The Right of Humans to a Healthy Environment, a Fourth Generation Human Right

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Abstract: This article aims to clarify the relationship between human rights and the environment, as it results from the jurisprudence of the two supranational institutions at the level of the European Union (the European Court of Human Rights and the European Court of Justice). It can be said that, to date, the jurisprudence covered by this article reflects the most important principles that the Court has applied in environmental case law. The article sets out the three most important principles regarding the individual rights that could be affected by environmental damage. On the one hand, the human rights that are protected by the Convention may be directly affected by harmful environmental factors, which may lead to a substantial violation of those rights. On the other hand, harmful environmental factors can lead to procedural violations of these rights. It is important to note here that the procedural aspects of these rights relate to the information and communication duties that national authorities have in the event of any damage brought to the environment. Finally, national authorities may also use environmental protection as a legitimate aim to justify possible interference with certain individual human rights.

Keywords: *human rights, the right to a healthy environment, ecology, fourth generation human rights.*

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1. Introduction

The issue of climate change has been on the international political agenda for some time. Thus, the human right to a healthy environment, according to some authors, primarily refer to “a wide range of global phenomena created mainly by burning fossil fuels” (Umair, 2015). These phenomena include global warming, but also rising sea levels, melting glaciers, changes in biodiversity and extreme weather events, which directly affect the natural living environment of hundreds of thousands of people. However, the world's focus has been mainly on reducing global warming, which is defined as “the rising temperature trend across Earth since the early twentieth century, and especially since the late 1970s, due to rising fossil fuel emissions since the industrial revolution”(UNEP, 2015).

In the 2015 Paris Agreement, the world community pledged to limit global warming “above pre-industrial levels and to aim to limit growth to 1.5 ° C” (Council of the European Union, 2016). Governments already had commitments to this effect since the 2010 Cancun Agreements, which first officially enshrined the imminent danger of global warming (United Nations, 2010), but the Paris Agreement also contains a comprehensive plan for global action. The 2°C target is widely considered the absolute limit to avoid the most devastating effects of climate change. In 2015, the global temperature has already increased by 1 ° C, compared to the pre-industrial period of 1851-1880. Moreover, the IPCC unequivocally clarified the link between human behavior and climate change in their Assessment Report (IPPC, 2018). “Human influence on the climate system is clear,” IPCC finds, “and recent anthropogenic greenhouse gas emissions are the largest in history. Recent climate change has had widespread effects on human and natural systems” (IPPC, 2018). This report concludes that our human rights are threatened by human economic behavior through the overexploitation of environmental resources.

As mentioned above, there are signs of legal trends of change, motivated by a deeper understanding of the implications of the impact of climate change on human rights. “The Declaration on Human Rights and Climate Change has been developed as a normative tool to support the aspirations of those who want to build an alternative climate future. As has been shown, climate change is more than a technical or scientific issue. It represents a deep crisis of human hierarchies, full of unequal distributions of vulnerability. It is therefore surprising that so many recent initiatives point the way to seeing human rights as intrinsically threatened by climate change. Indeed, it is vital that respect for human rights is now understood as an

indispensable element of any appropriate approach to climate change” (Davis et al., 2017). Human rights provide a strong critical meta-ethical language of alternative future histories, while these rights are understood to refer to a reimagined humanity.

In conclusion, it is interesting to see that the more flexible a human rights system appears to be in connecting the protection of the right to life to the protection of the environment against climate change, the fewer cases have been tried. Moreover, generous requirements on the real state of the environment do not always seem to meet health requirements in practice, while the European Court of Human Rights has by far the strictest requirements on the state of the climate and the *actio popularis* in connection to it, but the Convention does not contain a specific right to the environment. However, ECHR has managed to decide on a large number of cases and has expanded the interpretation of Articles 2 and 8 in quite creative ways, to ensure environmental protection. Considerable progress has been made in recognizing an environmental dimension of human rights. However, it remains to be seen whether the right to life is indeed the most effective approach in this regard, as some cases have focused only on people's lives, not the environment itself. The right to privacy is proving to be more successful in both instances, although we believe it is doubtful that environmental degradation that interferes with one's physical integrity can be invoked beyond the right to life.

