

## ASPECTS REGARDING THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT<sup>1</sup>

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### ABSTRACT

*The European Court of Human Rights has recognized in its jurisprudence the relationship between human rights and the environment and that, indirectly, environmental degradation affects human rights by altering the values protected by the Convention. Environmental degradation has far outstripped national borders, becoming a cross-border environmental issue with great challenges for the international community. Environmental degradation affects the community as a whole and, consequently, its rights to a clean environment. The ECHR indirectly provides protection for environmental issues by creating real and effective environmental jurisprudence.*

*Keywords:* ECHR, human rights, environment, international community, environmental jurisprudence, environmental challenges

### Introduction

In recent years, the issue of environmental protection has become of international interest. At international level and also at European level, the environment is of general interest. This development of international environmental issues has led to an increase in environmental cases in national and international courts.

The first attempts to give individuals a human right to a clean environment<sup>2</sup> and to implement it appeared in the courts in the 1970s after the Council of Europe elaborated the Additional Protocol No. 1/1952 to the European Convention on

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<sup>1</sup> This paper is written during the sustainability stage of the project entitled „*Horizon 2020 – Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research*”, contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**

The paper is part of the doctoral thesis „International Responsibility of States for Transformational Environmental Damage”.

<sup>2</sup> Oana-Maria Hanciu, The right to a clean environment. International recognition of a human right to a clean environment by EctHR jurisprudence – international conference „Challenges of the Knowledge Society” – CKS, Bucharest, Romania, 2015.

Defense Human Rights and Fundamental Freedoms, which concerned the individual right to a clean environment and an unaffected environment. Efforts have not been successful because this development has not been politically accepted. In 1985, following various academic and policy debates, the European Union adopted a directive providing for an environmental impact assessment for public or private projects likely to have a significant impact on the environment<sup>3</sup>. Later, the directive was replaced by a new directive<sup>4</sup> which set public access to environmental information as mandatory.

On this background, it has been suggested by doctrine that we can already talk about an international human right to a clean environment<sup>5</sup>.

Recently, the three regional human rights courts<sup>6</sup> have been involved in environmental protection as a result of environmental problems affecting more and more people.

The extension of ECHR environmental case law is due to the fact that the exercise of certain rights under the Convention can be prevented by environmental damage and exposure to environmental hazards.

Due to the degree of flexibility in the interpretation of the admissibility requirements provided by the Article 34 and Article 35 of the Convention, the case-law of the Court indirectly supports the international recognition of human rights to a clean environment.

The essential admissibility requirements refer to the status of victim and the exhaustion of domestic remedies, which occurs within six months of the date on which the final judgment was passed. Above all, cases brought before the Court must relate to human rights violations.

The Convention has been interpreted by the Court in a very dynamic and evolving manner<sup>7</sup>, so that the link between human rights and the protection of the environment determines indirect qualification in many cases.

In accordance with Article 34, requests to the Court must be submitted by a person, a non-governmental organization or a group of persons. The essential condition is that the applicant must be the victim of a violation by one of the High Contracting Parties of the rights recognized in the Convention or its Protocols.

Article 35 (1) of the Convention sets out the admissibility criteria, most of which are procedural, such as the six months<sup>8</sup>, and the exhaustion of all internal remedies.

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<sup>3</sup> Directive 85/335 on the assessment of the effects of public or private projects on the environment.

<sup>4</sup> Directive 2003/4 on public access to environmental information/

<sup>5</sup> Malcom Shaw, *International law*, Fifth Edition, Cambridge University Press, Cambridge, 2003, p. 756.

<sup>6</sup> The Inter-American Court of Human Rights, the European Court of Human Rights, the African Court on Human and Peoples' Rights.

<sup>7</sup> Harris, O Boyle & Warbrick, *Law of the European Convention on Human Rights*, Third Edition, Oxford University Press, 2014, p. 8.

<sup>8</sup> According to Protocol 15 of the Convention, when it is ratified, the six-month period will be reduced to four.

Article 35 (3) offers several admissibility criteria, such as manifestly unfounded claims<sup>9</sup> and no significant disadvantage<sup>10</sup>, criteria which require the court to assess the merits of the case at this preliminary stage<sup>11</sup>.

As regards the admissibility rules, the Court has stated in many decisions that these rules must be applied with a certain degree of flexibility and without excessive formalism<sup>12</sup>.

As the Court stated in the Georgia (Russia) v. Russia (II) judgment, this latter criterion applies only to individual requests, not to inter-state cases.

The former European Commission of Human Rights has pointed out that the applicant can not complain as a representative of the people in general because the Convention does not allow such an *actio popularis*<sup>13</sup>. However, there are exceptions in this area<sup>14</sup>, and in some judgments, the Court has stated that an NGO might act in some situations as a representative for real victims.

