

Right to environment as a human right and Europe 2020 Strategy

Abstract

In this article, particular attention is paid to the right to life in a clean natural environment, which is an essential component of the safe existence of every human being. The problem of the deteriorating condition of the natural environment and its impact on changing the conditions of human life and its security is a current problem, the solution of which will require effective cooperation of the international community.

Keywords: environment, human rights, Europe 2020 Strategy, safe existence

1. III generation right

The right to a clean environment belongs to the third generation of human rights, in which the entire humanity is the authorized entity, which determines the care for the common good, which is the natural environment. Not without significance is the fact that a healthy and clean environment is an element necessary to benefit from other human rights.

It is a solidarity law, collective. It manifests itself in both the power, the purpose of which is to provide to the individual and the entire humanity of life in a healthy, clean environment, but also providing legal instruments that will enable everyone to be active actor while ensuring environmental protection by participating in environmental decisions and the possibilities of suing them, as well as the conscious and sustainable use of his resources. The right is inextricably linked to the burden of responsibility that held by whole humanity, whose duty is to take care of the environment for the sake of its current and future generations. The right to live in

a clean environment can be embodied only by the joint effort of the international community, in a progressive way, while ensuring a balance between the development of societies, economy and environment. At the same time, it is both an individual right and collective – the responsibility of each person for the use of his due the power to stand on guard for the environment translates into the effect of a shared existence all people in one ecosystem, caring for the common good – the environment.¹

The human right to live in a clean environment should also be read as a right directly enabling the use of other human rights belonging to the other two categories of human rights, such as the right to life and health.²

Looking from a philosophical point of view, a human rights-based approach to ecological issues brings nature and its elements into the exclusive field of human rights. Through the history, the idea of human rights has extended to cover an expansive range of interests and a wide spectrum of beneficiaries, so it is possible that it could extend further to non-humans. People have a tendency to stretch out rights and benefits to anything they esteem or love, for example, pets, trees and even cultural or religious beliefs. Similarly, the rights of nature, which reflect the ecocentric approach of the ‘Right to Environment’, fall into this rights-based rhetoric. Notwithstanding, conflicting as it might appear, ecocentrism as an idea is not innately far from anthropocentric interests. Profound eco-scientists, who state that non-human beings and ecosystems must be protected for their own value, see nature and protection of flora and fauna as a feature of what they call ‘self-acknowledgment’ or ‘self-identification’ with nature. The idea of self-fulfilment regarding higher natural values is human-centric in itself; regardless of whether we ensure nature for our biological/financial survival or for our spiritual or mental prosperity, the human factor cannot be isolated from the rights-based examination.³

¹ Ukleja A., Wójcicka M. (2013) Ochrona prawa do życia w czystym środowisku naturalnym i migracje ekologiczne, [in:] Status cudzoziemca w prawie międzynarodowym publicznym. Implikacje w prawie Unii Europejskiej i polskim porządku prawnym (ed.) Galter J., Łachacz O., 124.

² Indian judiciary is known for proactive role in defending environment. Decisions of an anthropocentric nature have linked environmental violation to human life, health and safety. For example, in Chinnappa and Godavarman, the Indian Supreme Court found that a “*hygienic environment is an integral facet of the right to the healthy life and it would be impossible to live with human dignity without a humane and healthy environment*” (K.M. Chinnappa and T.N. Godavarman Thirumapada v. Union of India and Others, 10 SCC 606 (2002). In the Subash Kumar case, the Supreme Court stated that the right to life “*includes the right to enjoyment of pollution-free water and air for full enjoyment of life*” (Subash Kumar v. State of Bihar, AIR 1991 SC 420 (1991).

³ Leib L. H. (2011) Human Right and the Environment, 157.