Among the most prominent achievements of the international jurisprudence we can count the dissemination of the idea that all human beings have indisputable rights in this respective quality of being humans, rights that are recognized universally and are inalienable irrespective of the legal system. Even if the problems persist, the 21st century brings new challenges for the protection of the environment and ensuring a healthy climate for human existence. The life support system that makes it possible for all living beings to exist and its vulnerabilities are emphasized daily by new evidence of the way human activity changes the whole planet, in a dramatic way that seems to be irreversible. The 21st century brings along the challenge to combat the tragic effects of the changes in climate, by defining the ethical issues involved in ecology in correlation with social justice.

There are scientific argumentations invoking international human rights norms throughout the climate change discourse, as legislators, regulators and lawyers are trying to implement the “power of human rights” (Dungaciu & Cristea, 2006) in this new struggle. The advantage of the human rights approach to ecological issues is its practical applications, because the human rights system is already well established and any violation

of environmental law would benefit of its immediate applicability, as well as of its unconditional regulatory value. As Louis Henkin (as cited by Alvarez, 2017) wrote, “human rights enjoy *prima facie*, imply inviolability and will often trumpet to other public goods”.

If the issue of a healthy environment would become a human rights issue, then it would also be clear who as the rights and who has the obligations, namely what these obligations are and what states should do towards the protection of the environment of both states and international institutions. This would permit to the people who claim that their environmental rights have been breached to ask for financial compensations from national courts, and even from international tribunals, in case they believe that their own national law system does not provide for sufficient legal instruments. By making an appeal to the system of human rights is a way to raise environmental issues “above the rank and record of the competing society's goals” (Gonzalez, 2015) and to recognize that ecology is not linked to time, but timeless, is tied to absolute interests and has an universal validity. However, there is no greater difference between “law as it is” (*lex lata*) and “law as it should be” (*lex ferenda*) than the gap which is interposed between the factual application of human rights and their theoretical approach in treaties and agreements.

This concern lends itself to the ongoing debate on the existence of a hierarchy between human rights - in particular between “so-called first-generation rights (civil and political), second-generation rights (economic, social and cultural) and third-generation rights (solidarity rights, including rights to peace, development and the protected environment) - and questions arise about their usefulness in advocating for environmental protection through a human rights lens” (Bratspies, 2015). Structurally, this idea can be summarized graphically, to reveal the interference between human rights and the level of ensuring the right to a healthy environment as a fourth generation right, seen not as a right that might only ensure sustainable development (a characteristic that places it in the category of third-generation human rights), but as an independent human right (that places it in the category of fourth-generation human rights, alongside the right to digital security and rights related to bioethics).

Figure 1. Environmental protection through the human rights hierarchy (generations of rights)

Source: Author's own conception

2. The concepts "environment" and "pollution" in the context of the right to a healthy environment

Boer and Boyle (2014) consider that the right to a healthy environment does not fall into any of the three generations of human rights. He argues that the right to a healthy environment can be seen and treated by all three generations of human rights. On the other hand, Professor Dinah Shelton (2010) explains the link between the environment and human rights through three approaches - first, according to Shelton, a healthy environment is a precondition for the enjoyment of human rights. The second approach is based on international environmental instruments - which link human rights to environmental protection largely from a procedural point of view. The third approach argues that the right to a healthy environment is a substantial human right.

To resolve the causes of climate change is not easy at all, because of the enormous interests involved, therefore the United States has promoted a reserved opinion on the appropriateness of linking environmental issues to human rights, seen as "practical but unwise" (Anton & Shelton, 2011). Other researchers oppose human rights to a healthy environment, as they focus too much on human beings and less on the environment itself (De Lucia, 2017). Finally, theoretical disputes boil down to terminological disputes. "Legal definitions of the word's environment are often created around explanations in conventional dictionaries, as most legal dictionaries do not seem to have a definition of the term environment. This is not surprising, as the conceptual understanding of the term has undergone a change over time, influenced by various sciences" ("The Development", n.d.).

As Phillipe Sands remarks that legally, the term “environment” does not have a “general use accepted in international law” (Sands, 2012). The “environment” is generally defined as “the environment or conditions in which a person, animal or plant lives or operates”, while it is also explained as “the natural world, as a whole or in a certain geographical area, especially affected by human activity ”(Gonzalez, 2012). The second principle of the 1972 Stockholm Declaration avoids to clearly define the term "environment", but in return makes a clear description of what the earth's natural resources are: "air, water, land, flora and fauna, especially representative samples of natural ecosystems" (UN, 1972). This document also distinguishes between the "natural" and the "man-made" environment.

