Right to environment

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Ethical foundations

Common good,
Well-being

protecting the
creation,
stewardship

life,
human
dignity,
human
rights

↘ ↓ ↙

right to environment
+
obligations, duties

Ethical considerations

John XXIII.‘Pacem in Terris’ (1963):

- 55. Among the essential elements of the common good one must certainly include the various characteristics distinctive of each individual people. (38) But these by no means constitute the whole of it. For the common good, since it is intimately bound up with human nature, can never exist fully and completely unless the human person is taken into account at all times. Thus, attention must be paid to the basic nature of the common good *(see common heritage of mankind and common concerns of humanity today!)*and what it is that brings it about. (39)
- 56. We must add, therefore, that it is in the nature of the common good that every single citizen has the right to share in it—although in different ways, depending on his tasks, merits and circumstances….

- 41. 41. Modern man is on the road to a more thorough development of his own personality, and to a growing discovery and vindication of his own rights. ... For we are tempted to think that our personal rights are fully ensured only when we are exempt from every requirement of divine law. But this way lies not the maintenance of the dignity of the human person, but its annihilation. .”

...

- „69. God intended the earth with everything contained in it for the use of all human beings and peoples. Thus, under the leadership of justice and in the company of charity, created goods should be in abundance for all in like manner.(8) Whatever the forms of property may be, as adapted to the legitimate institutions of peoples, according to diverse and changeable circumstances, attention must always be paid to this universal destination of earthly goods. In using them, therefore, man should regard the external things that he legitimately possesses not only as his own but also as common in the sense that they should be able to benefit not only him but also others.”

(*GAUDIUM ET SPES Paul VI, 1965*)

Sollicitudo rei Socialis John Paul II, 1987

- 33.... The intrinsic connection between authentic development and respect for human rights once again reveals the moral character of development: the true elevation of man, in conformity with the natural and historical vocation of each individual, is not attained only by exploiting the abundance of goods and services, or by having available perfect infrastructures.
- 34. Nor can the moral character of development exclude respect for the beings which constitute the natural world, which the ancient Greeks - alluding precisely to the order which distinguishes it - called the "cosmos." ,... A true concept of development cannot ignore the use of the elements of nature, the renewability of resources and the consequences of haphazard industrialization - three considerations which alert our consciences to the moral dimension of development .”

Message Of Pope John Paul II, World Day Of Peace, 1990: Peace with God the Creator,Peace with all of Creation

- „7. … *Respect for life, and above all for the dignity of the human person, is the ultimate guiding norm for any sound economic, industrial or scientific progress.* ...
- 9. … *The right to a safe environment* is ever more insistently presented today as a right that must be included in an updated Charter of Human Rights. ...
- 13. Modern society will find no solution to the ecological problem unless it *takes a serious look at its life style*."

- „2. The dignity of the human person is a transcendent value,... To promote the good of the individual is thus to serve the common good, which is that point where rights and duties converge and reinforce one another.”
- „4. The first of these is the basic right to life. … To choose life involves rejecting every form of violence: the violence of poverty and hunger, which afflicts so many human beings; the violence of armed conflict; the violence of criminal trafficking in drugs and arms; the violence of mindless damage to the natural environment.

(*Message of John Paul II, World Day Of Peace, 1999: Respect For Human Rights: The Secret Of True Peace*)

XVI. Benedict Caritas in Veritate (2009)

- „23. ... Yet it should be stressed that *progress of a merely economic and technological kind is insufficient*. Development needs above all to be true and integral. .”
- „43. Hence it is important to call for a renewed reflection on how *rights presuppose duties, if they are not to become mere licence* ... *An overemphasis on rights leads to a disregard for duties.* . ...”
- „48. Today the subject of development is also closely related to the duties arising from *our relationship to the natural environment*. The environment is God's gift to everyone, and in our use of it we have a responsibility towards the poor, towards future generations and towards humanity as a whole… Consequently, projects for integral human development cannot ignore coming generations, but need to be *marked by solidarity and inter-generational justice*, while taking into account a variety of contexts: ecological, juridical, economic, political and cultural.
- 51. *The way humanity treats the environment influences the way it treats itself, and vice versa*. . ...”

