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The environmental defender and the EU – possibilities for protection in the exercise of civil disobedience

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Summary

This graduate thesis aims to examine possible avenues for protection for environmental defenders exercising civil disobedience within the EU legal framework. The aim is based on and inspired by the *Guidelines on Peaceful Environmental Protest and Civil Disobedience* published in 2025 by the Special Rapporteur on Environmental Defenders under the Aarhus Convention. Further, the graduate thesis builds on several international legal instruments to examine the protection of civil disobedience as an action within international human rights law and its effect on the European Union's legal system.

The legal doctrinal method is used to establish the content and scope of central terms such as 'civil disobedience' and 'environmental defender', as well as accounting for relevant provisions and functions of EU law. The legal analytical method is then used to explore possible avenues for protection for an environmental defender in the EU exercising civil disobedience. The graduate thesis explores these aspects from the perspective of the environmental defender. The graduate thesis is divided into four main parts; the initial part determines who can be classified as an environmental defender, the second part identifies how civil disobedience relates to the scope of different international instruments, the third part accounts for the Aarhus Convention and its art. 3(8). Lastly, the fifth section accounts for the EU legal landscape. These sections are then followed by an analysis and conclusion.

The graduate thesis concludes that although the scope for classifying as an environmental defender is similar within the EU and under the Aarhus Convention, the application may be narrower. As a result, classifying for protection within the EU may be easier, but the protection enjoyed may be slightly less extensive. Regarding civil disobedience, the graduate thesis concludes that it may fulfil the prerequisites of the freedom of assembly prerequisites in different international agreements, hence also qualifying for protection. As for the possibility of protection within the EU legal system, the CJEU plays a vital role. Furthermore, as the CJEU has yet to decide on the direct applicability of art. 3(8) of the Aarhus Convention and, in part, take a stance towards the HRC's statements the EU finds itself at a crossroads where protection through EU enforcement mechanisms is entirely possible but perhaps unlikely. At such a crossroads, the ECtHR plays a vital role. Civil disobedience may very well fall within the scope of the ECHR, in which the EU would be obligated to ensure an equivalent protection.

Sammanfattning

Uppsatsen syftar till att undersöka hur miljöförsvare kan skyddas inom EU-rätten i utövandet av civil olydnad. Syftet baseras till stor del på- och inspireras av *Guidelines on Peaceful Environmental Protest and Civil Disobedience* som Specialrapportören för miljöförsvare under Århuskonventionens nyligen har publicerat. Vidare bygger uppsatsen på ett antal internationella konventioner för att undersöka om civil olydnad omfattas av folkrätten och hur detta påverkar det EU-rättsliga systemet.

Den rättsdogmatiska metoden används för att etablera omfattning och kriterier för centrala begrepp såsom 'miljöförsvare' och 'civil olydnad' samt för att redogöra för relevanta lagrum och processer vad gäller EU-rätten. Den rättsanalytiska metoden används sedan för att undersöka möjliga vägar för miljöförsvare som utövar civil olydnad att skyddas genom det EU-rättsliga systemet. Samtliga aspekter undersöks med utgångspunkt i miljöförsvaren. Denna uppsats är disponerad i fyra huvudsakliga delar; först granskas kraven för att klassas som miljöförsvare, därefter undersöks rekvisit för civil olydnad och hur konceptet relaterar till olika internationella instrument, en tredje del granskar Århuskonventionen och dess artikel 3(8). Den fjärde delen redogör för relevant EU-rätt och processer, varpå den sista delen granskar dessa aspekter i relation till varandra för att besvara uppsatsens frågeställningar. Dessa fyra delar följs sedan av en analys och en slutsats.

Uppsatsen kommer fram till att klassificeringen som miljöförsvare enligt EU-rätten och Århuskonventionen är något mer liberal medan tillämpligheten inom EU möjligtvis är något mer begränsad. Med andra ord är det lättare att nå upp till tröskeln för skydd inom EU, men skyddet är sedan något begränsat. Vad gäller civil olydnad konkluderar uppsatsen att konceptet mycket väl kan rymmas inom de olika internationella konventioner som undersöks, vilket innebär att det kan skyddas av mötesfriheten i dessa ramverk. När det gäller möjligheten att skyddas av det EU-rättsliga ramverket spelar EU-domstolen en avgörande roll. Eftersom domstolen ännu inte har funnit att art. 3(8) Århuskonventionen har direkt effekt, eller tagit ställning till Kommissionen för Mänskliga Rättigheters uttalanden, befinner sig EU vid ett vägskäl vad gäller civil olydnad där möjligheten till skydd är fullt möjlig om än osannolik. I ett sådant scenario spelar Europadomstolen en avgörande roll. Det finns möjlighet för civil olydnad att omfattas av Europakonventionen och EU måste i ett sådant scenario garantera likvärdigt skydd.

Abbreviations

ACCC	Aarhus Convention Compliance Committee
Art.	Article
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
COM	The Commission
DROI	European Parliament's Subcommittee on Human Rights
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court on Human Rights
EU	European Union
HRC	Human Rights Committee
ICCPR	Covenant on Civil and Political Rights
MoP	Meeting of the Parties
MS	Member States of the European Union
NIR	National Implementation Report
Special Rapporteur	The UN Special Rapporteur on Environmental Defenders under the Aarhus Convention
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning on the European Union
The Aarhus Convention/ Convention	The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
The Charter	The European Charter of Fundamental Rights
UN	United Nations
UN Charter	The Charter of the United Nations

1 Introduction

1.1 Introduction and research objective

In the face of insufficient governmental response to the triple planetary crisis, the number of people and organisations taking action to defend the right to a clean, healthy and sustainable environment is growing. These actors, known as environmental defenders, are increasingly turning to peaceful protests, sometimes labelled civil disobedience, due to the lack of governmental response to the environmental emergency and the urgency of the situation.¹ At the same time, environmental defenders face intimidation, killings and threats.² In a 2024 position paper, the United Nations (UN) Special Rapporteur on Environmental Defenders under the Aarhus Convention (the Special Rapporteur) paints a picture of environmental defenders being disproportionately punished for engaging in environmental activism.³ A survey conducted by the Swedish organisation Naturskyddsföreningen concludes that the obstacles most often faced by organisations were surveillance, smear campaigns, death threats and murder.⁴

At the 2021 Meeting of the Parties (MoP) to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), the MoP, alarmed by the situation faced by environmental defenders, established the Special Rapporteur as a Rapid Response Mechanism.⁵ The Aarhus Convention is a regional convention under the United Nations Economic Commission for Europe, adopted in 1998 in Aarhus, Denmark. The obligations posed by the Aarhus Convention on its Parties are directed to the public rather than to other Parties of the Convention.⁶

¹ Forst M. (2024), *State repression of environmental protest and civil disobedience: a major threat to human rights and democracy*, https://unece.org/sites/default/files/2025-09/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf, p. 4.

² Economic Commission for Europe, *Excerpt from the addendum to the report of the seventh session of the Meeting of the Parties, Decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, ECE/MP.PP/2021/2/Add.1, p 2.

³ Forst (2024), p. 6.

⁴ Victor Åström(2019), *Environmental defenders under attack – The threats facing people who protect nature*, Swedish Society for Nature Conservation Retrieved 14.02.26 from https://cdn.naturskyddsforeningen.se/uploads/2021/05/11102844/environmental_defenders_under_attack_eng.pdf, p. 24

⁵ Forst M. (2025), *Guidelines on Peaceful Environmental Protest and Civil Disobedience*, Secretariat of the Aarhus Convention, Retrieved 07.02.26 from https://unece.org/sites/default/files/2025-10/Aarhus_SR_EnvDef_Guidelines_Right%20to%20Peaceful%20Environmental%20Protest_Civil%20Disobedience_ENG_0.pdf, p. 2.

⁶ Ebbesson J. (2014), *The Aarhus Convention Implementation Guide*, United Nations Economic Commission for Europe, p. 15.

In October 2025, the Special Rapporteur published *Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience*. The document is not legally binding⁷, a status supported by Decision VIII/9 on promoting the effective protection of environmental defenders taken by the MoP in 2025⁸. The Special Rapporteur argues that environmental defenders exercising civil disobedience, subject to certain conditions, are protected by art. 3(8) of the Aarhus Convention. The Special Rapporteur further argues that civil disobedience is a form of peaceful protest, in turn protected by art. 21 of the International Covenant on Civil and Political Rights (ICCPR).⁹ Although the recently published Guidelines focus heavily on civil disobedience and peaceful protest in relation to the protection offered by article (art.) 3(8) of the Aarhus Convention, the two behaviours are not explicitly addressed in the Aarhus Convention. Furthermore, the Aarhus Convention Compliance Committee (ACCC) and the MoP have yet to find that a Party has breached their obligations under the Aarhus Convention by not sufficiently complying with art. 3(8) in relation to civil disobedience. The ACCC has not found non-compliance in relation to either civil disobedience, or peaceful protest nor has it found that such actions do not fall within the scope of art. 3(8) of the Aarhus Convention. Hence, there is no decision establishing the limits of protection afforded by art. 3(8) of the Aarhus Convention, which creates an uncertainty of what actions fall within the scope of art. 3(8) of the Aarhus Convention.

Within Europe, there have been examples of anti-protest legislation and an increase in restrictions on freedom of assembly through various laws, as well as “heavy-handed policing of peaceful protest”¹⁰. The report also states that when specifying obligations regarding environmental human rights defenders (environmental defenders¹¹), the ICCPR provides a foundation.¹² In these circumstances, the European Union’s (EU) structure becomes an interesting legal framework for analysis. Additionally, EU human rights law poses obligations to protect, what the EU defines as, ‘environmental human rights defenders’. Furthermore, the EU has adopted several legal acts addressing the challenges faced by environmental human rights defenders.¹³

In light of the increasingly hostile attitude towards environmental defenders and the Special Rapporteur’s *Guidelines on Peaceful Environmental Protest*

⁷ Forst (2025), p. 3.

⁸ Economic Commission for Europe, *Decision VIII/9 on promoting the effective protection of environmental defenders*, ECE/MP.PP/2025/CRP.5, para. 10.

⁹ Forst (2025), p. 6.

¹⁰ Ituarte Lima C. and Sjöstedt B. (2025), *Environmental human rights defenders: New developments and their implications for the European Union and the European Parliament*, The European Parliament. [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754480/EXPO_STU\(2025\)754480_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754480/EXPO_STU(2025)754480_EN.pdf), p. 10.

¹¹ The scope and content of ‘environmental defender’ and ‘environmental human rights defender’ respectively will be discussed in Section 3. ‘Environmental human rights defender’ should be considered synonymous to ‘environmental defender’.

¹² Ituarte Lima and Sjöstedt (2025), p. 12.

¹³ Compare, *ibid*, p. 1-2.

and Civil Disobedience this graduate thesis aims to examine the possibilities of protection that are available for environmental defenders exercising civil disobedience as a part of the right to freedom of assembly within the framework of EU-law.

1.2 Research question and delimitations

To fulfil the purpose of the graduate thesis, I will try to answer the following questions:

- What possibilities for protection are available for environmental defenders exercising civil disobedience within the EU through art. 3(8) Aarhus Convention and art. 21 ICCPR?
 - Who falls within the definition environmental defender within the EU?
 - Does civil disobedience fall within the scope of art. 3(8) Aarhus Convention and art. 21 ICCPR?

The graduate thesis focuses on environmental law, human rights law and EU law. These areas of law are addressed only to the extent that they are relevant to the research questions.

Due to the regional setting of the Aarhus Convention and the legal structure of the EU, this text focuses on civil disobedience and peaceful protest as they are depicted within the EU. Therefore, the graduate thesis focuses on environmental defenders who are also EU citizens. The EU has been chosen as the legal setting for the graduate thesis due to its legal structure and its subsequent effect on the legal structures and human rights protection of its Member States (MS). Additionally, of the Aarhus Convention's 48 Parties, 27 are MS of the EU. With the EU also being Party to the Aarhus Convention, the EU and its MS constitute an absolute majority within the Convention.¹⁴ National laws of the EU's MS will not be elaborated on in detail but will be referred to when necessary.

Although civil disobedience can constitute an exercise of various freedoms and rights, this graduate thesis focuses on civil disobedience as an exercise of the right to freedom of assembly. This choice is mainly based on the Special Rapporteur's *Guidelines on Peaceful Environmental Protest and Civil Disobedience* in which he argues that civil disobedience is a part of international human rights law through the right to peaceful assembly in art. 21 of the

¹⁴ United Nations Treaty Collection, Chapter XXVII Environment, 13. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Retrieved 22.05.26 from https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en.

ICCPR.¹⁵ It is therefore fitting to interpret civil disobedience through the lens of the right to peaceful assembly. As the Special Rapporteur bases his statements on the ICCPR and the decisions and guidance of the Human Rights Committee (HRC), the ICCPR is examined. However, the aim is to examine the Aarhus Convention and its art. 3(8) as the main legal instrument.

