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Breathing Injustice: Human Rights, Environmental Harm, and
Sustainable alternatives to Kosovo's Coal Dependency

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Abstract

This thesis examines the legal implications of environmental harm caused by Kosovo's reliance on lignite-fired power generation, at the intersection of environmental law and international human rights law. Lignite combustion in outdated infrastructure produces some of the highest air pollution levels in Europe, with serious impacts on health, the environment, and the enjoyment of fundamental rights. The research evaluates how this harm engages the rights to life, health, and a clean, healthy, and sustainable environment, and assesses Kosovo's compliance with constitutional, treaty-based, and customary obligations. Using a doctrinal legal method, the study analyses primary sources — including the ICCPR, ICESCR, the UNFCCC, the Paris Agreement, and the 2025 ICJ Advisory Opinion on climate change — alongside case law and scholarly commentary. Comparative examples from North Macedonia and the Czech Republic illustrate approaches to coal phase-out compatible with human rights. Findings reveal deficiencies in enforcement, public participation, and legal remedies, disproportionately affecting marginalized groups. The thesis concludes that integrating rights-based environmental governance is both a normative necessity and a binding obligation under international law.

Zusammenfassung

Diese Arbeit untersucht die rechtlichen Auswirkungen von Umweltschäden infolge der Abhängigkeit Kosovos von der Stromerzeugung aus Braunkohle an der Schnittstelle zwischen Umweltrecht und internationalem Menschenrechtsschutz. Die Verbrennung von Braunkohle in veralteter Infrastruktur verursacht einige der höchsten Luftverschmutzungswerte Europas und beeinträchtigt Gesundheit, Umwelt und die Wahrnehmung grundlegender Rechte. Analysiert wird, inwiefern diese Schäden die Rechte auf Leben, Gesundheit sowie auf eine saubere, gesunde und nachhaltige Umwelt berühren und ob Kosovo seine verfassungs-, vertrags- und völkergewohnheitsrechtlichen Verpflichtungen erfüllt. Die Untersuchung folgt einer dogmatischen Methodik und wertet zentrale Rechtsquellen – darunter den Internationalen Pakt über bürgerliche und politische Rechte (ICCPR), den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte (ICESCR), die Rahmenkonvention der Vereinten Nationen über Klimaänderungen (UNFCCC), das Pariser Abkommen, das Gutachten des Internationalen Gerichtshof (ICJ) 2025 zum Klimawandel – sowie Rechtsprechung und Fachliteratur aus.

Vergleichsbeispiele aus Nordmazedonien und der Tschechischen Republik verdeutlichen menschenrechtskonforme Pfade für den Kohleausstieg.

Die Ergebnisse offenbaren Defizite bei Durchsetzung, öffentlicher Beteiligung und Rechtsschutz, die marginalisierte Gruppen unverhältnismäßig belasten. Die Arbeit schließt, dass die Integration einer menschenrechtsbasierten Umweltpolitik sowohl normative Notwendigkeit als auch völkerrechtlich verbindliche Verpflichtung ist.

To my family – for all the love and support

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List of Abbreviations:

Abbreviations	Definitions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UNFCCC	United Nations Framework Convention on Climate Change
ICJ	International Court of Justice
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
WHO	World Health Organization
EU	European Union
ECS	Energy Community Secretariat
HRC	Human Rights Committee
CESCR	Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
EC	European Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
SAA	Stabilization and Association Agreement
VCLT	Vienna Convention on the Law of Treaties
OSCE/ODIHR	Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights
HEAL	Health and Environment Alliance
EEA	European Environment Agency
KEPA	Kosovo Environmental Protection Agency
GHG	Greenhouse Gas
IPA	Instrument for Pre-Accession Assistance
NECP	National Energy and Climate Plan

1. Introduction and Background

1.1 Introduction

Clean air is essential for human health and survival. It is not merely a political aspiration but a basic condition necessary for life. Denying people the ability to breathe safely undermines the very foundations of human dignity, health, and survival. As David Boyd, the United Nations Special Rapporteur on Human Rights and Environment, has observed, humanity is embroiled in an unprecedented global environmental crisis, where air, water and soil pollution contribute to millions of premature deaths annually¹. The urgency of the situation demands the adoption of rights-based environmental policies and good practices to transform society onto a genuinely sustainable pathway and to protect human rights.²

Recognition of the right to a clean, healthy and sustainable environment has moved firmly into the sphere of international law, as reflected in the United Nations Human Rights Council's (UNHRC) 2021 resolution³, which recognized the right within its human rights mandate. In 2022, the United Nations General Assembly (UNGA) officially reaffirmed this right in broader political terms, describing it as “universal and indivisible” and intrinsically linked to other rights including life, health, water and development.⁴

The World Health Organization (WHO) has also declared air pollution to be the greatest environmental risk to human health globally, contributing to approximately 7 million premature deaths each year.⁵ These recognitions, while not legally binding, point towards an increasing

¹ David R Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Good Practices*, UN Doc A/HRC/43/53, 15 January 2020, para 7, p 4. Available at: <https://undocs.org/A/HRC/43/53>

² Ibid.

³ UN Human Rights Council, *The Human Right to a Safe, Clean, Healthy and Sustainable Environment* (8 October 2021) UN Doc A/HRC/RES/48/13, para 1, recognizing the right within the Council's human rights mandate (non-binding).

⁴ UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300, para 1, a non-binding political declaration affirming the right in universal terms with global endorsement.

⁵ World Health Organization, *Ambient (Outdoor) Air Pollution* (Fact Sheet, 4 April 2023) [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health) accessed 17 July 2025.

consensus toward the customary status of environmental rights in international law. Both legally and scientifically, the right to clean air is no longer an aspiration. As Boyd states, “clean air is not an optional policy objective. It must be regarded as a fundamental human right, related to the rights of life, health, and a safe, clean, healthy and sustainable environment.”⁶

This thesis examines how Kosovo’s legal system can transform severe lignite-related environmental harms into justiciable human-rights obligations and remedies, even in the absence of access to regional enforcement mechanisms. In answering this question, the research advances a customary-law-anchored accountability model for non-member states which combines Kosovo’s constitutional monism, the clarified due-diligence and no-harm standards from the International Court of Justice Advisory Opinion on Climate Change, enforceability lessons from EU and ECtHR practice, and comparative transition governance from North Macedonia and the Czech Republic. It proposes doctrinal tests and institutional design reforms to make environmental obligations judicially actionable in Kosovo.

The analysis is grounded in a rights-based environmental governance perspective, treating environmental protection not as a freestanding policy goal but as an integrated set of human-rights duties: to prevent foreseeable harm, to regulate private actors, to ensure participation and access to information and justice. The thesis proceeds as follows: Chapter 1 sets out the global and European legal baselines. Chapter 2 examines Kosovo’s constitutional architecture and environmental governance. Chapter 3 analyses Kosovo’s energy sector and environmental governance in detail. Chapter 4. Assess the human rights impact of coal pollution. Chapter 5 applies the ICJ’s 2025 opinion to Kosovo’s context. Chapter 6 provides a comparative evaluation of North Macedonia and the Czech Republic before presenting the conclusion, which formulates institutional reforms to close Kosovo’s accountability gap.

1.2 Context

Kosovo’s electricity system is dominated by two obsolete lignite-fired power plants – Kosovo A and Kosovo B – have long been associated with some of the most severe air pollution and health impacts as air quality continues to represent a significant health issue as concentrations of dust

⁶ David R Boyd, *‘The Human Right to Breathe Clean Air’* (2019) 85(1) *Annals of Global Health* 146, 2.

particles significantly exceed Kosovo's standards, as well as those of the European Union and WHO.⁷ Lignite, often referred to as 'dirty coal', is the most environmentally damaging form of coal due to its low energy content and high emissions per megawatt generated.⁸ Despite widespread public concern about the environmental and health impacts associated, they remain crucial to Kosovo's energy supply system as the country relies almost entirely on them to power its electricity generation – approximately 95% of Kosovo's electricity was produced by domestic lignite, placing the country as one of the most carbon-intensive in the western Balkans.⁹

Kosovo's geographic and geological conditions further compliance this dependence. Despite its size of roughly 10.000 square kilometers, it possesses the largest lignite reserves in Europe and the world's fifth-largest proven reserves with an estimated 11 billion tonnes.¹⁰ This abundance of low-grade coal, combined with Kosovo's limited ability to export it, has entrenched fossil-fuel energy economically and politically.¹¹ As such, the power plants not only pose a threat to public health, but also raise serious concerns under international human rights law due to the sustained and foreseeable harm they cause to health and life.¹²

From a legal perspective, addressing these harms presents both a necessity and a challenge. Kosovo is not a member of the Council of Europe (CoE) and consequently does not fall within the jurisdiction of the European Court of Human Rights (ECtHR).¹³ The absence of regional judicial oversight means there is no body of case law to invoke, no supranational judgement to enforce, and no formal mechanism to hold the state accountable for air-pollution-related human rights

⁷ World Health Organization Regional Office for Europe, *Health and Environment: Country Profile – Kosovo* (WHO Europe 2024) 4 <https://iris.who.int/bitstream/handle/10665/379498/WHO-EURO-2024-8319-48091-71320-eng.pdf> accessed 17 July 2025.

⁸ US Environmental Protection Agency, *Emission Factor Documentation for AP-42 Section 1.7: Lignite Combustion* (EPA 1993) 1 https://www.epa.gov/sites/default/files/2020-09/documents/background_document_ap-42_section_1.7-_lignite_combustion.pdf accessed 18 July 2025.

⁹ World Bank, *Western Balkans Energy Crisis Response Programmatic ASA* (Report, November 2023) 15 <https://documents1.worldbank.org/curated/en/099010925044027045/pdf/P1798261df7af309181651cacb444410f8.pdf> accessed 17 July 2025.

¹⁰ World Bank, *Kosovo Systematic Country Diagnostic* (World Bank 2017) 132 <https://documents1.worldbank.org/curated/en/282091494340650708/pdf/Kosovo-SCD-FINAL-May-5-C-05052017.pdf> accessed 17 July 2025.

¹¹ International Monetary Fund, *Kosovo's Electricity Sector Challenges and Opportunities* (Selected Issues Paper No 2023/025, March 2023) 4 <https://www.imf.org/-/media/Files/Publications/Selected-Issues-Papers/2023/English/SIPEA2023025.ashx> accessed 18 July 2025.

¹² UN Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)* (30 October 2018) UN Doc CCPR/C/GC/36, paras 26–27.

¹³ Council of Europe, *Our Member States* <https://www.coe.int/en/web/about-us/our-member-states> accessed 17 July 2025.

violations. This gap in legal remedies underscores the need for a doctrinal and policy analysis of how existing principles might be applied to Kosovo's circumstances.

This thesis examines how environmental harm linked to Kosovo's coal dependency engages international human rights law, and how legal accountability can be developed even in the absence of regional judicial enforcement. It considers the obligations of states under international human rights instruments, Kosovo's constitutional framework, and comparative legal experiences from other European countries.

1.3 Methodology

The research is guided by the central question of how the continued operation of Kosovo's coal power plants affects the protection of human rights, and what legal reforms can be pursued to mitigate this harm. To address this inquiry, the thesis is structured around the following sub-questions:

1. Which internationally protected human rights are most affected by environmental degradation caused by Kosovo's lignite-fired power plants?
2. How do international human rights and environmental legal frameworks apply to Kosovo's domestic context, given its unique legal and political status?
3. What are the implications of the 2025 Advisory Opinion of the International Court of Justice (ICJ) on climate change for Kosovo's obligations in relation to environmental protection and human rights?
4. What comparative lessons can be drawn from the experiences of North Macedonia and the Czech Republic in managing a coal phase/out while aligning with human rights obligation?