The 1993 Lugano Convention defines the environment as: 1) "both abiotic and biotic natural resources, such as air, water, soil, fauna and flora and the interaction between these factors", 2) "property that is part of the cultural heritage" and 3)“ characteristic aspects of the landscape” (Council of Europe, 1993). Clearly, there could be multiple definitions of the term "environment" from a legal point of view, as context is very important in determining its semantic sphere. As an example; "environmental pollution" and "environmental damage" can mean different things in international environmental law. Sands argues that "environmental damage" depends on the level of damage required so that such damage becomes compensable damage, thus illustrating the fact that there is a difference even in the way the terms are being used in Article 8 of the “Lugano Convention”. “The 1979 Convention on Long-Term Transboundary Air Pollution provides a definition of air pollution, but this definition can also be used to define other types of environmental pollution. In other words, pollution is defined as any substance introduced by man that has harmful effects on the environment” (“The Development”, n.d.).

The threats that humanity faces do not remain locked in time, neither the measures used to combat them, because technology and science move in to change the environmental models specific to a time or another. From a point on, there is now way to establish in detail things like the types of products that should not be used or the chemical composition of the air or the water, and even more to enshrine these aspects in a legal text. These issues will vary as the economic situations of communities change. The measures needed to implement the right to a healthy environment will thus be determined by reference to independent environmental findings and regulations that can change rapidly. The term selected for this study refers to the “right to a healthy environment” (UNEP Division of Environmental Law and Conventions, 2007). This term is largely used and accepted

by most authors cited in this paper, we adopted this terminology because it was first used in international agreements and national constitutions.

3. Theoretical considerations regarding the evaluation of the institutional relationship between human rights and the environment

It is important to analyze the institutional intersection between human rights and the environment. Thus, globally, several institutions have jurisdiction over environmental issues. Their counterparties, institutionally, and we do not necessarily speak of international institutions, are delegated to defend human rights. These institutions stemmed from disparate law systems and legal traditions. To generalize excessively, international law is the root for the so-called branch of “natural law”, that is the basis for the human rights system, while national law systems, based on state-centered legal traditions, are the roots for environmental law. While human rights are indissolubly linked to protecting the human being, environmental law only indirectly concerns itself with the protection of human beings as individuals.

Indeed, the most distinctive feature of environmental law is its main preoccupation for the environment in its natural context. If environmental issues are invoked in contexts where it is shown that these issues affected human rights, the dispositions of environmental law could be invoked even in the absence of any human-victims. Besides the differences in concepts (or meaning of concepts, if such concepts are common to human rights and environmental law), institutional differences are also to be noted, and in time those differences became more and more evident. The human rights system and its tools were the first to be established, when the so-called “fourth generation human rights” (amongst which we can enumerate the right to a healthy environment) did not even come into discussion, therefore these tools are not a perfect fit for solving environmental issues, like climate change, that only recently raised awareness on the public agenda. Only in 2009 did the “Human Rights Council” recognize that climate change has “a number of direct and indirect implications for the effective development of human rights” (United Nations High Commissioner for Human Rights, 2009). However, once process got started, the Human Rights Council understood the imperative to look at climate problems in terms of human rights.

Climate change became part of the resolutions extending the terms of reference of the “Special Rapporteur on the right to food”, and of the “Special Rapporteur on adequate housing”. Furthermore, “the Council established special procedures for the environment, as well as on clean water and sanitation, toxic waste disposal, the right to food, the right to housing,

indigenous cultural rights, corporate responsibility and other relevant human rights involved in climate change” (Bratspies, 2015).

The primacy of human rights over other legal institution became an generally recognized paradigm. International treaties and conventions are jus cogens for the national legal systems (they retain a position of primacy by comparison to national law) and are opposable *erga omnes*, meaning that all humans must respect the rights of all other humans -for example, the right to self-determination, prohibition of aggression, slavery and genocide (Hey, 2009).