To study the situation of environmental defenders in the EU, this graduate thesis examines the EU system of fundamental rights. This system is important because it contains provisions on e.g. freedom of assembly. To study the EU's system of fundamental rights, the European Convention of Human Rights (ECHR) and the European Court on Human Rights (ECtHR) are examined. The choice is motivated by the special relationship between the ECtHR and the Court of Justice of the European Union (CJEU), as well as the relationship between the European Charter of Fundamental Rights (the Charter) and the ECHR.

1.3 Method, material and disposition

To begin, it is necessary to establish the contents of two main terms: 'environmental defender' and 'civil disobedience'. An initial conceptualisation of the two terms is necessary as they are the object of the subsequent examination and constitute the first two sections (Section 2 and 3). The second part (Section 4) and the fourth part (Section 5) focus on art. 3(8) of the Aarhus Convention, as well as relevant EU provisions and processes to determine the legal order in which these two terms must be situated. Lastly, an analysis (Section 6) situates these two terms within the EU legal landscape and seeks to determine the possibilities for an environmental defender exercising civil disobedience within the EU.

The graduate thesis is primarily based on and inspired by two key works: *Are climate activists protected by the Aarhus Convention? A note on Article 3(8) Aarhus Convention and the new Rapid Response Mechanism for environmental defenders* by Theresa Weber and the Special Rapporteur's newly published *Guidelines on Peaceful Environmental Protest and Civil Disobedience*. Weber examines art. 3(8) of the Aarhus Convention, the ACCC and the Special Rapporteur¹⁶, while the Special Rapporteur's Guidelines aim to aid states, and interested states members of the UN in their implementation of art. 3(8) of the Aarhus Convention.¹⁷ These two works are also guiding in determining the material scope of this graduate thesis.

The conceptualisations in Sections 2 and 3 are based on the legal doctrinal method, as the two sections aim to establish *de lege lata* in relation to 'civil

¹⁵ Forst (2025), p. 6.

¹⁶ Weber T., 'Are climate activists protected by the Aarhus Convention? A note on Article 3(8) Aarhus Convention and the new Rapid Response Mechanism for environmental defenders', *Reciel*, (2023) Vol 32 No 1, pp. 67-76, p. 67.

¹⁷ Forst (2025), p. 3.

disobedience’ and the ‘environmental defender’. The legal doctrinal method examines and interprets different sources of law to determine the law as it is.¹⁸ The initial determination of the legal stance on civil disobedience therefore draws on convention texts, relevant decisions taken by UN enforcement bodies, reports and literature. The graduate thesis also builds on Teresa Weber’s reflection on a possible ACCC stance on the question of civil disobedience, as such a stance has not yet been announced. Material from the HRC and case law from the ECtHR is also used, although not directly related to the Aarhus Convention, to examine principles, interactions and development of law. Case law from the ECtHR is given particular importance because the CJEU, through its interpretation of the ECHR as a general principle of law, instituted the protection of fundamental rights.¹⁹

The legal doctrinal method, complemented by the EU legal method, is used to account for relevant EU provisions (Section 5). Such an account is necessary as it constitutes the framework for the later analysis. To examine the possibilities of protection within EU law, it is vital to determine the structure of EU law and the relevant legal frameworks. Materials used to account for the EU legal framework are mainly case law and literature. Significant works include *Krämer’s Environmental EU Law* by Ludwig Krämer and Christopher Badger and *EU Law, Texts, Cases and Materials* by Paul Craig and Gráinne De Búrca. EU legal acts are often vague and offer little guidance, which is why case law from the CJEU is necessary when encountering questions of implementation. The CJEU’s case law is also allotted great importance within the EU legal method.²⁰ Further motivation for the use of CJEU case law lies in the CJEU’s creation and application of general principles of law²¹, which are also of great use within the EU legal method.²² General principles can be used to examine the legality of secondary legislation and to interpret secondary legislation pursuant to the general principles.²³ When interpreting EU law, the CJEU chooses to interpret EU law in the way it considers to be most profitable in relation to the development of the EU legal system.²⁴ Further, in the evolution of EU law the CJEU is often a driving force²⁵, which is reflected in the importance given to the CJEU in this graduate thesis.

As the purpose of the text extends beyond establishing *de lege lata* to analysing the law, the legal analytical method is also used.²⁶ The legal analytical

¹⁸ Sandgren C. (2025), *Rättsvetenskap för uppsatsförfattare*, sjätte upplagan, Nordstedts Juridik, p. 52.

¹⁹ Reichell J. (2025) ‘EU-rättslig metod’, in Nääv M. and Zamboni M. (eds.) *Juridisk metodlära*, third edition, Studentlitteratur, pp. 177-228, p. 203.

²⁰ Reichell (2025), p. 210.

²¹ Ibid.

²² Ibid, p 203.

²³ Ibid.

²⁴ Hettne J. (2023), *EU-rättslig metod*, second edition, Nordstedts Juridik, p. 49.

²⁵ Reichell (2025), p. 210.

²⁶ Sandgren (2025), p. 54.

method does not necessarily conclude that there is one correct legal answer, but rather that there can be multiple answers to a legal issue.²⁷ The method is fitting, as the aim of this graduate thesis is to explore avenues of protection offered by the EU legal system to environmental defenders in their exercise of civil disobedience, based on the existing EU and international legal framework. The legal analytical method is used to assess the possible avenues within the EU legal framework for an environmental defender to be protected in the exercise of civil disobedience.

²⁷ Sandgren (2025), p. 54.

2 Civil disobedience as a right

2.1 Civil disobedience

The Special Rapporteur regards civil disobedience as a form of peaceful protest protected by the right to freedom of assembly under art. 21.²⁸ The right to freedom of assembly is also enshrined in art. 12 of the Charter and art. 11 of the ECHR.

Before examining whether civil disobedience is covered by the abovementioned legal frameworks, it is necessary to establish what civil disobedience is and what it is not. Initially, it is useful to briefly distinguish civil disobedience from conscientious objection. Lawrence Quill distinguishes the two by the fact that conscientious objection is practised by the individual, while civil disobedience is engaged in by a group, a factor which distinguishes the two in most cases.²⁹ The question of the collective aspect of civil disobedience will be revisited in Section 3.

John Rawls defines civil disobedience as “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government”³⁰. Rawls further argues that by engaging in civil disobedience one effectively proclaims that the “principles of social cooperation among free and equal men are not being respected”³¹. In Rawls’ account of civil disobedience, the law being broken need not be the law deemed unjust.³² Further, the courts in a constitutional regime are able to judge the legality of certain cases of civil disobedience. Hence, in the end, the law objected to by civil disobedience might be found unconstitutional.³³

Despite being on the outskirts of law, civil disobedience as an act still expresses loyalty to the law. This expression of loyalty lies in actions being non-violent and in the acceptance of a subsequent penalty.³⁴ Quill also states that “civil disobedience entails the acceptance of punishment and guilt”³⁵.

Based on and supported by the above, I argue that civil disobedience does not question the authority of the law or the state.³⁶

²⁸ Forst (2024), p. 5; Forst (2025), p. 6.

²⁹ Quill L. (2009), *Civil disobedience: (Un)Common Sense in Mass Democracies*, Palgrave Macmillan London, p. 13.

³⁰ Rawls J. (1999), *Theory of justice*, Harvard University Press, p. 320.

³¹ Ibid.

³² Ibid, p. 320.

³³ Ibid, p. 321.

³⁴ Ibid, p. 322.

³⁵ Quill (2009), p. 8-9.

³⁶ See also Rawls (1999), p. 322.

2.1.1 The justification of civil disobedience

To qualify as civil disobedience an act must, according to Rawls, be nonviolent. The act must be conducted in public, with fair notice and aimed at public principles.³⁷ Rawls considers three main conditions that could guide the determination of whether civil disobedience is justified.³⁸ Firstly, civil disobedience should be used only in regard to certain types of serious infringements, such as the principles of equal liberty and fair equality of opportunity.³⁹ Secondly, although civil disobedience should be considered a last resort, it is not necessary to exhaust all legal means before turning to actions of civil disobedience. Instead, it is enough that past actions have not been fruitful in swaying the majority and that further attempts to do so are not expected to succeed.⁴⁰ Furthermore, Rawls assumes that there is a limit for the number of groups that can exercise civil disobedience without negative consequences regarding respect for the law.⁴¹

It is important to recognise that despite civil disobedience being illegal, as it presumes a violation of law, it is not necessarily to be considered a crime.⁴² This line of thought is motivated partly by the fact that civil disobedience is “rarely contemplated in any specific penal code”⁴³. Additionally, there may be other factors at play which may exclude or modify culpability, exempt penalty, or exclude the anti-juridical.⁴⁴ Furthermore, although illegal, civil disobedience does not necessarily correspond to the illegality conveyed in the criminal schema and can at times be supported by alternative norms. Such norms can be of different character: it can be provisions that substitute the provision against which civil disobedience violates, or a provision which protects the law which civil disobedience violates.⁴⁵

2.2 Special Rapporteur on Environmental Defenders under the Aarhus Convention and the Guidelines on Peaceful Environmental Protest and Civil Disobedience

At the 7th MoP, Parties to the Aarhus Convention established a rapid response mechanism in relation to art. 3(8) of the Aarhus Convention.⁴⁶ The rapid response mechanism was established with respect to the “serious situation faced

³⁷ Rawls (1999), p. 320-321.

³⁸ Ibid, p. 326, 329.

³⁹ Ibid, p. 326.

⁴⁰ Ibid, p. 327-328.

⁴¹ Ibid, p. 328.

⁴² Falcón y Tella M.J, ‘Legal justification for civil disobedience?’, *13 Finnish Yearbook of International Law*, vol. 13 (2002), pp. 19-34, p. 21.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid, p. 22.

⁴⁶ ECE/MP.PP/2021/2/Add.1.

by environmental defenders”⁴⁷, and the need to provide these environmental defenders with greater protection.⁴⁸ The mandate is under the authority of and reports to the MoP⁴⁹ and takes the form of a Special Rapporteur. The Special Rapporteur acts on submissions made by the public, Parties to the Convention and the Aarhus Secretariat⁵⁰ and has the authority to take measures to protect environmental defenders.⁵¹ Such measures include the use of diplomatic channels, requests to the Chair of the Bureau of the Aarhus Convention to use his or her diplomatic channels, alerting other human rights bodies, if appropriate cooperating with them and issuing both immediate and ongoing protection measures.⁵² As the Special Rapporteur is complementary to the ACCC, a complaint may be submitted to both bodies. In addition to keeping the ACCC informed of ongoing work, the Special Rapporteur may also make referrals to the ACCC. Vice versa, in relation to art. 3(8) of the Aarhus Convention, the ACCC can request the advice and assistance of the Special Rapporteur.⁵³

According to the Special Rapporteur, civil disobedience should be considered a form of protest, and is characterised by the following four criteria: non-violent, public, deliberate breaking of the law, and relating to a matter of public interest. The Special Rapporteur regards these four criteria as cumulative and justifies the protection of civil disobedience by referring to art. 21 of the ICCPR and the HRC’s General Comment No. 37 issued on the same article, arguing that civil disobedience is protected under international human rights law. Hence, the Special Rapporteur includes civil disobedience within the scope of peaceful protest.⁵⁴ On this basis, this graduate thesis will also examine civil disobedience under the ICCPR and General Comment No. 37.

Regarding restrictions on the right to peaceful protest, the Special Rapporteur argues that such measures must fulfil three criteria, even if they are taken after an event has already occurred. Such measures must “(a) be prescribed by law; (b) pursue one or more legitimate aims; and (c) be necessary, that is to say proportionate to achieve that aim”.⁵⁵

2.3 International Covenant on Civil and Political Rights

⁴⁷ ECE/MP.PP/2021/2/Add.1, p. 2.

⁴⁸ Ibid, para 6.

⁴⁹ Ibid, Annex, para. 16.

⁵⁰ Ibid, Annex, para. 2.

⁵¹ Ibid, Annex, para 7.

⁵² Ibid, Annex, para 7.

⁵³ Ibid, Annex, para 15.

⁵⁴ Forst (2025), p. 6.

⁵⁵ Ibid, p. 8.

The Parties to the ICCPR are obliged directly, and with binding effect, to individuals in regards of its provisions.⁵⁶ The monitoring body of the ICCPR is the HRC.⁵⁷

2.3.1 Art. 21 of the ICCPR

Art. 21 of the ICCPR reads as follows.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

For a peaceful assembly to enjoy the protection of art. 21 ICCPR, two criteria must be met. Firstly, the action needs to fall “within the scope of the protection offered by the right, in that it amounts to participation in a peaceful assembly”⁵⁸. Secondly, it needs to be established, in relation to the specific context, whether possible restrictions on the right are legitimate.⁵⁹ The reader can also observe that the collective aspect of civil disobedience can be recognised in the freedom of assembly as codified in art. 21 ICCPR as well.

