

To What Extent Do Human Rights Provide an Appropriate Approach to Achieving Environmental Protection?

There is no legal definition of human rights. They can be perceived in different ways. Human rights aim to protect what is considered valuable for humans. As a result, there are opinions that natural resources like water, clean air or soil may be perceived as human rights only to the extent of necessity for human life and dignity and not as a value itself. Human beings are in the middle of the environment and every environmental action, both friendly and non-friendly to the environment, influence their lives. As the environment is an important part of life, there should be no doubts that environmental law would also influence other branches of law, among others human rights.

The main aim of this dissertation will be to assess if human rights provide an appropriate approach for achieving environmental protection. First of all, to assess that, it should be considered what is the main purpose of human rights. To answer the question posed above it is also necessary to assess what kind of human rights can be used as a tool to protect the environment. To fully understand the possibilities and the limits connected with human rights as a means to protect the environment, it will be also necessary to highlight the synergies and the conflicts between human rights and environmental protection.

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1. Introduction

As it is stated in the first Principle of the Rio Declaration¹, at the center of concerns for sustainable development are human beings. Moreover, human beings have the right to a healthy and productive life in harmony with nature. As this principle is proving, the approach of environmental law is rather anthropocentric than strictly ecocentric². Human beings are in the middle of the

- 1 The Rio Declaration on environment and development, 1992.
- 2 Daniel Bodansky, Jutta Brunnee, Ellen Hey, *The Oxford Handbook of International Environmental Law* (Oxford: Oxford University Press, 2007), 141.

environment and every environmental action, both friendly and non-friendly to the environment, influence their lives. As the environment is an important part of life, there should be no doubts that environmental law would also influence other branches of law, among others human rights. Since the 1970s, when the international environmental law had originated, the relationship between the environment and human rights was a challenge for environmental law³. Although these circumstances human rights can provide an appropriate approach to protect the environment, there are also situations in which the rights of individuals or groups may come into conflict with the environmental goals⁴.

However, there are a lot of different instruments of human rights that can be used to protect the environment, there are also plenty of barriers that may limit the linking between environmental protection and human rights. The main aim of this dissertation will be to assess if human rights provide an appropriate way for achieving environmental protection. To answer the question posed above, first, it will be considered what human rights are for and what kind of human rights can be used as a tool to protect the environment. Then, the relationship between human rights and environmental protection will be discussed. To fully understand the possibilities and the limits connected with human rights as a vehicle to protect the environment, it will be also necessary to highlight the synergies and the conflicts between human rights and environmental protection. The role of human rights in the past law cases concerning environmental protection and the predicted future impact on international environmental law will be described. The point of this dissertation will also be the assessment of the extent of environmental protection afforded by the instruments of human rights will and the arising problems connected to those instruments. As the description of instruments provided by human rights that can be used to achieve environmental protection will be provided, the last issue that will be the concern of this dissertation will be to assess if human rights are an appropriate measure to protect the environment or should we look for better solutions.

2. Preliminary comment on human rights

To start with, it is essential to provide a preliminary comment on human rights to understand the correlation between human rights and environmental law and how human rights can achieve environmental protection. It will be desirable, to begin with, a definition of human rights, but the uniform

3 Philippe Sands, Jacqueline Peel, Adriana Fabra, Ruth MacKenzie, *Principles of International Environmental Law, Fourth Edition* (Cambridge: Cambridge University Press, 2018), 811.

4 Bodansky, Brunnée, Hey, *The Oxford Handbook of International Environmental Law*, 141.

definition does not exist. Most conceptions of human rights do not provide useful criteria needed to assess if something should or should not be perceived as a right. The conceptions of human rights are usually too broad and incomplete in order to be used in practice⁵. Human rights are often an object of critique. There are a lot of concerns about the justification of human rights and their nature⁶. By different people, human rights can be perceived in different ways. One may consider them as legal rights, whereas others will conceive them rather as moral rights or both⁷. The justification of human rights should not be confounded with its object. It is crucial to understand that not everything can be protected by human rights, because human rights justify duties⁸. There are different ways in which human rights can be classified. However, all of them are indivisible, interdependent, and interrelated. Human rights can be classified into different categories such as – civil, political, economic, social, and cultural. They also can be categorized as individual or collective, one-dimensional, or composite⁹. As human rights can be recognized among others such rights as the right to life, right to property, right to family life and private, freedom of movement and freedom from torture¹⁰.