Encyclical Letter *Laudato Si'* of The Holy Father Francis on Care for our Common Home 2015

157. Underlying the principle of the common good is respect for the human person as such, endowed with **basic and inalienable rights ordered to his or her integral development**. It has also to do with the overall welfare of society and the development of a variety of intermediate groups, applying the principle of subsidiarity. Outstanding among those groups is the family, as the basic cell of society. Finally, the common good calls for social peace, the stability and security provided by a certain order which cannot be achieved without particular concern for distributive justice; whenever this is violated, violence always ensues. Society as a whole, and the state in particular, are obliged to defend and promote the common good.

Ethical considerations in Gabcikovo-Nagymaros judgment, 1997, ICJ

Separate opinion of Weeramantry:

- “The notion of not causing harm to others and hence sic utere tuo ut alienum non laedas was a central notion of Buddhism. It translated well into environmental attitudes. "Alienurn "in this context would be extended by Buddhism to future generations as well, and to other component elements of the natural order beyond man himself, for the Buddhist concept of duty had an enormously long reach.
- Traditional wisdom which inspired these ancient legal systems was able to handle such problems. Modern legal systems can do no less, achieving a blend of the concepts of development and of conservation of the environment, which alone does justice to humanity's obligations to itself and to the planet which is its home.

Human rights generations

Karel Vasak 1979 on three generations of human rights:

- First-generation human rights, often called "blue" rights, deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature
- Second-generation human rights are related to equality and began to be recognized by governments after World War II. They are fundamentally economic, social and cultural in nature
- Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration The term "third-generation human rights" remains largely unofficial, just as the also-used moniker of "green" rights, and thus houses an extremely broad spectrum of rights

Theories

A.Kiss-D. Shelton provides four variations for the relatioship between human rights and environment, emphasizing its interrelationship :

- „The first is to utilize or emphasize relevant human rights guarantees in international environmental instruments”...;
- „The second approach recasts of applies existing human rights guarantees and institutions where environmental harm occurs...”;
- „The third possibility is to formulate a new human right to an environment that is not defined in purely anthropocentric terms...”;
- „Finally, a fourth approach question utilization of human rights language, preferring to address environmental protection as a matter of human responsibilities rather than rights.”

Others have slightly **different approach** (Michael R. Anderson):

- There appear three main approaches: fist, mobilizing existing rights to achieve environmental ends; secondly, reinterpreting existing rights to include environmental concerns; and thirdly, creating new rights of an explicitly environmental character.

…

(a) <u>Mobilizing Existing Rights</u>

- (i) Civil and Political Rights

... These guarantees are necessary preconditions for mobilizing around environmental issues and making effective claims to environmental protection...

- (ii) Economic, Social and Cultural Rights

While civil and political rights may contribute to environmental protection principally through guarantees of process and participation, the second generation rights contribute mainly through substantive standards of human well-being....

- (iii) Right to Self-Determination

(b) <u>Reinterpretation of existing rights</u>

right to life, health, equality, property...

(c) <u>New Human Rights for Environmental Protection</u>

- (i) Procedural rights

... A procedural or practical approach promises environmental protection essentially by way of democracy and informed debate....

- (ii) Substantive rights

Yet even if the virtues of procedural rights are acknowledged, hey may not provide adequate protection of environmental goods.