The scale or nature of peaceful assemblies protected by the article can vary, but even when they intentionally or unintentionally cause disruption, assemblies are protected by art. 21 ICCPR. Such consequential disruption can entail disruption of traffic or economic activity. Hence, risks or disruptions caused by peaceful assemblies should be dealt with within the provisions of the ICCPR.⁶⁰

In *General Comment No. 37 (2020) on the right of peaceful assembly (art 21)*, the HRC concludes that collective civil disobedience, as long as it is non-violent, can fall within the protection afforded by art. 21 of the ICCPR.⁶¹ However, the HRC does not provide any other criteria or guidelines to further delineate this protection. In establishing that civil disobedience can be protected under the ICCPR, the HRC refers to para 16 of its *Concluding observations on the initial report of Macao, China*, adopted at the HRC’s 107th session (11-28 March 2013).⁶² In the concluding observation, the HRC

⁵⁶ Forst (2025), p. 6.

⁵⁷ Ibid, p. 4.

⁵⁸ United Nations Human Rights Committee, General comment No. 37 (2020) on the Right of Peaceful Assembly (article 21), CCPR/C/GC/37, para. 11. In the source, the term ‘peaceful assembly’ was marked by quotation marks. For clarity, these quotation marks have been removed.

⁵⁹ Ibid.

⁶⁰ Ibid, para 7.

⁶¹ Ibid, para 16.

⁶² Ibid, para 16, footnote 16.

expresses concern regarding the establishment of collective disobedience as an offence in Macao, China's Penal Code.⁶³

However, the HRC does not comment further on civil disobedience here either. The UN Special Rapporteur on Peaceful Assembly has also expressed their views on the matter. In a communication to Italy, the UN Special Rapporteur on Peaceful Assembly, together with several other Special Rapporteurs, concluded that civil disobedience can be covered by the scope of peaceful assembly under art. 21 ICCPR, so long as it is peaceful.⁶⁴

2.4 The European Convention of Human Rights

Before the institution of the Charter, the ECHR was the main source of inspiration for the CJEU in its protection of human rights.⁶⁵ Since the CJEU expanded its jurisdiction to include the review of MS compliance with fundamental rights, the two instruments risk conflict as they somewhat overlap in scope.⁶⁶ Although the EU is still not a party to the ECHR, its provisions work as a minimum level of protection throughout the EU.⁶⁷ The two conventions are closely intertwined – meetings between the two courts are held regularly. Additionally, the CJEU and the ECtHR both refer to each other in their respective case law.⁶⁸ All EU MS are also Parties to the ECHR.⁶⁹

2.4.1 Art. 11 of the ECHR

Art. 21 ICCPR corresponds to art. 11 ECHR.⁷⁰ The ECHR has 47 Parties, of which 46 are also Parties to the ICCPR. Notably, the HRC has been of the view that restrictions permitted under the ECHR are broader-based than restrictions permissible under the ICCPR.⁷¹ Comparing the ECHR with the ICCPR in terms of violations of the respective instruments, the ECtHR does not take the same level of scrutiny as the ICCPR. Hence, the margin of appreciation is one of the main differences between the ICCPR and the ECHR.⁷²

⁶³ United Nations Human Rights Committee, Concluding Observations on the Initial Report of Macao, China, adopted by the Committee at its 107th session (11-28 March 2013), CCPR/C/CHN-MAC/CO/1, para 16.

⁶⁴ Communication from the Special Rapporteur on Peaceful Assembly et al. OL ITA 7/2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29549>, p. 5.

⁶⁵ Craig P. and De Búrca G. (2024), EU, law texts cases and materials, eighth edition, Oxford University Press, p. 414.

⁶⁶ Ibid, p. 450.

⁶⁷ Craig and De Búrca (2024), p. 414.

⁶⁸ Ibid, p. 456-457.

⁶⁹ Council of Europe Portal, States Parties to the Convention. Retrieved 23.02.26 from <https://www.coe.int/en/web/cpt/states>.

⁷⁰ Taylor M. (2020), *A Commentary on the International Covenant on Civil and Political Rights*, Cambridge University Press, p. 591.

⁷¹ Ibid, p. 25.

⁷² Taylor (2020), p. 14.

The right to freedom of assembly and association applies both to organisers and participants of demonstrations, and the protection is independent of procedural requirements that may be found in domestic legislation.⁷³ With regards to the scope of protection offered by the article, all gatherings, eg. activities such as sit-ins and processions, can be included.⁷⁴ However, the ECtHR has deemed that deliberate roadblocking falls outside of the core of art. 11 ECHR.⁷⁵ There are several restrictions on freedom of assembly that constitute infringements of the freedom. An example would be a conviction, despite a low penalty, due to participation in a demonstration.⁷⁶ Although national authorities are often allowed to require notification or authorisation for an assembly to be allowed nationally, such requirements should not “represent a hidden obstacle to the freedom”⁷⁷.

The ECtHR has held that and even though assemblies may disturb or offend, they are covered by the scope of art. 11 ECHR.⁷⁸ Additionally, according to the ECtHR the right should be interpreted broadly. Alice Dejean de la Bâtie and Sharon Okunrobo Perez argue that art. 11 ECHR, together with the right to freedom of expression in art. 10 ECHR, cover civil disobedience. However, they provide no explicit reference to the reason for their conclusion.⁷⁹ Building on this understanding, the thesis will now proceed to investigate ECtHR case law relevant to civil disobedience.

Although there is no explicit right to civil disobedience in art. 11 ECHR, the ECHR has held that the right of freedom of assembly protects all gatherings except those where partakers and organisers “have violent intentions incite violence or otherwise reject the foundations of a democratic society”⁸⁰. In *Shmorgunov and Others v. Ukraine*, Application Number 15367/14 et al.⁸¹, the ECtHR established three factors determining if a person falls within the scope of art. 11 ECHR. These three factors focus on violence and harm. The ECtHR considered the applicant’s intentions when joining the assembly, the

⁷³ Gerards J. and Broeksteeg H. (2023). ‘The Right to Freedom of Association, Assembly and Demonstration’, in Gerards J. (eds.) *Fundamental Rights: The European and International Dimension*, Cambridge: Cambridge University Press, pp. 116–149, p. 118.

⁷⁴ Ibid.

⁷⁵ Ibid, p. 119.

⁷⁶ Ibid, p. 125.

⁷⁷ Ibid, p. 129.

⁷⁸ Dejean de la Bâtie A and Okunrobo Perez S. (2026) ‘Labelling Activists as Terrorists: The Securitisation of Peaceful Protest in Europe’, *International Journal for the Semiotics of Law*. Retrieved 22.04.26 from <https://doi.org/10.1007/s11196-026-10423-y>, p. 23.

⁷⁹ Ibid.

⁸⁰ European Court of Human Rights (2025), Guide on the case-law of the European Convention on Human Rights, Council of Europe, https://ks.echr.coe.int/documents/d/echr-ks/guide_mass_protests_eng, p. 7; Compare also *Fáber v. Hungary*, Application Number 40721/08 (Decision 24 July 2012), para 37.

⁸¹ *Shmorgunov and Others v. Ukraine*, Application Number 15367/14 et al. (Decision 21 January 2021).

intentions of the assembly and its organisers as well as whether the applicant had inflicted harm upon another person.⁸²

However, this interpretation differs from a recent ECtHR judgement. In *Bodson et al. v. Belgium*, application number 35834/22 et al.⁸³, the ECtHR upheld the national court's conviction of a blocking of a motorway during a general strike and deemed the striker's "presence and collective organisation as sufficient for criminal liability"⁸⁴. The ECtHR deemed it proportionate to restrict freedom of assembly due to public safety.⁸⁵ However, the fact that an assembly has not been priorly authorised and the consequence that the assembly is unlawful does not entail that national authorities may act as they wish. Authorities must still respect the principle of proportionality.⁸⁶

Although not specifically recognised, I would argue that civil disobedience may fall within the limits of art. 11 ECHR. For example, in 2006, the ECtHR deemed that a national police force acted disproportionately and unnecessarily when they forcefully intervened in an unlawful march. In the same case, the ECtHR ruled that peaceful gatherings should be shown a certain amount of tolerance.⁸⁷

⁸² European Court of Human Rights (2025), p. 7; Compare also *Shmorgunov and Others v. Ukraine*, para 491.

⁸³ *Bodson et al. v. Belgium*, Application Number 35834/22 et al. (Decision 16 January 2025).

⁸⁴ Bâtie and Perez, p. 10.

⁸⁵ Ibid.

⁸⁶ European Court of Human Rights (2025), p. 15.

⁸⁷ Ibid, p. 16-17.

3 Who is an environmental defender?

3.1 Environmental defender according to the Aarhus Convention

The Aarhus Convention itself does not provide a definition of the term ‘environmental defender’. Nor does the ACCC provide any guiding material on the term. In decision VII/9 establishing the rapid response mechanism, an environmental defender is defined as “any person exercising his or her rights in conformity with the provisions of the Convention”⁸⁸. The definition is thus quite broad and does not limit environmental defenders in how they exercise their right. In a 2024 Position Paper, the Special Rapporteur defines environmental defenders as organisations and people who “are taking action to defend their human right, and the human right of future generations, to a clean, healthy and sustainable environment, as recognised by the United Nations General Assembly”⁸⁹. The Special Rapporteur continues by stating that these people and organisations are exercising their rights to freedom of expression, association and peaceful assembly and argues that they are classified as environmental defenders regardless of how they choose to exercise those rights.⁹⁰ Importantly, while the definition provided by the MoP in decision VII/9 targets persons, the Special Rapporteur also extends the concept to organisations.⁹¹

In relation to Quill’s perception of civil disobedience being exercised by a group rather than an individual, the scope of art. 3(8) of the Aarhus Convention becomes important. For the remainder of this graduate thesis, it will be assumed that although the action of civil disobedience is exercised by a group, it is the individuals of that group who are protected by art. 3(8) of the Aarhus Convention, and not necessarily the group as a whole.

3.1.1 The scope of Art. 3(8) of the Aarhus Convention

Weber offers an alternative interpretation of the term ‘environmental defender’. Weber argues that an environmental defender protected by the Aarhus Convention is not only one who exercises rights as they are granted by the Aarhus Convention, since the protection offered by art. 3(8) of the Aarhus Convention is not limited to the rights granted by the convention. Instead, the definition can be interpreted as having a broader scope.⁹² This interpretation is similar to the one offered by the Special Rapporteur in his 2025 Guidelines, where he states that: “Article 3 (8) applies to all situations in which members of the public seek access to information, public participation or access to

⁸⁸ ECE/MP.PP/2021/2/Add.1, p. 2.

⁸⁹ Forst (2024), p. 4.

⁹⁰ Ibid.

⁹¹ Ibid, Compare also to Forst (2025), p. 10; Aarhus Convention art 2(4).

⁹² Weber (2023), p. 72.

justice in order to protect their right to live in an environment adequate to their health or well-being.”⁹³

Weber argues that a person exercising a right afforded by national law, in conformity with the Aarhus Convention, can trigger the protection provided by art. 3(8) of the Aarhus Convention if they are acting with the objective of promoting sustainable development and the right to a healthy environment. These objectives can be deduced from the broader objectives of the Aarhus Convention through reading the preamble in conjunction with the Convention’s art. 1.⁹⁴

Weber exemplifies that the national right to freedom of assembly could fall within the protection of art. 3(8) of the Aarhus Convention. Weber emphasises that the exercise of rights in conformity with the Aarhus Convention does not explicitly require actions to be non-violent or peaceful and argues that the definition of an ‘environmental defender’ therefore could be broader than the definition of ‘environmental human rights defender’. However, Weber also concludes that even the term ‘environmental defender’ cannot include activities that involve physical violence against other people.⁹⁵

Although Weber accepts the possibility of ‘environmental defender’ being interpreted broadly, she leaves open the possibility of civil disobedience not being covered by the protection of art. 3(8) of the Aarhus Convention. Her reasoning is based on the fact that penalisation of civil disobedience is usually not explicitly covered by any right, and that penalisation is inherent in the concept.⁹⁶

3.2 Environmental defender in the EU

A report requested by the European Parliament’s Subcommittee on Human Rights (DROI), *Environmental human rights defenders: New developments and their implications for the European Union and the European Parliament*, concludes that the term ‘environmental defenders’, amongst others, is used when referring to ‘environmental human rights defenders’. Other terms used are ‘climate activists’ and ‘climate defenders’.⁹⁷

The EU provides Commission Recommendations (EU) 2022/758⁹⁸, as a means by which environmental defenders are protected according to art. 3(8) Aarhus Convention. The recommendation is noteworthy because it

⁹³ Forst (2025), p. 2.

⁹⁴ Weber (2023), p. 72.

⁹⁵ Ibid.

⁹⁶ Ibid, p. 72-73.

⁹⁷ Ituarte-Lima and Sjöstedt (2025), p. 5.

⁹⁸ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’).

concentrates on journalists and human rights defenders, but not explicitly on environmental defenders. However, the recommendation establishes that human rights defenders play an important part in environmental protection.⁹⁹ The report produced for the DROI establishes that environmental defenders have recently been defined as “human rights defenders working in environmental matters”¹⁰⁰. Hence, there seems to be a tendency of the EU to consider environmental defenders as a subgroup of human rights defenders.