This thesis uses a normative legal methodology, grounded in desk-based research analysis, relying on the collection and analysis of primary and secondary sources such as legislation, case law, treaties, and scholarly commentary. In the legal context, this is characteristic of doctrinal research,

which Hutchinson and Duncan define as “research into the law and legal concepts”,¹⁴ in which the description of the law is intrinsically linked to its interpretation and evaluation.¹⁵ In line with Van Hoecke’s account of legal doctrine as a distinct scientific discipline,¹⁶ the analysis here formulates and test hypotheses about the existence, validity and meaning of legal norms, testing Kosovo’s domestic legal framework against binding international standards to identify both compliance gaps and opportunities for reform.

The research also applies comparative legal analysis. It examines how other countries - specifically North Macedonia and the Czech Republic - have approached the challenge of phasing out coal while respecting human rights. By applying a consistent comparative framework to all three jurisdictions, the thesis is able to assess transferability of reforms and identify context-specific constraints for Kosovo. This framework assess each jurisdiction according to the enforceability of obligations, the presence of oversight mechanisms, institutional capacity for implementation, the integration of environmental protection within human rights frameworks, and the availability of procedural rights.

This doctrinal approach is complemented by contextual and comparative elements. First, this study analyzes international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁷ the Aarhus Convention¹⁸ and relevant United Nations resolutions¹⁹ in order to identify the applicable obligations regarding the right to a healthy environment. Although Kosovo is not formally a party to all of these treaties, its Constitution adopts a monistic approach to international law, granting direct legal effect to several core human rights instruments.²⁰ These international obligations take precedence over conflicting domestic

¹⁴ Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) *Deakin Law Review* 83, 85 <https://doi.org/10.21153/dlr2012vol17no1art70> accessed 10 August 2025.

¹⁵ Mark Van Hoecke, ‘Legal Doctrine: Which Method(s) for What Kind of Discipline?’ in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 17.

¹⁶ *Ibid* 17–18.

¹⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

¹⁸ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention).

¹⁹ UN Human Rights Council Res 48/13 (8 October 2021) UN Doc A/HRC/RES/48/13; UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

²⁰ Constitution of the Republic of Kosovo (2008) art 22 <https://gzk.rks-gov.net> accessed 2 July 2025; Law No 04/L-147 on International Agreements.

legislation and form part of the domestic legal order.²¹ This framework is explored in greater detail in Section 2.3 below.

Second, Kosovo's constitutional and legal framework is analyzed to assess the extent to which international environmental and human rights standards have been implemented locally. This includes laws on environmental protection, air quality, public health and access to justice.²² The research also investigates the institutional and regulatory constraints that affect enforcement. This two-level analysis – international and domestic – ensures that doctrinal findings are grounded in Kosovo's political and institutional realities.

Third, the analysis incorporates the 2025 Advisory Opinion of the International Court of Justice (ICJ) on climate change,²³ evaluating its implications for Kosovo's environmental and human rights obligations. This step applies the Advisory Opinion's due diligence, prevention, and cooperation duties to Kosovo's constitutional and institutional context, enabling a structured doctrinal application rather than a purely narrative discussion.

Fourth, a comparative perspective is introduced through case studies on North Macedonia and the Czech Republic. These examples were selected for their legal and environmental relevance: North Macedonia as a neighboring Western Balkan state with similar challenges and the Czech Republic as an EU member state with a structured coal phase-out strategy based on environmental and social rights²⁴. The comparative findings are then used to derive actionable recommendations for Kosovo, aligning domestic reforms with both international obligations and feasible institutional capacity.

Finally, the analysis is supported by documentary sources that provide context, such as reports from the WHO, the Energy Community Secretariat (ECS), and Kosovo-based civil society groups.²⁵ This combination of normative analysis, comparative evaluation, and contextual

²¹ Constitution of the Republic of Kosovo (2008), arts 22 and 53.

²² Law No 03/L-025 on Environmental Protection (2009); Law No 04/L-160 on Air Protection from Pollution (2013).

²³ International Court of Justice, *Advisory Opinion on the Obligations of States in respect of Climate Change* (2025) para 393 <https://www.icj-cij.org> accessed 10 August 2025.

²⁴ Energy Community Secretariat, *Annual Implementation Report 2023* (2023) <https://www.energy-community.org/publications/annual-report.html> accessed 2 July 2025; Czech Ministry of Industry and Trade, *Coal Commission Final Report* (2021) <https://www.mpo.cz/en/energy/coal/coal-commission/> accessed 2 July 2025.

²⁵ World Health Organization, *Ambient Air Pollution: A Global Assessment of Exposure and Burden of Disease* (WHO 2016) <https://www.who.int/publications/i/item/9789241511353> accessed 2 July 2025; Institute for Development Policy (INDEP), *Towards a Sustainable Energy Future: Kosovo* (2022) <https://indep.info/towards-a-sustainable-energy-future-kosovo/> accessed 2 July 2025; GAP Institute, *Energy Sector in Kosovo: Challenges and Opportunities* (2020) https://www.institutigap.org/documents/89439_GAP_energysector.pdf accessed 2 July 2025.

grounding is designed to produce research outcomes that are both doctrinally rigorous and practically relevant.

2. Legal and Theoretical Framework

2.1 Global Legal Framework

The recognition of environmental protection as a matter of international human rights has consolidated significantly in recent decades. A key development was the adoption of UN Human Rights Council Resolution 48/13 (2021), which formally recognized the right to a clean, healthy and sustainable environment as a human right based on existing principles and treaties of international law, including those protecting the right to life, health, food, water and development.²⁶ This recognition was reaffirmed by the United Nations General Assembly in Resolution 76/300 (2022), which characterized the right as “universal and indivisible” and a prerequisite for the enjoyment of other human rights.²⁷

While lacking direct enforceability, both resolutions are evidence of *opinio juris* and contribute to the formation of customary norms. For Kosovo, excluded from some treaty regimes, such developments offer an alternative legal route for domestic application through constitutional monism.

Core treaty provisions further embed environmental dimensions within established rights. Article 6 of the International Covenant on Civil and Political Rights (ICCPR)²⁸ guarantees the right to life, which the Human Rights Committee (HRC) interprets to require regulation of environmental

²⁶ United Nations Human Rights Council, *Resolution 48/13: The Human Right to a Safe, Clean, Healthy and Sustainable Environment* (8 October 2021) UN Doc A/HRC/RES/48/13, para 1 <https://undocs.org/en/A/HRC/RES/48/13> accessed 18 July 2025.

²⁷ United Nations General Assembly, *Resolution 76/300: The Human Right to a Clean, Healthy and Sustainable Environment* (28 July 2022) UN Doc A/RES/76/300, para 1 <https://undocs.org/en/A/RES/76/300> accessed 18 July 2025.

²⁸ International Covenant on Civil and Political Rights, arts 6–7, 999 U N T S 171 (adopted 16 December 1966, entered into force 23 March 1976).

hazards.²⁹ Similarly, Article 12 of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”³⁰, a concept elaborated in the Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14 to include the “basic determinants of health, such as access to safe drinking water and adequate sanitation, safe and healthy working conditions and a healthy environment”.³¹ These interpretations strengthen the evidentiary link between environmental data and the existence of binding state obligations.

Instruments with a procedural focus complement these substantive guarantees. The Aarhus Convention integrates environmental protection with the rights of access to information, public participation in decision-making, and access to justice³². While its obligations are binding only on parties, its procedural model has been influential far beyond its membership.³³ Earlier non-binding frameworks – the Stockholm Declaration on the Human Environment³⁴ and the Rio Declaration on Environment and Development³⁵ – established a normative linkage between quality and human dignity, with Principle 1 of the Stockholm Declaration affirming that “everyone has the fundamental right to freedom, equality and adequate living conditions in an environment of a quality adequate for a life of dignity and well-being”.³⁶

Beyond these instruments, other key climate treaties have further shaped the global environmental governance. The United Nations Framework Convention on Climate Change (UNFCCC) sets the

²⁹ Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)* (30 October 2018) UN Doc CCPR/C/GC/36, paras 26, 62 https://www.ohchr.org/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf accessed 19 July 2025.

³⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)* (11 August 2000) UN Doc E/C.12/2000/4, para 8(a) <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf> accessed 19 July 2025.

³¹ CESCR, ‘General Comment No 14: The Right to the Highest Attainable Standard of Health’ (11 August 2000) UN Doc E/C.12/2000/4, para 11.

³² Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (*Aarhus Convention*).

³³ Making and Access to Justice in Environmental Matters (“Aarhus Convention”) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, Art 3.

³⁴ Declaration of the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972) UNGA Res 2994 (XXVII), UN Doc A/RES/2994 (15 December 1972), Principle 1.

³⁵ Rio Declaration on Environment and Development (adopted 13 June 1992) UN Conference on Environment and Development, UN Doc A/CONF.151/26 (Vol I) (1992), Principle 1.

³⁶ UN Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 16 June 1972) principle 1 https://www.ipcc.ch/apps/nj-lite/srex/nj-lite_download.php?id=6471 accessed 19 July 2025.

objective of stabilizing greenhouse gas concentrations to prevent harmful anthropogenic interference with the climate system;³⁷ the Paris Agreement operationalizes this with binding procedural duties, including nationally determined contributions and regular review.³⁸ These reflect general principles of prevention and due diligence, recognized as customary norms and applicable even to non-parties.

Collectively, these instruments and interpretations are pushing the right to a healthy environment toward customary status. For Kosovo, this convergence provides a credible legal basis to treat environmental protection as binding under both constitutional and international law, irrespective of treaty accession.

2.2 European Regional Legal Framework

Within Europe, environmental protection has been progressively embedded into binding legal frameworks through both the European Union (EU) and the Council of Europe (CoE). In the EU context, environmental objectives are anchored in primary law, notably Article 37 of the Charter of Fundamental Rights of the European Union, which obliges the Union to ensure a high level of environmental protection in line with sustainable development.³⁹ Although not directly enforceable by individuals, it serves as a guide for the interpretation and implementation of EU law and supports the integration of environmental protection into the Union's legal and policy framework.

This constitutional foundation has been operationalized through legislative and policy measures that impose concrete obligations. The European Green Deal, launched in 2019, lays out a roadmap for the sustainability of the EU economy with the central goal of achieving climate neutrality by

³⁷ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 2.

³⁸ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 3, arts 2, 4.

³⁹ Charter of Fundamental Rights of the European Union (2012/C 326/02) art 37.

2050.⁴⁰ The European Climate Law gives this objective binding legal effect and sets an interim target of a minimum 55% net reduction in greenhouse gas emissions by 2030.⁴¹

These measures are complemented by sector-specific instruments, such as the Air Quality Directive (2008/50/EC), which sets legally binding limit values for air pollution in the EU Member States and candidate countries.⁴² In *Craeynest and Others vs. Brussels*, the Court of Justice of the European Union (CJEU) confirmed that these obligations are judicially enforceable, thereby affirming the justiciability of both procedural and substantive environmental duties.⁴³

Parallel to the EU system, the Council of Europe has developed important case law on environmental human rights through the European Court of Human Rights (ECtHR). While the European Convention on Human Rights (ECHR) does not contain an explicit right to a healthy environment, the ECtHR has interpreted Articles 2 (right to life) and 8 (right to private and family life) as including protection from serious environmental harm. In the cases of *López Ostra v. Spain* and *Fadeyeva v. Russia*, the Court found violations of Article 8 because the state authorities had failed to prevent or mitigate industrial pollution. More recently, in the case of *Verein KlimaSeniorinnen Schweiz v. Switzerland*, the Grand Chamber ruled that inadequate climate protection could breach Convention rights, thereby extending environmental protection into the sphere of climate change obligations.⁴⁴

Taken together, these European legal mechanisms demonstrate a regional consolidation of environmental protection within enforceable legal norms. Through the combination of substantive standards, procedural guarantees, and robust judicial oversight by both CJEU and ECtHR, European law has transformed environmental protection from a policy aspiration into a rights-based legal imperative. The subsequent section explores how these international and regional legal frameworks, while not all formally binding upon Kosovo, are reflected in its constitutional

⁴⁰ European Commission, *The European Green Deal* COM (2019) 640 final, 11 December 2019.