### **International recognition of human rights to a clean environment in the ECHR case-law**

The European Court of Human Rights has recognized in its jurisprudence the relationship between the protection of human rights and the environment and indirectly the degradation of the environment affects human rights. This relationship has become a preoccupation of the international community, which has realized that environmental degradation affects the community as a whole and, consequently, its rights to a clean environment.

The ECHR is not intended to cover and guarantee the right to a clean environment. However, the Convention and its Protocols indirectly provide protection for environmental issues, and in this respect the numerous cases brought before the ECHR create real and effective environmental jurisprudence.

The doctrine has established that the right of the individual to a clean environment has no conventional guarantee other than by attracting another right<sup>15</sup>.

The Court stated in *Loizidou v. Turkey*, at paragraph 71: „The Convention is a living instrument which must be interpreted in the light of the current conditions in which it is well established in the case-law of the Court”.

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<sup>9</sup> In the preliminary examination of the purpose of an application it is decided whether or not the applicant has succeeded in supporting the allegation.

<sup>10</sup> The Court has stated that violation of a rights must reach a minimum level of severity to be admitted by an international court.

<sup>11</sup> Harris, O Boyle & Warbrick, *Law of the European Convention on Human Rights*, Third Edition, Oxford University Press, 2014, p. 43.

<sup>12</sup> *Ilhan v. Turcia* 2000, CEDO, paragraful 51.

<sup>13</sup> *X Association v. Sweden* 1982, CEDO.

<sup>14</sup> *Asselbourg și 78 alții și Greenpeace Luxemburg c. Luxemburg* 1999, CEDO; *Câmpeanu c. România* 2014, CEDO.

<sup>15</sup> Frederic Sucre, *La protection du droit a l'environnement par la Cour europeenne des droit de l'homme, Les Nations Unies et la protection de l'environnement*, Paris, 1999, p. 140.

Even if the violation of the right to a clean environment is not protected by the Convention, because it can not be invoked directly in the Convention, it may be a violation of other rights that are guaranteed by it<sup>16</sup>.

In recent years, the Court has examined an impressive number of complaints in which individuals have stated that a violation of one of their Convention rights has led to the emergence of negative environmental factors<sup>17</sup>.

There are a number of human rights that are relevant in the field of environmental protection, and ECHR jurisprudence has guaranteed environmental protection in environmental cases, which could affect the right to life, the right to respect for private and family life, and at home, to an effective remedy, the right to property and the right to respect for someone's property.

The right to life provided by Article 2 of the ECHR provides a positive obligation for States to take all necessary measures to protect human life.

The positive obligation of Member States can be applied in the context of hazardous activities, such as industrial activities that are by their very nature dangerous, such as the management of waste collection facilities<sup>18</sup>.

In the case of *Oneryıldız v. Turkey*, the Court found a violation of Article 2 of the Convention. The facts that led to such a decision consisted of a municipal waste landfill where a methane gas explosion took place in April 1993, and thirty-nine people who had illegally built their homes around it were killed. Nine members of the applicant's family died in the accident. The complainant complained that no special measures were taken to prevent the explosion, despite a report of expertise that drew the authorities' attention to the need to act preventively, and as such, the explosion would have been unlikely.

The Court found that there had been a violation of Article 2 of the Convention in its substantive aspect due to the lack of adequate measures to prevent the accidental death of nine of the applicant's close relatives. As regards the procedural aspect, the Court has held that there has been a violation of Article 2 due to the lack of adequate protection by law in order to protect the right to life.

On the other hand, in *L.C.B. c. The United Kingdom*'s father was exposed to radiation while working as a catering assistant at the Royal Air Force on Christmas Island during four nuclear tests in 1950. The applicant was born in 1966 and in 1970 was diagnosed with leukemia. His medical file suggests a possible cause – „Father Radiation”. The applicant stated that the state did not warn and counseled parents about the impact of nuclear tests on their future children and also did not monitor their health status. The Court has held that there is no violation of Article 2 on the ground that the applicant has not established a causal link between her father's exposure to radiation and her illness, leukemia.

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<sup>16</sup> Mircea Dutu, *Dreptul international al mediului*, Ed. Economica, Bucharest, 2010, p. 159.

<sup>17</sup> Manual on Human Rights and the Environment, Council of Europe Publishing, Strasbourg, 2012, p. 8.

<sup>18</sup> *Oneryıldız v. Turcia*[CEDO], paragraph 71.

Although environmental degradation does not imply a violation of Article 8 of the Convention, indirectly, environmental factors can directly and gravely affect private and family life.

Article 8 of the Convention protects the right to „respect“ various interests and implies an extended right to environmental issues. The State has a positive duty to adopt rights protection measures in this article.