Human rights are depictive of the fundamental values that the entire humanity adheres to, and need to be preserved. “Because human beings depend on the environment, a healthy and safe environment is essential for the full development of human rights. Without a safe, healthy and sustainable environment, the survival and development of humanity cannot be guaranteed. It has been argued that the human rights approach is anthropocentric (human-centered) because it focuses on the harmful impact of environmental degradation on people, rather than on the environment itself” (Morrow, 2017). In opposition, Boer and Boyle (2014) state that the placement of environmental protection under the umbrella of human rights: provides the possibility for a direct approach of the impact that environmental rights have on people's lives, health and property; are protected under the positive obligation of the states to insure the respect for the right to health and the right to privacy through environmental quality by controlling pollution; imply a direct responsibility of the state to solve environmental problems in a state governed by the rule of law.

The approach to human rights clearly moves away from the theory of fragmentation, as it strengthens the concept of “common concern” for humanity and “complementarity” (Hafner, 2004). The “fragmentation theory” presented the two systems somehow incorrect, by considering them as being irreconcilable. But currently numerous examples of convergence can be given, along with the advantages of a rights-based approach. “For example, the rights to life and health can now be used to force governments to regulate environmental risks, enforce environmental laws or even disclose environmental information. It is important to continuously acknowledge the coherence of international law as a unitary legal system” (Morrow, 2017). This objective does must not be understood in the sense that fragmentation is a less permanent feature of international law and therefore it could be ignored.

“Reaffirming convergence” (Andrenas, 2015) is a positive and welcome thing. Convergence can be defined a process that determines the

evolution of the environmental laws of some states in a similar way not because of deliberate acts of transplantation or lending of principles or norms, as a consequence of the fact that these states are under similar pressures from the exterior and the requirements for the functionality of their laws on ecology are the same. It might imply growing networks of experts and spreading a kind of "universal" global culture. Finally, convergence is not a simple, but rather an elaborate process, starting with a global problem, like climate change, for which a global regulatory system is created, and then, in time, when the jurisdiction of that global system is applied in the national legal systems, its application is made in a similar way, through similar policies. Convergence processes are usually enacted by states, but the initiatives of other actors than states could play an important role.

The convergence process allows for the creation of a more harmonious global regulatory framework, when a state's own interests are in line with the interests of other states or other actors in the worldwide governance. "In other words, if there is a convergence of interests, a transnational emergence of norms and principles could appear along the lines of those interests" (Morrow, 2017).

Convergence examples can be given in relation to South Africa and Zimbabwe. South Africa faced, as a consequence of Apartheid, issues not only of a social nature, but also environmental apartheid, which were solved through decisive anthropocentric environmental provisions, based on the principle of social justice to induce social and ecological transformations (Christiansen, 2013). Zimbabwe's new constitution, that also refers to rights related to the environment, made such changes as an effect of the lobby of multiple civil society organizations that acted in accordance (Murombo, 2011). The two "events that led to the emergence of environmental rights in these two states are very different, but the similar pressures" (Morrow, 2017) such events placed on governments have had a similar effect: introducing provisions on environmental rights in newly adopted constitutions.

The integration and harmonization of environmental legislation is becoming imminent today. Integration and harmonization refer to efforts, made in several countries, to approach in a concordant regulatory manner a multitude of issues, such as trans boundary water governance, a process which is different from convergence, that is possible without necessary cooperation among states, specifically to achieve "a certain level of homogeneity, integration and harmonization are usually the result of concerted efforts made by states in order to achieve specific goals" (Morrow, 2017).

Shaffer notes that “TEL involves acts of cooperation between states - for example, mutual recognition of licenses and permits” (Shaffer, 2010). Based on this assessment, Shaffer's article is concluded with the examination of the perspectives and limitations of a global environmental organization. He examines the representativeness of national trade agencies before the Committee on Trade and Environment, the impact of a sophisticated World Trade Organization international secretariat in developing debates, modeling knowledge and appreciating alternatives, and the role of strong trade interests and transnational environmental advocacy groups.

There are various examples of regional environmental governance organizations, set up because of the need for harmonization and integration. The “East African Community” has used these two principles to solve environmental problems. The “East African Community” drafted the “EAC Legal Texts Bill” in 2009, and inserted the right to a clean environment. Two of the five member states of the “East African Community” ratified the bill. Making changes or developing the frame of environmental rights protection by using Article 31, could mean that states have engaged themselves on a course of harmonization and integration. There are situations when the link between the adherence to this principles and the desired regional objectives is obvious.