The notion of environmental defenders as constituting human rights defenders seems to be both a bit broader and narrower than the Aarhus Convention’s and the Special Rapporteur’s definition of the term. While environmental defenders within the EU seem to enjoy the protection afforded human rights defenders, they also appear limited in their protection under the Aarhus Convention.

In its 2025 National Implementation Report (NIR), the EU states that:

Any decision by EU institutions that would penalise, persecute or harass a person on the sole ground that they have exercised rights under the Aarhus Convention would constitute a misuse of powers and be illegal¹⁰¹

This statement nudges towards a perception of environmental defenders enjoying limited protection – it leaves room for an open-ended interpretation of the protection offered to environmental defenders under art. 3(8) of the Aarhus Convention. Taking the example of civil disobedience, one could argue that the EU’s statement allows for penalisation, persecution or harassment of an environmental defender in respect of the law broken through his exercise of art. 3(8) of the Aarhus Convention, as he or she is not solely exercising their Aarhus rights but operating in a legal landscape where an action can fall within several other legal categories.

⁹⁹ Commission Recommendation (EU) 2022/758, para 6, 7.

¹⁰⁰ Ituarte-Lima and Sjöstedt (2025), p. 5.

¹⁰¹ United Nations Economic Commission for Europe, Aarhus Convention National Implementation Reports, Reporting year 2025, European Union, Question 3, Article 3 paragraph 8, Aarhus Clearinghouse. Retrieved 23.02.26 from https://aarhusclearinghouse-stg.unece.org/national-reports/reports?field_nr_report_language_aux_2_value=en&field_nr_report_language_aux_value=en&field_nr_q_year_target_id_verf%5B%5D=19169&field_nr_party_target_id_verf%5B%5D=17517&combine=&field_nr_answer_question_target_id_verf%5B%5D=16728.

4 Art. 3(8) of the Aarhus Convention

Art. 3 of the Aarhus Convention establishes the general provisions of the convention, e.g. that Parties should promote the convention's principles in certain international settings regarding the environment (art. 3(7)). Art. 3(8) of the Aarhus Convention reads as follows:

Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

4.1.1 The ACCC and its legal impact

The Aarhus Convention is accompanied by the ACCC, established at the first MoP of the Aarhus Convention and tasked to review Parties' compliance with the Convention.¹⁰² In decision I/7 adopted by the MoP in 2002, the ACCC was entrusted with certain tasks, including examining cases of compliance and, if appropriate, making recommendations on the matter.¹⁰³ The ACCC presents its findings and recommendations to the MoP, who can decide on measures to bring a Party back to compliance with the Convention.¹⁰⁴ The ACCC can consider cases of compliance submitted by Parties to the Convention, referrals of compliance made by the Aarhus Secretariat and communications from the public.¹⁰⁵ The goal of the compliance process is to bring Parties that have been found non-compliant back to compliance. Hence, when a decision of non-compliance has been endorsed at the MoP, the ACCC continues its work by monitoring the concerned Party's implementation of the recommendations.¹⁰⁶

There has been discourse on the legal nature of the ACCC's findings and recommendations. Decision I/7 of the 2002 MoP does not establish their legality.¹⁰⁷ There are several different legal statuses that should be considered. The dominant view has been that the ACCC's findings and recommendations are not binding in nature but rather authoritative interpretations. Recently, the narrative has shifted and there are now those who consider that the ACCC's findings are binding interpretations.¹⁰⁸ Such arguments focus on the Vienna Convention of the Law of Treaties, more specifically art. 31(3)(a) of the

¹⁰² Economic Commission for Europe, *Decision N I/7 review of compliance*, ECE/MP.PP/2/Add.8, p. 1.

¹⁰³ *Ibid*, paras 13-14.

¹⁰⁴ *Ibid*, para 37.

¹⁰⁵ *Ibid*, paras 15-18.

¹⁰⁶ Samvel G., 'Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice', *Transnational Environmental Law*, 9:2 (2020), pp. 211-238, p. 216.

¹⁰⁷ *Ibid*, p. 216.

¹⁰⁸ *Ibid*, p. 212.

Vienna Convention of the Law of Treaties, which stipulates that the interpretation of a treaty should take into account “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions”¹⁰⁹.

There are those who, similarly but not completely in the same way, argue that when the findings of the ACCC can be considered to explain provisions or interpret the meaning that the Aarhus Convention poses on its Parties, the findings can be considered binding as far as they establish that a Party has breached the relevant provisions.¹¹⁰ The binding nature of the rulings in this interpretation is slightly narrower in scope and seems to concern only the specific Party and the specific breach, while the former view of legality seems to accept the ACCC’s findings as binding interpretations in general, that is, not in relation to a specific action and Party. Others argue that the ACCC’s findings and recommendations constitute soft law and thus non-binding. However, in the capacity of soft law, ACCC rulings would still create certain expectations on future conduct by Parties to the Aarhus Convention as well as enhancing Parties’ understanding of the Aarhus provisions.¹¹¹

For the purposes of this text, the ACCC’s findings will be considered legally binding, authoritative interpretations of the Aarhus Convention upon endorsement of the MoP. Apart from the reasoning above, this decision is also supported by a statement from the European Environmental Bureau, that the ACCC’s findings are legally binding once endorsed by the MoP.¹¹²

4.1.2 Breach pictured by the ACCC

For the purposes of this graduate thesis, it is interesting to consider what would be considered a breach of art. 3(8) of the Aarhus Convention would render a Party non-compliant. There are only a handful of cases where the ACCC has dealt with art. 3(8) of the Aarhus Convention in depth.¹¹³ There are no cases where the question of civil disobedience has been examined. Nonetheless, relevant guidelines for breach of art. 3(8) of the Aarhus Convention have come from the ACCC’s findings and recommendations. These guidelines are also important in assessing whether civil disobedience could fall within the scope of art. 3(8) of the Aarhus Convention or not.

¹⁰⁹ Art. 31 Vienna Convention of the Law of Treaties.

¹¹⁰ Samvel (2020), p. 217.

¹¹¹ Ibid.

¹¹² European Environmental Bureau, *The EU’s non-compliance with the Aarhus convention: a brief history*, https://eeb.org/wp-content/uploads/2024/12/EU-non-compliance-with-Aarhus-Convention-2024_Draft-V2_FH.pdf, p. 1.

¹¹³ Weber (2023), p. 70.

Based on a non-compliance case against Belarus, ECE/MP.PP/C.1/2017/19¹¹⁴, Weber has identified four cumulative conditions established by the ACCC regarding breach of art. 3(8) of the Aarhus Convention. These four criteria will be outlined below, and subsequently used as a framework for analysis and guiding material when considering civil disobedience as a potential right protected by the Aarhus Convention.¹¹⁵

1. The complainant must be an environmental defender. The ACCC adopted a broad scope in regards to who was to be considered an environmental defender stating that art. 3(8) of the Aarhus Convention is not limited to situations covered by art. 4, 9 or 3. Weber interprets the ruling as in turn extended the application of the Aarhus Convention, through its art. 3(8) to also be applicable to environmental matters in general.¹¹⁶

2. In order for a party to be found non-compliant, a harmful act must have occurred. Similar to the first criteria, the ACCC also opted for a broad interpretation of what should be considered a harmful act (penalized, persecuted or harassed). However, the ACCC also noted that the Parties to the convention should be allowed to justify the measures taken with respect to non-discrimination and proportionality, also stating the importance of an individual assessment of each case. The ACCC also found that Parties to the convention could be held liable for not sufficiently preventing private actors from causing harm.¹¹⁷

3. If a harmful act is considered to be a consequence of a communicant exercising their right under the Convention, the Party can be found non-compliant. The ACCC referred to the ECtHR case law on this matter, and found that it was sufficient for the communicant to provide a prima facie case of the occurrence of a harmful act. The ACCC further found that after the communicant has succeeded in proving the occurrence of a harmful act, the burden of proof to show that the harmful acts were not connected to the exercise of rights according to the Aarhus Convention shifts to the alleged non-compliant party.¹¹⁸

4. Lastly, the ACCC established that if the alleged non-compliant party could provide full remedy of the situation, violations of the obligations under art. 3(8) of the Aarhus Convention could be prevented. In other

¹¹⁴ United Nations Economic Commission for Europe, *Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus*, ECE/MP.PP/C.1/2017/19.

¹¹⁵ Weber (2023), p. 71.

¹¹⁶ Weber, p. 71; Compare ECE/MP.PP/C.1/2017/19, para 66.

¹¹⁷ Ibid; Compare ECE/MP.PP/C.1/2017/19, paras 69-70.

¹¹⁸ Ibid; Compare ECE/MP.PP/C.1/2017/19, paras 72-73.

words, if such remedy has not been achieved, the State Party can be found non-compliant.¹¹⁹

The ACCC has also stated that actions not in compliance with art. 3(8) are serious and puts the implementation of the Aarhus Convention in jeopardy.¹²⁰

Regarding civil disobedience in relation to art. 3(8) of the Aarhus Convention, the following shall be mentioned. As Weber describes civil disobedience is problematic in that in engaging in civil disobedience, penalisation as a result of such an act is also accepted as a possibility and an inherent consequence of the action.¹²¹ As such, Weber highlights that one could argue that civil disobedience is outside the scope of art. 3(8) of the Aarhus Convention.¹²² However, Weber believes that it is likely that the ACCC, if presented with a case regarding an act of civil disobedience specifically, would find that civil disobedience in fact does fall within the scope of protection in art. 3(8) of the Aarhus Convention.¹²³ Weber supports her argument by the ACCC's previous findings and the objectives behind art. 3(8) of the Aarhus Convention. She continues to argue that if civil disobedience was to fall outside of the scope of art. 3(8) of the Aarhus Convention, a possible consequence would be that parties to the convention could criminalise unwanted behaviour and then argue that it is not protected by the convention, as it would be unlawful. As a consequence, art. 3(8) of the Aarhus Convention would lose any meaning.¹²⁴

¹¹⁹ Ibid; compare ECE/MP.PP/C.1/2017/19 para 74.

¹²⁰ United Nations Economic Commission for Europe, *Findings and recommendations with regard to communication ACCC/C/2018/161 concerning compliance by Bulgaria*, ECE/MP.PP/C.1/2025/15, para. 164.

¹²¹ Weber (2023), p. 72-73.

¹²² Ibid, p. 73.

¹²³ Ibid.

¹²⁴ Ibid.

5 Avenues for protection of environmental defenders within the EU legal sphere

5.1 The CJEU as an actor within the EU and the Charter of Fundamental Rights

5.1.1 The CJEU as a legal actor

According to art 19(1) of the Treaty of the European Union (TEU) the CJEU should ensure that the application and interpretation of the Treaties is observed. The task of the CJEU is two-fold. It is tasked with both filling out gaps in legislation and ensuring that EU law is respected by EU institutions. In its case law, the CJEU considers itself obligated and mandated to consider questions of union integration. That is, questions of the harmonious development of EU law as well as the overarching legal system.¹²⁵

The CJEU is also a legal actor in all avenues of protection discussed in this graduate thesis. The focus of this graduate thesis is the possible protection for environmental defenders. As such, it is interesting to examine whether the concept of direct effect can provide such protection. In examining direct effect, case law from the CJEU will be studied insofar as it is relevant to the research questions.

It was also the CJEU that fashioned the principle of direct effect and that determines where the EU's competence ends and the MS's competence begins.¹²⁶ It is also important to keep in mind that the CJEU may be active to various degrees within different legal spheres. As illustrated by Craig and De Búrca, the CJEU may "simultaneously create new methods of enforcement, while reducing its intervention in an area where legislative institutions have been more active"¹²⁷. Regarding international law, the CJEU acts as a gatekeeper, maintaining both the relations with and effects of international law. The CJEU also ensures the maintenance of EU legal autonomy.¹²⁸

5.1.2 Art. 12 of the Charter

Art. 12 of the Charter covers both the freedom of assembly and association.

¹²⁵ Hettne, p. 58-59.

¹²⁶ Craig and De Búrca, p. 93.

¹²⁷ Ibid.

¹²⁸ Hadjiyianni, I. 'The CJEU as the Gatekeeper of International Law: The Cases of WTO Law and the Aarhus Convention.' *International and Comparative Law Quarterly*, 70:4 (2021), pp. 895-933, p. 898.

