses on the recent climate change judgments and underlines the role of soft law in the Court's judgment. International environmental law relies heavily on soft law. Accordingly, adjudication concerning the environment provides a prominent and timely arena for understanding the Court's interpretive practices. It is shown that the Court acted in these cases in harmony with its broader jurisprudence by integrating the soft law instruments into its reasoning consistently and systematically.

2. THE ROLE OF SOFT LAW IN INTERNATIONAL LAW

Soft law instruments encompass a wide spectrum, with various definitions and classifications proposed in the literature. For instance, Chinkin argues that, at one end,

³ The sections of the letter that directly concern the European Court of Human Rights are as follows: "... as leaders, we also believe that there is a need to look at how the European Court of Human Rights has developed its interpretation of the European Convention on Human Rights. Whether the Court, in some cases, has extended the scope of the Convention too far as compared with the original intentions behind the Convention, thus shifting the balance between the interests which should be protected.

We believe that the development in the Court's interpretation has, in some cases, limited our ability to make political decisions in our own democracies. And thereby affected how we as leaders can protect our democratic societies and populations against the challenges facing us in the world today.

We have seen, for example, cases concerning the expulsion of criminal foreign nationals where the interpretation of the Convention has resulted in the protection of the wrong people and posed too many limitations on the states' ability to decide whom to expel from their territories" (Open Letter to the ECtHR, 2025).

there are treaties which, although formally binding in structure, contain primarily non-obligatory or flexible commitments (“legal soft law”), while, at the other end, there are non-binding resolutions, guidelines, and codes of conduct developed and endorsed by international and regional organizations (“non-legal soft law”) (Chinkin, 1989, p. 851). The scope of soft law instruments is also inherently indeterminate, as it varies considerably: while some resolutions are articulated in broad and general terms, others are narrowly circumscribed and specific in their subject matter (Chinkin, 1989, p. 852). This diversity in purpose and style renders the systematic analysis and categorisation of soft law virtually impossible, as any attempt to construct a coherent framework is either burdened with numerous exceptions or remains at an excessively high level of generalisation and abstraction (Chinkin, 1989, p. 852).

Soft law has been the object of sustained debate in international law as well and it has been examined through a range of different perspectives. The main issue has concerned whether soft law possesses legal authority and effect. From a legal positivist standpoint, sources of international law are generally understood as either hard law or not law at all, thereby denying any binding force to soft law (Terpan, 2015, p. 70). However, whereas soft law instruments are not included among the sources of international law in the Statute of the International Court of Justice (ICJ), they nevertheless “do not lack all authority” (Birnie, Boyle and Redgwell, 2009, p. 34). Despite their non-binding nature, they are often meticulously negotiated and designed by states (Birnie, Boyle and Redgwell, 2009, p. 34). Pierre-Marie Dupuy (1990, p. 420), as a legal advisor to the OECD Transfrontier Pollution Group (1974-1980), observes that States parties’ delegations negotiate non-binding instruments with extreme care. States do not consider “‘soft’ recommendations as devoid of at least some political significance, if not, in the long term, any legal significance” (Dupuy, 1990, p. 420).

It has been widely acknowledged that soft law assumes a particularly prominent role in newly emerging and rapidly developing areas, such as international environmental law. According to Krista Singleton-Cabbage (1995, p. 171), the sources of international law⁴ remain currently insufficient to cope with global environmental degradation as they do “not provide a clear and compelling direction for states to work collectively toward a common goal”. Crises such as environmental degradation, climate change, and maritime pollution require prompt responses and necessitate timely action by states (Shelton, 2011, p. 66). In situations where sufficient resources are lacking and crises are unforeseeable, soft law instruments do assist states and non-state actors in formulating timely responses.

As one of the youngest branches of international law, the development of international environmental law has relied heavily on soft law. The Stockholm Declaration on the Human Environment, the Rio Declaration on Environment and Development, the Johannesburg Declaration on Sustainable Development, the Rio+20 Conference on

⁴ Pursuant to Article 38 of the Statute of the International Court of Justice, the principal sources of international law are set out as follows: international conventions, international custom and the general principles of law recognized by civilized nations. Available at: https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (Accessed 9 January 2026).

Sustainable Development, among others, have been quite influential in concretising the scope and principles of international environmental law (United Nations, 1972; United Nations, 1992; United Nations, 2002; United Nations General Assembly, 2012). According to Antto Vihma (2013, p. 146), binding international agreements in the field of climate change may also be regarded as the 'hardened' evolution of initially non-binding soft law instruments. For instance, the operationalisation of the legally binding Kyoto Protocol of 1997 considerably relied on the decisions adopted by the Conference of the Parties (COP), which may be characterised as a form of soft law (Vihma, 2013, p. 146).

In the face of the "economic development versus environmental protection" dilemma,⁵ states often prioritize economic gains and become "jealous of their sovereign autonomy" (Abbott and Snidal, 2000, p. 423) when confronted with international demands or obligations that seek to restrict their domestic policy choices. In such a scenario, soft law holds a significant advantage over hard law in that it allows states, when circumstances require, to assume obligations they would otherwise neglect, precisely because such commitments are entirely non-binding (Birnie, Boyle and Redgwell, 2009, p. 35). Soft law opens up space for states to reach an agreement with greater ease (Skjæseth, Stokke and Wettstad, 2006, p. 115). By relying on soft law, states are able to engage in collective problem solving without subjecting themselves to overly stringent limitations on their freedom of action (Birnie, Boyle and Redgwell, 2009, p. 35).

The discussion of soft law has largely centred on the role it plays in the formation of customary international law, particularly in concretizing the element of *opinio juris* (Hillgenberg, 1999, p. 514; Pisillo Mazzeschi, 2021, pp. 119-122). However, even prior to their transformation into hard law, soft law instruments play a significant role in international law. As Dupuy (1990, p. 435) underlines, soft law generates tangible legal effects itself, even if these effects are exerted in an indirect manner. Some scholars even adopt a more flexible approach and advocate for the inclusion of soft law among the sources of international law. For instance, Cárdenas Castañeda (2013, p. 364) states that:

"I share also the view that if – for some – 'formality' means exclusive attachment to the forms of article 38 of the ICJ Statute, international law should be broadened to informality. That would imply the recognition of other possible manners of law ascertainment (...). [S]oft law would not be called 'soft' anymore, but it would probably be added to the list of 'hard' law sources, using labels like 'resolutions of recognized international organizations', 'declarations resulting from world summits', *inter alia*".