Integration and harmonization do not mean an uniformization or identity of legal norms in all respects. Even if case of common actions to take care of an identical or similar problem, that leads to convergence, states will always have a free margin of appreciation in terms of the framing and implementation of environmental laws in their jurisdictions.

However, “the notion of harmonization between nations or peoples by law depends not only on identifying a common law for all who are subject to it, but on ensuring that the same law can have the same impact in different situations” (Gonzalez, 2012). Networking to homogenize the practices of conserving a healthy and sustainable environment for future and present generations is proving to be an important step in international environmental justice. The creation, exchange and dispersal of different points of view by networks of influential people or groups of people are essential and significant for the development of such ideas. From a conceptual standpoint, Benford prefers the term “transnational social movements” (Sampara et al., 2018) to describe networks or civil society groups that want to influence the results of global governance.

For Larouche and Chirico (2005), “network effects” increase as both product value and number of users increase. The authors analyze the market of illegal ideas from a juridical perspective, considering it an effect of

networking. The result is that “the more members of a legal epistemic community subscribe to a given opinion, the more attractive it becomes, sometimes regardless of the inherent validity” (Larouche & Chirico, 2005).

“As such, these epistemic communities are also perceived to contribute to the development of TEL by facilitating the exchange of knowledge that could indirectly affect normative development” (Morrow, 2017). Non-governmental actors can also form networks, and in case of environmental law, their activity can prove to be a real influence on the legal process, which is something that transforms these actors into “entrepreneurs with transnational regulations” (Chirico et al., 2010).

Courts and arbitral tribunals have their own important role in imposing international regulation and transnationality. The concept of “global environmental constitutionalism”, is discussed by May and Daly, who argue that “by borrowing and learning from each other, courts develop a rich and varied set of responses to environmental protection challenges” (May & Daly, 2011). Regarding these processes, Dupré (as cited by Bell, 2005) considers that legal dependence on foreign and comparative legislation has been termed cross-fertilization, judicial dialogue, constitutional lending, import and migration of ideas. Clearly, case law from other jurisdictions could be important insofar as “they can provide guidance to another court. For example, the broad interpretation of environmental rights in the Indian Constitution is reported to have influenced other courts” (Morrow, 2017) such as the “Argentine Supreme Court”, when it shaped and interpreted Argentine environmental law.

It should be said that transnationality arising from epistemic judicial activity could also be improved by a justice network of communities across borders. “It has been argued that through such networks and communities, transnational dialogues flow more naturally” (Morrow, 2017), as “judges share common beliefs, values, and a self-perception and understanding of their role in the legal system and society” (Brewbaker, 2006). An example that explains a move towards judicial networks is the creation of the “Global Commission on Environmental Law in Brazil” by judges from 15 countries (World Commission on Environmental Law, n.d.). They worked together with environmental experts to issue “Charter for the Global Judicial Institute for the Environment”.

In time, international jurisprudence became a major promoter of transnationalization, as it stemmed a phenomena of regulatory cross-reflection, when the decisions of courts from different states, by referring to the jurisprudence of the international courts, gave the same interpretation and established the same content for certain principles or provisions of

environmental law. The jurisprudence of the national courts then reflected in the national legal doctrine of those states, which influences law-making processes, further contributing to transnationalization.

4. Schools of thought on environmental protection as a condition for the realization of human rights

Two distinct schools of thought tried to explain the link between the environment and human rights, each of them bringing to the forefront its own conception. The first argued that human rights can be achieved through the protection of the environment. The second stated that human rights can be used as a tool to ensure the protection of the environment. In "Resolution 16/11", the "Human Rights Council" opted to take into consideration both theories, stating that environmental protection "can contribute to human well-being and the development of human rights", and that "human rights obligations and commitments have the potential to inform and strengthen developing international, regional and national policies in the field of environmental protection" (Resolution 16/11).

Former "United Nations Environment Program Director" (UNEP) Klaus Toepfer has mentioned that "human rights cannot be secured in a degraded or polluted environment" (Werhane & Ofiesh, 2008). If this is right, then a large number of threats to the environment, including climate change, endanger fundamental human rights, including the right to life, health, adequate food, housing and culture. In this context, environmental protection is a prerequisite for the realization of human rights.