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

In accordance with the principle of subsidiarity, art. 12(1) of the Charter addresses all EU institutions and bodies.¹²⁹ Assemblies that cannot be considered peaceful fall outside of the scope of the Charter.¹³⁰ Hence, the interpretation of the term ‘peaceful’ naturally has an effect on the scope of the provision.¹³¹

Although the institution of the Charter did not extend EU competence as it is defined in the Treaties, art. 6(1) TEU, the CJEU established in *Viking*, C-438/05¹³², and *Laval*,¹³³ that exercise of fundamental rights, namely the freedom of assembly, fell within the scope of the Treaties.¹³⁴ As established by art. 51 of the Charter, the Charter applies only to MS and EU institutions in their application of EU law. In *Åkerberg Fransson*, C-617/10¹³⁵, the CJEU established that although a national measure did not originate from an EU act, it was sufficient that the regulation aimed to penalise an infringement of a Directive for the Charter to become applicable.¹³⁶ However, a more recent judgment hints at a narrower scope of the notion of implementing Union law. In *Almudena Baldonado Martín v. Ayuntamiento de Madrid*, C-177/18¹³⁷, the CJEU determined that in order for a MS to fall within the scope of the article relevant in the case presupposed “a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other”¹³⁸.

5.1.3 The status and effect of international agreements

¹²⁹ Dorsemont F. (2021), ‘Article 12(1)’, in Hervey T. et al (eds.) *EU Charter of Fundamental Rights: A Commentary*, second edition, Hart Publishing, pp 371-394, p. 372.

¹³⁰ Ibid, p. 379.

¹³¹ See also, ibid, p. 382.

¹³² C-438/05 International Transport Workers' Federation, Finnish Seamen's Union, v. Viking Line ABP, OÜ Viking Line Eesti [2007] ECLI:EU:C:2007:772.

¹³³ C-341/05 Laval un Partneri Ltd .v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet [2007] ECLI:EU:C:2007:809.

¹³⁴ C-438/05 *Viking* para 46; C-341/05 *Laval* para 94.

¹³⁵ C-617/10 *Åklagaren v. Åkerberg Fransson* [2013] ECLI:EU:C:2013:105.

¹³⁶ Craig and De Búrca (2024), p.443-444; Compare C- 617/10 *Åkerberg Fransson*, paras 17-31.

¹³⁷ C-177/18 *Almudena Baldonado Martín v. Ayuntamiento de Madrid* [2020] ECLI:EU:C:2020:26.

¹³⁸ C-177/18 *Almudena Baldonado Martín v. Ayuntamiento de Madrid*, para 58.

According to art. 216(2) Treaty on the Functioning of the European Union (TFEU), international agreements, such as the Aarhus Convention, constitute part of EU law. In the hierarchy of legal norms, international agreements fall between primary law and secondary law. If an international agreement is found to conflict a directive or regulation, the international agreement will prevail.¹³⁹ EU- and national authorities must also comply with international agreements.¹⁴⁰ Hence, when the EU is party to an international agreement, the agreement prevails over EU acts.¹⁴¹

Perhaps more surprisingly, international treaties of which the EU is not a Party can also create obligations for the EU. In *Nold v. the Commission*, C-4/73¹⁴², the CJEU concluded that the fundamental rights were a part of the general principles of law. The CJEU also stated that international treaties to which MS are signatories or have collaborated on could serve as guidelines within EU legislation.¹⁴³ The two main sources of influence on the EU's general principles were found to be constitutional traditions common to the MS and international human rights agreements.¹⁴⁴

More specifically, CJEU case law establishes that if all MS are Parties to an international legal instrument, while the EU itself is not, provisions from the instrument can still be applicable within the EU. Such applicability is only relevant under the following conditions. Firstly, all MS must be Parties to the instrument. Secondly, the nature and logic of the agreement at large cannot prohibit its application within the EU. Lastly, the provision must have a direct effect – that is, the provision must be unconditional and sufficiently precise so that a natural or legal person can rely on it.¹⁴⁵

According to art. 351(1) TFEU rights and obligations of MS due to agreements concluded either before 1 January 1958 or before MS accession to the Union, if this date occurred after 1958, remain unaffected by provisions from the Treaties. Two human rights instruments, the ECHR and the UN Charter, fall within the scope of art. 351 of the TFEU. Despite the scope of art. 351 TFEU including only agreements entered into before 1958, certain other treaties, such as the ICCPR from 1966, will still affect MS under the article.¹⁴⁶ Ahmed and Butler argue that the ICCPR could be viewed as an expression of human rights as established in the UN charter.¹⁴⁷ In regard to art. 351 TFEU's

¹³⁹ Krämer L. and Badger C.(2024), Krämer's Environmental EU law, ninth edition, Hart Publishing, p. 6.

¹⁴⁰ Ibid, p. 416.

¹⁴¹ Gallo D. (2025), *Direct Effect in EU Law*, Oxford University Press, p. 249.

¹⁴² C-4/73 J. *Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities* [1974] ECR 491.

¹⁴³ C-4/73 *Nold v. the Commission*, para 13.

¹⁴⁴ Craig and De Búrca (2024), p. 413.

¹⁴⁵ Krämer and Badger (2024), p. 415

¹⁴⁶ Ahmed T. and Butler I. J, 'The European Union and Human Rights: An International Law Perspective', *European Journal of International Law*, 17:4 (2006), pp. 771-801, p. 784.

¹⁴⁷ Ibid, p. 787.

third-party criteria, it is important to note that human rights treaties obligate their Parties not only towards their own populations but also towards other Parties of the Treaties.¹⁴⁸

In its jurisprudence, the CJEU has recognised that to the extent that the EU has assumed competence of legal areas that previously belonged to MS, the EU has also succeeded to MS's international obligations stemming from international agreements. When such a succession of responsibility has been accepted, the CJEU considers the EU to be bound by the obligations just as if the EU itself had entered into the agreement.¹⁴⁹

5.1.3.1 *The EU relationship with the ECHR*

Although the ECtHR cannot rule that the EU is in violation of the ECHR, as the EU is not a Party, the ECtHR has been known to review EU acts indirectly. This can occur when a complaint is filed against one or more of the EU's MS.¹⁵⁰

The leading case on the ECtHR's jurisdiction over EU acts is the *Bosphorus* case, Appl. No 45036/98¹⁵¹. The ECtHR considered that the Charter provided protection of fundamental rights equivalent to the protection provided by the ECtHR. The presumption of equivalence has, however, not been consistently considered. After *Bosphorus*, there have been several instances in which the ECtHR has opted to use its own standard of review, disregarding the principle of equivalence.¹⁵²

Similarly to the principle of equivalence, the Charter contains art. 52(3). Art. 52(3) of the Charter establishes a corresponding level of protection to the ECHR. Although the CJEU has never recognised the ECHR as binding upon the EU, the ECHR served as the main inspiration for the CJEU in the protection of human rights up until the adoption of the Charter.¹⁵³ Art. 52(3) of the Charter ensures corresponding rights to the ECHR but also allows for the EU to provide a higher level of protection and thus the article acts as a minimum level of protection required within the EU.¹⁵⁴ The ECHR also constitutes the international legal instruments on which the CJEU has drawn most frequently.¹⁵⁵

5.2 Direct effect – background and development

¹⁴⁸ Ahmed and Butler (2006), p 785.

¹⁴⁹ Ibid, p. 788.

¹⁵⁰ Craig and De Búrca (2024), p. 452.

¹⁵¹ *Bosphorus Hava Yollari Turizm ve Ticaret Anomin Sirketi v. Ireland*, Application Number 45036/98 (Decision 30 June 2005).

¹⁵² Craig and De Búrca (2024), p. 453-455.

¹⁵³ Ibid, p. 414.

¹⁵⁴ Ibid, p. 414-415.

¹⁵⁵ Ahmed and Butler (2006), p. 774.

The direct effect of international agreements is not solely based on the traditional criteria set out by the CJEU in *Van Gend en Loos*, C-26/62¹⁵⁶. Both political and strategic factors also come into play when determining direct effect.¹⁵⁷ As for direct effect of provisions stemming from international treaties, the CJEU seems quite restrictive in its recognition. In fact, it seems that the CJEU systematically has denied the possibility for an individual to invoke an international treaty against an EU act.¹⁵⁸ Additionally, often when an agreement is entered into by the EU, the Commission (COM) will enter a preclusion of direct effect in the concluding decision.¹⁵⁹

In 1982, *Polydor* C-270/80¹⁶⁰, the CJEU ruled that a bilateral treaty provision did not have direct effect because the treaty in question did not share the aim of the Treaty of Rome. However, in the same year, another provision of the same agreement was deemed to have direct effect in *Kupferberg*, C-104/81¹⁶¹, somewhat contradicting that the agreement's purpose included direct effect. In respect of *Germany v. Commission*, C-280/93¹⁶², concerning the General Agreement on Tariffs and Trade, the CJEU determined that in order for a provision of an international treaty to be invoked against an EU measure, there needed to be an intent on the EU's part to implement the measure in question. Alternatively, the measure could be invoked if the challenged EU act specifically referred to the measure.¹⁶³

After *Internationale Fruit Company*, C-51-54/71¹⁶⁴, the CJEU recognised the direct effect of a provision of an international agreement in *Bresciani*, C-87/75¹⁶⁵, regarding the multilateral Yaoundé Convention. The case did not reference *Van Gend en Loos*, nor did it challenge an EU provision, as in *International Fruit Company*. The CJEU used a teleological interpretation, the article was deemed to convey an individual right and although, the CJEU deemed that the balance of assumed obligations was heavier on the EU's side, the provision was not stripped of its direct effect. Additionally, the CJEU

¹⁵⁶ C-26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECLI:EU:C:1963:1.

¹⁵⁷ Craig and De Búrca (2024), p. 388.

¹⁵⁸ Gallo (2025), p. 277.

¹⁵⁹ *Ibid*, p. 256-257.

¹⁶⁰ C-270/80 *Polydor Limited and RSO Records Inc. v Harlequin Records Shops Limited and Simons Records Limited* [1982] ECLI:EU:C:1982:43.

¹⁶¹ C-104/81 *Hauptzollamt Mainz v C.A. Kupferberg & Cie KG a.A.* [1982] ECLI:EU:C:1982:362.

¹⁶² C-280/93 *Federal Republic of Germany v Council of the European Union* [1994] ECLI:EU:C:1994:367.

¹⁶³ Craig and De Búrca (2024), p. 389.

¹⁶⁴ Joined Cases 51 to 54-71 *International Fruit Company NV and others v Produktschap voor groenten en fruit* [1971] ECLI:EU:C:1971:128.

¹⁶⁵ C-87/75 *Conceria Daniele Bresciani v Amministrazione Italiana delle Finanze* [1976] ECLI:EU:C:1976:18.

highlighted that certain provisions of the Treaty of Rome were referred to by the Yaoundé Convention.¹⁶⁶

Before *Intertanko*, C-308/06¹⁶⁷, the CJEU seemed to recognise the direct effect of international treaties, except for provisions stemming from the General Agreement on Tariffs and Trade or World Trade Organisation.¹⁶⁸ This trend seemed to shift with the 2008 case *Intertanko*, in which the CJEU deemed that the United Nations Convention on the Law of the Sea could not give rise to obligations and freedoms enforceable by an individual. Furthermore, the CJEU considered that the UNCLOS was not of such a nature that the CJEU could assess the validity of EU law in light of the treaty. This perspective prevailed in subsequent case law. *Intertanko* constituted a shift in the CJEU's case law considering the invocability of EU law. Currently, in order for an international agreement to be invoked against an EU act, the provision must be sufficiently precise and certain, so that it can generate an individual right. Additionally, the nature of the agreement cannot be such that it prohibits such reliance.¹⁶⁹

The direct effect of an Aarhus Convention provision, art. 9(3), was first denied by the CJEU in the *Brown Bear*, C-240/09¹⁷⁰. After that initial case, several other articles of the Aarhus Convention have been denied direct effect.¹⁷¹ In *Brown Bear*, the CJEU refrained from mentioning that legality review necessitated the conferral of a right. Further, the CJEU did not consider the purpose and nature of the agreement. One possible explanation for the choice of judgment is that as the provision was considered to require subsequent measures, the CJEU deemed that further analysis was not necessary.¹⁷²

In *Client Earth*, C-612/13¹⁷³, the CJEU again held that reliance on an international treaty when contesting an EU act requires that such reliance is not precluded by the broad nature of the treaty and that the relevant provision is sufficiently precise and unconditional.¹⁷⁴

5.2.1 The CJEU's stance to the UN Charter and the ICCPR

¹⁶⁶ Gallo (2025), p. 259-260.

¹⁶⁷ C-308/06 *The Queen, on the application of International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport* [2008] ECLI:EU:C:2008:312.

¹⁶⁸ Craig and De Búrca (2024), p. 392.

¹⁶⁹ *Ibid*, p. 392-393.

¹⁷⁰ C-240/09 *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* [2011] ECLI:EU:C:2011:125.

¹⁷¹ Gallo (2025), p. 271-272.

¹⁷² *Ibid*, p. 272.

¹⁷³ C-612/13 P *ClientEarth v. Commission* [2015] ECLI:EU:C:2015:486.

¹⁷⁴ Craig and De Búrca (2024), p. 393.