To assess if human rights can provide an appropriate approach to protect the environment, it should be considered what is the main purpose of human rights. It is stated in the Universal Declaration on Human Rights that: „all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”¹¹. In the light of this provision, it can be said that the objective of human rights is to ensure the free and peaceful coexistence of all human beings in the world. As N. Pillay said, human rights aspire to a world in which every human being „live free from hunger and protected from oppression, violence, and discrimination, with the benefits of housing,

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- 5 James Rouse, „What are Human Rights: Grounding Human Rights in Dignity, Worth or Sacredness” *Auckland University Law Review*, No. 23 (2017), HeinOnline, 326.
 - 6 Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, *International Human Rights Law, Second Edition* (Oxford: Oxford University Press, 2014), 34-35.
 - 7 *Ibidem*, 39.
 - 8 *Ibidem*, 37.
 - 9 *Ibidem*, 155.
 - 10 *Ibidem*, 148.
 - 11 The Universal Declaration on Human Rights, United Nations General Assembly, 1948, Article 1.

healthcare, education and opportunity”¹². Although the term „human rights” sounds familiar to most people, it can be perceived differently depending on the perspective. For instance, for the human rights defenders, the most important may be the freedoms of expression, assembly, association, or access to information. On the other hand, for the victims of violations, more relevant may be principles of human dignity, equality, or non-discrimination¹³. To conclude, after H. Jilani – human rights provide „the standards that must be reached so that rights can be realized through the combined medium of state responsibility and the rule of law”. It raises the question of whether environmental protection can and should be an objective of human rights?

3. The inter-relationship between human rights and environmental law

After World War II, the environment was not one of the concerns. The priorities were the reconstruction of the economy and lasting peace, as well as human rights guaranteeing civil, political, social and economic rights. Although the main human right law instruments were created before the environmental problems had become transparent and do not concern the environmental issues, it is broadly accepted that both human rights and the environment are interlinked¹⁴. The relationship between human rights and environmental protection has been reflected since the 1970s. In 1972 the United Nations Conference on the Human Environment stated that: „Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”¹⁵. This provision of the Stockholm Declaration may be considered as a basis for the elaboration of a human right to environmental equity¹⁶. The relationship between human rights and environmental protection can be described in different ways. Firstly, in Principle 1 of the Stockholm Declaration, environmental issues have been expressed as a right to a clean or healthy environment. However, this provision had not been repeated in the Rio Declaration. Secondly, there are also procedural rights that can be used to protect the environment, such as access to information or

12 Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, *International Human Rights Law, Second Edition*, 4.

13 Ibidem, 10.

14 Alfonso De Salas, *Manual on human rights and the environment, Second Edition* (Strasbourg: Council of Europe Publishing, 2012), 11.

15 Stockholm Declaration on the Human Environment, 1972, Principle 1.

16 Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment, Third Edition* (Oxford: Oxford University Press, 2009), 271.

participation in decision-making¹⁷. In Europe, procedural rights concerning environmental protection are expressed in Aarhus Convention¹⁸ and there is also an increase in the number of national constitutions providing a right to a clean environment¹⁹.