While Fabián Augusto Cárdenas Castañeda argues that soft law forms part of the sources of international law, this position is not endorsed in this article. Instead, we argue that soft law should be considered a tool that contributes to the clarification and operationalisation of hard law, without itself constituting a direct source of hard law.

⁵ For literature on the "economic development versus environmental protection" dilemma, see Rees (2003), Panayotou (2016), Feiock and Stream (2001) and Peng, Sheng and Wei (2020).

Rather than “binary categories”, hard and soft law should be considered “choices arrayed along a continuum” (Schaffer and Pollack, 2010, p. 706). Both binding and non-binding instruments aim to regulate states’ activities in the international sphere and to provide stability, although the latter does so to a lesser extent (Olivier, 2002, p. 298). Thus, the call for the elimination of soft law as a whole, as Matthias Goldmann underlined, reminds of Don Quixote’s fight against windmills (Goldmann, 2012, p. 343). As Chinkin aptly noted, classifying instruments as either law or non-law obscures the fact that both are instrumental in shaping international law and are necessary for regulating state behaviour and generating legitimate expectations among states (Chinkin, 1989, p. 866).

Soft law has long consolidated its role within international law. In concretizing hard law and in the application of the hard law to a specific case at hand, soft law already plays a significant role for international courts and tribunals. The use of soft law by international courts and tribunals strengthens the position of soft law within international law. If a resolution or a declaration is frequently referred to by an international court, the soft law instrument at stake indisputably consolidates its position. An important question here concerns what would occur if a soft law instrument were persistently disregarded by an international court and/or not taken into account in the process of applying and interpreting hard law (Blutman, 2010, p. 622). The answer to this question is closely linked to the inquiry into what it would mean if a soft law instrument were persistently applied by an international court. The use of soft law instruments by international courts increases in proportion to their substantive contribution to, and practical effect on, the functioning of international law. Thus, international, regional, and domestic courts confer legitimacy upon the soft law instruments they invoke, in proportion to the extent of their reliance.

3. THE ECtHR’S MOTIVATIONS FOR USING SOFT LAW

At first sight, the jurisprudence of the ECtHR may seem to rest purely on the provisions of the Convention and its protocols. However, the reality is much more complex. A closer examination of the Court's case law reveals that its decisions are based on a broader set of norms. These include binding instruments of international law other than the ECHR, as well as the non-binding “soft law” instruments. An examination of any judgment delivered by the ECtHR shows that every judgment begins by listing the facts of the given case. Then the Court proceeds to its analysis, discussing the relevant legal sources, whether domestic or international. Following this discussion, the Court delivers its legal assessment, without limiting itself to the ECHR and its protocols.

This practice raises several questions: Where does soft law stand within the ECtHR’s reasoning framework? What role does soft law play in the Court’s judicial decision-making process? As per Article 19 of the ECHR, the Court is established to observe whether the Contracting Parties fulfil their engagements under the Convention as well as its protocols. Therefore, the primary source of law for the Court is clearly the Convention itself, along with its protocols. In line with Article 38 of the Statute of the ICJ, the mandate of the ECtHR also encompasses the legally binding obligations applicable to the Contracting Parties, including ratified international treaties, customary international

law, and general principles of law. Nevertheless, in the interpretation of binding law, the Court takes into account a wide array of sources such as judicial decisions of other courts, international organisations' recommendations, guidelines, as well as certain treaties or legislation that are not yet binding on Contracting States concerned.

In the literature, the use of international law sources by the ECtHR has been classified according to whether the sources are directly connected to the Council of Europe, such as Committee of Ministers' recommendations or whether the instruments are created outside of the Council of Europe, such as the treaties concluded within the United Nations (Dzehtsiarou, 2017, p. 97). The Court recognises that its formal mandate does not cover the enforcement of Council of Europe treaties and soft law, but the Court also does not hesitate to address and include these instruments in its reasoning as "it is not contrary to ECHR law and the logic of the Strasbourg system for the ECtHR to use legal instruments of the Council of Europe as persuasive authority" (Dzehtsiarou, 2017, p. 105). As these instruments emerge from the will of largely the same Contracting Parties and aim to guide the same State community in implementing human rights, the Court does not see any inconsistency in referring to these instruments in its case law. The decisions often encompass soft law materials in the sections dedicated to the relevant international law and practice. The ECtHR refers to these sources without making any detailed analysis under the section "relevant international law" or sometimes it includes a specific section for Council of Europe materials (see *Öneryıldız v. Türkiye*, 2004). More importantly, the Court also resorts to these resources during its consideration of the merits of a given case and, in this way, it integrates the content of these sources into its reasoning (Glas, 2017, pp. 106-107).

Article 32 of the Convention provides the ECtHR with a mandate for "all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47". Accordingly, where an applicant argues that a Contracting State acted against a Committee of Ministers' recommendation, the Court may not find a State in violation. However, the Court may refer to the given soft law source as an interpretative and supportive tool to foster its finding of a breach of the Convention or its protocols. It may be observed that when the Court applies sources of law, it does not always draw a clear distinction between binding and non-binding sources of international law (Nußberger, 2018, p. 82). It does not adopt a formalistic approach towards the sources of law, but rather employs a functional approach (Rachovitsa, 2015, p. 880). Whereas the Court places primary importance on the provisions of the Convention and the hard law treaties binding on the Contracting Parties, it also accords significant weight to soft law instruments since it considers that these sources shed light on the contemporary application of the rights and freedoms safeguarded in the Convention (Nußberger, 2018, p. 90). In its landmark case *Demir and Baykara v. Türkiye*, for instance, the Court acknowledged that:

"in searching for common ground among the norms of international law it has never distinguished between sources of law according to whether or not they have been signed or ratified by the respondent State" (*Demir and Baykara v. Türkiye*, 2008, para 78).