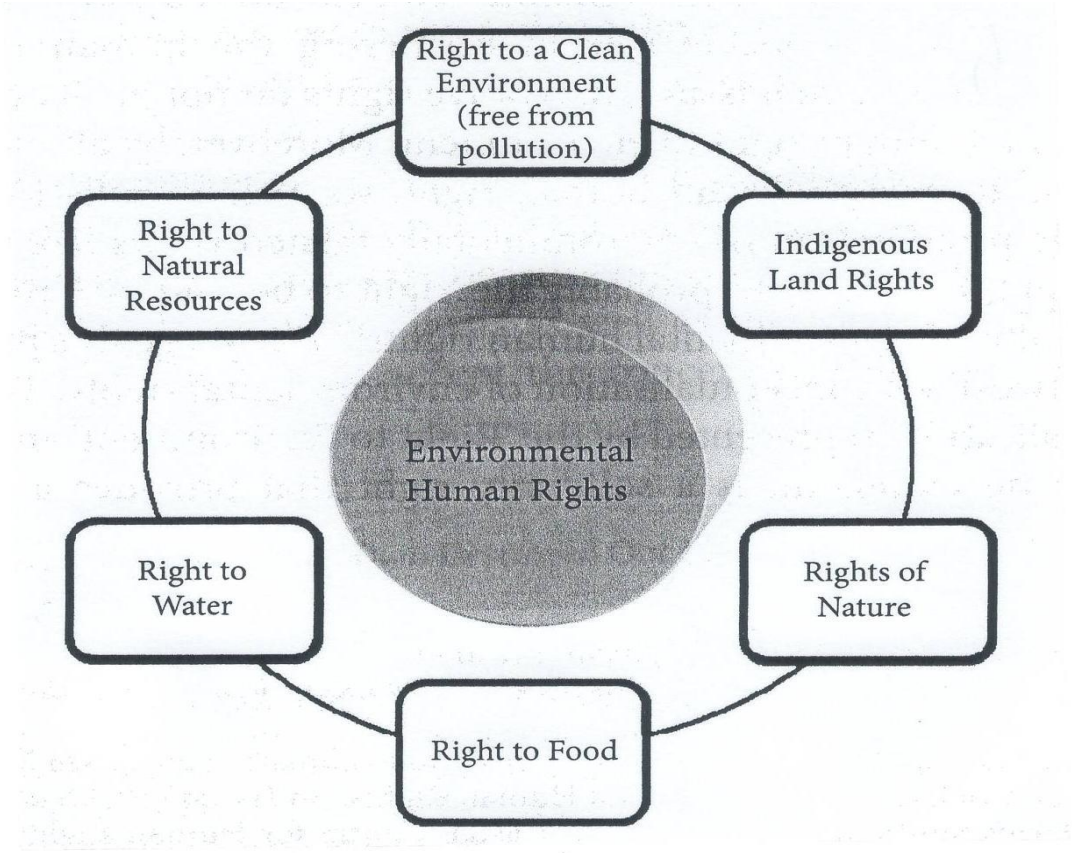
Ole W. Pedersen:

- two strong trends are emerging in relation to environmental rights in Europe. First, the strong focus on procedural environmental rights to access to information, public participation and access to review procedures at the regional level, as embodied in the jurisprudence from the European Court of Human Rights, the Aarhus Convention, and environmental policy and law from the EC, has led to these rights today enjoying the status of regional customary law.
- Second... the recognition of a substantive human right to the environment on a regional level in Europe is taking place in a cautious and step-by-step process, ...
- That said, the answer to the question of whether a right exists under international law is likely to remain **“not yet”.**

There are attempts to refer to **several individual constituents** of the right to environment:

- Right to life
- Right to health
- Right to water
- Right to food
- Possession, property
- Shelter, home
- Information, public participation
- labour
- Culture, family
- Indigenous people
- Equity, dignity, non-discrimination
- women
- Child, etc

Linda Hajjar Leib, 2011



Possible conflicts

Weeremantry:

- The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration andother human rights instruments.

Conlficts may rise:

- Individual – collective
- Human beings – environment
- Developed - developing
- Economic interests – non-material interests
- Present - future
- Rigths - dutiesjogok - kötelezettségek

It is easier to accept the role of this right as a tool or means to sg. Else, as e.g. ILA New-Delhi Declaration(2002) takes this as a means to implement sustainable development

Pope John Paul II. message to the World Day of Peace, 1999

- 10. The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving juridic form to this right. … The world's present and future depend on the safeguarding of creation, because of the endless interdependence between human beings and their environment. Placing human well-being at the centre of concern for the environment is actually the surest way of safeguarding creation; this in fact stimulates the responsibility of the individual with regard to natural resources and their judicious use.

Fourth Generation and other tendencies

- Doc. 12003 **Parliamentary Assembly**, 11 September 2009, Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, Report Committee on the Environment, Agriculture and Local and Regional Affairs:

„12. At present, we are witnessing what could be called a fourth generation of fundamental rights, or a generation of rights and duties for the society of the future. Society as a whole and each individual in particular must pass on a healthy and viable environment to future generations. That is quite simply the principle of solidarity between generations.

A Universal Declaration of Human Responsibilities (InterAction Council, 1 September 1997)

Article 9: All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.