Although, as was mentioned above, there are human rights instruments dedicated to environmental protection, the environmental problems and the consequences caused by them may also influence the enjoyment of other substantive rights such as the right to life, the right to property, the right to private and family life, the right to health or the right to food and water²⁰. The means to protect the environment, provided by the other substantive rights will be the topic of further consideration. In the late 1980s and 1990s, many national courts started to apply the right to a healthy environment to specific issues. At the same time, the European Court of Human Rights started to use other human rights to exercise environmental protection, including the right to life, the right to life, to property and privacy in home. It was stated that the environmental harm may overlap the full embracing of these rights and that the governments are obliged to prevent such harm²¹. The inter-relationship between human rights and environmental protection can be perceived in two ways – as synergies and as conflicts. Synergies are issues concerning the usage of human rights to protect the environment and using environmental law to protect human rights. On the other hand, conflicts reflect tensions between environmental interventionism and human rights in different aspects²². Due to the preconceived text limit, this issue will not be broader described.

The relationship between human rights and the environment can be perceived in different dimensions. Environmental degradation may threaten the enjoyment of substantive human rights, but on the other hand

17 Ellen Hey, *Advanced Introduction to International Environmental Law* (Cheltenham: Edward Elgar Publishing, 2016), 124.

18 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, UNECE, 1998, Article 1.

19 Ellen Hey, *Advanced Introduction to International Environmental Law*, 125-127.

20 Ibidem, 125-127.

21 John H. Knox, „The Past, Present and Future of Human Rights and the Environment” *Wake Forest Law Review*, No. 53 (2018): HeinOnline, 652-653.

22 Pierre-Maire Dupuy, Jorge E. Viñuales, *International Environmental Law, Second Edition* (Cambridge: Cambridge University Press, 2018), 360-361.

environmental protection also may restrict their enjoyment of them. From the beginning, the main difference between human rights and environmental law concerns the judiciary issue. Contrary to human rights law, international environmental law suffers from a lack of specialized international environmental courts. Due to this fact, international environmental law has gradually incorporated the adjudicative mechanisms of human rights law. This process resulted in two forms of integration – positive and negative²³.

The positive integration means the environmental protection achieved within human rights provisions. The protection of the environment can be integrated „positively” within the human rights law regime both explicitly and implicitly. The positive integration explicitly means incorporation into a human rights treaty, whereas implicitly means derived from already existing provisions of a human rights treaty²⁴. The negative integration involves situations when human rights are used to challenge already existing environmental protection regulations. In such a situation, the role of a judge is to assess if a specific environmental protection provision is legitimate and proportionate to its incursion of the human right if such a regulation complies with the human rights law regime²⁵. Such a close inter-relationship between human rights law and environmental law may cause multiple tensions on the cross of these two law regimes. The main areas of tensions between the environmental law and the human rights law represent the conflicts that usually occur between regulations concerning environmental protection and certain human rights, mainly indigenous peoples’ rights, private property rights and the right to private and family life²⁶.

4. Examples of relations between substantive human rights and the environmental protection

Nowadays, there are no doubts that a safe and healthy environment is a condition to a full embracing of most human rights. Tribunals have recognized environmental protection as inherent for the equal enjoyment of certain human rights such as rights to life, health, an adequate standard of

23 Marie-Catherine Petersmann, „The integration of environmental protection considerations within the human rights law regime: which solutions have been provided by regional human rights courts” *The Italian Yearbook of International Law Online*, No. 24 (2015): 193-194.

24 Ibidem, 194.

25 Marie-Catherine Petersmann, „The integration of environmental protection considerations within the human rights law regime: which solutions have been provided by regional human rights courts”, 194.

26 Ibidem, 194.

living, home life and property²⁷. In the further part of this paragraph, some of the courts' rulings will be provided to exemplify the relations and tensions between substantive human rights and environmental protection on the example of the right to private property and the right to private and family life.

According to the First Protocol to The European Convention on Human Rights, every natural person has a right to the peaceful exercise of his possessions. The exceptions of this right may be justified only on the ground of public interest and under the conditions provided by law and by the general principles of international law. However, the right of a State to enforce such laws as it deems necessary to control the use of the property by the general interest or to secure the payment of taxes or other contributions or penalties, shall not be impaired in any way²⁸.