In the *Kadi* (case T-315/01)¹⁷⁵ and *Yusuf* (case T-306/01)¹⁷⁶ judgements of the Court of First Instance (CFI), the CFI recognised that the UN Charter triumphed over EU law, in the light of art. 103 of the UN Charter, and art. 307 ECT (now art. 351 TFEU).¹⁷⁷ The CFI also deemed that, as far as it had assumed powers previously belonging to MS that were governed by the UN Charter, the Community was bound by the UN Charter.¹⁷⁸ Ahmed and Butler argue that the CFI's rulings seemed to assume that provisions present in the ICCPR constituted *jus cogens* because of their presence in the instrument. However, the CFI did not motivate their assumption of *jus cogens* by an analysis.¹⁷⁹

The subsequent ECJ judgement, joined cases C-402/05 and C-415/05 P¹⁸⁰, took a different approach. The ECJ began by clarifying that it is the court's task to ensure compliance with fundamental rights as a part of the Union's general principles. In its practice, the ECJ will also use international human rights instruments that MS are part of or have contributed to as guidance. The ECHR was deemed of special significance in that regard.¹⁸¹ The ECJ clarified that an international agreement could not "affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the Community legal system"¹⁸². Additionally, the ECJ clarified that art. 351 TFEU could not be used to challenge the principles of the foundation of the community legal order, including the protection of fundamental rights.¹⁸³ The ECJ continued by deeming that although the UN Charter could have primacy over secondary but not primary law.¹⁸⁴ Such primacy over secondary law was justified by art. 300(7) Treaty of the European Community, not codified in TFEU.

In comparison with the obligations stemming from the UN treaties, "the depth of obligations accepted by the EU is generally more restrictive"¹⁸⁵. The EU institutions play a part in this, as they have deemed that human rights fall largely outside of the EU's competence on the matter. Additionally, the EU rather recognises that it must ensure the respect for human rights, and does not itself infringe them. However, the EU is less willing to recognise that

¹⁷⁵ T-315/01 *Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities* [2005] ECLI:EU:T:2005:332.

¹⁷⁶ T-306/01 *Ahmed Ali Yusuf and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* [2005] ECLI:EU:T:2005:331.

¹⁷⁷ Ahmed and Butler (2006), p. 786.

¹⁷⁸ Case T-315/01 *Kadi*, para 203; Case T-306/01 *Yusuf*, para 253.

¹⁷⁹ Ahmed and Butler (2006), p. 780-781.

¹⁸⁰ Joined Cases C-402/05 and C-415/05 P *Kadi and Al Barakaat International Foundation v. Council and Commission* [2008] ECLI:EU:C:2008:461.

¹⁸¹ Joined cases C-402/05 and C-415/05 P, para 283.

¹⁸² *Ibid*, para 282.

¹⁸³ *Ibid*, para 304.

¹⁸⁴ *Ibid*, paras 307-308.

¹⁸⁵ (OHCHR)United Nations Human Rights Office of the High Commissioner, *The European Union and International Human Rights Law*. Retrieved 30.03.26 from https://europe.ohchr.org/sites/default/files/2023-07/EU_and_International_Law.pdf, p. 14.

human rights also come with “a duty to protect and promote”¹⁸⁶ the fulfilment of such rights.¹⁸⁷

If the protection of human rights also entails an obligation to protect those rights from interference by third parties, the EU risks not fulfilling their obligations under international human rights law where they have not prevented MS from breaching human rights within its areas of competence. However, as accounted for above, such an obligation within the EU internal legal order to ensure protection of human rights is not supported by CJEU’s judgments.¹⁸⁸

5.2.2 The direct effect of the Aarhus Convention

Generally, the CJEU has denied the direct effect of provisions of the Aarhus Convention due to two main factors. These are 1. that the wording of the convention allows for an extensive consideration in respect of domestic legal orders and 2. because several provisions are dependent on implementing actions.¹⁸⁹

In Joined Cases C-401/12 P to C-403/12 P, *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*¹⁹⁰, the CJEU refrained from assessing the nature and broad logic of the Aarhus Convention. In C-612/13 P *ClientEarth*, the CJEU ruled that the EU will examine the incompatibility of EU acts with international law only if, among other factors, it is not precluded by the nature and broad logic of the agreement.¹⁹¹ The CJEU went on to argue that the provision of the Aarhus Convention, art. 4(1), was designed with national legislation in mind, and not an institution like the EU, albeit the possibility of the EU acceding to the Convention.¹⁹² From the above-mentioned case law, it seems that the CJEU has refrained from interpreting the broad logic and nature of the Aarhus Convention and instead deemed such an interpretation unnecessary, as the provisions in question cannot attain direct effect either way.

In Council decision 2005/370/EC of the 17th of February 2005 by which the EU became party to the Aarhus Convention, it is stated that the EU (a the time the Community) “in accordance with the Treaty, and in particular Article 175(1) thereof, is competent, together with its Member States, for entering

¹⁸⁶ OHCHR, p. 14.

¹⁸⁷ Ibid.

¹⁸⁸ OHCHR, p. 15.

¹⁸⁹ Váradi, Agnes. ‘Defining the Role of the Aarhus Convention as Part of National, International and EU Law - Conclusions of a Case-Law Analysis.’ *Hungarian Yearbook of International Law and European Law* (2019), pp. 121-140, p. 130.

¹⁹⁰ Joined cases C-401/12 P and C-403/12 P Council of the European Union and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht [2015] ECLI:EU:C:2015:4.

¹⁹¹ C-612/13 P *ClientEarth*, para 35.

¹⁹² Ibid, para 40.

into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the objectives listed in Article 174 of the Treaty”, now art. 191 TFEU, establishing the EU’s environmental objectives.¹⁹³ Further, Council decision 2005/37/EC establishes that the objective of the Aarhus Convention is consistent with the EU’s own objectives in terms of environmental policy as they are pictured in art. 174 Treaty of the European Community.¹⁹⁴

In relation to art. 3(1) of the Aarhus Convention, the ACCC has found that the EU was in compliance with the Convention. The reason for the judgment seemed to be that in the decision to adhere to the Aarhus Convention, the EU reserved itself to the scope of obligations under the Convention. These obligations now extend only to the extent that the EU has law in force.¹⁹⁵ In other areas, where no EU law is in force, the MS are responsible for the implementation of the Aarhus Convention.¹⁹⁶ Hence, as the EU had no law in force to implement art. 3(1) of the Aarhus Convention, they were not found to be in non-compliance with the article.

In ECE/MP.PP/C.1/2021/23, the ACCC provided clarifying comments on the practical meaning of art. 3(8) of the Aarhus Convention. According to the ACCC, the article provides protection for environmental defenders who have exercised their rights under the Aarhus Convention and consequently been targeted in any way.¹⁹⁷ In the case, the complainant argued that she had suffered worse than she should have, had she not exercised her rights under the convention. The ACCC deemed that the situation was not so, as the Supreme Court’s statement was generally provided. Hence, the complainant had not been targeted.¹⁹⁸

Since its accession to the Aarhus Convention, the EU has been found to be in non-compliance with the convention on five occasions,¹⁹⁹ of which two were still ongoing in 2024 before the 2025 MoP. At one point, the EU chose to only take note and refused to endorse a finding of non-compliance. Thereby, the EU also blocked the endorsement of the decision at the MoP 2017. However,

¹⁹³ Council decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, para 5.

¹⁹⁴ Council decision 2005/370/EC, para 7.

¹⁹⁵ United Nations Economic Commission for Europe, *Findings and recommendations with regard to communication ACCC/C/2014/101 concerning compliance by European Union*, ECE/MP.PP/C.1/2017/18, para 57, 58.

¹⁹⁶ ECE/MP.PP/C.1/2017/18, para 51.

¹⁹⁷ United Nations Economic Commission for Europe, *Findings and recommendations with regard to communication ACCC/C/2015/131 concerning compliance by the United Kingdom of Great Britain and Northern Ireland*, ECE/MP.PP/C.1/2021/23, para. 153.

¹⁹⁸ ECE/MP.PP/C.1/2021/23, para 61, 153.

¹⁹⁹ European Environmental Bureau, p. 1.

the EU position in 2017 constituted the first time since the ACCC was established that its findings were not endorsed by the MoP.²⁰⁰

Examining the CJEU's case law, it seems that the Aarhus Convention is only considered a basic point of reference when it is a matter related to environmental laws "in a strict sense"²⁰¹, despite it being possible to do so in a more comprehensive manner in cases which are related to environmental legislation through the art. 1 of the Aarhus Convention.²⁰²

5.3 CJEU use of international instruments as guidelines

It has already been expressed that the general principles of EU law are based, in part, on such treaties of which all MS are Parties. Not accounted for is that the general principles also draw on, in part, UN human rights treaties.²⁰³ All MS are parties to the ICCPR²⁰⁴ as well as the ECHR. With this background, there are a few aspects of the EU legal structure that are noteworthy in relation to the EU's relationship to international law. Most importantly, and discussed below, is the system of equal protection between the CJEU and the ECHR, as well as the CJEU's use of international agreements.

Art. 6(3) of the TEU recognises that the fundamental rights of the EU constitute a general principle, but the article only explicitly recognises the influence of the constitutional traditions common to the MS and the ECHR. In a handful of cases however, despite rarely relying on other international instruments apart from the ECHR, the CJEU has referred to the ICCPR. While referring to the ICCPR, the CJEU has also chosen to dismiss HRC opinion²⁰⁵, determining its findings to be without binding force²⁰⁶.

In the 1998 case *Grant v SouthWest Trains Ltd*, C-249/96²⁰⁷, the CJEU held that although the CJEU takes account of the ICCPR in its application of fundamental rights²⁰⁸, HRC's findings were not legally binding, and that the institution was not a judicial one.²⁰⁹ In this case, the CJEU deemed that sexual orientation was not included in discrimination based on sex, despite HRC jurisprudence recognising sexual orientation as a protected discrimination

²⁰⁰ Ibid, p. 1-2.

²⁰¹ Váradi, p. 129.

²⁰² Váradi, p. 129.

²⁰³ OHCHR, p. 9.

²⁰⁴ United Nations Human Rights Regional Office Europe (2025), *Engagement of the European Union and its member States with UN Human Rights Mechanisms*, p. 5.

²⁰⁵ Craig and De Búrca, p. 415.

²⁰⁶ OHCHR, p. 11.

²⁰⁷ C-249/96 *Lisa Jacqueline Grant v. South-West Trains Ltd* [1998] ECLI:EU:C:1998:63.

²⁰⁸ C-249/96 *Grant v SouthWest Trains Ltd*, para 44.

²⁰⁹ Ibid, para 46.

ground.²¹⁰ The reasoning of the CJEU can be considered in the light of a later ruling from 2006. In *Parliament v. Council*, C-540/03²¹¹, the CJEU again recognised that in applying the general principles the ICCPR was indeed an international instrument of which it took account.²¹² Other international bodies do not seem to share the CJEU's sentiment regarding the HRC. For example, the ECtHR has, to a greater extent and increasing degree, drawn upon UN treaty bodies' decisions.²¹³

Furthermore, in its capacity as an intergovernmental organisation, the EU could also be subject to international law.²¹⁴ In addition, it is relevant to consider art. 103 UN Charter, which states that in case of conflict between the UN Charter and other international agreements, the Parties' obligations under the Charter should prevail. This paragraph is an interesting read in relation to art. 351 TFEU, which allows for MS's obligations vis-à-vis other agreements towards third countries that were included before 1958 to remain unaffected by EU law. Hence, there is a possibility that the EU may be bound by the UN Charter and subsequent instruments, e.g. ICCPR, sponsored by the UN.²¹⁵

While the CJEU has recognised succession of MS obligations to the EU in areas with exclusive competence, the CFI has accepted the succession in an area of shared competence, namely that of the UN Charter.²¹⁶ In the *Kadi* and *Yusuf* cases, the CFI deemed the ICCPR to be an "expression of 'human rights' as they featured among the purposes and principles of the UN"²¹⁷. This would allow for the interpretation that the EU could succeed MS in their obligations under the ICCPR within the field of EU competence, as all MS were parties to the UN Charter before the institution of the EU (the European Community).²¹⁸ In its determination of the contents of the EU fundamental rights, the CJEU has relied on the ICCPR.²¹⁹ There are also, albeit few, examples of the CJEU acknowledging the ICCPR however, it is difficult to find examples of cases where the CJEU has relied on the ICCPR. There are also certain examples of the Advocates General relying on the ICCPR.²²⁰ As far as implementation of the ICCPR goes, the HRC expects that the ICCPR rights have

²¹⁰ OHCHR, p. 11.

²¹¹ C-540/03 *European Parliament v. Council of the European Union* [2006] ECLI:EU:C:2006:429.

²¹² *Parliament v. Council* C-540/03, paras 37.

²¹³ OHCHR, p. 12.

²¹⁴ Ahmed and Butler (2006), p. 776.

²¹⁵ Ibid, p. 772.

²¹⁶ Ibid, p 789.

²¹⁷ Ibid, p. 791.

²¹⁸ Ibid.

²¹⁹ Ibid, p. 774.