The development and implementation of laws on the protection of the environment can be used in the process of advocacy for the respect of human rights. This theory that considers "the environment as a precondition for human rights" was promoted by the "Stockholm Declaration", which was the first international document that recognizes the connection of human rights to the protection of the environment in international law. The first principle of the Stockholm Declaration stated that: "the human has the fundamental right to freedom, equality and adequate living conditions, in a quality environment that allows a dignified life and well-being" (Brunnée, 2009). The "United Nations General Assembly" has recognized this approach since 1990, stating that "a better and healthier environment can contribute to the full development of human rights by all" (Álvaro, 2011).

This approach is reflected in the "American Declaration of Human Rights" and the "American Convention on Human Rights", which emphasize the theory that, "by their nature, human rights require a basic level of environmental protection" (United Nations Global Compact &

Office of the High Commissioner of Human Rights, n.d.). The Commission has adopted the idea that human rights, such as the right to health, life and food, cannot be realized in an environment suffering from degradation, which can cause serious physical illness, harm and suffering to the local population and are not in line with the obligation to respect the human being. Protection is therefore seen as "a vital part of the contemporary human rights doctrine", naming it a "sine qua non for many human rights", including the right to health and the right to life itself, adding that "environmental damage can affect and undermine all human rights referred to in the Universal Declaration and other human rights instruments" (Álvaro, 2011).

The fact that the protection of the environment is viewed as a basic part of human rights efforts in general, it proposes environmental protection as a form of human rights protection. "Efforts to protect the environment attract additional legitimacy from this association with the human rights normative framework. As a result, environmental protection not only invokes the normative values underlying human rights, but also becomes part of the legal obligations" (Bratspies, 2015) that made states commit to ratifying human rights agreements through bilateral and multilateral conventions. This framework has a deep resonance for issues related to environmental justice. Humanitarian law drives itself according to two fundamental principles: non-discrimination and equality.

The theoretical perspective of environmental protection as a protection of the human rights entails that the assessment of progress in aggregate statistics is not sufficient for the environment in general. The human rights approach requires that the groups that are most vulnerable to environmental damage (such as children, the elderly and those with underlying health problems), as well as those already affected by environmental damage should receive a special attention. If the scope would be to see the potential of the "environment as a precondition" approach, it would rapidly become evident that it has a lot of advantages. However, "examples of sustainable development have shown again and again that it is not always possible to avoid trade-offs and choices between competing priorities, including priorities" (Déjeant-Pons & Pallemmaerts, 2002) for the promotion of human rights and environmental protection.

There is no easy task to obtain an equilibrium between these two priorities, that seem to be competing. To provide an example, we could analyze what would happen if a building project designated for building houses for the needy would lead to environmental degradations that could, in the long run, imply the infringement of the right to health for others?

Which human rights would be protected by such a project and which would be breached? This example is based on similar cases that have actually happened and is not just a simple speculation. Human rights courts are invited to deal regularly with similar claims for conflicting rights. As the “European Court of Human Rights” has observed in “Lopez Ostra v. Spain” (ECHR, 1994), the state retains its margin of appreciation when appreciating on the proper balance between the rights of an individual and the economic interests of the society as a whole. In the above mentioned case, the Court had to make precisely such an assertion regarding the right to privacy of a person in their home, protected by Article 8 of the “European Convention”, against the state and the community.

International agreements and other instruments on environmental rights have a key role to play in establishing problem-solving practices related to ensuring a “healthy environment” as a fundamental human resource. Thus, before the “Stockholm Declaration”, environmental issues were not new topics of discussion in the international community anymore. Rachel Carson's 1962 book, "The Silent Spring", and following works authored by different scholars sparked up environmental debates (ACS, 2012). After the media became interested in the environmental crisis, the need for the protection of the environment through the provisions of the law has been recognized. For example, the embarkation of the Torrey Canyon oil tanker in 1967 caused black waves of fuel oil off the coasts of France, England and Belgium (Wells, 2017). This undoubtedly created the impetus needed for the “United Nations General Assembly” to convene the World Conference on the Human Environment in Stockholm and issue the 1968 resolution.

The 1972 “Stockholm Declaration on the Human Environment” is largely recognized as “the beginning of modern international environmental law” (Duțu, 2007). It consists of a preamble and seven proclamations, followed by 26 principles. The first principle of the Stockholm Declaration begins with: "the man has the fundamental right to freedom, equality and adequate living conditions, in a quality environment that allows for a dignified life and well-being and bears a solemn responsibility to protect and improve the environment for present and future generations ". Thus, this is the first international treaty that clearly linked human rights to environmental problems, a view that became widely accepted not only by the states who initially signed the Declaration.