2. Aarhus convention

In Europe, the right to the environment is based mainly on the right to information based on the Aarhus convention (The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), signed on 25 June 1998. Former UN-Secretary Kofi Annan called it “*the most impressive elaboration of Principle 10 of the Rio Declaration and (...) the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.*”⁴ It is the first international environmental agreement whose main objective is to determine states’ obligations towards their citizens and NGOs. By establishing these obligations, the Convention demonstrates a ‘close affinity’ with the international human rights system.⁵

The environmental procedural rights embedded in the Convention, the so called ‘three pillars’ are the reflection of rights-based approach: the public, both in the present and in future generations, have the right to know and to live in a healthy environment.

The right to access to environmental information – all citizens should have easy access to environmental information. Public authorities, also including regional bodies, must provide all the information required and collect and disseminate them and in a timely and transparent manner. The limitation to this provision can occur only under certain circumstances, ex. national defense need.

The right to participate in environmental decision-making procedures – the public must be informed over all the relevant activities and it needs to have the opportunity to take part during the decision-making and legislative process. Leaders can take advantage from people’s knowledge and expertise; this contribution is a strong opportunity to improve the quality of the ecological choices, results and to ensure procedural authenticity.

The right to access to justice – people has the privilege to judicial or administrative recourse procedures in case a Party abuses or neglect to adhere to environmental law and the convention’s principles.

The Aarhus Convention is a reflection of the environmental democracy theory, an inventive method for assembling procedural and democratic rights on environmental issues, basic to the reasonable connection between ecological

⁴ UNECE, „Aarhus Convention: Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, <http://www.unece.org/env/pp/> after: Leib L. H. (2011) Human Right and the Environment, 83.

⁵ Leib L. H. (2011) Human Right and the Environment, 83.

protection and democracy based on values and practices. Although the environmental democracy theory claim to protect the environment without the need for a substantive right to environment, it prepares the legal and philosophical ground for the future acknowledgment of natural rights by greening the idea of human rights and reshaping our beliefs and mentalities towards nature⁶.

The Convention had an undoubted impact on the establishment and implementation of the principle of sustainable development, as well as intensified by the European Union for last several years environmental policy, that forced changes aimed at improving the fight against crimes against the environment. The changes introduced by the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law had also an impact on crime policy in Poland and other member states⁷.

The principles of environmental protection obviously derive from the right to the environment, which are part of a wider context of the rights of the human being, offering a new model of subjective rights, in which individual rights are closely connected with social and collective rights. The right to environment is also a proposal to strengthen mutual relations in the mock conflict of interests between the individual and the community. These relations are also expressed in the spiritual and material development of this society, creating a new bond between the individual and society. It should be emphasized, however, that the basic characteristic of the right to the environment is its complexity and the need to balance between the rights of the individual (individual property) and the rights of all people (common property). Perhaps that is why all legal regulations in this respect turn out to be extremely difficult and still insufficient⁸.

Ensuring the right to (healthy, clean) environment is the duty mainly of the state, as the state is the main guarantor of the rights of their citizens. Firstly, it is the state that has inherent responsibility for certain institutions, like the legal system. Secondly, states have a degree of control over other institutions and structures that influence the environment. Thirdly, states have power of enforcement against ecological criminals than any other entity in society.⁹

⁶ Ibidem, 159.

⁷ Wójcicka M. (2015) Wpływ dyrektywy Parlamentu Europejskiego i Rady 2008/99/WE z dnia 19 listopada 2008 r. na polską politykę kryminalną, *Journal of Modern Science*, 2/25/2015, 427–439.

⁸ Krajewski P. (2010) Ochrona prawna człowieka i jego środowiska wobec ekspansji organizmów genetycznie zmodyfikowanych w prawie wspólnotowym i międzynarodowym, Olsztyn, ISBN 978-83-7299-654-1, 82.

⁹ Brown G. (2016) The Universal Declaration of Human Rights in the 21st Century, 72-73.