²²⁰ Ibid p. 774-775.

full effect in national legislation.²²¹ The HRC has also established that the ICCPR is to be interpreted in light of current conditions.²²²

Despite some ambiguity on how far the EU has succeeded to the obligations posed in the UN Charter, it is clear that the EU should respect the principles of international law and the UN Charter.²²³

5.4 The implementation of the Aarhus Convention and EU environmental law

Human rights law did not have a prominent role in the early stages of the EU. Efforts were made in creating the common market, but it was not until the 1970s that human rights formally appeared on the agenda and they did not see headway until the 1990's. However, the legacy of the early years of the EU lives on and still today the main objectives of the Union are economic.²²⁴ One can ponder on the economic legacy of the EU in the area of environmental law.

However, the term environment, as it was used in the Treaties, needs to be understood in a wider scope than simply nature and climate. The term also includes economic, social and political aspects.²²⁵ The EU's environmental objectives and guidelines are established in art. 3(3) TEU and 191 TFEU.²²⁶ Art. 3(3) TEU establishes that the EU should work for sustainable development in the Union, and aim for a high level of environmental protection. Art. 191 TFEU is more comprehensive than art. 3(3) TEU but also establishes that EU policy should aim to achieve certain objectives. Such objectives include preserving, protecting and improving the quality of the environment, as well as promoting measures at the international level to combat climate change, art. 191(1) TFEU. Art. 191(3) of the TFEU concludes that in the preparation of the EU's environmental policy, the EU should consider both the social and economic development of the EU and the balanced development of the EU regions. Lastly, art. 191(4) TFEU states that the EU, within its competence, should cooperate with competent international organisations.

The objectives of EU environmental policy, as depicted in art. 191(1) TFEU, results in the area being to a large extent within the competence of the Union, and hardly any area is outside of EU's competence.²²⁷

Art. 2 TEU recognises that the EU is founded on respect for human rights. Internationally, the EU should act guided by universality and indivisibility of

²²¹ Taylor M. (2020), p. 23.

²²² Ibid, p. 18.

²²³ See also, Hadjiyianni, p. 897-898.

²²⁴ Craig and De Búrca (2024), p. 411.

²²⁵ Krämer and Badger (2024), p. 2.

²²⁶ Ibid, p. 1.

²²⁷ Ibid, p. 5.

human rights and respect for international law. In the European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter, the European Parliament calls for the EU to include the right to a safe and healthy environment in the Charter to comply with art. 37 of the Charter.²²⁸ The *European Union Guidelines on Human Rights Defenders* aim to provide suggestions on how to enhance EU action regarding human rights defenders and is to be used in relation to third countries as well as multilateral mediums of human rights.²²⁹ The guidelines state that human right defenders often engage in criticism of a government's actions and policies, and that they play an important part in legal development, which should be supported.²³⁰ Although perhaps not providing ample examples of regulations within the EU, the Guidelines provide important insight on the view of human rights defenders.

5.4.1 EU implementation of art. 3(8) of the Aarhus Convention

Antonino Ali lists ways of which obligations from the Aarhus Convention are expressed:

from the Aarhus Convention as an international treaty; the secondary legislation adopted by EU institutions (in particular directives); the mixed agreement, as part of the Union legal order, insofar as the provisions fall within the scope of Union competence; a general obligation on the EU, which has assumed responsibility for the due performance of the agreement; and a general duty of loyal cooperation in situations involving shared competence.²³¹

Ali also highlights that the Aarhus Convention is a mixed agreement and that if an MS were to breach the obligations under the Aarhus Convention, COM could be entitled to initiate an infringement procedure against the MS as far as obligations under the Aarhus Convention coincide with obligations under EU law.²³²

In its National Implementation Report (NIR) from the 2025 cycle, the EU stated that, as it is based on the rule of law, the application of art. 3(8) of the Aarhus Convention is already ensured. The EU continues by establishing that

²²⁸ Resolution 2020/2134 European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter (2020/2134(INI)), para 8.

²²⁹ *Ensuring Protection – European Guidelines on Human Rights Defenders*, Retrieved 23.02.26 from https://www.eeas.europa.eu/sites/default/files/eu_guidelines_hrd_en.pdf, para 1.

²³⁰ *Ibid*, para 5.

²³¹ Ali A. (2012), 'The EU and the compliance mechanisms of multilateral environmental agreements: the case of the Aarhus Convention', in E Morgera (eds.) *The External Environmental Policy of the European Union: EU and International law Perspectives*, Cambridge University Press, pp. 287-303, p. 288-289.

²³² Ali (2012), p. 292.

it would be considered illegal and a misuse of power if a person were to be harassed, penalised or persecuted on the “sole ground that they have exercised rights under the Aarhus Convention”.²³³ However, this leaves certain discretion to EU institutions and MS: if a person is exercising their rights under the Convention and their behaviour could also be classified as other acts, is protection according to the convention no longer guaranteed? The EU’s response on the implementation of art. 3(8) provides no guidance on the matter. The EU also draws attention to the Environmental Crime Directive²³⁴, the Anti-SLAPP EU initiative²³⁵, Whistleblowers Protection Directive²³⁶ and Commission Recommendations (EU) 2022/758 as means to which they have implemented art. 3(8) of the Aarhus Convention.²³⁷

The EU’s 2025 report differs slightly from the report submitted in 2021. In its 2021 NIR response, the EU similarly establishes that it is governed by the rule of law. In addition to persecution, harassment or penalisation as a consequence of exercising rights under the Aarhus Convention being illegal and a misuse of powers, the EU also establishes that “such acts would be subject to disciplinary proceedings”.²³⁸ The manner and legal framework of such disciplinary proceedings are not accounted for in the answer.

5.5 Judicial protection as an avenue for protection for environmental defenders

There are several avenues for EU citizens to act when they believe the Union or a MS have acted against EU law. These avenues can also potentially be used by environmental defenders within the Union to protect themselves against legal acts which are not in accordance with EU law. The EU system of judicial protection is made up of the annulment procedure, the infringement procedure and the preliminary reference procedure.²³⁹ As the preliminary

²³³ EU NIR 2025 response to question 3, art. 3(8).

²³⁴ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC.

²³⁵ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’).

²³⁶ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

²³⁷ EU NIR 2025, response to question 3, art. 3(8).

²³⁸ United Nations Economic Commission for Europe, *Aarhus Convention National Implementation Reports*, Reporting year 2021, European Union, Question 3, Article 3 paragraph 8, Aarhus Clearinghouse. Retrieved 23.02.26 from https://aarhusclearinghouse-stg.unece.org/national-reports/reports?field_nr_report_language_aux_2_value=en&field_nr_report_language_aux_value=en&field_nr_q_year_target_id_verf%5B%5D=18900&field_nr_party_target_id_verf%5B%5D=17517&combine=&field_nr_answer_question_target_id_verf%5B%5D=16728.

²³⁹ Adam C. et al. (2020) *Taking the EU to Court Annulment Proceedings and Multilevel Judicial Conflict*, Palgrave Macmillan. Retrieved 29.04.26 from <https://doi.org/10.1007/978-3-030-21629-0>, p. 51-52.

reference procedure is directed mainly to national courts²⁴⁰, it will not be addressed further in this graduate thesis. This subchapter will therefore focus on the requirements and functions of the annulment proceeding and the infringement proceeding.

5.5.1 Annulment

The annulment action provides for the opportunity to dispute the legality of EU-institutions' actions before the CJEU²⁴¹ and within the EU's political and multilevel order, the actions are a part of struggles related to e.g. policies and competences²⁴². Through the annulment procedure, citizens can request judicial review directly before the CJEU, making it unique within the EU legal system.²⁴³ Applications for annulment actions are guided by art. 263 TFEU.²⁴⁴ The article provides that the CJEU should review the legality of different EU legal acts. The legal acts that can be subject to annulment actions are codified in art. 263(1) of the TFEU and include, e.g. acts from COM, the Parliament and Union agencies and institutions which intend to produce legal effect in relation to third parties. Such acts can be challenged under certain circumstances by an individual on the grounds of "lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers lack of competence, infringement of the Treaties or a rule relating to their application, or misuse of powers"²⁴⁵.

Art. 263 TFEU also provides that such a proceeding can be instigated by either a natural or a legal person if that act is a regulatory act that does not entail implementing measures, if it is of direct and individual concern or if the act is addressed to them, art. 263(4) TFEU. If a request for legality review is considered well-founded the CJEU can annul the legal act, in which case the act will be considered void, art. 164 TFEU. From the perspective of an environmental defender, an issue would be to qualify for protection as individuals have had difficulties succeeding in proving their individual concern.²⁴⁶

If a person is not an addressee of an act or the act in question is not a regulatory act fulfilling the criteria to instigate a legality review, individual concern must be established to instigate an annulment proceeding. The Plaumann test, established in *Plaumann & Co v. Commission*, C-25/62²⁴⁷, deems that an act can be of individual concern to a person provided that this person is "differentiated from all other persons, and by reason of these distinguishing features

²⁴⁰ Compare art. 267 TFEU.

²⁴¹ Adam (2020), p. 51.

²⁴² Ibid, p. 189.

²⁴³ Ibid, p. 52.

²⁴⁴ Ibid, p. 53.

²⁴⁵ Ibid, p. 54; Compare art. 263(2) and (4) TFEU.

²⁴⁶ Compare with Craig and De Búrca (2024). p. 549.

²⁴⁷ C-25/62 *Plaumann & Co. v Commission of the European Economic Community* [1963] ECLI:EU:C:1963:17.

singled out in the same way as the initial addressee”²⁴⁸. To fall within the scope of individual concern, it is usually not enough that the individual has suffered a particular factual injury.²⁴⁹ The right for natural and legal persons, labelled non-privileged applications, to bring an annulment action before the CJEU, is generally considered to be infamously strict.²⁵⁰

5.5.2 Infringement

When an international agreement has not been implemented through a directive or regulation, MS are left to apply and ratify the agreement as they please, and COM skips enforcing the agreement against them.²⁵¹ Nonetheless, MS’s courts are required to give effect to provisions of international law which do not have direct effect in their individual legislations, although the CJEU has not yet recognised this obligation for itself.²⁵² According to art. 17 TEU COM “shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.”²⁵³ Krämer and Badger argue that COM does not fully comply with art. 17 TEU if it does not also ensure the application of international agreements. Rather, Krämer and Badger state, if provisions of an international agreement have not been codified in a directive or regulation, COM ignores those provisions.²⁵⁴ However, COM’s interpretation of art. 17 TEU has yet to be tested, as its understanding has yet to be brought before the CJEU.²⁵⁵ Regarding international agreements binding on the EU as grounds to challenge EU acts, such agreements must be able to generate individual rights by being sufficiently certain and precise. Additionally, the reliance on the provision cannot be precluded by the nature of the agreement.²⁵⁶

The main and general enforcement procedure is codified in art. 258 TFEU. The process established by art. 258 TFEU follows certain steps. Through art. 258 TFEU COM can deliver a reasoned opinion to a MS if it believes that a MS has not fulfilled their obligations under the Treaties. If the MS does not comply with COM’s reasoned opinion within the given time frame, COM is able to bring the matter before the CJEU. Such a proceeding may be initiated by COM itself or as a response to a complaint.²⁵⁷ Although not primarily

²⁴⁸ Craig and De Búrca (2024), p. 549.

²⁴⁹ Ibid, p. 563.

²⁵⁰ Adam (2020), p. 62.

²⁵¹ Krämer and Badger (2024), p. 7.

²⁵² Ibid, p. 6.

²⁵³ Art. 17 TFEU

²⁵⁴ Krämer and Badger (2024), p. 416.

²⁵⁵ Ibid.

²⁵⁶ Craig and De Búrca (2024), p. 393.

²⁵⁷ Ibid, p. 462.

intended to provide individuals with a means of redress, the infringement procedure allows for citizens to participate in law enforcement.²⁵⁸

The art. 258 TFEU procedure has four distinct stages. Firstly, the MS has the opportunity to reach an arrangement with COM and to demonstrate their position. Secondly, if not resolved in the previous step, COM will notify the MS concerned of the alleged infringement and give the MS the possibility to answer within a given timeframe. If the matter remains unsolved after the second stage, COM can issue a reasoned opinion. In the reasoned opinion, a timeframe for MS compliance is set out, in which if it does not do so, COM will refer the issue to the CJEU. The referral is considered the last step.²⁵⁹

Although the possibility for an environmental defender to be protected by COM through the articles is slim, they are possible through a textual reading of the paragraphs. However, as COM, contradictory to art. 17 TEU, refrains from enforcing international agreements against MS if there is no EU legislation transposing the agreement but only a council decision to adhere to the agreement.²⁶⁰ When the EU accedes to an international agreement, it also becomes obligated to ensure that the treaty's provisions are enforced throughout EU territory. This obligation stands against other parties to the same convention, and is independent on if MS has made commitments regarding their national territory to the same convention.²⁶¹ Additionally, COM has hinted to not prioritizing infringements with individual impact, but rather such cases regarding systematic implications.²⁶²

²⁵⁸ Craig and De Búrca (2024), p. 462.