⁴¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law) [2021] OJ L243/1.

⁴² Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe [2008] OJ L152/1.

⁴³ Case C-723/17 *Craeynest and Others v Brussels Hoofdstedelijk Gewest* EU:C:2019:533, paras 34–45, interpreting Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe [2008] OJ L152/1.

⁴⁴ *López Ostra v Spain* App no 16798/90 (ECtHR, 9 December 1994); *Fadeyeva v Russia* App no 55723/00 (ECtHR, 9 June 2005); *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

structure and influence the development of its domestic legal obligation concerning environmental protection and human rights.

2.3 Kosovo's Constitutional and Domestic Legal Framework

2.3.1 Limited International Legal Personality

Kosovo's legal obligations are shaped by its contested international status. Since its 2008 declaration of independence, the country has been recognized by over 100 UN member states, however, it remains outside the United Nations (UN) system, due to sustained opposition from permanent Security Council members, notably Russia and China.⁴⁵ This exclusion limits its ability to participate in the UN treaty system, as UN membership is generally a prerequisite for accession to multilateral agreements and participation in treaty-monitoring bodies under Article 102 of the UN Charter.⁴⁶

Kosovo is likewise not a member of the European Union. While the 2016 Stabilization and Association Agreement (SAA) between the EU and Kosovo commits the latter to a gradual alignment of its legislation with the EU acquis, including environmental and human rights law,⁴⁷ the arrangement provides neither access to EU judicial mechanisms nor obligations equivalent to membership.

Similarly, Kosovo is also not a member of the Council of Europe (CoE) and consequently has not acceded to the European Convention on Human Rights (ECHR).⁴⁸ As a result, its citizens cannot submit complaints before the European Court of Human Rights (ECtHR).

⁴⁵ International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403, paras 28–34.

⁴⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) **art 102(1)–(2)** <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> accessed 20 July 2025.

⁴⁷ Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part (signed 26 February 2016, entered into force 1 April 2016) [2016] OJ L71/3, art 115, p. 58 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22016A0316\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22016A0316(01)) accessed 20 July 2025.

⁴⁸ Council of Europe, 'Kosovo* and the Council of Europe' <https://www.coe.int/en/web/programmes/kosovo> accessed 10 July 2025.

2.3.2 Domestic Use of International Jurisprudence and Constitutional Commitments to Human Rights and the Environment

Despite the absence of formal membership, Kosovo's courts and public institutions frequently invoke ECtHR jurisprudence and consider it as a benchmark for constitutional interpretation and human rights reasoning.⁴⁹ This practice has become more systematic in recent years: between 2009 and 2023, a significant proportion of Constitutional Court human rights decisions cited ECtHR case law, reinforcing its de facto authority in the domestic order.⁵⁰ Such reliance, while non-binding, narrow the gap between Kosovo's legal standards and those applied in CoE member states, though it cannot substitute for binding international oversight.

Kosovo is not a signatory to the Aarhus Convention⁵¹, which guarantees procedural environmental rights, including access to information, participation in environmental decision-making and access to justice.⁵² Nevertheless, certain Aarhus principles have been incorporated into domestic law, though they lack the enforceability of an international framework as Kosovo's internal legal order is constitutionally obliged to integrate international human rights standards.

The Constitution of the Republic of Kosovo takes a monistic approach to international law: Article 22 gives direct effect to several key human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), giving them precedence over conflicting national legislation.⁵³ This monistic approach affirmed in constitutional case law and academic commentary,⁵⁴ is reinforced by Article 52 of the Constitution, which recognizes environmental protection as a constitutional obligation forward present and future generations.⁵⁵

Article 19(2)–(3) further stipulates that ratified international agreements and other legally binding norms of international law – including customary international law - are directly applicable and

⁴⁹ Constitution of the Republic of Kosovo (adopted 15 April 2008, in force 16 June 2008) arts 22, 53 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702> accessed 22 July 2025.

⁵⁰ Jesse Loevinsohn and Joris Larik, 'Protection Without Recognition: The Role of the Council of Europe in Strengthening Human Rights in Kosovo' (2024) 9 European Papers 287, 299.

⁵¹ United Nations Economic Commission for Europe, 'Status of the Aarhus Convention' <https://unece.org/env/pp/ratification> accessed 10 July 2025.

⁵² Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

⁵³ Constitution of the Republic of Kosovo (2008) art 22.

⁵⁴ Enver Hasani, 'The Constitutional Basis of Kosovo's International Legal Personality' in Bekim Sejdiu (ed), *International Law and Kosovo's Statehood* (Kosovo Academy for Public Safety 2020) 113–120.

⁵⁵ Constitution of the Republic of Kosovo (2008) art 52.

take precedence over domestic legislation in the event of a conflict despite the absence of formal ratification.⁵⁶

This constitutional structure means that customary international law, as binding on all states regardless of treaty participation, applies fully in Kosovo. A notable example is the Vienna Convention on the Law of Treaties (VCLT), whose provisions on such as the obligation to perform contracts in good faith (*pacta sunt servanda*, Article 26) and the duty not to defeat a treaty's object and purpose before its entry into force (Article 18) are recognized as customary international law.⁵⁷ This dual reliance on constitutional monism and customary international law was recently reaffirmed in the International Court of Justice's 2025 Advisory opinion on climate change, which confirmed that such fundamental obligations apply universally, irrespective of treaty membership.⁵⁸ Together, these elements establish international environmental standards, even without direct access to the primary enforcement mechanisms of the UN or Council of Europe.

2.3.3 Environmental Legislative Limitations and Institutional Gaps

Kosovo has enacted several important environmental laws based on international and European models, including the Law on Environmental Protection, the Law on Air Pollution Control and the Law on Environmental Impact Assessment.⁵⁹ While these laws formally reflect established international principles, the degree to which they are effectively implemented and enforced remains subject to ongoing scrutiny. The Energy Community Secretariat's repeated findings of non-compliance with air obligations,⁶⁰ and the WHO's identification of monitoring deficits, restricted public data access, and overlapping institutional mandates⁶¹ indicate that the operational

⁵⁶ Constitution of the Republic of Kosovo (2008) art 19(2)–(3)

⁵⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 arts 18, 26; Anthony Aust, *Modern Treaty Law and Practice* (4th edn, CUP 2022) 9–10.

⁵⁸ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 132.

⁵⁹ Law No. 03/L-025 on Environmental Protection (2009); Law No. 02/L-102 on Air Protection (2005); Law No. 03/L-214 on Environmental Impact Assessment (2010).

⁶⁰ Energy Community Secretariat, *Annual Implementation Report 2024: Kosovo* (April 2024) 11

https://www.energy-community.org/dam/jcr:6b71aefe-c1a4-472f-8593-128e8b8c2c5d/IR2024_Kosovo.pdf accessed 22 July 2025.

⁶¹ World Health Organization, *Health and Environment: Country Profile – Kosovo* (WHO Europe 2024) 5–6 <https://iris.who.int/bitstream/handle/10665/379498/WHO-EURO-2024-8319-48091-71320-eng.pdf> accessed 22 July 2025.

conditions necessary for these laws to fulfil their intended protective function remain underdeveloped.

The procedural dimension shows a similar pattern. While several Aarhus principles have been formally incorporated, empirical assessments by the GAP Institute⁶² and OSCE/ODIHR⁶³ reveal that these rights are not yet systematically realized. Consultation processes often operate as procedural formalities rather than participatory decision-making; access to environmental information is subject to administrative discretion; and judicial review, although available in principle, is either underused or lacks sufficient remedial impact.

These findings suggest a disjunction between the formal recognition of procedural rights and their capacity to function as effective accountability mechanisms. From a legal standpoint, these gaps carry implications beyond administrative efficiency. Under Kosovo's constitutional monism and the obligations flowing from the SAA, legislative harmonization carries a duty of practical effectiveness; rights recognized in law must be operationalized in a manner that produces equivalent protection to that enjoyed under the originating international or EU standard.⁶⁴

3. Kosovo's Energy Sector and Environmental Governance

3.1 Energy Dependency and Environmental Consequences

Kosovo's energy system is almost entirely based on lignite, with over 95% of energy production coming from two lignite-fired power plants: Kosovo A built in the early 1960s, and Kosovo B, which has been in operation since 1984.⁶⁵ This makes Kosovo one of the countries in the region

⁶² GAP Institute, *Environmental Rule of Law in Kosovo* (2021) 9–12 <https://www.institutigap.org> accessed 10 July 2025.

⁶³ OSCE ODIHR & Open Government Partnership, *Kosovo: Democratizing Democracy* (May 2023). https://www.oegfe.at/en/policy_briefs-en/kosovo-democratizing-democracy/ accessed 25 July 2025.

⁶⁴ Florian Bieber, 'The Rule of Law and Human Rights in Kosovo: Between Monist Constitution and Fragmented Enforcement' in Adem Beha (ed), *Kosovo Law and Justice Review* (Prishtina Legal Studies Press 2023) 55–60.

⁶⁵ European Commission, *EU Support to Clean Air in Kosovo: IPA 2018 Project Fiche* (2018) 2 https://enlargement.ec.europa.eu/system/files/2019-08/ipa_2018_041246.05_eu_support_to_clean_air_in_kosovo.pdf accessed 18 July 2025.

with the least diversified electricity source and the highest energy reliance on domestic fossil fuels.⁶⁶

Lignite is widely regarded as the most harmful form of coal, emitting exceptionally high levels of particulate matter (PM10 and PM2.5), sulphur dioxide (SO₂) and nitrogen oxides (NO_x).⁶⁷

In the vicinity of the Kosovo A and B power plants, particulate matter (PM2.5 and PM10) levels routinely exceed the limits set by EU and WHO guidelines, but enforcement in the country remains inadequate.⁶⁸ In the case of Kosovo, the environmental and health risks are amplified by the age and technical condition of the power plants. According to the CEE Bankwatch Network, which analyzes Kosovo's compliance with EU environmental standards, the absence of functioning filters at Kosovo A and B allows emissions of particulate matter up to 35 times higher than modern systems would permit.⁶⁹ These technical deficiencies fall far short of the requirements of EU and Energy Community environmental legislation, including the standards set out in the Industrial Emissions Directive.⁷⁰

The environmental impact of this degrading infrastructure is significant and well documented. According to a joint report by Bankwatch and the Health and Environment Alliance (HEAL), Kosovo A and B emitted around 5,867 tons of particulate matter in 2020 - more than four times Kosovo's permitted national limit under the Large Combustion Plant Directive.⁷¹ These plants rank as the highest-emitting coal-fired power plants in the Western Balkans and contribute significantly to cross-border pollution in the region.⁷²

⁶⁶ Eurostat, *Production of lignite in the Western Balkans – statistics* (June 2023) fig 5 https://ec.europa.eu/eurostat/statistics-explained/index.php/Production_of_lignite_in_the_Western_Balkans_-_statistics accessed 18 July 2025.

⁶⁷ World Bank, *Lignite Power and Health in Kosovo* (2019) 4–6 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/123981559963199717> accessed 10 July 2025.

⁶⁸ World Health Organization, *Health and Environment: Country Profile – Kosovo* (WHO Europe 2024) 5–6 <https://iris.who.int/bitstream/handle/10665/379498/WHO-EURO-2024-8319-48091-71320-eng.pdf> accessed 22 July 2025.