The case *Fredin v. Sweden*²⁹ is one of the most significant rulings in the area of environmental protection and human rights. It is the first case in which the European Court of Human Rights established the importance of environmental protection. The main concern of the case is the withdrawal of a permit to exploit a gravel pit on private property based on governmental legislation on environmental protection. The Court assessed that the measure was prescribed by formal law and pursued a legitimate aim. Moreover, the Court stated that the revocation decision was not disproportionate to pursue the legitimate aim of protecting the environment. The Court concluded that no formal expropriation had taken place³⁰. This case is significant because the Court stated that „in today's society the protection of the environment is an increasingly important consideration”³¹.

In the case, *Lars and Astrid Fägerskjöld v. Sweden*³², the applicants, Swedish citizens, complained under Article 8 of the Convention and Article 1 of the Protocol No. 1 to the Convention that the noise from the wind turbine and the light reflections violate their right to peaceful enjoyment of their property and also to enjoy their private and family life. The applicants also complained that due to the noise the worth of the property had decreased.

27 Donald K. Anton, Dinah L. Shelton, *Environmental Protection and Human Rights* (New York: Cambridge University Press, 2011), 436.

28 The European Convention on Human Rights First Protocol to the Convention, 1959, Article 1.

29 *Fredin v. Sweden*, Application No. 12033/86, 1991.

30 Petersmann, „The integration of environmental protection considerations within the human rights law regime: which solutions have been provided by regional human rights courts”, 208-209.

31 *Fredin v. Sweden*, para. 48.

32 *Lars Astrid Fägerskjöld v. Sweden*, App. No. 37664/04, 2008.

The Court stated that the nuisance caused by the wind turbine to the applicants does not affect them severely or interfere with their right to property. The Court also noticed that wind power is a renewable source of energy and is beneficial for both the environment and society. The Court also highlighted that the Environment Committee to reduce the noise imposed a temporary restriction on its functioning³³. This case is a good example of a situation where environmental protection outweighs the enjoyment of human rights.

According to the European Convention on Human Rights, everyone has the right to respect their private and family life and their home. The only interference can be justified based on law and when is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others³⁴.

In *The Herrick v. United Kingdom*³⁵ case, brought before the former European Commission of Human Rights, the applicant was concerned about her right to live in a bunker, situated on a property that she bought on the island of Jersey. After the local legislation was adopted to protect the environment, the local planning authority assessed the applicant's use of the bunker as breaching the local regulations. The Commission had to establish whether the interference was legal, necessary in a democratic society to protect the rights and freedoms of others (legitimate aim) and proportional. To establish a limitation to the right to private and family life, the control of planning regulations of „areas of outstanding natural beauty” had to fall within one of the conditions mentioned above. The Commission linked the environmental protection regulations of the State to specific „rights and freedoms of others”. In this case, the Commission established environmental rights to „areas of outstanding natural beauty” and granted them to both the inhabitants and the visitors of the island. In this case, the Commission created environmental rights that were not established within the European Convention on Human Rights but also relied on its analysis without referring to the proportionality test set by the national authorities. This case shows an example of the negative integration of environmental protection and human rights law regime. The right to the natural beauty of landscapes, interpreted as a general right to environmental protection was, in this case, recognized as capable of outweighing individuals' rights to private and family life³⁶.

33 Anton, Shelton, *Environmental Protection and Human Rights*, 515-517.

34 The Convention for the Protection of Human Rights and Fundamental Freedoms, 1953, Article 8.

35 *Herrick v. The United Kingdom*, Application No. 11185/84, 1985.

36 Petersmann, „The integration of environmental protection considerations within the human rights law regime: which solutions have been

In contrast, *Lopez Ostra v. Spain*³⁷ case is an example of positive integration, where the degradation of the environment threatens substantive human rights. In this case, one company built a facility for the treatment of liquid and solid waste, caused by heavily concentrated in the town of Lorca leather industry. The plant was built with a State subsidy on municipal land twelve meters away from the applicant's home. Mrs Lopez Ostra stated that, despite the partial shutdown of the plant, the facility continued to emit fumes, repetitive noise, and strong smells. As a result, article 8 of the Convention, providing her right to private and family life had been violated. The living conditions of the Ostra family were unbearable and all of them had suffered serious health problems. The Court ruled that the State failed in balancing the interests of the town's economic well-being – having a waste-treatment plant, and the applicant's effective enjoyment of her right to private and family life³⁸. The Court stated that Article 8 had been violated and added that: „naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health”³⁹.