In the case of *Kyrtatos v. Greece*, the applicants denounce an illegal urban planning act, which destroyed a protected swamp under the Greek Constitution. The Court found that there had been no violation of Article 8 on the ground that, on the assumption that the environment was severely affected by the urban development of the area, the applicants did not provide convincing arguments showing that the damage to birds and other protected species living in the swamp was liable to directly affect their rights under Article 8 § 1 of the Convention. It would have been otherwise if, for example, the alleged damage to the environment were to destroy the forest in the immediate vicinity of the applicants' houses, a situation which could have directly affected the applicants' well-being. When considering the second aspect of the complaint, the Court found that the discomfort that arose from the applicants' neighborhood as a result of the urban development of the area (noises, night lights, etc.) did not reach a sufficient degree of seriousness for be taken into account for the purposes of Article 8.

In *Tătar v. Romania*, claimants, father and son, complain that the technological process used by a company in the gold mining activity is life-threatening because a significant part of the company's activity took place near their homes. In January 2000 an environmental accident occurred at this company. A UN report revealed that a dam was broken, releasing a significant amount of sodium cyanide and contaminated water into the environment. The complainants also argued that the authorities did not take any action, although one of the applicants, has lodged numerous complaints that their lives were threatened (especially the health of their asthmatic son). In this case, the Court found that there had been a violation of Article 8 of the Convention on the ground that the Romanian authorities had failed in their duty to assess to a satisfactory extent the risks that the mining company might have involved and to take the necessary steps to protect the rights of those involved, to respect their private lives and their homes and, in general, the right to enjoy a healthy and protected environment. The Court emphasized that pollution could interfere with a person's private and family life, affecting his well-being and that the State was required to ensure the protection of its citizens by regulating the authorization, establishment, operation, safety and monitoring of industrial activities, which were dangerous to the environment and human health.

Article 13 of the Convention speaks of the relationship of cooperation between the Convention and the national legal system. Article 13 requires states to protect human rights and guarantees people an effective remedy for human rights violations.

In *Kolyadenko and Others v. Russia*, the applicants lived near the Pionerskaya River and the water reservoir. They were affected by a large flood in the city of Vladivostok, as the authorities spilled water without any prior warning and failed to keep it on the river canal. They also complained that their homes and properties were seriously damaged. The Court found that there had been a violation of Article 2 of the Convention, its substantive and procedural aspects, since Russia had failed to respect its positive duty to protect the applicants' life and there was no judicial response to that event on the responsibility of the authorities. The Court held that there had been a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1 (Protection of Property) of the Convention, noting that the responsible authorities failed to do their utmost to protect the applicant's rights. With respect to Article 13 of the Convention, the Court found that it had not been violated on the ground that the outcome of the procedure provided for by the Russian law was unfavorable to the applicants and they did not demonstrate that, under Article 13, the remedies available were insufficient.

Article 1 of Protocol No. 1 to the Convention guarantees the right to respect for property of persons. The Court found that the provisions of Article 1 of Protocol No. 1 applies to environmental issues based on the premise that the protection of a person's property must be practical and effective. The general interest in environmental protection may justify certain restrictions by public authorities on the individual right to property<sup>19</sup>.

It is the case of *N.A. and Others v. Turkey*, in which the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention on the ground that the applicants, even if they had acquired the land at issue in good faith, received no compensation for the transfer of their property to the Treasury or the demolition of the hotel.

In view of the above, we can say that environmental protection is in close relationship with the protection of human rights and this has been recognized by human rights jurisprudence.

The case law of the ECHR has recognized an individual right to a clean environment deriving from the circumstances in which Articles 2, 8, 13 of the Convention and Article 1 of Protocol No. 1 have been applied. 1 to the Convention.

## Conclusion

The intensification of environmental issues has given the ECHR grounds to extend its jurisprudence in this respect, provided that the violation of a rule of law is only retained if the claimant is sufficiently affected and there is a direct link between the alleged victim and the violation of the law. The plaintiff must also have a legitimate interest in that the damage to the environment should have a direct impact on him.

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<sup>19</sup> *Pine Valley Developments Ltd și alții c. Irlanda*, hotărârea din 29 noiembrie 1991, paragraph 57.

The protection of the environment can not be separated from the concept of protection of human rights. It has been shown that environmental damage has a significant impact on mankind, especially in relation to the right to life, the right to health, the right to property.

The challenges of the future in the protection of the environment and the fact that it is increasingly evident that environmental issues directly affect human rights will lead to an extension of environmental jurisprudence and a clearer international recognition of human rights to a clean environment not only by the ECHR but also by other international courts.

In view of this, it is necessary for states and international organizations to be more receptive to the implementation of the rights to a clean environment, given the possibility of a new Protocol to the ECHR, which directly regulates human rights in a clean environment.

As the Costa Rica Supreme Court said, any doubt about the interpretation or application of a law should be resolved in favor of nature protection – *in dubio pro natura*.