²⁵⁹ Ibid, p. 465.

²⁶⁰ Krämer and Badger (2024), p. 7.

²⁶¹ Ibid.

²⁶² Craig and De Búrca (2024), p. 462.

6 Analysis and Conclusion

Having established the contents and scope of the terms ‘civil disobedience’ and the ‘environmental defender’ as well as for relevant provisions and characteristics of the EU legal landscape it is time to return to the research questions presented in Section 1.2:

- What possibilities for protection are available for environmental defenders exercising civil disobedience within the EU through art. 3(8) Aarhus Convention and art. 21 ICCPR?
 - Who falls within the definition environmental defender within the EU?
 - Does civil disobedience fall within the scope of art. 3(8) Aarhus Convention and art. 21 ICCPR?

The following section will return to these questions, drawing on the different aspects already put forward in the graduate thesis.

6.1 Qualifying for protection

To examine the possible avenues for protection for environmental defenders within the EU legal framework, it is first necessary to compare the definition of an ‘environmental defender’ as posed in the Aarhus Convention and the notion of the ‘environmental human rights defender’ in the EU. It is also necessary to situate the environmental defender within the EU legal framework to later examine how the ‘environmental defender’ can be protected.

Neither the scope of the term ‘environmental defender’ as pictured by decision VII/9 establishing the rapid response mechanism, nor the scope of protection offered by art. 3(8) of the Aarhus Convention seems limited to people exercising rights provided in the Aarhus Convention itself. Rather, as suggested by Weber, it seems that any action in conformity with the Convention – that is if we understand conformity to mean action with the objective to protect the human right to a healthy environment – could trigger the status and protection as an environmental defender. Although Weber argues that an action taken by an environmental defender need not to be non-violent or peaceful, the act of civil disobedience must certainly be.

The scope of the concept ‘environmental defender’ in the EU seems, if anything, broader than that provided under the Aarhus Convention and the Special Rapporteur. The perception is based on the fact that the ‘environmental defender’ is considered a part of the broader subgroup of ‘human rights defenders’. One could go so far as to state that within the EU, an environmental defender is simply a human rights defender engaged in environmental

matters. I contend that a person classified as an environmental defender under the Aarhus Convention would also fall within the category by EU standards.

However, while the concept ‘environmental defender’ might be broader in scope within the EU than within the limits provided by the Aarhus Convention, I argue that protection offered within the EU is simultaneously narrower in application. Large areas of law could fall entirely outside of the EU-legal sphere and instead be left up to national legislation of the MS. Similarly, the Charter applies only to EU institutions and MS when they are applying EU law. Although the CJEU can interpret the ‘application of union law’ liberally, the structure of protection risks leaving gaps in legislation where the Charter will not be applicable.

Further, it has been established that the EU, in its implementation of art. 3(8) of the Aarhus Convention does not entail any provisions on civil disobedience or peaceful assembly. Regarding the EU reservation upon entering the Aarhus Convention, it is also bound only to the extent it has legislation. Additionally, the CJEU seems reluctant to apply the Aarhus Convention in matters which are not strictly environmentally related. This could cause issues for an environmental defender, as their exercise of civil disobedience might not be strictly related to an environmental act. Such an interpretation, however, is at odds with the interpretation of art. 3(8) of the Aarhus Convention, where we have seen arguments of many other rights than those granted by the convention falling within the scope of protection of art. 3(8) of the Aarhus Convention as long as they are exercised in conformity with the Convention.

A small reflection can also be made as to the application of the Charter in relation to the application of the Aarhus Convention. As established (Section 5.2.2) the obligations of the Aarhus Convention only apply to the EU in far as the EU has legislated on the matter. It has also been established that the Charter applies to the EU when it implements Union law. Where the EU has implemented the Aarhus Convention and the resulting EU legal acts are applied, the Charter will also be applicable. As such, there can be no area where the EU is bound by its obligations of the Aarhus Convention where it is not also bound by the Charter.

Hence, I would argue that any person qualifying for protection under the Aarhus Convention will also qualify as an environmental defender within the EU. However, the environmental defender in question will only be entitled to protection within the EU legal sphere within the application of EU law. Such an application of EU law could be related to the Aarhus Convention, which would facilitate the process from the environmental defender’s perspective. However, the application of EU law is not limited to application relating to EU acts relating to the implementation of the Aarhus Convention. The CJEU may take account of both the ICCPR and the Aarhus Convention when interpreting fundamental rights, as all MS are parties to both conventions.

6.2 Civil disobedience as a protected action

To answer research question 2, the thesis analysed Rawl's requirements of civil disobedience: non-violent, public, conducted against a public principle and with fair notice. These criteria have two main points of contact with the Special Rapporteur's criteria: non-violent and public. In turn, these criteria do not seem to exclude the action from protection by the ICCPR, the ECHR or the Charter.

Rather, it seems possible for civil disobedience to be protected under the frameworks of both the ICCPR and the ECHR, although that possibility is explicitly recognised to a varying degree. While the HRC has recognised civil disobedience as falling within the scope of art. 21 ICCPR, the ECtHR has yet to explicitly recognise the right. However, as accounted for in the above section, civil disobedience seems to share vital characteristics as to fall within the two conventions. Firstly, non-violence seems to be a shared aspect in civil disobedience as well as a prerequisite to qualify for protection under the ICCPR, the ECHR and the Aarhus Convention. Secondly, both freedom of assembly and the exercise of civil disobedience are necessarily conducted by a group.

As the ACCC has yet to take a stance on the matter, it is not certain that the right falls within the scope of art. 3(8) of the Aarhus Convention. However, such a stance might not be necessary. If we accept the above narration of civil disobedience, there is no reason that civil disobedience should not be protected under the Aarhus Convention. As such, it is not necessary for the ACCC to recognise this right, nor for the MoP to endorse such a finding. In fact, due to the classification and prerequisites of breach, an act of civil disobedience would fall under the scope of art. 3(8) of the Aarhus Convention as long as it targets an environmental defender.

Analysing the subject comes with natural challenges. Firstly, the civil disobedience naturally involves breaking the law, which also entails that punishment can be a consequence of one's actions. Along the lines of breach of art. 3(8) of the Aarhus Convention as pictured by Weber and the ACCC, such punishment would constitute a breach of art. 3(8) of the Aarhus Convention if targeted at the environmental defender. Further, suppose the EU was in breach of art. 3(8) of the Aarhus Convention, but provided full remedy, the EU would not be found non-compliant.

The EU's own legal fulfilment of art. 3(8) of the Aarhus Convention does not entail civil disobedience. However, I argue that this is not necessary. The main aspect ensured by art. 3(8) of the Aarhus Convention is that environmental defenders should not be targeted, and thus environmental defenders should not be targeted in their exercise of civil disobedience either.

6.3 Possible avenues for protection for environmental defenders within the EU

Although the EU has no legal instrument to guarantee the protection of civil disobedience, such a duty can be interpreted through the EU's international obligations at large. The area of civil disobedience is not explicitly referred to in any conventions mentioned in this graduate thesis. Although the HRC stance on civil disobedience is quite clear, the EU has historically not been very receptiveness towards the HRC's judgement.²⁶³

Imagine a scenario in which it would be necessary to challenge an EU act on the basis that it was not in compliance with art. 3(8) of the Aarhus Convention. In such a scenario, would it be possible to challenge that act, with support of art. 3(8) of the Aarhus Convention or art. 21 ICCPR? Based on the expose of CJEU case law regarding the direct effect of international agreements I would consider it unlikely that either art. 21 ICCPR or art. 3(8) of the Aarhus Convention was found to be sufficiently clear and precise wording as to be able to confer individual rights by the CJEU. As a consequence, would also be unlikely that a MS or the EU would be found liable for breach of their obligations under EU law.

The possible avenues for protection provided by the EU legal framework are complicated. Through the infringement procedure there is a possibility for an environmental defender to alert COM of infringements of EU law. However, this venue requires the EU to recognise civil disobedience as protected by the Aarhus Convention and/or by the Charter. It has also been shown that COM does not entirely recognise its own obligations under art. 17 TEU and often refrains from exercising its mandate if an international agreement has not been transposed through a directive.

An alternative approach is to consider COM's potential obligation under art. 17 TEU as null and void due to the EU not being bound further than they have legislated. Although art. 3(8) of the Aarhus Convention has, in fact, been implemented through a number of legal measures, these measures concern neither civil disobedience nor freedom of assembly. The lack of implementation of measures concerning civil disobedience may also indicate the EU's perception of its obligations under the article.

Regarding the option of legality review, I consider it unlikely that an environmental defender could be found to be of individual concern. If an environmental defender were to be targeted in their capacity as an environmental defender, they would necessarily not amount to the requirements of the Plaumann test. Presume that the environmental defender would amount to the

²⁶³ Compare Section 5.3.

alternative requirements in art. 263 TFEU, the question would again fall into the lap of the CJEU.

6.3.1 International instruments influence on the CJEU's judgements

Although unlikely that either art. 3(8) of the Aarhus Convention or art. 21 ICCPR would be recognised as having direct effect, there are other ways in which they can influence EU law.

As the EU is a party to the Aarhus Convention, art. 3(8) of the Convention would prevail over conflicting obligations of secondary EU law. Furthermore, following the reasoning of the CJEU in C-4/73, the ICCPR should act as guidelines within EU legislation as all MS are Parties to the ICCPR. The influence of the HRC is not equally clear, as they have previously been dismissed by the CJEU. Although the CJEU has been quite restrictive in its referrals to the ICCPR and the HRC, the ECtHR has been more open to decisions by UN bodies.

As the CJEU and ECHR are intertwined, one could argue that the relationship between the ECHR and the HCR also affects the CJEU. However, although the ICCPR influences the judgements of the CJEU it is not necessarily so that the CJEU would be in accordance with the view that civil disobedience is included in art. 21 of the ICCPR.

Additionally, as accounted for in this graduate thesis there seems to be a will within the EU to be strongly committed to principles and standards set by international law. Such a will could potentially influence the CJEU, as political factors can affect the determination of direct effect. Additionally, it has been made clear that the CJEU should take international human rights instruments to which all MS are signatories into account in its judgments. It is likely that both the ICCPR and the Aarhus Convention could serve as guidelines and influence the CJEU's interpretation.

6.4 Conclusion and discussion

One general observation is that many possible avenues for protection for an environmental defender within the EU end up at the table of the CJEU in some way or another. The level of protection, therefore, seems to depend on the CJEU's stance on civil disobedience at large and on the ICCPR and the Aarhus Convention altogether. As a non-compliance case on the matter of art. 3(8) of the Aarhus Convention and civil disobedience have not yet been established by the ACCC, it seems that the EU has found itself at a crossroads. To fully determine which avenues are available for an environmental defender within the EU, several puzzle pieces must fall into place. An ACCC finding determining whether civil disobedience falls within the scope of art.

3(8) of the Aarhus Convention, or a CJEU precedent on civil disobedience, could constitute such puzzle pieces.

However, based on the factors considered in this graduate thesis, I will make an attempt at some final remarks in relation to the research questions.

It has been concluded that any person who qualifies as an environmental defender according to the Aarhus Convention would also qualify as such within the EU.²⁶⁴ Further, civil disobedience seems to fall within the scope of art. 21 ICCPR and as of May 2026, there seems to be no hindrance as to why civil disobedience should not fall within the scope of protection under art. 3(8) of the Aarhus Convention. Regarding the EU's implementation of art. 3(8) of the Aarhus Convention, there are few unmitigated environmental acts. Rather, the provisions provided seem to fall within other areas of law, such as criminal law. Assuming the MoP's endorsements to be binding, the EU would be obligated to protect civil disobedience through art. 3(8) of the Aarhus Convention if the MoP endorsed a finding in which a party was found non-compliant for not having done so.

Although the ICCPR could not be used to challenge an EU act targeting environmental defenders, it could be used by the CJEU as guiding material and, in such a manner, influence the fundamental rights of the EU. Depending on whether one recognises the ICCPR as being an extension of the UN Charter, it could also be used to challenge secondary EU law. Furthermore, EU action should be taken in accordance with human rights and international law. This supports the notion that the EU should be guided by the ICCPR in protecting civil disobedience. However, such an assumption should be considered in relation to the CJEU's own objectives in safeguarding the EU legal system, which makes a conclusion difficult.

I argue that there are several avenues, as outlined in this graduate thesis, for environmental defenders seeking protection in their exercise of civil disobedience within the EU. However, the likelihood of procuring protection and the effectiveness of such protection are questions which are more difficult to answer. Based on the contents of art. 21 of the ICCPR, the likelihood of art. 3(8) of the Aarhus Convention protecting civil disobedience, the criteria for breach of art. 3(8) of the Aarhus Convention and lastly these instruments' influence on EU law, I believe it is unlikely that the EU would be able to deny the protection of environmental defenders in their exercise of civil disobedience.

²⁶⁴ Compare Section 6.1.

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