The Court might also find a norm relevant, even though the norm is contained in an unratified instrument with respect to the state concerned. In *Demir and Baykara*, the Court relied on certain instruments that Türkiye had not ratified, such as the European Social Charter (*Demir and Baykara v. Türkiye*, 2008, para 84). The Court also relied on the International Labour Organisation Conventions Nos. 98 and 151 and statements by the ILO's Committee of Experts on the interpretation of Convention No. 98 in order to shed light on the scope of Article 11 of the ECHR (freedom of peaceful assembly and freedom of association) (Nordeide, 2009). Similarly, in *Christine Goodwin v. United Kingdom*, the Court based its decision on the European Union's Charter of Fundamental Rights, although this document was not officially binding at the time the Court released the decision (*Christine Goodwin v. United Kingdom*, 2002, para 100). It is evident that the Court does not specifically select the binding sources applicable to the States Parties, but it indeed seeks to reflect the common standards of international or domestic law across European States. At this juncture, the relevant question is whether it is possible to conclude that the Court abandons the hierarchy of international norms and ignores the legal force of the sources (*Demir and Baykara v. Türkiye*, 2008, para 76).

The Court generally applies soft law in line with binding international legal rules when interpreting the Convention. As underscored by Angelika Nußberger (2018, pp. 86-90), the Court indeed takes both sources seriously, yet it also makes a distinction between hard law and soft law. It does not intend to render the soft law instruments binding, but assigns them a serious persuasive weight, connecting them to the text and the interpretation of the Convention (Nilsson, 2023, p. 276). The weight the Court attaches to a soft law instrument depends on the context. For instance, particular weight is accorded to the Council of Europe recommendations as they are perceived as an expression of the stance of the European states (Glas, 2017, p. 120). The Court tends to accord more legal significance to soft law instruments that reflect widespread practice, as well as those that engage with fundamental rights and freedoms (*Demir and Baykara v. Türkiye*, 2008, para 103). Overall, it blends hard and soft law in its decisions when and if it considers both to be closely related. However, when the Court refers to certain soft law instruments, it does not solely engage with their content but rather uses them as tools for interpreting the provisions of the ECHR, taking them into consideration in harmony with evolving international practice. In this respect, soft law guides the emergence of new norms and attitudes, thereby bolstering the Court's interpretation of the ECHR as a 'living instrument'.

4. SYSTEMIC INTEGRATION OF SOFT LAW IN THE ECtHR'S INTERPRETIVE PRACTICE

The Court faces the challenge of delivering judgments on the implementation of the ECHR in a constantly changing and evolving international legal system. To minimise the potential incoherence due to the fragmentation of international law in this context, the Court occasionally resorts to interpretation and systematically integrates certain sources of law into its jurisprudence (Rachovitsa, 2015, p. 863). The Court, in certain cases, leverages Article 31(3) of the Vienna Convention in order to incorporate external human rights sources into its analysis (Forowicz, 2010, p. 25). As confirmed in the case of *Saadi v. United Kingdom*, while determining the object and purpose of the

Convention, the Court takes into account “the international law background” of which the principles and standards reflected in soft law instruments constitute a crucial part (*Saadi v. United Kingdom*, 2008, para 63).

The Court applies soft law instruments for various reasons. First, it may resort to such sources in case a certain concept in the Convention requires further elaboration (Nußberger, 2018, p. 84). The Convention encompasses certain broadly framed rights, which occasionally afford the ECtHR a degree of interpretive flexibility. This flexibility comes at the cost of ambiguity in certain notions, and they may require further clarification in light of current international practice (Nußberger, 2018, p. 83). For instance, in the case of *Neulinger and Shuruk v. Switzerland* (2010, para 51) the Court referred to the guidelines of the Committee on the Rights of the Child in order to determine how a “child’s best interest” should be defined and how this concept should be adopted to the European human rights system.

Second, when the Court faces the challenging task of determining the extent to which a State is entitled to a margin of appreciation concerning a particular measure, it examines both comparative law and international instruments to reach a determination and meticulously identifies the trends in the European States (Kemmerer, 2012). In this examination, soft law sources are often considered an indication of a certain consensus or the fact that a consensus is emerging. For example, in the case of *Marckx v. Belgium*, the Court stated that even though certain treaties received a small number of ratifications, this would not eliminate the emerging trend that most of the Contracting States have started to legislate concerning children’s rights that are embodied in these “not-yet-law” conventions (*Marckx v. Belgium*, 1979, para 41). Thus, the Court perceives the existence of non-binding normative materials as a crystallisation of a certain normative development that supports the Court’s conclusion (Theilen, 2021, p. 251).

Where the Convention’s text or earlier case law alone fails to resolve the issue before the Court, the Court observes whether soft law standards match the prevailing practical stance of the Contracting Parties, and the Court uses these instruments to confirm its conclusion. However, a problem arises when an external norm clashes with the prevailing approach of the Contracting Parties. This is because if the Court relies on external norms, this approach might raise issues regarding the ECtHR’s legitimacy (Nußberger, 2018, pp. 77-78). It could be considered problematic for the Court to use soft law as a determining factor when States’ practice is otherwise. Ultimately, soft law instruments should not have the goal of “replacing hard law” but should only be used as a contextual guide (Pitea, 2013, p. 545).

Third, soft law might be functional for the Court to determine the scope of positive obligations, as such obligations are not, in general, listed in the Convention. The Court, in certain cases, applies external standards when it wants to identify which acts and measures States are required to adopt to comply with the Convention (Dzehtsiarou, 2017, p. 105). In the landmark *Opuz v. Türkiye* case, the Court referred to a recommendation of the Committee of Ministers, as well as the CEDAW Committee’s General Recommendation in order to point out Türkiye’s positive obligations in relation to domestic violence (*Opuz*

v. Türkiye, 2009, para 200). In this way, the Court relied on soft law materials to convey the due diligence obligation of the States to prevent and act against domestic abuse, even though such obligation was not specifically spelt out in the Convention's text (Demir, 2021, p. 84). This case provides an important example of how soft law can, in fact, provide normative content for the ECtHR's jurisprudence. Soft law instruments provide a comprehensive framework and are particularly useful for the Court to make such an assessment (Demir, 2024). As emphasised in the case of *Demir and Baykara v. Türkiye*, when the Court defines a certain term or notion, it actually "takes into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values" (*Demir and Baykara v. Türkiye*, 2008, para 85). In this way the Court actually demonstrates that the ECHR is not enforced in isolation, but it goes hand in hand with the broader international human rights framework (van Aaken, Motoc and Vasel, 2018, p. 33).