⁶⁹ CEE Bankwatch Network, *Between the Hammer and the Anvil: Air Quality and Coal Power in Kosovo* (2020) <https://bankwatch.org/story/between-the-hammer-and-the-anvil> accessed 18 July 2025.

⁷⁰ Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.

⁷¹ CEE Bankwatch Network and Health and Environment Alliance (HEAL), *Comply or Close: Coal Plant Emissions in Kosovo* (2021) 3, 5–6 <https://www.complyorclose.org/wp-content/uploads/2021/09/En-COMPLY-OR-CLOSE-web.pdf> accessed 13 July 2025.

⁷² Ibid 6.

Mark. Z. Jacobson, Professor of Civil and Environmental Engineering at Stanford University and a leading scholar on air pollution and climate impacts, has emphasized that coal-fired power plants are among the largest sources of fine particulate matter, a pollutant linked directly to respiratory diseases and premature mortality.⁷³ This general scientific finding is borne out in Kosovo, where the European Environment Agency (EEA) reports that the annual average PM_{2.5} concentration in Kosovo is 12.9 µg/m³, which is more than 2.5 times higher than the limit recommended by the World Health Organization (5 µg/m³).⁷⁴ Underscoring the health significance of such exceedances, the WHO Regional Office for Europe has emphasized that “there is no evidence of a safe level of exposure to particulate matter or a threshold below which no adverse health effects occur as many components attached to black carbon are known carcinogens and directly toxic to cells”.⁷⁵

The volume and regularity of emissions associated with Kosovo's lignite-fired power plants have been repeatedly observed by international monitoring organizations. These exceedances have raised concerns about Kosovo's obligation under the Energy Community Treaty, which requires the Parties to implement the entire EU environmental acquis as defined in Title II – Environment, notably. The 2022 Implementation Report confirms Kosovo's continued breach of emissions ceilings and failure to install necessary abatement techniques.⁷⁶

Kosovo's most prominent initiative to overhaul its energy sector was the proposed Kosova e Re power plants, a new lignite-fired facility intended to replace the ageing Kosovo A. The project, backed by the US-based company ContourGlobal, was presented as a means of ensuring reliable electricity generation with comparatively lower emissions. However, in October 2018, the World Bank publicly withdrew its support for new coal projects globally, citing economic and

⁷³ Mark Z Jacobson, *Atmospheric Pollution: History, Science, and Regulation* (Cambridge University Press 2002).

⁷⁴ European Environment Agency, *Kosovo – Air Pollution Country Fact Sheet 2024* (2024) <https://www.eea.europa.eu/en/topics/in-depth/air-pollution/air-pollution-country-fact-sheets-2024/kosovo-air-pollution-country-fact-sheet-2024> accessed 13 July 2025.

⁷⁵ WHO Regional Office for Europe, *Health Effects of Particulate Matter: Policy Implications for Countries in Eastern Europe, Caucasus and Central Asia* (World Health Organization 2013) 6.

⁷⁶ Energy Community, *Treaty Establishing the Energy Community* (revised edn, 2024) Title II – Environment, art 12 https://eur-lex.europa.eu/resource.html?uri=cellar:4e1e771a-bb0c-4fdf-a0df-db38bb7a72ba.0004.02/DOC_2&format=PDF accessed 14 July 2025; Energy Community Secretariat, *Annual Implementation Report 2022* (2022) 82 https://www.energy-community.org/dam/jcr:b40a7f8b-5a14-41b8-a13e-7fcdb35c9231/EnC_IR2022.pdf accessed 14 July 2025.

environmental risks. This decision contributed to ContourGlobal's eventual withdrawal from the project in March 2020.⁷⁷

In parallel, the security of electricity supply remains fragile. Kosovo continues to experience frequent supply disruptions, particularly in the winter months, when domestic electricity generation only covers around two-thirds of demand and utilities have to rely on emergency imports.⁷⁸ These supply gaps increase the pressure to continue lignite-fired power generation despite the well-documented environmental and social impact.

3.2 Environmental Governance and Public Participation

Public participation in environmental decision-making is not merely a formality, but a core element of environmental justice.⁷⁹ This ensures that communities affected by pollution can influence the decisions that shape their environment. Kosovo's constitutional and legal framework formally recognizes the public's right to participate in environmental policy. Article 52 of the Constitution of the Republic of Kosovo guarantees that “everyone should be informed about the state of the environment and its protection” and that participation in environmental decision-making is a constitutional right.⁸⁰

The main legal instrument is Law No. 03/L-025 on Environmental Protection, which contains certain procedural guarantees for public engagement. Article 4 sets out the principle of access to environmental information and participation, while Articles 50-55 set out the legal obligation to consult the public in environmental impact assessments (EIAs) and strategic environmental

⁷⁷ Pippa Gallop, ‘ContourGlobal finally quits Kosova e Re coal plant’ (CEE Bankwatch Network, 17 March 2020) <https://bankwatch.org/blog/contourglobal-finally-quits-kosova-e-re-coal-plant> accessed 14 July 2025; Reuters, ‘World Bank pulls out of Kosovo coal power plant project’ (10 October 2018) <https://www.reuters.com/article/breakingviews/world-bank-pulls-out-of-kosovo-coal-power-plant-project-idUSL8N1WQ518> accessed 15 July 2025.

⁷⁸ *Kosovo stops import of electricity and begins energy rationing* (The Guardian, 15 August 2022) <https://www.theguardian.com/world/2022/aug/15/kosovo-stops-import-of-electricity-and-begins-energy-rationing> accessed 15 July 2025.

⁷⁹ United Nations Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide* (2nd edn, 2014) 3 https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf accessed 18 July 2025.

⁸⁰ Constitution of the Republic of Kosovo (2008) art 52.

assessments (SEAs).⁸¹ These provisions stipulate that affected persons and the general public are notified and consulted prior to project approval and given the opportunity to voice concerns. However, there is no evidence of secondary legislation that fully harmonizes these requirements with EU Directive 2003/35/EC, which regulates public participation in environmental decision-making throughout the Union.⁸²

Even though Kosovo is not a signatory to the Aarhus Convention on Access to Information, public participation in decision-making and Access to Justice in Environmental Matters⁸³ and is not a member of the Council of Europe⁸⁴ or the United Nations⁸⁵, the standards set out in the Convention have indirect influence through the EU and the Energy Community frameworks. The Stabilization and Association Agreement (SAA) between Kosovo and the EU commits Kosovo to align its legislation with the *acquis communautaire*, including environmental policy guidelines derived from the Aarhus Principles.⁸⁶ The Energy Community Treaty also refers to procedural rights related to environmental protection, which further reinforces the obligation to adopt participatory legal frameworks in line with European standards.⁸⁷

Kosovo's domestic legal frameworks in parallel also obligate authorities to provide access to environmental information and facilitate engagement in decision-making processes, particularly in relation to EIAs and SEAs.⁸⁸ However, practical implementation remains fragmented. The Ministry of Environment, Spatial Planning and Infrastructure is the main institution in charge of coordinating environmental policy and monitoring the approval procedures for activities that may have an impact on the environment. Under Article 17 of the Environmental Protection Act, the Ministry is obliged to ensure the participation of the public in environmental assessments,

⁸¹ Law No 03/L-025 on Environmental Protection [2009] OJ of the Republic of Kosovo 85/09, arts 4, 50–55.

⁸² Energy Community Secretariat, *Annual Implementation Report 2024 – Kosovo* (2024) 11 https://energy-community.external.syracus.net/dam/jcr%3A6b71aefe-c1a4-472f-8593-128e8b8c2c5d/IR2024_Kosovo.pdf accessed 20 July 2025.

⁸³ UNECE, *Status of Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* <https://unece.org/env/pp/ratification> accessed 15 July 2025.

⁸⁴ Council of Europe, *47 Member States* <https://www.coe.int/en/web/portal/47-members-states> accessed 15 July 2025.

⁸⁵ United Nations, *Member States* <https://www.un.org/en/about-us/member-states> accessed 15 July 2025.

⁸⁶ Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part [2016] OJ L71/3, arts 114, annex III ch 27.

⁸⁷ Energy Community, *Treaty Establishing the Energy Community* (revised edn, 2024) Title II – Environment, art 12 https://eur-lex.europa.eu/resource.html?uri=cellar:4e1e771a-bb0c-4fdf-a0df-db38bb7a72ba.0004.02/DOC_2&format=PDF accessed 20 July 2025.

⁸⁸ Law No 03/L-025 on Environmental Protection (Republic of Kosovo) arts 50–55.

including notification, disclosure of relevant documents and the opportunity to submit comments.⁸⁹ The Kosovo Environmental Protection Agency (KEPA), as a subordinate authority, is in charge of collecting environmental data and publishing regular environmental status reports.⁹⁰ However, public access to these reports is inconsistent and often delayed, which affects transparency and informed public participation.⁹¹ This institutional lack of transparency limits the ability of civil society organizations (CSOs), communities and individuals to be meaningfully engaged.

In practice, this translates into a situation where the legal harmonization obligations under the SAA and the Energy Community Treaty are often formally fulfilled but not operationalized through detailed implementing legislation, administrative capacity or sufficient funding.⁹² Thus, while the Kosovar legal framework contains the basic procedural rules for public participation in environmental governance, alignment with binding European standards remains incomplete and is externally driven.

The analysis in this chapter demonstrates that Kosovo's continued dependence on lignite is not only a question of energy policy, but is also linked to structural and legal deficiencies. While formal alignment with international and European environmental compliance standards exists on paper, practical implementation remains inconsistent and fragmented. The next chapter builds on this by examining how Kosovo's coal dependence directly impacts fundamental human rights and implicates international legal obligations.

4. Human Rights Impact of Coal Pollution

4.1 Human Rights Engaged by Environmental Harm in Kosovo

⁸⁹ Ibid art 17.

⁹⁰ Law No 04/L-174 on the Kosovo Environmental Protection Agency [2013] art 5.

⁹¹ World Bank, *Kosovo: Country Environmental Analysis* (2012) 18 https://documents1.worldbank.org/curated/en/282361468047686579/pdf/750290ESWOP1310LIC00Kosovo0CEAO_Rprt.pdf accessed 20 July 2025.

⁹² European Commission, *Kosovo 2023 Report* SWD(2023) 720 final, 114 https://neighbourhood-enlargement.ec.europa.eu/kosovo-report-2023_en accessed 20 July 2025.

The environmental damage caused by Kosovo's dependence on lignite-fired power generation affects a number of essential human rights that are protected by international law. These rights are set out in binding instruments such as the ICCPR, the ICESCR, as well as in the Universal Declaration of Human Rights (UDHR), which, while not legally binding, has served as a foundational normative document influencing the development of international human rights law.⁹³

The right to life, protected by Article 6 ICCPR⁹⁴ and affirmed in Article 3 UDHR⁹⁵, includes the state's obligation to protect the people from foreseeable environmental hazards.⁹⁶ International organizations such as the Human Rights Committee (HRC) have made it clear that this obligation includes the duty to regulate industrial and environmental hazards that can lead to preventable deaths.⁹⁷

The right to health, recognized in Article 12 ICESCR and Article 25 UDHR, includes access to clean air and protection from environmental degradation.⁹⁸ The Committee on Economic, Social and Cultural Rights has clearly stated that states must take active measures to reduce the exposure to pollution and ensure just and fair access to health determinants, particularly for vulnerable populations.⁹⁹ In Kosovo, these concerns are particularly relevant in the vicinity of the Kosovo A and B power plants, which significantly degrade air quality in the areas of Obiliq and Pristina, and where Roma, Ashkali, and Egyptian communities – already displaced into polluted areas – suffer disproportionate exposure and face limited access to legal, social and health protection

⁹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)).