5. The limits of environmental protection afforded by human rights

Although the right to the environment is not recognized as a human right in the Universal Declaration on Human Rights, if the Universal Declaration on Human Rights were drafted today, it would probably include the right to the environment⁴⁰. States have already recognized the right to the environment and incorporated it in constitutional, statutory, and regulatory frameworks. However, many of the same countries still violate the right to the environment, both by act and omission⁴¹. Although, as was discussed above, substantive human rights may be used to protect the environment and the environmental degradation may be considered as a violation of human rights, the instruments provided by human rights to afford the environmental protection are limited. The environmental protection provided by human rights instruments is conditioned on the existence of a link between environmental

provided by regional human rights courts”, 212-213.

37 *Lopez Ostra v. Spain*, Application No. 16798/90, 1994.

38 Anton, Shelton, *Environmental Protection and Human Rights*, 490-493.

39 *Lopez Ostra v. Spain*, para. 51.

40 Luis E. Rodriguez-Rivera, „The Human Right to Environment in the 21st Century: A Case for Its Recognition and Comments on the Systemic Barriers It Encounters” *American University International Law Review*, No. 34 (2018): 194 (HeinOnline).

41 *Ibidem*, 198.

degradation and a breach of a substantive human right⁴². This issue also raises questions about the capacity to sue, especially in mass claims and about the conditions under which the European Court of Human Rights may be accessed by NGOs. As to these limitations and the developing knowledge about environmental issues such as climate change or lack of food and water, there are also many concerns about the future relationship between environmental protection and human rights law.

The link between environmental degradation and a breach of a substantive human right is required because human rights law is based on a personal-injury-based approach. The link, depending on the legal context, may be narrowly or more broadly understood. The adjudicatory bodies expressed different opinions depending on both a particular human right and the specific circumstances of the case. Due to this fact, it is challenging to set a level sufficiently precise to capture the essence of the case law while at the same time broad enough to come up with general conclusions⁴³. Usually, the „link” required by the Court has to be “direct”. For instance, in the already mentioned case *Astrid Fägerskjöld v. Sweden*⁴⁴, the Court ruled that the nuisance caused by the wind turbines located near the applicant’s home were not serious enough to violate Article 8 and the right to family and private life. Even though human rights may be used to protect the environment, the requirement of the existence of the link between environmental degradation and a breach of a substantive human right may cause a lot of difficulties in proving the interest in suing. This requirement may also be especially challenging under the issue of mass claims and access to the European Court of Human Rights.

There is no doubt that the environment is a common issue and environmental degradation do not influence only individuals but also society as a collective. For instance, the global average temperature is predicted to increase by 1.8 degrees. This will cause a lot of environmental issues such as land degradation, droughts, desertification, the intensity of floods and tropical cyclones, a decrease of water level and crop yield and food security⁴⁵. The climate change, considered as an environmental issue, will affect also human lives, but no link or relation can be easily found to go to court. Although the outcome of climate change will not be immediately apparent in human’s life,

42 Dupuy, Viñuales, *International Environmental Law, Second Edition*, 386.

43 Dupuy, Viñuales, *International Environmental Law, Second Edition*, 387.

44 *Astrid Fägerskjöld v. Sweden*.

45 Siobhan McInerney-Lankford, Mac Darrow, Lavanya Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions* (Washington: World Bank Publications, 2011), 26.

the climate change will limit the enjoyment of many human rights such as the right to life, right to food, water, right to shelter and property, rights connected with culture, migrations, and livelihood⁴⁶. In this context, it is justified to ask- who may speak on behalf of the environment?