Finally, the Court also uses the soft law instruments to determine whether certain factual circumstances warrant the application of the Convention articles. For example, in the case of *M. S. S v. Belgium and Greece*, to determine whether the applicant had been treated inhumanely or not, the ECtHR used UNHCR reports to understand the conditions in Greece. Having examined the reports, the Court found a violation of Articles 3 and 13 of the Convention (*M. S. S. v. Belgium and Greece*, 2011, para 348). At this juncture, it is important to emphasise that the ECtHR has demonstrated how it may transpose soft law instruments into its binding jurisprudence, yet it did so by way of anchoring these instruments to a certain article under the Convention.

Overall, the Court applies soft law instruments in cases where an abstract Convention right or a relevant concept requires clarification. It seeks to demonstrate a consensus or a certain trend among the States; this helps the Court justify its approach while adopting an evolutive interpretation (Nußberger, 2018, pp. 82-85). A key feature of soft law is to support the ECtHR in ensuring that the ECHR, as a regional European standard, does not fall behind global standards or other widely accepted regional human rights developments. In other words, soft law provides an important tool for the Court to achieve systemic integration, enabling it to maintain its jurisprudence as part of the universal human rights consensus, rather than limiting it to an isolated interpretation of the Convention.

On the other hand, there are certain criticisms of the ECtHR's approach on soft law. Some scholars emphasise that the Court should not use such instruments in its judgments, as they constitute no obligations for the States (de Albuquerque, 2017). Opponents also argue that the Court may risk overstepping the member states' sovereignty while utilising soft law instruments (Nilsson, 2023, p. 277). These critical approaches are rooted in the concerns regarding state sovereignty and the possibility that state consent might be bypassed. As observed by Glas, there is also another concern among critical voices that a potential transformation of soft law elements into hard obligations in an ECtHR judgment may demotivate States to be involved in soft law instruments, which may eventually cause "a chilling effect" in international law (Glas, 2017, p. 99). Some also argue that integrating external sources into the ECtHR's jurisprudence may mislead the Court, and the judges

may disregard certain textual details or context of a given source of law (Rachovitsa, 2017, pp. 560-561). Although some fear that the integration of soft law into the ECtHR's jurisprudence may jeopardise the legitimacy of the Court, there are also views supporting the idea that, as long as there is no clash with the Convention, such a practice may bolster the Court's legitimacy, as it adds to the Court's persuasiveness, enriching the Convention's interpretation (Dzehtsiarou, 2017, p. 94).

Despite criticisms, it seems that the ECtHR has institutionalised the method of treating soft law as an important aspect of its interpretive corpus. We contend that this helps the Court to acknowledge the developments in international human rights law and establish a jurisprudence that is in harmony with them. As soft law instruments are generally quite detailed materials, replete with definitions and best practices, they help the Court clarify broadly worded concepts in the Convention and maintain a robust jurisprudence. The Court often faces the challenge of adapting the Convention's jurisprudence to the latest developments in international law (e. g. climate change). To maintain its jurisprudence in harmony with the most recent developments, the Court employs systemic integration as a deliberate choice.

5. THE COURT'S USE OF SOFT-LAW INSTRUMENTS IN ENVIRONMENTAL AND CLIMATE RELATED CASES

The Court has developed an extensive body of jurisprudence and linked the human rights regime with the impact of environmental issues on individuals (Francioni, 2010, p. 47). In doing so, the Court creatively and deliberately used soft law instruments in international law to clarify the scope of related Convention rights, what they entail and what kind of substantive and procedural obligations states have. Within the context of international environmental law, the Court generally uses soft law in order to clarify the context of applicable ECHR provisions and to elucidate how they encompass the right to a clean and healthy environment in both substantive and procedural dimensions (Pedersen, 2018, p. 95).

An early example of the Court's examination of procedural environmental rights can be found in its judgment in the case of *Guerra and Others v. Italy*, in which the Court strengthened its reading of procedural environmental rights through soft law instruments (*Guerra and Others v. Italy*, 1998). The Court, while interpreting Article 8 of the ECHR in a way that it includes individuals' right to be informed about environmental risks and hazards, referred to the Council of Europe's Parliamentary Assembly Resolution 1087 (1996), which was drafted in the aftermath of the Chernobyl disaster, and which explicitly accepted "public access to clear and full information" as a fundamental human right. Accordingly, in the case, the Court held that the Italian authorities failed to take the required action to notify the relevant individuals of the environmental pollution and consequently, that the State failed to protect individuals' rights under Article 8 (*Guerra and Others v. Italy*, 1998, para 59-60).

After the *Guerra and Others v. Italy* judgment, another important international instrument on procedural environmental rights entered into force: the Aarhus Convention

of 1998. Although not all parties to the ECHR signed this instrument, the Court did not hesitate to refer to the Aarhus Convention's provisions. A striking case in this regard is *Taşkın and Others v. Türkiye*, in which the Court referred to Principle 10 of the Rio Declaration, which affirms the rights to information on environmental matters, participation in environmental decision-making, and access to justice in matters concerning environmental protection (*Taşkın and Others v. Türkiye*, 2005, para. 98; Mirzadeh Kooohshahi and Goodarzi, 2021, p. 89). The Court also addressed the Aarhus Convention on access to information, public participation, and access to justice, despite Türkiye's non-party status under this convention (*Taşkın and Others v. Türkiye*, 2005, para. 99). The ECtHR included the Aarhus Convention among the relevant international materials, alongside other soft law instruments, such as the Parliamentary Assembly of the Council of Europe's Recommendation 1614 (2003) (*Taşkın and Others v. Türkiye*, 2005, para. 100). By referring to these materials, the ECtHR adopted an interpretation of Article 8 in harmony with evolving environmental principles. Indeed, in its judgment, after elaborating on the two instruments mentioned above, the ECtHR set out its interpretation of what Article 8 entails in environmental decision-making processes, essentially referring to the principles set out in those instruments. Notably, the Court underlined "the importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question" (*Taşkın and Others v. Türkiye*, 2005, para. 119).