3. Limited resources as a challenge for the future

According to the 2006 Living Planet Report, “*the Earth’s regenerative capacity can no longer keep up with demand-people are turning resources into waste faster than nature can turn waste back into resources. Humanity is no longer living off nature’s interest but drawing down its capital.*”

With up to three billion people likely to join the global middle class by 2050¹⁰, competition for resources will inevitably grow. Improving the productivity of resources such as water and land by around a factor of two, and energy by a far higher factor, would make a substantial contribution to reducing resource depletion and the threat of climate change. The European Union (EU) has therefore designated resource-efficiency as one of the flagships of its Europe 2020 strategy. For the reasons given above, influential authors from civil society and policy makers see PSS-like business models as one of the most important means of creating a ‘lease society’ a term coined by Member of the European Parliament Judith Merkies, a circular economy or simply a ‘resource revolution’¹¹.

Resources are important for the economy and condition to work. However, the times of bulk supply of cheap raw materials – a key factor in the major financial development in the last two centuries – are over. A substantive increase in the number of population and rising expectations for everyday comforts are expanding interest and raising the cost and shortage of common assets like the metals, minerals and food we rely on. Consistently, the worldwide population increases by 200 000 daily. By the end of the following decade, an extra 2 billion people may have joined the high-consumption middle classes in developing states.

Demand and supply are do not go in the same direction. If resource use continues at the present rate, mankind will require the equivalent of more than two planets by 2050 to satisfy its needs and the hopes of millions for a better quality of life will be dashed¹².

¹⁰ WBCSD (2009) World Business Council for Sustainable Development (WBCSD), Vision 2050. The New Agenda for Business, Geneva, Switzerland.

¹¹ McKinsey (2011) Resource Revolution: Meeting the World’s Energy, Materials, Food, and Water Needs McKinsey Global Institute; McKinsey and Company Sustainability, Resource Productivity Practice
Available from: www.mckinsey.com/mgi

¹² Directorate-General for Communication (European Commission) (2014), Environment. A healthy and sustainable environment for present and future generations, ISBN 978-92-79-42633-9, 9.

4. The resource-efficient Europe flagship initiative as a part of the Europe 2020 Strategy

To address the difficulties, the European Commission has made resource efficiency one of the lead activities of its 2020 strategy.

The main aim of 2020 Strategy is to ensure growth by offering job while implementing principles of sustainable development and taking into consideration challenges. *“The Europe 2020 strategy Europe 2020 is the EU’s agenda for jobs and growth for the current decade. It emphasises smart, sustainable and inclusive growth as a way to strengthen the EU economy and prepare its structure for the challenges of the next decade. As its main objectives, the strategy strives to deliver high levels of employment, productivity and social cohesion in the Member States, while reducing the impact on the natural environment.”*¹³

Among the challenges the strategy lists limited resources. This implies producing more value with less input, utilizing assets economically and managing them more effectively during their life-cycle. It requires development, changes underway and consumption patterns and the correct motivations and price signals.

One of seven flagship initiatives included in Europe 2020 to catalyse progress is: *“Resource efficient Europe” to help decouple economic growth from the use of resources, support the shift towards a low carbon economy, increase the use of renewable energy sources, modernise our transport sector and promote energy efficiency.*¹⁴

In late 2011, EU governments received the Roadmap to a Resource-Efficient Europe. This implied a vague change in monetary, political and individual behavior. It contains milestones across different policy areas to arrive at a European economy within 40 years that furnishes an high-class living conditions with a much lower effect on the ecosystems. This Roadmap sets the milestones, which illustrate what will be needed to put us on a path to resource efficient and sustainable growth. Each section then describes the actions that are needed in the short term to start off this process.

The purpose of the Roadmap is: by 2050 the European economy should grow in a way that respects resource challenges and planetary boundaries, and therefore contributing to global economic change. European economy is competitive,

¹³ https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/europe-2020-strategy_en

¹⁴ European Commission, COM(2010) 2020 Communication From The Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010.

comprehensive and furnishes an exclusive expectation of living with much lower natural effects. All resources are sustainably managed, from raw materials to energy, water, air, land and soil. Climate change milestones have been reached, while biodiversity and the ecosystem services it underpins have been ensured, esteemed and considerably reestablished.¹⁵ There are a few measures and ideas that encourage or help obtain the established goal like: changing the consumption patterns of private and public purchasers by benchmarking the product's lifecycle, providing accurate information about way of manufacturing product, voluntary and mandatory measures such as the EU's Lead Market Initiatives and the Ecodesign Directive, eco-innovations, avoiding the use of dangerous chemicals and promoting green chemistry.