- **Joint Committee on Human Rights** **Twenty-Ninth Report** UK Parliament

210. In our view there is a strong case to be made for including the right to a healthy and sustainable environment in a UK Bill of Rights. The briefest consideration of the status of the right in international instruments and national constitutions shows that the right has evolved into one which is clearly capable of legal expression. We believe that a UK Bill of Rights should treat it as one of the social rights for which a particular legal regime can be devised.

Right to environment in international human rights' law

We may divide the relevant international documents into 3 categories:

- Official catalogues of human rights (UN or Europe – with the excpetion of the EU) do not mention this right directly;

- Non-binding documents may contain, such as Rio 1992 Principle 1. The role of man: Human beings are at the centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

- Regional and mostly environmental agreements, documents refer to this right, such as the Aarhus Convention (1998) in the preamble: „Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

Group I examples

- The **Universal Declaration of Human Rights** (1948), Art. 25 indirect reference: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- **International Covenant on Civil and Political Rights (1966)**
  On the right to life (Article 6(1)), it declares: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.„
- **International Covenant on Economic, Social and Cultural Rights (1966)**
  This covenant guarantees the right to safe and healthy working conditions (Article 7 b) and the right of children and young persons to be free from work harmful to their health (Article 10-3). The right to health (Article 12) within the Covenant expressly calls on States parties to take steps for "the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.”

Group I examples cont'd

- **Convention on the Rights of the Child (1989)**
  This covenant refers to aspects of environmental protection in relation to the child's right to health. Article 24 provides that parties (States) shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Article 24(2)(c). Information and education is to be provided to all segments of society on hygiene and environmental sanitation. (Article 24(2)(e).

- **United Nations Declaration on the Rights of Indigenous Peoples (2007)**
  The UN General Assembly on 7 September 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples. It's the first General Assembly Declaration on Human Rights which recognises the conservation and protection of the environment and resources as a Human Right.

  Article 29 of the Declaration declares:1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
  2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
  3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Group I examples cont'd

- **American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)**
  Article 11 of the Additional Protocol to this convention is entitled: "Right to a healthy environment" and proclaims (1.) Everyone shall have the right to live in a healthy environment and to have access to basic public services and (2.) The States parties shall promote the protection, preservation and improvement of the environment.

- **African Charter on Human and Peoples' Rights (1981)**
  This charter contains both a right to health and a right to environment.
  Article 16 of the Charter guarantees the right to enjoy the best attainable state of physical and mental health to every individual.
  Article 24 declares that all peoples shall have the right to a general satisfactory environment favourable to their development.

Group II examples

- 1972 Stochkolm Declaration, Principle 1

  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. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.
- Rio 1992 Principle 1. The role of man: Human beings are at the centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature.
- 2002 Johannesburg summit: The 2002 World Summit on Sustainable Development specifically commits to "assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels" (para. 5).
- 2012, Rio+20 reinforces the above, nothing new

Group II examples contn'd

European Charter on Environment and Health, 1989, WHO

„1. Every individual is entitled to:

- an environment conducive to the highest attainable level of health and wellbeing;
- information and consultation on the state of the environment, and on plans, decisions and activities likely to affect both the environment and health;
- participation in the decision-making process.

2. Every individual has a responsibility to contribute to the protection of the environment, in the interests of his or her own health and the health of others.

5. Every government and public authority has the responsibility to protect the environment and to promote human health within the area under its jurisdiction, and to ensure that activities under its jurisdiction or control do not cause damage to human health in other states. Furthermore, each shares the common responsibility for safeguarding the global environment.

Group III examples

- See Aarhus again, covering the procedural gurantees (1998) in the preamble: „Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,
- World Water Forums, like 2006, Mexico Cityben, Summit in 2013 Budapest. Latter Statement, Policy Recommendations:

  2. Access to sustainable, gender-responsive safe drinking water and sanitation are fundamental to health, well-being and poverty eradication. Commitments are required at global, regional and national levels to accelerate the achievement of universal access and the progressive realization of the human right to safe drinking water and basic sanitation that are essential for dignified human life. Narrowing the water and sanitation deficiency gap will protect and improve human health, advance gender equality and human dignity, create education and development opportunities, especially for vulnerable groups, and facilitate economic development and poverty reduction.
- The European Landscape Convention, Florence 2000:

  Believing that the landscape is a key element of individual and social well-being and that its protection, management and planning entail rights and responsibilities for everyone;

Europe

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

- ARTICLE 2, Right to life

  1.Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- ARTICLE 8, Right to respect for private and family life

  1. Everyone has the right to respect for his private and family life, his home and his correspondence.

  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952
- ARTICLE 1, Protection of property

  Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

ECHR case law

Arrondelle v. UK 26 DR 5 (1982) - This case was about the interference with an individual's right to private life and home as well as the peaceful enjoyment of his property through aircraft noise from increased flights and extension of flight paths at Heathrow Airport. Article 8 and Article 1 of Protocol No. 1 provided the basis for a 'friendly settlement' between the parties in a complaint, alleging nuisance due to the development of an airport and construction of a motorway adjacent to the applicant's home.

Lopez Ostra v Spain 16798/90 [1994] ECHR 46 (9 December 1994) and Guerra v. Italy 14967/89 [1998] ECHR 7 (19 February 1998)

Landmark cases include Lopez Ostra v Spain and Guerra v. Italy. In both cases ECHR found the violation of the Article 8 (privacy and family life). The Court, in Lopez Ostra v. Spain, for the first time held that a failure by the state to control industrial pollution was a violation of Article 8 where there was a sufficiently serious interference with the applicants' enjoyment on their home and private life.[3]
However, the ECHR noted that regard has to be given to the fair balance between competing interests of individual and community as a whole (balancing the 1st and the 2nd paragraph of the Article 8).[4]. It is important to note that in some cases[5] the economic interest of a state (which is regarded as the interest of the community as whole) can override the interest of an individual.

ECHR

Moreno Gomez v Spain, 4143/02 [2004] ECHR 633 (16 November 2004)

In this case there had been serious night noise disturbance from pubs and clubs, exceeding 100 dbA, which made sleeping difficult. An expert report concluded that noise levels were unacceptable. The council had banned any further activities that would have noise impacts on the area but a month later licensed a new disco in the building that the applicant lived in. The licence was eventually declared to be invalid and the applicant lodged a claim against the council, which the national courts rejected. The court concluded that there had been a violation of Article 8 (respect for private life and the home) because the authorities had tolerated and hence contributed to, the repeated breach of the local rules dealing with noise. The authorities had repeatedly failed to respect regulations relating to the control of noise, granting permits for discotheques and bars despite being aware that the area was zoned as "noise saturated". In view of the volume of the noise, at night and beyond permitted levels, and the fact that it had continued over a number of years, the Court found that there had been a breach of the rights protected by Article 8.

„53. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see Hatton and Others v. the United Kingdom cited above, § 96)."

ECHR

Fadeyeva v Russia, 55723/00 [2005] ECHR 376 (9 June 2005)

The applicants were exposed to pollution from a massive steel works close to their home. Although the authorities had established a sanitary 'buffer zone' around the works, the applicants, like many thousands of others, had been housed in a flat inside the zone. The applicants obtained a court order requiring that they be re-housed outside the zone, but this was never executed, and a subsequent attempt to enforce this order was rejected by the courts. The Court held that there had been a violation of Article 8 (right to private, family life, and no interference by a public authority).

- *„68. Article 8 has been relied on in various cases involving environmental concern, yet it is not violated every time that environmental deterioration occurs: no right to nature preservation is as such included among the rights and freedoms guaranteed by the Convention (see Kyrtatos v. Greece, no. 41666/98, § 52, ECHR 2003-VI). Thus, in order to raise an issue under Article 8 the interference must directly affect the applicant's home, family or private life.*
- *69. The Court further points out that the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8 … There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city.*
- *70. Thus, in order to fall within the scope of Article 8, complaints relating to environmental nuisances have to show, firstly, that there was an actual interference with the applicant's private sphere, and, secondly, that a level of severity was attained."*

ECHR

- Moreno Gomez:

  „57. The present case does not concern interference by public authorities with the right to respect for the home, but their failure to take action to put a stop to third-party breaches of the right relied on by the applicant."

  62. In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for her home and her private life, in breach of Article 8 of the Convention.

- Fadeyeva

  „92. The Court concludes that the authorities in the present case were certainly in a position to evaluate the pollution hazards and to take adequate measures to prevent or reduce them. The combination of these factors shows a sufficient nexus between the pollutant emissions and the State to raise an issue of the State's positive obligation under Article 8 of the Convention."