As soft law instruments generally include detailed and technical information on the content of international obligations, the Court applies these materials when necessary, in order to clarify the substantive obligations states have under a relevant Convention article. For example, the Court used the explanatory dimension of soft law instruments in the case of *Fägerskiöld v. Sweden* (2008). The case concerned the noise pollution from an erected wind turbine. The Court, in its admissibility examination, delved into whether there was an interference with a sufficient level of severity. While the Court was examining acceptable levels of community noise, it explicitly referred to the World Health Organisation's (WHO) guidelines. It considered the WHO's parameters in its factual evaluation, even though such guidelines are not legally binding on the parties to the ECHR. Given that the noise levels were within the WHO's accepted standards, the ECtHR found the case inadmissible and reached the conclusion that the interference at hand was not serious.

The Court also employs soft law instruments to support its interpretation of the substantive principles embedded in the Convention articles. For example, in the judgment of *Tătar v. Romania*, the Court examined an application concerning a catastrophic cyanide spill at a gold mine (*Tătar v. Romania*, 2009). In its assessment, the Court elaborated on the Stockholm Declaration of 1972 and the Rio Declaration of 1992 in detail and underscored the precautionary principle in international environmental law. Accordingly, the Court found that the Romanian authorities failed to address and prevent the risk and breached the precautionary principle (*Tătar v. Romania*, 2009, para. 120). In this way, the Court basically incorporated these principles into its reasoning and thus used related soft law instruments to demonstrate the existence of states' positive environmental obligations, including the obligation to take preventive measures against environmental hazards.

The above analysis shows that when it comes to environmental issues, the Court considers the protection of the environment and public access to environmental information and participation in decision-making and access to justice in the context of environmental issues as parts of the human rights protection regime (Morrow, 2019, pp. 43-44). For environmental rights to be entrenched in the ECHR, the ECtHR makes use of soft law instruments in different functions. The Court uses these instruments as interpretive guides as well as a litmus test to clarify whether certain state conduct is acceptable under the ECHR. The result of such an approach is no doubt a progressive “greening” of the ECHR (Cima, 2022, p. 39). Soft law provisions constitute important tools for the Court to fill the “criteria deficit”, given the lack of specific provisions on environmental rights (Morrow, 2019, p. 41). In this context, the Court has begun facing more difficult questions as environmental challenges have become more complex, with the rapid escalation of the climate crisis. A systematic review of the Court’s recent and definitive climate change jurisprudence serves as a test case to understand the role of soft law instruments. This review reveals that the Court extensively integrates soft law not to rewrite the Convention, but to provide functional, scientifically backed definitions for the positive obligations already inherent in Article 8.

ECtHR’s recent judgment on climate change, namely *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, once again and very strongly confirms the Court’s approach on soft law. The Court, in the emerging field of climate change litigation, heavily engaged with the soft law instruments related to the climate crisis. From the reports of the Special Rapporteur on the promotion and protection of human rights in the context of climate change (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, paras. 159-166) to the Inter-American Convention on Protecting the Human Rights of Older Persons of 2015 (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, para. 224), a wide range of non-binding instruments were thoroughly examined and considered “relevant international materials” by the ECtHR. In order to respond to a crisis which closely concerns the Council of Europe members, the Court reinterpreted its constitutional framework in the light of recent (non-binding) developments in international law and politics.

Engagement with the recent developments enabled the Court to establish the link between human rights and climate change more clearly. By creating a dialogue with other expert bodies, institutions and courts, the ECtHR has made clear the ways in which climate change impacts and poses serious threats to the protection of human rights and freedoms. To give an example, the General Comment No. 26 (2022) of the ICESCR Committee which examined the impacts of climate change on land rights, the right to housing, agriculture, and access to fisheries was cited in the case (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, para. 183). Similarly, the UN Treaty Bodies’ (namely Committee on the Elimination of Discrimination against Women; Committee on Economic, Social and Cultural Rights; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; Committee on the Rights of the Child; and Committee on the Rights of Persons with Disabilities) Joint Statement on human rights and climate change was extensively cited in the *Verein KlimaSeniorinnen* judgment.

The ECtHR's extensive reliance on soft law instruments in these uncharted waters appears intended to create a more secure basis for substantiating the intrinsic relationship between human rights and climate change. Recalling Dupuy's point, the Court's approach to soft law in *Verein KlimaSeniorinnen* shows how soft law instruments might generate tangible legal effects themselves, even if these effects are exerted in an indirect manner (Dupuy, 1990, p. 435). The Court clearly refrains from adhering to a binary distinction between hard and soft law, and it remains willing to explore the links between binding and non-binding norms in order to reinforce the obligations arising under the Convention. By integrating these soft law resolutions, the Court identifies a growing international consensus that environmental degradation threatens human rights. This allows the Court to concretize Article 8, ruling that it encompasses a right for individuals to effective protection by State authorities from the serious adverse effects of climate change.

It is also important to note that in the *Duarte Agostinho* case, to argue that the respondent states owed them extraterritorial obligations, the applicants relied heavily on the principle of preventing transboundary harm and the primary soft law document evaluated by the Court in this context was the Articles on Prevention of Transboundary Harm from Hazardous Activities (*Duarte Agostinho and Others v. Portugal and 32 Others*, 2024, para. 210). Furthermore, to argue that expanding extraterritorial jurisdiction would be harmonious with wider developments in international law, the applicants relied on the approaches of other international human rights bodies. Specifically, they cited the UN Committee on the Rights of the Child's (CRC) decision in *Sacchi and Others* and the Inter-American Court of Human Rights' (IACtHR) Advisory Opinion OC-23/17 (*Duarte Agostinho and Others v. Portugal and 32 Others*, 2024, paras. 82 and 210). While these are quasi-judicial decisions and advisory opinions rather than traditional normative declarations or guidelines, they were utilized by the applicants as non-binding international materials to argue that a state's jurisdiction should apply whenever it exercises effective control over the sources of emissions that cause foreseeable transboundary harm to individuals outside its territory. The Court ultimately rejected the invitation to use these principles and instruments to expand its jurisdictional boundaries. The Court reasoned that soft law instruments like the Articles on Prevention of Transboundary Harm are fundamentally different in nature from the ECHR, as they are primarily designed to govern the relationships and reciprocal engagements between sovereign States. The Court concluded that while these documents address "damage" or "harm" occurring outside a State's borders, they do not suggest that such transboundary harm automatically brings the impacted individuals under the human rights jurisdiction of the State from which the emissions originated (*Duarte Agostinho and Others v. Portugal and 32 Others*, 2024, para. 212). Consequently, this strict adherence to territorial boundaries perfectly illustrates that the Court uses soft law strictly to interpret existing rights and refuses to rely on non-binding instruments to artificially expand the Convention's scope or create new, non-Conventional obligations for member states.