⁹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

⁹⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 3.

⁹⁶ ICCPR art 6; UDHR art 3.

⁹⁷ UN Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, UN Doc CCPR/C/GC/36 (30 October 2018) paras 26–27.

⁹⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 25.

⁹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)* (11 August 2000) UN Doc E/C.12/2000/4, paras 4–12.

measures.¹⁰⁰ Such conditions raise serious legal questions about environmental inequality, institutional discrimination and the efficiency of domestic remedies.

The following sections analyze each of these rights in detail, examining the extent to which Kosovo's coal-based energy production and environmental governance align – or fail to align – with its obligations under international human rights law.

4.2 Introduction to the Rights-Based Approach

The environmental harms of coal-based energy production in Kosovo can only be fully understood while acknowledging their impact on human rights. While previous chapters examined the legal frameworks and institutional inadequacies that enable such harm, this chapter explores the specific rights affected by pollution and inadequate environmental policies. International human rights law obliges states to take positive measures to prevent foreseeable threats to life, health and well-being.¹⁰¹

These obligations are enshrined in treaties such as the ICCPR and the ICESCR.¹⁰² This chapter applies these legal standards directly to the situation in Kosovo to assess whether the state has fulfilled its duty to protect the population from the harms associated with lignite pollution.

4.3 The Right to Life

¹⁰⁰ European Environmental Bureau (EEB), *Pushed to the Wastelands: Environmental Racism Against Roma Communities in Central and Eastern Europe* (April 2020) 4–5 <https://eeb.org/wp-content/uploads/2020/04/Pushed-to-the-Wastelands.pdf>.

¹⁰¹ UN Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (24 January 2018) UN Doc A/HRC/37/59, para 54 <https://undocs.org/en/A/HRC/37/54-59>.

¹⁰² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 arts 2, 6; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 arts 2, 12.

The right to life is a fundamental principle in international human rights law, enshrined in Article 6 of the ICCPR.¹⁰³ This right not only defends individuals from arbitrary deprivation of life, but also obliges states to take effective measures to protect life from foreseeable threats, including environmental hazards.¹⁰⁴ In its General Comment No. 36, the Human Rights Committee affirmed that the right to life must be interpreted broadly to include threats posed by environmental degradation, pollution and the climate crisis.¹⁰⁵ It emphasized that States must take appropriate legislative and policy measures to prevent conditions that could lead to premature mortality or impair the ability to live with dignity. Recognition that environmental degradation falls within the scope of protection of Article 6 signals an increasing alignment between environmental and human rights law, particularly in contexts where environmental degradation is severe, long-lasting and preventable.

Pursuant to Article 6 of the ICCPR, as interpreted by the Human Rights Committee, states have an obligation to take “positive measures” to address “the life-threatening effects of environmental degradation”.¹⁰⁶ This obligation is triggered when harm to life is foreseeable, preventable and of serious concern. Kosovo's coal-based energy sector generates consistently high levels of particulate matter (PM2.5), which scientific bodies have linked to serious health impacts, including premature deaths.¹⁰⁷ According to the European Topic Center on Air Pollution, PM2.5 concentrations in Kosovo are among the highest in Europe.¹⁰⁸

Despite the legal obligations, reports indicate that Kosovo has yet to implement sufficient mitigation measures or invest in cleaner technologies. The question of whether this failure to regulate a known, persistent source of potentially deadly pollution constitutes a violation of Article

¹⁰³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 6.

¹⁰⁴ UN Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (24 January 2018) UN Doc A/HRC/37/59, para 54.

¹⁰⁵ UN Human Rights Committee, *General Comment No 36: Article 6 – Right to Life* (30 October 2018) UN Doc CCPR/C/GC/36, paras 26–27.

¹⁰⁶ UN Human Rights Committee, *General Comment No 36: Article 6 – Right to Life* (30 October 2018) UN Doc CCPR/C/GC/36, para 62 <https://digitallibrary.un.org/record/1654914> accessed 19 July 2025.

¹⁰⁷ World Health Organization, *Ambient Air Pollution: A Global Assessment of Exposure and Burden of Disease* (WHO 2016) 7 <https://www.who.int/publications/i/item/9789241511353> accessed 19 July 2025.

¹⁰⁸ European Topic Centre on Air Pollution, Transport, Noise and Industrial Pollution (ETC/ATNI), *Annual European Union Emission Inventory Report 1990–2019 under the UNECE CLRTAP* (Eionet Report – ETC/ATNI 2021/10, October 2021) 19 <https://www.eionet.europa.eu/etcs/etc-atni/products/etc-atni-reports/eionet-report-etc-atni-2021-10-annual-european-union-emission-inventory-report-1990-2019-under-the-unece-clrtap> accessed 19 July 2025.

6 remains a legal question that merits close scrutiny. However, the severity, foreseeability and duration of the ongoing harms indicate that the threshold for engaging the right to life may plausibly have been reached.

4.4 The Right to Health

The right to the highest attainable standard of physical and mental health is protected under Article 12 of the ICESCR, which forms part of Kosovo's domestic legal framework through Article 22 of the Constitution.¹⁰⁹ According to the Committee on Economic, Social and Cultural Rights, this right extends beyond access to medical care and includes the “underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions.”¹¹⁰ States are required to take legal, administrative, and policy measures to respect, protect, and fulfil this right.¹¹¹

The Committee has stated that environmental pollution can interfere with the enjoyment of the right to health and that states must adopt “measures to prevent third parties from causing environmental degradation” that affects public health.¹¹² The World Health Organization notes that ambient air pollution causes approximately 7 million premature deaths every year, primarily due to heart disease, stroke, chronic obstructive pulmonary disease, lung cancer and acute respiratory infections.¹¹³ In Kosovo, coal-based energy production has been a well-documented source of harmful air pollution.

In a 2019 report by the Health and Environment Alliance and CEE Bankwatch Network estimated that emissions from the Kosovo A and B power plants are linked to approximately 370 premature deaths, 9,500 asthma symptom days in children, and over 100 hospital admissions per year,

¹⁰⁹ Constitution of the Republic of Kosovo (2008) art 22; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 12.

¹¹⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health* (11 August 2000) UN Doc E/C.12/2000/4, para 11.

¹¹¹ *ibid* paras 33–37.

¹¹² *ibid* paras 51, 34–35.

¹¹³ World Health Organization, ‘Ambient (Outdoor) Air Pollution’ (Fact Sheet, 4 April 2023)

[https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health) accessed 19 July 2025.

primarily from respiratory and cardiovascular illnesses. These figures reflect not only public health consequences but also economic and social costs that are disproportionately borne by vulnerable communities near the plants. The same report estimated that the resulting health-related economic costs could be as high as €352 million annually.¹¹⁴

The legal question is therefore whether Kosovo's conduct meets the international standard of 'appropriate steps' to progressively realize the right to health.¹¹⁵ While this analysis does not make a definitive determination, the sustained nature of pollution, the foreseeability of health impacts, and the limited institutional response may suggest that the threshold of non-compliance with Article 12 has been approached. Moreover, in light of current international public health standards and the well-established causal link between coal combustion and disease, the continued operation of coal-fired power plants—absent rigorous mitigation—may in itself constitute a failure to uphold the right to health under international human rights law.

4.5 The Right to a Healthy Environment

The right to a clean, healthy and sustainable environment has been explicitly recognized in recent international instruments, including United Nations Human Rights Council (UNHRC) Resolution 48/13 (2021) and United Nations General Assembly Resolution 76/300 (2022), which describe it as "important to the enjoyment of human rights" and closely linked to existing rights such as life, health and dignity.¹¹⁶ While this right is not enshrined in a binding treaty, it draws its normative force from its connection to established human rights and is increasingly treated as an emerging standard of customary international law.¹¹⁷ Core elements of the right include access to safe and clean air; clean water and soil; a safe climate; and the ability to participate in environmental decision-making. In this context, the right to a healthy environment is not limited to aspirational declarations, but requires measurable state behavior aligned with international environmental and health benchmarks.

¹¹⁴ Health and Environment Alliance and CEE Bankwatch Network, *Chronic Coal Pollution: EU Action on the Western Balkans Will Improve Health and Economies Across Europe* (2019) 43 <https://www.env-health.org/wp-content/uploads/2019/02/Chronic-Coal-Pollution-report-1.pdf> accessed 19 July 2025.

¹¹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (11 August 2000) UN Doc E/C.12/2000/4, para 43.

¹¹⁶ UNHRC Res 48/13 (8 October 2021) UN Doc A/HRC/RES/48/13; UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

¹¹⁷ UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300, preamble.

The International Court of Justice recently provided the most authoritative judicial confirmation of this interrelationship between environmental protection and human rights. In its 2025 advisory opinion on the obligations of states with regard to climate change, the Court stated that a clean, healthy, and sustainable environment is a *prerequisite* for the enjoyment of rights such as the right to life, health, and an adequate standard of living, and that it is *inherent* to the enjoyment of other human rights. It concluded that states cannot fulfill their obligations under human rights treaties without ensuring environmental protection, thereby confirming this right as an essential component of international human rights.¹¹⁸

According to the Energy Community Secretariat, Kosovo is yet to the Secretariat of an adopted National Energy and Climate Plan (NECP), thereby missing the applicable legal deadline. Among other outstanding obligations, Kosovo is criticized for not transposed the Energy Labeling Directive into national law.¹¹⁹ The Secretariat also points to limited progress in aligning with updated EU regulations on energy efficiency and reporting, as well as shortcomings in the collection and harmonization of energy data. In addition, Kosovo has yet to fully open its electricity and gas markets or separate energy production from distribution - both of which are required as part of regional energy market reforms.¹²⁰ These regulatory and institutional shortcomings point to broader structural deficiencies that could prevent Kosovo from adapting to the good practices required to implement the right to a healthy environment.

Although the Constitution of Kosovo does contain provisions on environmental protection, the right to a healthy environment is not explicitly endorsed as an enforceable justiciable right.¹²¹

The absence of such recognition restricts the enforceability of environmental rights claims and may limit the ability of individuals to seek redress for harm caused by environmental degradation. More broadly, this signals a gap between Kosovo's legal obligations and the direction of international human rights law. As international consensus on this right continues to grow, states are increasingly expected not only to avoid harmful environmental practices, but to integrate

¹¹⁸ International Court of Justice, *Advisory Opinion on the Obligations of States in respect of Climate Change* (2025) para 393 <https://www.icj-cij.org> accessed 10 August 2025.

¹¹⁹ Energy Community Secretariat, *Annual Implementation Report 2024 – Kosovo* (Energy Community, 2024) 6.

¹²⁰ Energy Community Secretariat, *Annual Implementation Report 2023* (Energy Community, November 2023) 6–8 https://www.energy-community.org/dam/jcr:9063d826-c7dc-4e4e-84b8-c6f1688d3d9e/ECS_IR2023.pdf accessed 19 July 2025.

¹²¹ Constitution of the Republic of Kosovo (2008) art 52; Law No. 03/L-025 on Environmental Protection (2009).

environmental protection into their legal and institutional frameworks as part of rights-based governance.

The legal question is therefore whether Kosovo's inability to formally enshrine or operationalize the right to a healthy environment constitutes a derogation from its broader human rights obligations. While there is currently no binding treaty requiring the recognition of this right as such, its close relationship to the rights to life and health - which Kosovo is obliged to uphold - suggests that the state may nonetheless have a duty to realize its essential elements. In this context, the focus on coal energy in the absence of a clear legal or political commitment to environmental rights may be a sign that the evolving environmental dimension of international human rights law is not being acknowledged.