ECHR

Oneryildiz v. Turkey, 48939/99 [2004] ECHR 657 (30 November 2004)

In this case the European Court of Human Rights decided its first environmental case involving loss of life. The applicant lived in a slum area of Istanbul built around a rubbish tip under the authority and responsibility of the main City Council. An expert report from 1991 noted that no measures had been taken to prevent a possible explosion of methane gas from the tip. In 1993 there was such an explosion. The refuse erupting from the pile of waste buried 11 houses, including the applicant's. The applicant lost nine members of his family. The applicant complained under Article 2 of the ECHR (the right to life) that the accident had occurred as a result of negligence on the part of the relevant authorities.

He also relied on Article 1 of Protocol 1 (the protection of property), as regards the loss of his house and other property. The Court concluded there had been a violation of right to protection of life enshrined in Article 2 in its procedural aspect; violation of the right to peaceful enjoyment of possessions as protected by Article 1 of the Protocol No. 1; and violation of the right to a domestic remedy, as set forth in Article 13 of the Convention, in respect of both complaints (complaint under the substantive head of Article 2, and complaint under Article 1 of Protocol No. 1); The Court deemed it not necessary to examine Article 6 and Article 8.

Tatar v. Romania, Application no. 67021/01. (27.01.2009)

The European Court held unanimously that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, on account of the Romanian authorities' failure to protect the right of the applicants, who lived in the vicinity of a gold mine, to enjoy a healthy and protected environment.

ECHR

Öneryildiz (2002)

62. The Court reiterates that the first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also guarantees the right to life in general terms and, in certain well-defined circumstances, imposes an obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction

64. In the light of those principles, the Court must first point out that a violation of the right to life can be envisaged in relation to environmental issues relating not only to the spheres mentioned by the Government (see paragraph 60 above; see, among other authorities, the examples provided by the above-cited L.C.B. judgment; Guerra and Others v. Italy, judgment of 19 February 1998, Reports 1998-I, and Calvelli and Ciglio, cited above; see also, in respect of cases examined under Article 8 of the Convention, Botta v. Italy, judgment of 24 February 1998, Reports 1998-I, p. 422, §§ 33 and 34), but also to other areas liable to give rise to a serious risk for life or various aspects of the right to life.

65. In the Court's view, the positive obligation which derives from Article 2 (paragraphs 62 and 63) is indisputably also applicable to the sphere of public activities in question here; contrary to the Government's assertions (see paragraph 59 above), no distinction needs to be drawn between acts, omissions and "negligence" by the national authorities when examining whether they have complied with that obligation.

- Recommendation 1885 (2009) Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment (General Assembyl, CoE)

  „2. The Assembly notes and regrets, however, that in spite of the political and legal initiatives taken both nationally and internationally, environmental protection is still very inadequately guaranteed.” and „10. The Assembly recommends to the Committee of Ministers to: 10.1. draw up an additional protocol to the European Convention on Human Rights, recognising the right to a healthy and viable environment;”
- The Committee of Ministers refused the proposal at 16 June, 2010
- Consequence (Ellen Desmet 2010)

  „The Strasbourg organs have accepted nature protection as a legitimate public interest goal, which may warrant an interference between rights to property, private life anjd home. ... In general, the European human rights organs have been reluctant to pronounce on the conflict between conservation measures and the interests of the individauls or minorities, given the complexity and sensitivity of the issues at stake. A wide margin of appreciation has been left to the national states.”

EU

- EU Charter of Fundamental Rights, entering into force at 1 December 2009, as a part of the Lisbon Treaty

„Article 37 - Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”

Procedural rights

„Therefore, with the human right to the environment, whilst the procedural element is clear and extremely important (information, participation and access), it is difficult to define its ‘substantive’ content (such as the ‘acceptable’ quality of the air and water and food). The ‘minimum’ substantive content does not exclude in principle the possibility of reconciliation with other public interests, without prejudice to the procedural elements.” (POSTIGLIONE, Amedeo, 2010)

- Information, Participation and Access to Justice: the Model of the Aarhus Convention , Jonas Ebbesson, 2002

  The Aarhus Convention covers the three themes indicated by its title. Rather than using rights-oriented language, the Convention requires the parties to "ensure" that members of the public have access to information, are allowed to participate and have access to judicial review. Although the term "right" is generally avoided, the objective, structure and context of the Aarhus Convention are rights-oriented. In part, the Convention draws on notions of international human rights law. It is intended to provide for participatory, informational and procedural rights in environmental matters, and a failure to do so implies a breach of the treaty.