Building on the approach adopted in the judgment in *Verein KlimaSeniorinnen*, in *Greenpeace Nordic and Others v. Norway* (2025) the ECtHR once again demonstrated its

readiness to address soft law instruments, this time within the context of States' procedural positive obligations in relation to climate change. Whereas *Verein KlimaSeniorinnen* extensively referred to soft law instruments to support its interpretation on the substantive link between the protection of human rights and climate change, in the case of *Greenpeace Nordic v. Norway* the Court adopted a specifically procedural approach (Ganesan, 2025). The Court's examination included quasi-judicial materials addressing the procedural obligations Contracting States have in climate-related decision-making. In this context, the Court attached importance to the recent advisory opinions by the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR) and finally the ICJ. The Court used these legally non-binding advisory opinions as persuasive evidence to demonstrate how environmental decision-making should take place in the era of climate change. Even though the Court did not find a violation of the ECHR in the *Greenpeace Nordic* case, it did address the procedural reach of Article 8 in climate decision-making, signalling a subtle methodological shift supported by an extensive body of non-binding international instruments (EU Law Live Op-Ed, 2025).

By utilizing these external advisory opinions, the Court concretized the existing procedural safeguards inherent in Article 8 of the Convention, specifically the obligation to conduct a comprehensive environmental impact assessment for potentially dangerous activities. However, by ultimately finding no violation and accepting that Norway's staged administrative process, which deferred the full climate impact assessment to the later Plan for Development and Operation stage, fell within its wide margin of appreciation, the Court demonstrated strict methodological boundaries. It utilized non-binding instruments strictly as interpretive aids to clarify the functional requirements of existing duties, while systematically refusing to use soft law to bypass state consent or impose new, rigid, non-Conventional procedural obligations on States. Furthermore, the trajectory of recent environmental and climate litigation suggests a growing trend wherein applicants increasingly rely on soft law instruments to concretize State obligations in novel contexts. A prime example of this trend is the application in *Humane Being v. the United Kingdom* (2022). In this case, an NGO challenged the UK Government's support for factory farming, arguing that the practice poses life-threatening risks to the public through climate change, future pandemics and antibiotic resistance, thereby engaging Articles 2, 3 and 8 of the ECHR (Humane Being, 2022; Climate Rights Database, 2022). Crucially, to substantiate its claims regarding the scope of the State's positive obligations, the applicant explicitly relied on soft law. It cited the Global Methane Pledge, a non-binding international political commitment to reduce methane emissions, to argue that the current scale of factory farming is fundamentally incompatible with the Government's own emission-reduction duties (Humane Being, 2022). This case illustrates that applicants are actively bringing claims that utilise non-binding international pledges to functionally indicate what specific domestic policies a State must adopt to fulfil its human rights obligations. However, the ECtHR declared the application inadmissible. In a single-judge decision, the Court ruled that the applicant was not sufficiently affected by the alleged breach to claim "victim status" within the meaning of Article 34 of the Convention (Climate Rights Database, 2022). Consequently, whereas soft law remains a powerful interpretive tool for concretising duties, the Court's high admissibility threshold prevents such instruments from expanding the Convention's procedural or substantive reach.

6. CONCLUSION

This article shows that soft law instruments hold a significant place in the jurisprudence of the ECtHR. The Court openly acknowledges the importance of these instruments in concretising the member states' obligations under binding legal instruments. Recently, the Court's approach and methods have been under scrutiny. Member States question the overuse of soft law instruments and carefully assess whether the Court is, in fact, creating "new obligations" that are not within the letter and scope of the Convention. In the midst of these discussions and increasing pressure from environmental challenges, the ECtHR delivered its first climate change case, and in its judgment, the Court once again engaged with soft law instruments in an extensive way. The Court consistently followed the same approach in the recent case of *Greenpeace Nordic and Others v. Norway*. This shows that the Court, regardless of the discussions and criticisms, will continue integrating these instruments into its case law in a systematic and consistent manner. We argue that deeper reliance on soft law instruments—such as declarations, scientific assessments, and non-binding principles—can provide the Court with interpretive flexibility, enabling it to respond to ongoing human rights challenges while mitigating perceptions of judicial overreach.

This article demonstrates that, instead of creating "new obligations" the Court is engaging with soft law instruments to concretise the legally binding obligations of the Contracting Parties. With this method, the Court considers and situates itself within the broader international human rights system, which is currently under attack due to the rise of far-right movements in Europe and beyond. Given the increasing resistance to binding international agreements—such as those in the field of climate change—and the growing number of withdrawals from binding treaties, including the Istanbul Convention, we contend that the Court should strategically draw more on soft law. Such engagement with soft law can help the Court safeguard fundamental human rights and also solidify its authority and normative influence within an increasingly contested legal landscape.

BIBLIOGRAPHY

- ABBOTT, K. W. and SNIDAL, D. (2000). 'Hard and Soft Law in International Governance', *International Organization*, 54(3), pp. 421–456.
- BIRNIE, P., BOYLE, A. and REDGWELL, C. (2009). *International Law and the Environment*. 3rd edn. Oxford: Oxford University Press.
- BLUTMAN, L. (2010). 'In the Trap of a Legal Metaphor: International Soft Law', *International and Comparative Law Quarterly*, 59(3), pp. 605–624.
- CÁRDENAS CASTAÑEDA, F. A. (2013). 'A Call for Rethinking the Sources of International Law: Soft Law and the Other Side of the Coin', *Anuario Mexicano de Derecho Internacional*, 13, pp. 355–403.
- CHINKIN, C. M. (1989). 'The Challenge of Soft Law: Development and Change in International Law', *International and Comparative Law Quarterly*, 38, pp. 850–866.