4.6 Disproportionate Impacts on Marginalized Communities

International human rights law requires not only the universal protection of rights, but also their equal and effective enjoyment by all.¹²² When environmental policies or their omissions lead to systemic inequalities, the issue of indirect discrimination arises, which is particularly relevant in the case of coal-related pollution in Kosovo.

Based on available data from the WHO-Europe field study from Obiliq and Fushë Kosovë - the municipalities surrounding Kosovo's lignite-fired power plants - marked environmental inequalities, with Roma, Ashkali and Egyptian (RAE) communities being strongly associated with higher exposure to environmental health risks.¹²³ The study specifically indicates that RAE

¹²² Committee on Economic, Social and Cultural Rights, *General Comment No 20: Non-discrimination in economic, social and cultural rights (art 2, para 2 of the International Covenant on Economic, Social and Cultural Rights)* (2 July 2009) UN Doc E/C.12/GC/20, para 10.

¹²³ World Health Organization Regional Office for Europe, *Socio-economic, demographic, spatial and ethnic inequalities in environmental exposure in Obiliq/Obilić and Fushë Kosovë/Kosovo Polje* (WHO Regional Office for Europe 2015) 7, 9 <https://iris.who.int/bitstream/handle/10665/182534/WHO-EURO-2015-3223-42982-60063-eng.pdf> accessed 21 July 2025.

ethnicity, along with low income and limited education, is one of the strongest determinants of increased environmental deprivation in these areas.¹²⁴

Although these are the most heavily monitored locations, the WHO warns that other informal settlements - many of which also house RAE communities - are not adequately monitored and may be exposed to similar or even higher levels of pollution.¹²⁵ Overall, this shows not only that RAE populations are more likely to live close to sources of pollution, but that structural factors make them systematically more vulnerable.

According to Article 2(2) of the ICESCR¹²⁶ and Article 26 of the ICCPR,¹²⁷ States are obliged to ensure the enjoyment of rights without discrimination, including through indirect and structural forms. The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that this includes the duty to recognize and redress structural inequalities.¹²⁸ In environmental terms, States are therefore expected to conduct impact assessments, provide targeted remedies for vulnerable communities and ensure inclusive procedural safeguards.¹²⁹ The UN Special Rapporteur on Human Rights and the Environment reaffirms that States should address the cumulative environmental pressures faced by marginalized groups.¹³⁰

The available data suggests that Kosovo has not yet adopted equity-appropriate environmental measures to address the disproportionate burden of coal-fired power plant pollution on RAE communities. The lack of spatial and socio-economic breakdown of monitoring data, combined with procedural barriers to participation, indicates a concern that formal legal protection is unequally implemented in practice. This raises the possibility that Kosovo is complying with its international commitments to ensure substantial equality in the enjoyment of rights.

¹²⁴ Ibid 7.

¹²⁵ Ibid 9.

¹²⁶ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 2(2).

¹²⁷ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 26.

¹²⁸ Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health (art 12 of the International Covenant on Economic, Social and Cultural Rights)* (11 August 2000) UN Doc E/C.12/2000/4, para 34.

¹²⁹ UN Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (24 January 2018) UN Doc A/HRC/37/59, paras 47–50.

¹³⁰ Ibid 47-50.

4.7 Conclusion

The rights-based analysis in this chapter illustrates that Kosovo's continued reliance on lignite-fired power generation raises serious concerns under international human rights law. The impacts of air pollution associated with coal combustion - particularly where concentrations consistently exceed recognized safety thresholds - affect not only environmental or public health obligations, but also legally binding obligations relating to life, health and non-discrimination.

Today, international standards increasingly recognize coal-fired power plants as areas of heightened human rights risk. When operated without adequate safeguards, they can violate core state obligations, especially when the harm is foreseeable, preventable and disproportionate. In the case of Kosovo, persistently high levels of pollution, a lack of data broken down by social or geographic groups and insufficient remediation measures all indicate a potential misalignment of environmental management and international legal obligations.

A rights-based approach requires more than just formal compliance: it requires states to recognize structural inequalities, address accumulated burdens and ensure fair protection for all population groups. Adapting Kosovo's environmental policy to these standards is not only a normative imperative, but also a legal necessity if human rights obligations are to be effectively fulfilled in practice.

5. The 2025 ICJ Advisory Opinion on Climate Change and Its Implications for Kosovo

5.1 Relevance of the Advisory Opinion to Kosovo

The International Court of Justice's *Advisory Opinion on the Obligations of States with regard to Climate Change*¹³¹ (July 23, 2025) is the most comprehensive legal statement to date on the scope and content of States' obligations to combat climate change under international law. The advisory opinion, requested by the United Nations General Assembly in its Resolution 77/276 (2023), draws

¹³¹ International Court of Justice, *Obligations of States in respect of Climate Change* (Advisory Opinion, General List No. 187, 23 July 2025).

together treaty obligations, principles of customary international law and human rights standards into a coherent and authoritative framework. It clarifies that mitigation and adaptation are not matters of political discretion, but are binding legal obligations under these established sources of law, and are applicable to all States, regardless of their treaty status.¹³²

The Court interpreted the customary duty to prevent significant environmental harm as extending beyond traditional transboundary pollution to encompass global environmental challenges such as climate change.¹³³ This represents an important doctrinal expansion, as it detaches legal responsibility from territorial boundaries and instead grounds it in the global doctrine. The duty must be fulfilled with due diligence, requiring precautionary measures, the use of the best available science, and environmental impact assessments (EIAs) for activities with significant greenhouse gas (GHG) implications.¹³⁴ The Court also recognized that climate change adversely affects the rights to life, health, an adequate standard of living, and a clean, healthy, and sustainable environment.¹³⁵ It emphasized that serious environmental damage, whether caused by climate change or other factors, can constitute a violation of these rights and that states are obliged to take measures to prevent such damage.¹³⁶ By explicitly connecting environmental harm to human rights violations, the Advisory Opinion effectively broadens the interpretative scope of instruments such as the ICCPR and ICESCR, illustrating how they may serve as enforcement pathways even where environmental treaties are absent. In Kosovo – where lignite combustion is a principal source of GHG emissions and severe air pollution – these findings indicate that inaction may amount to a breach of customary and constitutional human rights obligations.

5.2 Customary International Law Obligations

¹³² United Nations General Assembly, ‘Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change’ (29 March 2023) UNGA Res 77/276, UN Doc A/RES/77/276; *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 315.

¹³³ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 132–134.

¹³⁴ *ibid* paras 135–137, 280–298.

¹³⁵ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 372–376.

¹³⁶ Human Rights Committee, *Teitiota v New Zealand* (Views) CCPR/C/127/D/2728/2016 (24 October 2019) para 9.5, cited in *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 377; Human Rights Committee, General Comment No 36, ‘Article 6: Right to life’ (30 October 2018) CCPR/C/GC/36, para 62, cited in *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 377.

The Court reaffirmed three interrelated obligations under customary international law that are directly relevant to climate change governance; the duty to prevent significant environmental harm, the duty to co-operate, and the obligation to exercise due diligence.¹³⁷

5.2.1 Obligation to Prevent Significant Environmental Damage

The Court reaffirmed the *no-harm* rule, requiring States to ensure that activities under their jurisdiction do not cause significant environmental damage, including to the climate system.¹³⁸ This principle, first formulated in the *Trail Smelter* arbitration,¹³⁹ is now interpreted to require States to act pre-emptively where scientific evidence demonstrates a clear risk, even in the absence of absolute certainty.

5.2.2 Duty to Cooperate

The Court affirmed that the duty to cooperate is a binding customary obligation, requiring States to act in good faith, share information, consult, and coordinate responses to climate change.¹⁴⁰ This significantly limits the legal space for unilateral inaction in the face of collective environmental risks and places an affirmative obligation on States – including non-treaty participants such as Kosovo – to engage with regional and global mitigation frameworks.

5.2.3 Duty of Care and the “Stringent” Standard

The duty of care obliges States to take all appropriate measures, using the best available science and technology, to prevent environmental damage.¹⁴¹ In relation to climate change, the Court ruled that the duty of care entails a “strict” standard of care that is proportionate to the severity and

¹³⁷ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 132 (p 131).

¹³⁸ *ibid* para 133.

¹³⁹ *Trail Smelter (United States v Canada)* (Arbitral Tribunal, 11 March 1941) 3 RIAA 1905, 1965–1966, holding that “no State has the right to use or permit the use of its territory in such a manner as to cause injury [...] in or to the territory of another” (at 1965), cited in *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 272.

¹⁴⁰ *ibid* paras 140–142.

¹⁴¹ *ibid* para 138.

predictability of the risk.¹⁴² This standard includes precautionary measures and, where appropriate, procedural steps such as environmental impact assessments for activities that may cause significant environmental harm.¹⁴³ Significantly, the Court clarified that the duty of care is a continuing obligation: States must take effective measures without delay when they determine that activities within their territory cause or contribute to a breach of their environmental obligations.¹⁴⁴

5.3 Application to Kosovo's Lignite Sector

5.3.1 Foreseeability of Harm and Due Diligence Triggers

The Court, drawing on existing principles of customary law, has affirmed that States are under obligations to prevent foreseeable and avoidable environmental damage, to exercise strict due diligence, and to take immediate action when harmful activities are identified.¹⁴⁵ In Kosovo, the harmful effects of lignite combustion on air quality, public health, and the global climate system are extensively documented and acknowledged in government assessments. These scientific and political findings justify a duty to act: the Court has interpreted the duty of care, already established under customary international law, as an ongoing obligation that requires measures to reduce or eliminate the harmful activity as soon as its effects are known.¹⁴⁶ Given this body of evidence, Kosovo has already crossed the threshold where due diligence obligations are triggered, making regulatory inertia legally indefensible under both constitutional and customary standards.

5.3.2 Procedural Obligations: Environmental Impact Assessments and Public Participation

¹⁴² *ibid* para 138.

¹⁴³ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, 83 [204]–[205], cited in *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 296–297.

¹⁴⁴ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 446.

¹⁴⁵ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 133–134, 138, 234–236.

¹⁴⁶ *ibid* para 446–447.

The duty of care includes comprehensive environmental impact assessments (EIAs) for activities likely to cause significant environmental harm, including high-emission energy projects.¹⁴⁷ While Kosovo's domestic law requires EIAs for new projects, the Court's interpretation of this obligation requires that such assessments incorporate climate data, cumulative impact analysis, and public participation mechanisms. Failure to integrate these elements risks procedural non-compliance even where domestic law is formally satisfied.

5.3.3 Substantive Human Rights Impacts

The Court has interpreted the rights to life, health, and an adequate standard of living to include protection from environmental and climate-related harm.¹⁴⁸ In Kosovo, air pollution levels from lignite combustion frequently exceed WHO guidelines, posing serious health risks.¹⁴⁹ The obligation to respect, protect, and fulfill these rights means that measures that exacerbate the damage must be avoided and positive measures must be taken to mitigate it. This reasoning makes it clear that climate-related measures are part of binding human rights obligations and are not optional policy preferences.

5.3.4 Disproportionate Impact on Vulnerable Groups

The ICJ's Advisory Opinion has also underlined that climate change and environmental degradation disproportionately affect vulnerable groups, including children, older people, and people with pre-existing health conditions.¹⁵⁰ In Kosovo, communities near mines and industrial plants are disproportionately affected, as they suffer from the worst air quality and have the least

¹⁴⁷ *ibid* paras 296–298; *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, 83 [204]–[205].

¹⁴⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 6; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 arts 11–12, cited in *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 369–380.

¹⁴⁹ World Bank, *Air Pollution Management in Kosovo* (World Bank 2020) <https://documents1.worldbank.org/curated/en/214511576520047805/pdf/Air-Pollution-Management-in-Kosovo.pdf> accessed 8 August 2025.