However, to understand this principle as a right to a secure environment per se is not the right conclusion. That was discussed later, when the “Stockholm Declaration” was debated, but the express provision

of such a right was rejected. By the correlative interpretation of all the principles included in the declaration, it becomes obvious that its purpose is not to recognize a right to a healthy environment in itself, but rather to inspire states to extend their regulations and measures on environmental protection. Another “UN conference on environmental issues”, which took place 20 years after the Stockholm conference, gave rise to the “Rio Declaration” (UNEP, 2012). The signing of these two statements created landmarks, noted by Phillipe Sands, who calls the 21st century: the “modern era” of international environmental law (Knox, 2009).

The Rio Declaration, viewed from a broad perspective, reaffirms a lot of the principal provisions of the “Stockholm Declaration”. The “Rio Convention” also presents differences as compared to the Brundtland report (WCED, 1987) in terms of the sustainable development from of environmental protection. Regarding the right to a healthy environment, the first principle of the Rio Declaration states (UNEP, 2012): “Human beings are at the heart of concerns for sustainable development. They have the right to a healthy and productive life, in harmony with nature ”. By comparing it with the first principle of the “Stockholm Declaration”, a number of law scholars stated that the first principle of the “Rio Declaration” suggested even less when it came to stating a *per se* right to a healthy environment (Sohn, 1973).

Irrespective of what conclusion is adopted, the fact that the health of the environment is an important issue is beyond any interpretation in both statements, as provided in the first principle of both acts. They were also inspired by the more intensive use of the terminology on rights related to environmental protection in national constitutions and other international agreements, as well as regional agreements. Thus, several international and regional conventions that were signed after the “Stockholm Declaration” expressed the right to a healthy environment. Article 24 of the 1981 “African Commission on Human and Peoples' Rights” (1981) states: “All peoples shall have the right to a general satisfactory environment favorable to their development”. A comparable provision, roughly in the same terms, was inserted in an additional protocol to the “American Convention on Human Rights”.

Article 11 of the 1988 San Salvador Protocol (OAS, 1988), entitled “Right to a healthy environment”, is worded as follows: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment”. The 1998 Aarhus Convention uses the first principle of the Stockholm Declaration as a basis

in its preamble, but keeps the main focus on strengthening the environmental procedural rights introduced in the tenth principle of the Rio Declaration (Dellinger, 2011). Article 1 of the Aarhus Convention illustrates this point as follows: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention". It should be noted that Article 1, instead of declaring the existence of a right to a healthy environment, indirectly states, by directly calling it "the right", states that "the substantive right already exists as an obligation for Member States. Access to information, public participation in decision-making and access to justice in environmental matters are the central procedural rights named in the convention" ("The Development", n.d.).

Article 38 of the 2004 Arab Charter on Human Rights states: "All peoples have the right of self-determination and control over their natural wealth and resources and, accordingly, have the right to freely determine the form of their political structure and to freely pursue their economic, social and cultural development"(Council of the League of Arab States, 2004). The 2012 ASEAN Declaration on Human Rights, which affirms the rights of some 600 million human beings in Southeast Asia, includes "the right to a safe, clean and sustainable environment" (ASEAN, 2012).

Minimal interference between human rights and environmental rights is also found in the national constitutions of states. National constitutions embody the basic legal principles that form the basis for the functioning of the state. A relatively large number of papers written by law scholar have marked the fact that the healthy environment has become an important right in constitutions worldwide (Boer & Boyle, 2014). Also, surveys that were made in connection to this constitutional "movement" showed that there is a tendency for states to constitutionally enshrine rights linked to a healthy environment and obligations of the governments regarding the protection of these rights. Thus, Fatma Ksentini, the "UN Special Rapporteur on Human Rights and the Environment", enumerated 61 countries that had such legal provisions (Aguilar & Popovic, 1994).