- CIMA, E. (2022). 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change', *Review of European, Comparative & International Environmental Law*, 31, pp. 38–49.
- CLIMATE RIGHTS DATABASE (2022). 'Humane Being v. the United Kingdom'. Available at: <https://climaterightsdatabase.com/2022/12/01/humane-being-v-the-united-kingdom/> (Accessed: 11 May 2026).
- COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY (1996). 'Resolution 1087 (1996) on the Consequences of the Chernobyl Disaster'. Available at: <https://pace.coe.int/en/files/16498/html> (Accessed: 10 December 2025).
- DE ALBUQUERQUE, P. P. (2017). 'Is the ECHR Facing an Existential Crisis?'. Available at: https://www.law.ox.ac.uk/sites/default/files/migrated/pinto_opening_presentation_2017.pdf (Accessed: 28 December 2025).
- DEMIR, E. (2021). 'The European Court of Human Rights' Engagement with International Human Rights Instruments: Looking at the Cases of Domestic Violence', *The Age of Human Rights Journal*, 17, pp. 79–96.
- DEMIR, E. (2024). 'The Principle of Systemic Integration at the ECtHR after *Verein KlimaSeniorinnen Schweiz*', *Oxford Human Rights Hub*. Available at: <https://ohrh.law.ox.ac.uk/the-principle-of-systemic-integration-at-the-ecthr-after-verein-klimaseniorinnen-schweiz/> (Accessed: 30 December 2025).
- DUPUY, P. M. (1990). 'Soft Law and the International Law of the Environment', *Michigan Journal of International Law*, 12(2), pp. 420–435.
- DZEHTSIAROU, K. (2017). 'What Is Law for the European Court of Human Rights?', *Georgetown Journal of International Law*, 49, pp. 89–134.
- EU LAW LIVE OP-ED (2025). 'Winning by Losing: Greenpeace Nordic and Others v. Norway and the Rise of Procedural Climate Rights before the ECtHR'. Available at: <https://eulawlive.com/op-ed-winning-by-losing-greenpeace-nordic-and-others-v-norway-and-the-rise-of-procedural-climate-rights-before-the-ecthr/> (Accessed: 12 November 2025).
- FEIOCK, R. C. and STREAM, C. (2001). 'Environmental Protection Versus Economic Development: A False Trade-Off?', *Public Administration Review*, 61(3), pp. 313–321.
- FOROWICZ, M. (2010). 'The Law of Treaties'. In: Forowicz, M. (Ed.), *The Reception of International Law in the European Court of Human Rights*. Oxford: Oxford University Press, pp. 795–799.
- FRANCIONI, F. (2010). 'International Human Rights in an Environmental Horizon', *European Journal of International Law*, 21(1), pp. 41–55.
- GANESAN, P. (2025). 'Leaving Out "Leaving It in the Ground": The ECtHR's *Greenpeace Nordic* Judgment', *EJIL: Talk!* Available at: <https://www.ejiltalk.org/leaving-out-leaving-it-in-the-ground-the-ecthrs-greenpeace-nordic-judgment/> (Accessed: 12 November 2025).

- GLAS, L. R. (2017). 'The European Court of Human Rights' Use of Non-Binding and Standard-Setting Council of Europe Documents', *Human Rights Law Review*, 17(1), pp. 97–125.
- GOLDMANN, M. (2012). 'We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law', *Leiden Journal of International Law*, 25(2), pp. 335–368.
- HILLGENBERG, H. (1999). 'A Fresh Look at Soft Law', *European Journal of International Law*, 10(3), pp. 499–515.
- HUMANE BEING (2022). 'Humane Being v. the United Kingdom — press release'. Available at: https://www.climatecasechart.com/documents/humane-being-v-the-united-kingdom-press-release_5c5e (Accessed: 11 May 2026).
- KEMMERER, A. (2012). 'On the Margin: Observations on Reception, Ratio and Reform of the Strasbourg Court', *Verfassungsblog*. Available at: <https://verfassungsblog.de/margin-observations-reception-ratio-reform-strasbourg-court/> (Accessed: 30 December 2025).
- MCGOWAN, J. (2024). 'Swiss Government Rejects Court's Ruling Linking Climate Change and Human Rights', *Forbes*. Available at: <https://www.forbes.com/sites/jonmcgowan/2024/08/28/swiss-government-rejects-courts-ruling-linking-climate-change-and-human-rights/> (Accessed: 10 January 2026).
- MIRZADEH KOOHSHAHI, N. and GOODARZI, A. (2021). 'Abilities of European Court of Human Rights to Protect Environment from Nuclear Accidents', *Caspian Journal of Environmental Sciences*, 19(1), pp. 85–93.
- MORROW, K. (2019). 'The ECHR, Environment-Based Human Rights Claims and the Search for Standards'. In: Shelton, D. L. and others (Eds.), *Environmental Rights: The Development of Standards*. Cambridge: Cambridge University Press, pp. 41–59.
- NILSSON, I. (2023). 'On the Path to Universalism? The Role of External Instruments in the European Court of Human Rights Jurisprudence', *Nordic Journal of International Law*, 92(2), pp. 248–282.
- NORDEIDE, R. (2009). 'Demir & Baykara v. Turkey', *American Journal of International Law*, 103(3), pp. 567–574.
- NUSSBERGER, A. (2018). 'Hard Law or Soft Law—Does It Matter? Distinction Between Different Sources of International Law in the Jurisprudence of the ECtHR'. In: van Aaken, A. and Motoc, I. (Eds.), *The European Convention on Human Rights and General International Law*. Oxford: Oxford University Press, pp. 41–58.
- OLIVIER, M. (2002). 'The Relevance of "Soft Law" as a Source of International Human Rights', *CILSA*, 35, pp. 289–307.
- OPEN LETTER TO THE EUROPEAN COURT OF HUMAN RIGHTS (2025). Available at: https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf (Accessed: 10 January 2026).