¹⁵⁰ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep para 383–384.

access to healthcare.¹⁵¹ Under the integrated human rights environment framework articulated by the Court, targeted protection for these communities is not optional social policy but a binding legal requirement.

5.4 Binding Effect on Kosovo and Transition to Comparative Analysis

As Chapter 2 established, Kosovo's legal order incorporates customary international law and treaty provisions reflecting customary norms via Articles 19 and 22 of its Constitution.¹⁵² Building on that framework, this section applies those binding pathways specifically to the obligations identified by the ICJ in its Advisory Opinion on Climate Change.

The ICJ, in its Advisory opinion, reaffirmed that the duties to prevent significant environmental harm, to cooperate, to exercise strict due diligence, and to protect human rights from environmental destruction are norms of customary international law.¹⁵³ Pursuant to Article 19(2) and (3) of the Kosovo's Constitution, these norms are directly applicable within the legal order of Kosovo and take precedence over conflicting domestic legislation. Article 22 further strengthens this framework by incorporating key international human rights treaties - many of which were cited by the ICJ in its Advisory Opinion - into Kosovo's constitutional hierarchy.

The treaty obligations identified by the Court, such as those arising from the UNFCCC and the Paris Agreement¹⁵⁴ also are reflective of customary principles codified in the VCLT, including *pacta sunt servanda* (Article 26) and the obligation not to defeat the object and purpose of a treaty prior to its ratification (Article 18).¹⁵⁵ Even though Kosovo has not acceded to the VCLT, these provisions are generally recognized as customary law and are therefore binding on Kosovo regardless of formal treaty membership.¹⁵⁶

¹⁵¹ Bajram Maxhuni, *Community Health Needs Assessment* (Accessible Quality Healthcare/Swiss TPH & Save the Children, March 2019) https://aqhproject.org/wp-content/uploads/2020/08/Community-Health-Needs-Assessment_Report.pdf accessed 8 August 2025.

¹⁵² Constitution of the Republic of Kosovo (2008) arts 19(2)–(3), 22.

¹⁵³ *Obligations of States in respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep paras 132–142, 369–374.

¹⁵⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 arts 18, 26.

¹⁵⁵ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 18, 26.

¹⁵⁶ Anthony Aust, *Modern Treaty Law and Practice* (4th edn, Cambridge University Press 2022) 9–10.

Applied together, these legal pathways indicate that the standards clarified by the Court are binding on Kosovo as a matter of both international and constitutional law. Meeting these standards in practice — particularly in relation to the lignite sector — is not only a legal requirement but a tangible opportunity to reduce harmful emissions, protect public health, and align Kosovo with regional and global climate objectives.

The chapter compares the situation in Kosovo with that in North Macedonia and the Czech Republic. This comparative analysis will illustrate how different countries with similar energy profiles have addressed the same obligations and how the proper implementation of these standards can lead to measurable improvements in environmental quality, public health, and climate resilience, while fulfilling core human rights obligations.

6. Comparative Study: North Macedonia and Czech Republic

6.1 Introduction: Purpose and Method of Comparison

This chapter adopts a problem-oriented comparative approach to assess how different legal, institutional, and policy contexts influence the implementation of coal phase-out strategies within the framework of international and regional environmental and human rights obligations. The analysis focuses on North Macedonia and the Czech Republic, two states with historic dependence on coal but divergent positions in European legal integration.

North Macedonia is a non-EU state and a Contracting Party to the Energy Community Treaty¹⁵⁷, sharing with Kosovo both lignite dependency and the obligation to align with EU environmental acquis. However, unlike Kosovo, it benefits from EU candidate status, which introduces structured conditionality, compliance monitoring, and targeted transition financing.

¹⁵⁷ Energy Community Secretariat, *Annual Implementation Report 2024 – North Macedonia* (Energy Community, 2024).

The Czech Republic, by contrast, is an EU Member State bound by the full *acquis communautaire*, subject to European Court of Justice Jurisdiction, and participating in EU-wide climate targets and funding mechanisms and its coal transition is shaped by binding EU climate neutrality goals.¹⁵⁸

The aim of this chapter is not to directly propose a transfer of legal models, but rather to identify elements of accountability, public participation, environmental policy and rights-sensitive transition planning that could be normatively compatible with Kosovo's constitutional framework and structurally adjustable to its institutional realities.

This comparative approach follows the thesis methodology outlined in Chapter 1: both states are selected on the basis of shared environmental risks (coal dependency, air pollution) and systemic legal challenges (alignment with EU standards under varying degrees of legal integration). This allows a controlled analysis of how identical or comparable obligations produce different outcomes depending on political leverage, institutional capacity, and external enforcement.

6.2 North Macedonia

North Macedonia was selected as a comparator because it shares Kosovo's obligations under the Energy Community Treaty, faces similar challenges in lignite dependency and air quality, and yet operates within the structured framework of EU candidate status. This allow for a comparison between the two non-EU states with differing degrees of legal integration and external conditionality.

North Macedonia has long struggled with severe air pollution, especially in cities like Bitola and Skopje, where coal-fired power plants and lignite-fired heating systems in private households are predominant. According to the WHO country profile for 2023, the annual mean concentration of PM2.5 (particulate matter) is around 25 µg/m³, five times higher than the WHO guideline value. Exposure to PM2.5 is closely linked to cardiovascular and respiratory diseases and contributes to an estimated 27% of deaths from stroke and heart disease in North Macedonia.¹⁵⁹ Although there

¹⁵⁸ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 19; Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, arts 267–281.

¹⁵⁹ World Health Organization Regional Office for Europe, *North Macedonia — Air pollution country profile* (WHO 2023) 1, 3 <https://cdn.who.int/media/docs/default-source/country-profiles/environmental-health/environmental-health-mkd-2023.pdf> accessed 21 July 2025.

are still implementation gaps, the country is on track to take noteworthy steps towards phasing out coal and investing in greener alternatives - supported by plans to gradually phase out the remaining lignite-fired power plants as part of the national energy strategy.¹⁶⁰

North Macedonia demonstrates a more organized and enforceable strategy for coal phase-out than Kosovo, despite both countries being parties to the Energy Community Treaty¹⁶¹. The difference lies not in the scope of legal obligations, but in the institutional context, political incentives, and operational capacity for reform.

From a doctrinal perspective, North Macedonia demonstrates a more organized and enforceable strategy for coal phase-out than Kosovo, despite both countries being parties to the Energy Community Treaty. The difference lies not in the scope of legal obligations, but in the institutional context, political incentives, and operational capacity for reform.

Under the Energy Community framework, both North Macedonia and Kosovo are legally obliged to align themselves with key elements of EU environmental law. These include the Large Combustion Plant Directive (2001/80/EC), the Industrial Emissions Directive (2010/75/EU), and the Renewable Energy Directive (2009/28/EC).¹⁶² Article 6 of the Treaty obliges the contracting parties to implement environmental regulations “for the benefit of present and future generations” in a manner consistent with sustainable development and the protection of public health,¹⁶³ while Article 11 requires the implementation of the *acquis communautaire* listed in Annex II, compliance with which is monitored by the Secretariat.¹⁶⁴

Although both Kosovo and North Macedonia share these contractual obligations, North Macedonia's EU candidate status fundamentally differs in the way in which these obligations are implemented. As an EU candidate, North Macedonia operates within a formal framework of negotiation chapters, compliance milestones, and progress monitoring. It also receives pre-accession assistance (IPA III), which is linked to measurable sectoral reforms.¹⁶⁵

¹⁶⁰ Euronews, ‘Will North Macedonia be able to quit dirty coal?’ (*Euronews*, 8 December 2023) <https://www.euronews.com/2023/12/08/will-north-macedonia-be-able-to-quit-dirty-coal> accessed 21 July 2025.

¹⁶¹ Treaty Establishing the Energy Community (opened for signature 25 October 2005, entered into force 1 July 2006) [2006] OJ L198/18, arts 6, 11–12, Annex II [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22006A0720\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22006A0720(01)) accessed 25 July 2025.

¹⁶² *ibid* Annex II, 26–29.

¹⁶³ *ibid* art 6.

¹⁶⁴ *ibid* arts 11–12.

¹⁶⁵ European Commission, *Commission Staff Working Document: North Macedonia 2023 Report SWD* (2023) 693 final (8 November 2023) 10–11 https://enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf accessed 25 July 2025.

Kosovo, by contrast, while also receiving pre-accession assistance under IPA III, is not an EU candidate and is therefore not subject to either *acquis* conditionality or structured monitoring.¹⁶⁶ Its IPA allocations support general alignment with EU objectives but are not linked to formal negotiation benchmarks or compliance mechanisms under enlargement law. Its IPA allocations support general alignment with EU objectives but are not linked to formal negotiation benchmarks or compliance mechanisms under enlargement law. This lack of structured conditionality significantly reduces the institutional and financial leverage available to drive reforms.

These structural differences are reflected in national policies. North Macedonia's strategic framework is notably advanced in comparison. In 2019, the country adopted its Energy Development Strategy until 2040, which sets out the basic principles of its energy and climate policy and commits it to aligning with EU energy targets, reducing pollution, modernizing the sector, and increasing private sector participation.¹⁶⁷ In 2020, North Macedonia signed the Sofia Declaration on the Green Agenda for the Western Balkans and, in 2021, submitted its improved nationally determined contribution (NDC) to the UNFCCC and adopted a long-term climate protection strategy.¹⁶⁸

The National Energy and Climate Plan (NECP) adopted in 2022 presents year 2027 as an ambitious tentative target for a phase-out of coal and includes measurable indicators for three strategic objectives: achieving sustainable development, reducing import dependency, and diversifying energy sources, making North Macedonia the first Western Balkan country to commit to such a timeline.¹⁶⁹

In comparison, Kosovo's Energy Strategy 2022–2031 sets the goal of phasing out coal by 2050, but lacks legally binding interim milestones, a comprehensive framework for a just transition, or enforceable legal instruments to steer implementation.¹⁷⁰ Although the strategy envisages that new

¹⁶⁶ European Commission, 'Kosovo – Instrument for Pre-Accession Assistance (IPA III)' https://neighbourhood-enlargement.ec.europa.eu/kosovo_en accessed 25 July 2025.

¹⁶⁷ Government of North Macedonia, *Long-Term Strategy for Climate Action: Towards Climate Neutrality by 2050* (UNFCCC submission, November 2021) 22–24 https://unfccc.int/sites/default/files/resource/MKD_LTS_Nov2021.pdf accessed 25 July 2025.

¹⁶⁸ *ibid.*

¹⁶⁹ Balkan Green Energy News, 'North Macedonia First in Western Balkans Adopts National Energy and Climate Plan' (2 June 2022) <https://balkangreenenergynews.com/north-macedonia-first-in-western-balkans-adopts-national-energy-and-climate-plan/> accessed 25 July 2025.

¹⁷⁰ Republic of Kosovo, *Energy Strategy of the Republic of Kosovo 2022–2031* (April 2023) 8, 30–31 <https://me.rks-gov.net/wp-content/uploads/2023/04/Energy-Strategy-of-the-Republic-of-Kosovo-2022-2031-1-1.pdf> accessed 25 July 2025.

renewable energies will gradually replace lignite-fired power generation, the interim plans rely heavily on maintaining coal-fired base load capacity, specifically, two units at Kosovo B and at least one unit at Kosovo A are to be refurbished to ensure base load and reserve capacity until 2030, with only one unit at Kosovo A to be decommissioned by 2031¹⁷¹. The document remains primarily indicative - dependent on the expansion of renewable energies, future CO2 pricing, and market incentives - but does not offer any concrete transition measures for affected workers or communities.