It seems that mass or collective claims may be a useful instrument to protect the environment. Environmental degradation affects many people and the individual in such a group are different as to their position and their right to sue, the mass human rights claims may be an appropriate solution. According to Article 34 of the European Convention on Human Rights, the Court may receive an application from a group of individuals claiming to be the victim of a violation of human rights. Although it seems that through environmental degradation, the specific rights may be infringed, the link between environmental degradation and a breach of a substantive human right is still required. However, to use mass claims to protect the environment, the link requirement needs to be loosened in two aspects – the adjudication of those whose rights have been breached and of the entity that is entitled to bring the claim⁴⁷. Nevertheless, the approach of the European Court of Human Rights is rather strict. For instance, in the case *Aydin v. Turkey*⁴⁸, the applicants challenged a dam and hydroelectricity development project affecting a natural park, based on articles 6 and 8 of the European Convention on Human Rights and claiming the right to a healthy environment. However, the Court stated that the applicants were rather trying to protect the environment instead of their rights⁴⁹. As a result, the recognition of collective rights of environmental protection is still limited by the requirement of the link. Finding a link may be especially challenging in some issues such as climate change, where the barriers to proving such a link are numerous⁵⁰.

6. Conclusion

Many cases provided in this dissertation demonstrates that to some extent environmental protection can be afforded by already existing human rights. Undoubtedly, the fact that environmental protection can be provided also by human rights instruments, is a mile step in protecting the environment and providing societies with new tools. However, the right to a healthy

46 Stephen Humphreys, *Human Rights and Climate Change* (Cambridge: Cambridge University Press, 2009), 1.

47 Dupuy, Viñuales, *International Environmental Law, Second Edition*, 391.

48 *Aydin and others v. Turkey*, Application No. 40806/07, 2012.

49 Dupuy, Viñuales, *International Environmental Law, Second Edition*, 392.

50 *Ibidem*, 394.

environment is not recognized as one of the human rights established by the Universal Declaration on Human Rights, it was recognized by the United Nations⁵¹. The aim of this dissertation though is not to assess if human rights are a sufficient means to protect the environment, but if they are an appropriate one. Human rights are created to improve the conditions of human life. To protect such values as life, liberty, property, or dignity there are no doubts that there should be considered as human rights and be protected. At the same time, the profit of protecting the environment is not self-evident. Environmental protection may be perceived as a benefit itself to humans and their prosperity and a well-preserved environment as a necessary part of life as education or shelter⁵². It can be also believed that there is a value in natural resources that is independent of human beings and for this reason they should be protected⁵³. Although there are different conceptions concerning natural resources and environmental protection as a human right, as a means of protecting natural resources human rights law is limited. Human rights aim to protect what is considered valuable for humans. As a result, there are opinions that natural resources like water, clean air or soil may be perceived as human rights only to the extent of necessity for human life and dignity and not as a value itself⁵⁴. However, it is difficult to envisage the situation in which environmental degradation does not influence the well-being of humans and do not affect their lives. The protection of the environment does not aim only to preserve natural resources but primarily to improve the quality of life and health of humans. The degradation of the environment affects human lives directly in a lot of aspects. In this light, the right to the environment should be considered a human right. Moreover, human rights law provides more sufficient instruments and a court system to protect the values than the environmental law does. To conclude, environmental issues affect human lives in a lot of ways and interfere with the right to life, health, family life, property, and others. As environmental issues directly influence the welfare of human beings, it seems that human rights are an appropriate approach to protect the environment.

51 Luis E. Rodriguez-Rivera, „The Human Right to Environment in the 21st Century: A Case for Its Recognition and Comments on the Systemic Barriers It Encounters”, 197.

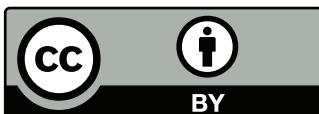
52 Erin Daly, „Environmental Constitutionalism in Defense of Nature” *Wake Forest Law Review*, No. 53 (2018): 668 (HeinOnline).

53 Ibidem, 669.

54 Daly, „Environmental Constitutionalism in Defense of Nature”, 671.

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