- PANAYOTOU, T. (2016). 'Economic Growth and the Environment'. In: Haenn, N., Wilk, R. R. and Harnish, A. (Eds.), *The Environment in Anthropology: A Reader in Ecology, Culture, and Sustainable Living*. New York: New York University Press, pp. 140–148.
- PEDERSEN, O. W. (2018). 'The European Court of Human Rights and International Environmental Law'. In: Knox, J. H. and Pejan, R. (Eds.), *The Human Right to a Healthy Environment*. Cambridge: Cambridge University Press. Available at: <https://www.cambridge.org/core/books/human-right-to-a-healthy-environment/european-court-of-human-rights-and-international-environmental-law/B5A02DE2DCA5B5BF585C9160203F3190> (Accessed: 10 November 2025).
- PENG, B., SHENG, X. and WEI, G. (2020). 'Does Environmental Protection Promote Economic Development? From the Perspective of Coupling Coordination between Environmental Protection and Economic Development', *Environmental Science and Pollution Research*, 27(31), pp. 39135–39148.
- PISILLO MAZZESCHI, R. (2021). *International Human Rights Law*. Cham: Springer, pp. 119–122.
- PITEA, C. (2013). 'Interpreting the ECHR in the Light of "Other" International Instruments: Systemic Integration or Fragmentation of Rules on Treaty Interpretation?'. In: Boschiero, N. and others (Eds.), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves*. Cham: Springer, pp. 545–559. Available at: https://doi.org/10.1007/978-90-6704-894-1_40 (Accessed: 30 December 2025).
- RACHOVITSA, A. (2015). 'Fragmentation of International Law Revisited: Insights, Good Practices, and Lessons to Be Learned from the Case Law of the European Court of Human Rights', *Leiden Journal of International Law*, 28(4), pp. 863–885.
- RACHOVITSA, A. (2017). 'The Principle of Systemic Integration in Human Rights Law', *International and Comparative Law Quarterly*, 66(3), pp. 557–588.
- REES, W. E. (2003). 'Economic Development and Environmental Protection: An Ecological Economics Perspective', *Environmental Monitoring and Assessment*, 86, pp. 29–45.
- SCHAFFER, G. C. and POLLACK, M. A. (2010). 'Hard vs Soft Law: Alternatives, Complements, and Antagonists in International Governance', *Minnesota Law Review*, 94, pp. 706–799.
- SHELTON, D. L. (2011). 'Comments on the Normative Challenge of Environmental "Soft Law"'. In: Kerbrat, Y. and Maljean-Dubois, S. (Eds.), *The Transformation of International Environmental Law*. Oxford: Hart Publishing, pp. 61–71.
- SINGLETON-CAMBAGE, K. (1995). 'International Legal Sources and Global Environmental Crises: The Inadequacy of Principles, Treaties, and Custom', *ILSA Journal of International and Comparative Law*, 2(1), pp. 171–187.
- SKJÆESETH, J. B., STOKKE, O. S. and WETTESTAD, J. (2006). 'Soft Law, Hard Law, and Effective Implementation of International Environmental Norms', *Global Environmental Politics*, 6(3), pp. 104–120.

- TERPAN, F. (2015). ‘Soft Law in the European Union: The Changing Nature of EU Law’, *European Law Journal*, 21(1), pp. 68–96.
- THEILEN, J. T. (2021). *European Consensus between Strategy and Principle: The Uses of Vertically Comparative Legal Reasoning in Regional Human Rights Adjudication*. Baden-Baden: Nomos.
- UNITED NATIONS (1972). ‘Declaration of the United Nations Conference on the Human Environment’. Available at: <https://www.un.org/en/conferences/environment/stockholm1972> (Accessed: 10 January 2026).
- UNITED NATIONS (1992). ‘Rio Declaration on Environment and Development’. Available at: <https://digitallibrary.un.org/record/141565?v=pdf> (Accessed: 10 January 2026).
- UNITED NATIONS (2002). ‘Johannesburg Declaration on Sustainable Development’. Available at: https://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm (Accessed: 10 January 2026).
- UNITED NATIONS GENERAL ASSEMBLY (2012). ‘The Future We Want’, UN Doc. A/RES/66/288. Available at: <https://digitallibrary.un.org/record/731519?v=pdf> (Accessed: 10 January 2026).
- VAN AAKEN, A., MOTOC, I. VASEL, J. J. (2018). ‘Introduction: The European Convention on Human Rights and General International Law’. In: van Aaken, A. and Motoc, I. (Eds.), *The European Convention on Human Rights and General International Law*. Oxford: Oxford University Press, pp. 1–22.
- VIHMA, A. (2013). ‘Analyzing Soft Law and Hard Law in Climate Change’. In: Hollo, E. J. and others (Eds.), *Climate Change and the Law*. Heidelberg: Springer, pp. 143–164.

CASE LAW

- Christine Goodwin v. United Kingdom*, App. No. 28957/95 (ECtHR, 11 July 2002).
- Demir and Baykara v. Türkiye*, App. No. 34503/97 (ECtHR, 12 November 2008).
- Duarte Agostinho and Others v. Portugal and 32 Others*, App. No. 39371/20 (ECtHR, 9 April 2024).
- Fägerskiöld v. Sweden*, App. No. 37664/04 (ECtHR, 26 February 2008).
- Greenpeace Nordic and Others v. Norway*, App. No. 34068/21 (ECtHR, 28 October 2025).
- Guerra and Others v. Italy*, App. No. 116/1996/735/932 (ECtHR, 19 February 1998).
- Marckx v. Belgium*, App. No. 6833/74 (ECtHR, 13 June 1979).
- M. S. S. v. Belgium and Greece*, App. No. 30696/09 (ECtHR, 21 January 2011).
- Neulinger and Shuruk v. Switzerland*, App. No. 41615/07 (ECtHR, 6 July 2010).
- Öneryıldız v. Türkiye*, App. No. 48939/99 (ECtHR, 30 November 2004).

Opuz v. Türkiye, App. No. 33401/02 (ECtHR, 9 June 2009).

Saadi v. United Kingdom, App. No. 13229/03 (ECtHR, 29 January 2008).

Taşkın and Others v. Türkiye, App. No. 46117/99 (ECtHR, 30 March 2005).

Tătar v. Romania, App. No. 67021/01 (ECtHR, 27 January 2009).

Received: 14th February 2026

Accepted: 19th May 2026