Both Kosovo and North Macedonia benefit from the EU's Instrument for Pre-Accession Assistance (IPA III). Although candidate status does not automatically lead to higher financial allocations, North Macedonia's IPA funding is tied to strict, performance-based conditionality embedded in the enlargement process,¹⁷² whereas Kosovo's is directed primarily at broad institutional development without binding sectoral targets.¹⁷³

In North Macedonia's case, these institutional factors are bolstered by targeted external financing. In March 2024, the Climate Investment Fund (CIF) approved US\$85 million to support the coal phase-out in North Macedonia as part of its Accelerating Coal Transition (ACT) platform.¹⁷⁴ This package includes the decommissioning of country's largest plants, the Bitola and Oslomej power plants, the remediation of mining sites, the construction of 400 MW of renewable energy capacity, and the retraining of around 3,000 workers. The CIF estimates that the investment will mobilize an additional \$166 million in co-financing. This was supplemented in June 2024 by a \$500 million investment by Alcazar Energy to build the country's largest wind farm.¹⁷⁵ This illustrates that identical obligations under the Energy Community Treaty can produce markedly different outcomes when mediated by institutional capacity, EU conditionality, and targeted transition

¹⁷¹ Ibid.

¹⁷² European Commission, *Overview – Instrument for Pre-Accession Assistance (IPA III) 2021–2027* (2021) sec 2 https://enlargement.ec.europa.eu/enlargement-policy/overview-instrument-pre-accession-assistance_en accessed 25 July 2025; European Commission, *North Macedonia 2024 Report* SWD(2024) 693 final (30 October 2024) 22–23 https://enlargement.ec.europa.eu/document/download/5f0c9185-ce46-46fc-bf44-82318ab47e88_en accessed 25 July 2025; European Commission, *Kosovo 2024 Report* SWD(2024) 692 final (30 October 2024) 12–13 https://enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en accessed 25 July 2025.

¹⁷³ Ibid.

¹⁷⁴ Climate Investment Funds, *ACT Investment Plan – North Macedonia* (March 2024) https://www.cif.org/sites/cif_enc/files/2024-05/act_ip_north_macedonia_03202024.pdf accessed 25 July 2025.

¹⁷⁵ Reuters, 'Alcazar Invests \$500 Million in North Macedonia's Largest Wind Farm' (25 June 2024) <https://www.reuters.com/business/energy/alcazar-invests-500-mln-north-macedonias-largest-wind-farm-2024-06-25/> accessed 25 July 2025.

financing. North Macedonia's coal phase-out is embedded in a legally binding, politically reinforced, and financially supported architecture, whereas Kosovo remains structurally constrained by the absence of candidate mechanisms, sectoral conditionality, and enforceable planning obligations.

6.3 Czech Republic

The Czech Republic offers a pertinent contrast to Kosovo, by demonstrating how entrenched coal dependency can be dismantled when environmental protection is framed as a constitutional right, a binding supranational obligation, and a condition for access to substantial financial assistance. In 2020, coal still generated 41% of Czech electricity, placing it among the EU's most coal-reliant states,¹⁷⁶ yet, the trajectory of its phase-out illustrates that the decisive factor is not the scale of the problem but the legal architecture that governs it, namely, the interlocking mechanisms of constitutional and legal guarantees, binding supranational obligations, and targeted financial conditionality that collectively close the enforcement gap Kosovo faces. Coal-related emissions are regulated under binding EU environmental directives and the EU Emissions Trading System, enforceable through the Court of Justice of the EU.¹⁷⁷

These hard-law obligations, combined with sustained civil society pressure¹⁷⁸, compelled the government to accelerate its coal phase-out to 2033¹⁷⁹, aligning national policy with EU climate objectives. In Kosovo, where comparable obligations are absent, transition timelines remain dependent on political will alone.

¹⁷⁶ International Energy Agency, *Energy Policy Review: Czech Republic 2021* (IEA/OECD 2021) 12 <https://www.iea.org/reports/czech-republic-2021> accessed 27 July 2025.

¹⁷⁷ Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions [2010] OJ L334/17; Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe [2008] OJ L152/1.

¹⁷⁸ Czech Coal Commission, *Final Report* (Dec 2020) 4–6 https://www.mpo.cz/assets/cz/energetika/uhli/2021/1/Zprava-Uheln-komise_EN.pdf accessed 28 July 2025.

¹⁷⁹ Jan Lopatka and Robert Muller, 'New Czech Government Sees Coal Exit by 2033, Backs Nuclear Power' (Reuters, 7 January 2022) <https://www.reuters.com/markets/commodities/new-czech-government-sees-coal-exit-by-2033-backs-nuclear-power-2022-01-07/> accessed 28 July 2025.

Environmental protection in the Czech Republic is a justiciable constitutional right under Article 35 of the Charter of Fundamental Rights and Freedoms,¹⁸⁰ enabling courts to hold the state accountable for failing to prevent environmental harm. Czech Courts have ruled that inadequate air quality measures breach rights to life and health, obliging the state to adopt stronger climate measures consistent with domestic and international obligations.¹⁸¹

As a member of the Council of Europe, Czech citizens have direct access to the ECtHR and have actively used this mechanism to frame environmental harm as a violation of human rights, besides their reportedly functional domestic justice system¹⁸², which has demonstrated its capacity to adjudicate environmental rights claims thus effectively utilizing a dual layer to amplify pressure on accountability enforcement on the state. In addition to Kosovo's lack of access to the ECtHR, there is also no evidence that the domestic judiciary has ever adjudicated a case involving breaches of environmental law or recognized infringements of the rights to life or health in an environmental context. This shows that even domestic legal avenues offer no realistic prospect of enforcing these rights, as they have never been interpreted by the courts, have generated no binding precedent, nor have imposed any practical constraints on state authorities, thus leaving citizens without any effective legal remedy.

While the Czech citizens also have direct access to the ECtHR and have actively used this mechanism to frame environmental harm as a violation of human rights, thereby applying external judicial pressure when domestic remedies proved insufficient. By contrast, Kosovo's citizen lack access to the ECtHR and there is no evidence that Kosovo's judiciary has ever adjudicated a case involving breaches of environmental law or recognized infringements of the rights to life or health in an environmental context, leaving such rights effectively dormant and unenforced.

Procedural rights under the Aarhus Convention¹⁸³ are actively invoked in the Czech Republic through strategic litigation that has overturned emission exemptions for coal-fired plants¹⁸⁴ and

¹⁸⁰ Charter of Fundamental Rights and Freedoms (Czech Republic) Act No 2/1993 Coll, Art 35
https://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Pravni_uprava/AJ/Listina_en_2021.pdf
accessed 28 July 2025.

¹⁸¹ Nejvyšší správní soud (Supreme Administrative Court), *Klimatická žaloba ČR v Česká republika* 9 As 116/2022 (20 February 2023).

¹⁸² *ibid.*

¹⁸³ United Nations, *Aarhus Convention* (adopted 25 June 1998, entered into force 30 October 2001)
https://treaties.un.org/Pages/ViewDetails.aspx?chapter=27&clang=en&mtdsg_no=XXVII-13&src=IND accessed 28 July 2025.

¹⁸⁴ Environmental Justice Atlas, 'Limits to Lignite Mining in Horní Jiřetín' (2021) <https://ejatlas.org/print/limits-to-lignite-mining-horni-jiretin> accessed 28 July 2025.

local referendums that have upheld statutory mining limits, preventing environmental degradation and forced displacement.¹⁸⁵ Furthermore, institutional capacity is reinforced by billions of Euros from the EU's Just Transition Fund,¹⁸⁶ with disbursement conditional on demonstrable progress in coal phase-out and socio-economic restructuring, creating direct financial incentives for compliance. Kosovo's IPA III allocations, by contrast, are not tied to binding sectoral milestones and thus exert limited leverage over domestic implementation.

Crucially, these legal and financial mechanisms in the Czech Republic are underpinned by sustained public mobilization, ensuring that procedural rights are not only formal guarantees but active levers of accountability. In Kosovo, aside from limited activity by a small number of NGOs and media outlets, there is no evidence of sustained public mobilization capable of exerting meaningful pressure for governmental reform in the energy sector or air-quality-related policies to this date. The absence of enforceable supranational obligations, functioning domestic adjudication, conditional funding, and sustained civic pressure means that even adopting EU member state models would face significant implementation barriers, with environmental harm and related rights violations likely to persist until structural enforcement gaps are addressed.

6.4 Findings and Conclusion

The evidence presented in this thesis has established that continued reliance on outdated lignite-fired power plants constitutes a persistent violation of the right to life, health, and a clean, healthy, and sustainable environment. These harms are cumulative and are exacerbated by outdated technology, aging infrastructure, and a lack of effective control mechanisms. This persistence does not simply reflect a gap in formal commitments, but rather a pattern of inadequate implementation of these commitments into enforceable measures.

A central factor in this failure is the absence of integration into regional judicial and supervisory systems. Without access to the European Court of Human Rights, the Court of Justice of the European Union, or an equivalent oversight, there is no independent forum that to compel

¹⁸⁵ Environmental Justice Atlas, 'Limits to Lignite Mining in Horní Jiřetín' (2021) <https://ejatlas.org/print/limits-to-lignite-mining-horni-jiretin> accessed 28 July 2025.

¹⁸⁶ European Commission, *Just Transition Fund – Country Report: Czech Republic* (2022) https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5702 accessed 28 July 2025.

compliance or provide binding remedies. The absence of structured compliance checks also limits public awareness and reduces pressure on decision-makers, while weaker links between environmental performance and eligibility remove a crucial incentive for implementation. These missing elements contrast sharply with the arrangements in the comparative cases examined.

In the Czech Republic, constitutional justiciability, binding EU directives, and supranational case law ensure that environmental obligations have direct legal effect and that violations carry legal and financial consequences. North Macedonia shows that significant progress can be made even without EU membership when strategic planning is embedded in structured monitoring, milestone-based financing, and regular external evaluations. Both examples show that enforcement capacities can be boosted by combining precise legal obligations, independent institutions, and performance-based external engagement - elements that can be adapted to the current context even without full treaty integration.

Domestic law in Kosovo does not currently provide for such a framework. Although international instruments have been incorporated into the constitution, they have not produced any documented environmental case law. There is no evidence that cases of environmental pollution have been brought before domestic courts, and administrative authorities lack the powers and resources to enforce compliance. There are no binding deadlines or interim targets for phasing out lignite, and oversight is fragmented, underfunded, and largely without enforcement powers. As a result, strategic documents function more as ambitious political statements than as legally binding instruments.

Strengthening compliance requires a robust package of reforms. Laws must establish pollutant caps and facility-specific limits linked to time-bound milestones and mandatory corrective measures in the event of exceedances. Courts ought to have explicit authority to treat environmental destruction as a violation of constitutional and human rights obligations and have the power to order effective remedies. Regulatory agencies need to be independent in their function and funding, able to monitor compliance in real time, and empowered to enforce outcomes.

While full participation in international monitoring mechanisms may depend on political processes beyond domestic control, significant harm reduction can be achieved through national measures: continuous public reporting on air quality and emissions, legally binding decommissioning plans for the most polluting plants, investment in renewable energy to replace lignite-fired power plants,

and modernization of the transmission grid to integrate new energy sources. Targeted energy efficiency programs can reduce demand and decrease dependence on coal, while public awareness initiatives and legal empowerment of communities can promote national accountability.

The evidence presented leads to a clear conclusion: the present environmental harms are unlawful under binding human rights and environmental norms, and the absence of external enforcement does not diminish the obligation to act. Legal reform, institutional strengthening, and an integrated energy transition anchored in renewable energy are essential to bring practice into alignment with the law. Delivering these changes would not only fulfil formal obligations, but also prevent further avoidable loss of life and protect the dignity and health of the population.

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