Past examples of development have brought expanded success, however through concentrated and regularly wasteful utilization of assets. The part of biodiversity, biological systems and their services is generally underestimated, the expenses of waste are frequently not reflected in costs current markets and public policies cannot completely manage contending requests on vital assets, for example, minerals, land, water and biomass. This requires a cognizant and incorporated reaction over an extensive variety of strategies keeping in mind the end goal to manage anticipated that asset limitations and would maintain our flourishing over the long run.¹⁶

Resource efficient development is the route to this vision. It allows the economy to create more with less, delivering greater value with less input, using resources in a sustainable way and minimising their impacts on the environment. In practice, this requires that the stocks of all environmental assets from which the EU benefits or sources its global supplies are secure and managed within their maximum sustainable yields. It will also require that residual waste is close to zero and that ecosystems have been restored, and systemic risks to the economy from the environment have been understood and avoided. A new wave of innovation will be required.

One of the measures to achieve the goal set up in Europe 2020 and Roadmap to a Resource-Efficient Europe is through eco-innovations. "Eco-innovation is any innovation that reduces the use of natural resources and decreases the release

¹⁵ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Roadmap to a Resource Efficient Europe /* COM/2011/0571 final */

¹⁶ Ibidem.

of harmful substances across the whole life-cycle”.¹⁷ Recently, the understanding of eco-innovation has evolved more and more from a customary understanding of innovating to reduce environmental impacts towards a renewed understanding of innovating to minimise the use of natural resources and the release of harmful substances over the whole life cycle, i.e. in the design, use, re-use and recycling phases of products, materials and services related to them.

There are manifold approaches to reduce the resource use of the economy and increase resource efficiency and circularity. In the context of circular economy the 3 R's are most widely known: reduce, reuse and recycle. But – considering the fact that the 3 R's are mainly focused on the end of the life-cycle, i.e. waste options – further concepts have been brought onto the agenda: waste prevention, sharing/leasing, repair, remanufacturing, and – finally – recovery. These concepts also include other stages of the life-cycle, including the design and use phase.⁶ The vision is to deploy eco-innovation as a means to move towards a resource-efficient circular economy in Europe by intelligently applying all those concepts at those levels where they contribute best, e.g. sharing and reusing electronic goods and clothes, prevention of food and packaging waste, or recovery of critical materials and fertilizers, etc.¹⁸

In the Seventh Framework Program, a part of the 2020 Strategy, the concept of the process of implementing sustainable consumption has been created. The creators of the 7th Action Program drew attention to the necessity of linking consumption with production, i.e. with the processes of manufacturing products and providing services. It is necessary to create a new model of consumption related to the activities of producers and consumers themselves, no matter private or public.

It is necessary to implement procedures to make consumers and producers aware of the effective use of products throughout their lifetime, manufacture and purchase of energy-efficient products, sustainable use of natural resources, and moderate use of packaging. For this it is necessary to use various incentives for producers and consumers to get involved in the implementation of sustainable consumption principles.¹⁹

¹⁷ Eco-innovation observatory (2012) Closing The Eco-Innovation. Gap An economic opportunity for business, Annual Report 2011, Brussels.

¹⁸ Eco-innovation observatory (2016) Policies and Practices for Eco-Innovation Up-take and Circular Economy Transition, EIO bi-annual report November 2016, Brussels.

¹⁹ Sitek M. (2014) Prawne i instytucjonalne podstawy modelu zrównoważonej konsumpcji w optyce 7. programu działania UE na rzecz ochrony środowiska do roku 2020, *Journal of Modern Science* 4/23/2014, 231–247.

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