A paper written by David Boyd shows that 147 of 193 national constitutions make direct references to environmental rights and / or environmental responsibilities (Saul & McAdam, 2008). From the 193 analyzed constitutions, a substantial right to a healthy environment is recognized in 92 national constitutions, emphasizing on the maintenance of

the productivity and diversity of the environment. "The right to a healthy environment in a growing number of national constitutions certainly contributes to the acceptance of this right as an emerging norm in ordinary international law. This acknowledges the influence of the development of environmental rights in national constitutions, as he states that the large number of national constitutions" ("The Development", n.d.) with environmental and procedural rights provisions adds a supplementary impetus to the use of rights in order to ensure environmental protection. With regard to substantive rules, rights in national constitutions have the potential to influence debates on the status of a substantial environmental rule in accordance with international law.

However, the main role in accurately establishing human rights to a healthy living environment has been issued by the "United Nations Human Rights Council" on the right to a healthy environment. Thus, for the last 40 years, a lot of energy was invested regarding the right to a healthy environment in the "United Nations Human Rights Council". An analytical report on the relationship between human rights and the environment was published in 2011, which expressed the importance of focusing on the international recognition of the right to a healthy environment (United Nations High Commissioner for Human Rights, 2011).

Concerning the importance of amending the "Universal Declaration of Human Rights", by adding a right to a healthy environment, the report said: "if the Universal Declaration was drafted today, it is easy to imagine that it would include a right recognized in so many national constitutions and regional agreements." (Shelton, 2002) The report also indicated that even in the early provisions of the Declaration some obligations were mentioned in relation with a healthy environment, which should be clarified, but rather the Declaration referred to the enjoyment of a sustainable environment as a healthy, safe and clean space, which is a necessity for all states. It is considered that such clarifying provisions will make people more aware that these obligations are not only nominal, but should be practically carried out to their full fulfillment, at all levels, locally and globally, because the right to a healthy environment should be considered as a fundamental human right, along with other human rights (Kiss & Shelton, 2007). The emergence of environmental law among law scholars has progressed along with the growing concern for the right to a healthy environment, that has taken place since the 1960s.

David Boyd exactly summarized many of the questions that were discussed as follows: if it could be said that the characteristics of the right to a healthy environment are those of an universal human right; if such a right,

once recognized as such, could be harmonized with already recognized civil, political, economic, social and cultural rights; if this right would have its own purpose and nature ; if this right would be an individual or a collective right; if this right would be a moral or a legal right; if such a right would refer to human's freedoms, which would make it a negative right, or to individual welfare, which would make it a positive right; if this right should better be exercised as a set of substantive rights or a set of procedural provisions (Mank & Smith, 2012)?

Ideas about the link between environmental protection in national legislations and human rights can be classified in various ways, and can be summarized in three different approaches. The analysis should start from the idea that environmental protection is a precondition for fully benefiting from human rights. "This approach is based on the argument that certain levels of environmental standards are necessary to have an adequate life of good health, peace and security" ("The Development", n.d.). The second idea emphasizes that some environmental problems are important in human rights, but mostly as sides of human rights that already exist. The third idea supports the right to a healthy environment as being separate and independent. Finally, the point of view of environmental issues is not at all a human rights issue. Proponents of this view have said many times that environmental issues need to be solved through independent environmental policies. As Dinah Shelton rightly acknowledged, "rights creation is primarily the result of many erroneous historical experiences" (Shelton, 2007). So that people are protected from such oversights in the years to come, this right should be viewed in consensus by all states and adequate legal provisions should be adopted.

5. Conclusions

With regard to the ECHR, its practice has meant limiting the effects of environmental damage on fundamental human rights. On the other hand, the jurisprudence of the ECJ has developed procedures similar to these effects, by limiting development, in particular as regards sustainability. That is, the case law reads that the expansion of development should be limited only when it reaches the threshold imposed by EU legislation on environmental damage. At present, it seems that we are at a stage where environmental protection can be better achieved through procedural means related to human rights than those related to environmental protection. This is done by resorting to violations of human rights rules, in order to solve the problems of environmental damage, which can be seen from the jurisprudence of the ECHR and the ECJ.

There are, therefore, three basic directions in linking human rights with the right to a healthy environment: First, the courts have given a difficult, if not always coherent, yet imaginative, bold and largely satisfactory jurisprudence. Secondly, the case law of the courts is exceptionally effective and perhaps unique in terms of enforcement. Thirdly, because environmental protection may require more action at EU level. Thus, the emphasis is on environmental protection in relation to human rights. The growing importance of better environmental protection requires the application of superior legal protection, which goes beyond the national level, and the implementation of these considerations is very important, especially through recommendations and guidelines.

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