Procedural rights

Rio Declaration on Environment and Development

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Special UN Expert, 2015

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Compilation of good practices by John H. Knox at the Human Rights Council Twenty-eighth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 3 February 2015, A/HRC/28/61

- 73. Perhaps the most important example in this category is the proliferation of constitutional rights to a healthy environment. More than 90 national constitutions now recognize some form of this right. (Many other constitutions include references to the importance of environmental protection.) About two-thirds of these constitutional rights refer to health, and another one-quarter refer to an ecologically balanced environment. Alternative formulations include rights to a clean, safe, favourable or wholesome environment.
- 74. Experts have identified many potential benefits of adopting a constitutional environmental right, including that the recognition of such rights can lead to the enactment of stronger environmental laws, provide a safety net to protect against gaps in statutory environmental laws, raise the profile and importance of environmental protection as compared to competing interests such as economic development, and create opportunities for better access to justice and accountability

National legislation - Hungary

The new constitution (Fundamental Law, 2011) is divided into the following parts, each represented by different ways of numbering:

- – National Profession (or National Avowal), acting as a long preamble;
- – Groundwork or Foundation, covering several really basic rules and also procedural elements;
- – Freedom and Responsibility – the human rights; and
- – The State, until the budgetary or defence issues.

Preamble:

We commit ourselves to promote and safeguard our heritage, our unique language, the Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.

There are three major concepts, essential from the point of view of the environment:

–(1) National assets or national heritage,

–(2) The mention of future generations ,

–(3) Finally human dignity.

- Article P of the Groundwork is a very complex summary of *heritage*, using the definition in a broad context and also referring to future generations again: ‘All natural resources, especially arable land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation’s common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.’

- Article XX is the more indirect, connecting environment protection to public health, where environmental protection is taken as a tool of safeguarding public health.

- Article XXI is the specific article on environmental rights, whose first paragraph has been the major legal basis for interpretation in front of the Constitutional Court until recently: ‘(1) Hungary shall recognize and enforce the right of every person to a healthy environment.’

Constitutional Court

Constitutional Court decision No. (28/2017 (X. 25.) AB határozat), connected with nature conservation, with Natura 2000 protection versus agricultural uses. The importance of biodiversity, the special use of Natura 2000 sites, the common heritage of the nation – which is closely connected to the common heritage of mankind – and emphasized again the **non-regression principle**. According to the Court, while environmental protection is everyone's obligation, the **responsibility of the state is even greater**, as the state shall also create the underlying legal conditions of effective environmental protection.

In this decision the Court also interpreted **the obligations towards future generations**, as it has been articulated by Article P) of the Fundamental Law. This encompasses a threefold obligation:

- (1) to provide the chance for options,
- (2) to maintain the environmental quality and
- (3) to provide the chance for access.

Finally the Court clearly stated that the state, when making various decisions in connection with nature conservation, must keep in mind **the precautionary principle**. The precautionary principle has been taken as **part of the constitutional right to the environment.**

- The main issue in the most recent judgment (13/2018 (IX. 4.) AB. határozat) is water management, more specifically, the unlimited drilling and use of groundwater wells, down to the level of 80 metres. This judgment combines the references to future generations and right to environment with the questions of state property or even more national assets (Article 38 of the Fundamental Law) – the water resources belong to this scope.
- The **non-regression principle** is underlined again, as being based on the provisions of Fundamental Law, and it is combined with the **precautionary principle**, also distinctly referred to. In both cases the **necessity-proportionality test** shall be used, comparing the protection of the environment to the protection of various other human rights. As the proposed law aims to eliminate the permitting or notification requirements in case of the given wells without replacing this with any other guarantees, the Court could not accept this regression of protection interests. We also should not forget – says the Court – that the protection of water resources is a strategic task of the state. The legislator could not point to any other human rights of constitutional interests which might support the limitation of environmental rights.