

# Concept of environment, sustainable development and respect for human rights

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## **Abstract**

*The insistence on the definition of environmental protection is an aspiration which has served as prerequisites to the implementation of human rights in a global economic crises. European Regional System has traditionally been focused on the protection of civil and political rights. In the wake of environmental risks that imply the violation of human rights, the emphasis has been placed more on the social, economic and cultural. Collective mechanisms to appeal to the United Nations and the European Court of Human Rights, gave a number of decisions on matters implicating environmental laws and policies. What is to be noted, is the evolution of the guarantees provided under the European Convention on Human Rights, which refers to a substantial understanding of environmental protection, and also including procedural aspects related to the protection of the right to life, privacy, property, information and effective means of appeal. This evolution has been launched by the growing need for states to take preventive measures and policies to the requirements for a balanced sustainable economic development, avoiding environmental risks that imply the violation of human rights. Proportionality in the protection of the interests in this respect creates a context for a fair trial, but also promotes an open and constructive dialogue between judges and lawmakers to protect the public interest.*

**Keywords:** Environment, Sustainable Economic Development, Public interest, the rights of the individual.

**JEL Classification:** K32, K33

## **1. Urgency to prevent environmental pollution**

Urban Massacre happened because of Hurricane Sandy<sup>2</sup>, in America in 24 states, from Florida to Maine, West Michigan and Wisconsin, with particularly serious consequences in New Jersey and New York, reminded us that such events should not be neglected when it comes to environmental issues. Its storm lashed New York City on October 29 covering with strong currents roads, tunnels, subway. While years on July 11th Copenhagen waters flooded a 135 mm rainfall intensity in 2 hours<sup>3</sup>. Air pollution by high concentration of dust (PM), O<sub>3</sub>, NO<sub>2</sub>, BAP, SO<sub>2</sub>, CO, benzene and heavy metals such as Arsenic, CADMIUM, nickel returned to cause danger to the environment as eutrophication, acidification, heart disease, respiratory complications, lung cancer, and other diseases or. Some

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<sup>2</sup> Beychok, M.R. (2005). *Fundamentals Of Stack Gas Dispersion* (4th ed.), author-published, www.air-dispersion.com

<sup>3</sup> Pattberg, P; Stripple, J. (2008). "Beyond the public and private divide: remapping transnational Climate governance in the 21st century." *International Environmental Agreements: Politics, Law and Economics*

industrial pollution can lead to the reduction of agricultural crops to climate change. Among other things, the risk of transmission of environmental pollution is increasing due to the development of the global market. Besides the advantages of tomatoes or fruit supply throughout the year, from one state to another, also followed many components together from all over the world. This interface can transmit global pollution caused by China straight into your garden.

## **2. Historical references to the definition of the environment in terms of law**

Environmental issues at first sight are not as simple as they seem. In their complexity, they include several areas of interest and reports. Environmental pollutants have on the target in the foreground individuals as citizens and as consumers. State-individual relations, first as a civil contract, passjellin obligation of the state to create a civil environment, political, social, cultural, economic and respect for fundamental human rights. The impact of environmental pollution on life, health, property of people born later need to develop the concept of environment in terms of the law. The protection of individual rights from the effect of environmental pollution, became part of the political agenda of countries, especially after World War II. States, the protection of public interest, began to engage and among other preventive measures and environmental protection. In these circumstances, was born for the first time need to have a definition for the environment. In 1972 Stockholm Declaration which was adopted at the United Nations Conference on the Human Environment, threw light on the respect of human rights and environmental protection. According to its preamble: "Both the human environment, whether natural or man-made, are essential to human welfare and to the peaceful enjoyment of human rights, including the right to life itself." Furthermore, this concept is widely defined in section 2 of the "Convention on the civil responsibility for the consequences of damage from environmentally hazardous activities" in Lugano, June 21, 1993. According to him, "The environment includes biotic and abiotic natural resources such as air, water, flora and fauna and interaction to the same factors; property which constitutes a part of the cultural heritage, landscape features." ... Further note that one has the right fundamental freedom, equality and adequate conditions of life, in a quality environment that permits a life of dignity and well-being, and who holds a direct responsibility to protect and improve the environment for present and future generations.

## **3. The concept of environmental, political or economic right, European or global phenomenon**

The concept of environment was not born as a purely European phenomenon, but there was an intercontinental range. Initially, the meaning of environmental rights is reflected in the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Rights Economic,

Social and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR), the American Convention Human Rights (AmCHR), the African Convention on the Rights of People (AfCHPR). The Convention, under the influence of jurisprudence have provided solutions mainly on issues related to the environment and its impact on an individual's right to life, privacy, health, water and property. But specific predictions about the environment are given only in the ICESCR, Article 11 of the European Social Charter (1961), Article 11 of Additional Protocol AmCHR (1988), Article 24/2/c the Convention for the Protection of Human Rights Child (1989), always seen in the context of health protection. While the ICCPR and the ECHR does not contain predictions directly related to the right to quality environment. Green Reflecting these conventions only fed by the rich interpretation of jurisprudence <sup>4</sup>.

The idea of creating a special provision for the right to an adequate environment, has been discussed several times, but found it impossible. Treaty on Civil and Political Rights ICCPR, can not extend the rights in this area, due to the complex legal architecture. Environment found the place to adapt better to the Convention on Economic, Social and Cultural Rights on the right settings for water, food and environmental hygiene. The United Nations has given valuable contribution in the field of environmental policy. Articles 11 and 12 of the ICESCR, are widely interpreted by the comments of the UN Committee on Economic, Social and Cultural policy framework for preventing and reducing exposure to chemical substances including chemical and radiation or other harmful conditions for environment, which have direct impact on human health. However ICESCR makes no explicit reference to the protection of the environment. If in its Article 1 stated that "freedom of people to pursue their goals of economic, social, cultural" in its Article 12 states "only to improve all aspects of hygiene and environmental INDUSTRIAL". Although the Convention recognizes the interdependence of the environment with economic rights, it fails to establish an understanding of the notion of a suitable environment as a public interest that deserves special attention.

#### **4. The concept of environment as a requirement for sustainable development**

Only after 40 years since the Stockholm Declaration<sup>5</sup> in 1972, to Rio in 1992 and then in Johannesburg in 2002<sup>6</sup>, states found a consensus that the need for a "sustainable development" is directly influenced by international policies environment. Article 3<sup>7</sup> of the Rio Declaration and paragraph 11 of the Vienna

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<sup>4</sup> Rehmain Javaid, *International Human rights law*, Perqson educqted Limited, 2003.

<sup>5</sup> Mason, M., *Information Disclosure and ENVIRONMENTAL rights: The Aarhus Convention*. Global Environmental Politics.

<sup>6</sup> White, Robin C. A. (2006). *Jacobs & White: The European Convention on Human Rights* (4th ed.), OxfordUniversity Press.

<sup>7</sup> Greer, Steven (2006). *The European Convention on Human Rights: Achievements, Problems and Prospects*, CambridgeUniversity Press.

Declaration on Human Rights state that "The right to development must consistently meet the need for development and the environment in the present and future generations in the future ". In this way the demand for balancing economic development on the one hand the need for environmental protection on the other hand, served as a prerequisite for sustainable development, the use of reasonable and uniform natural resources. Environmental policies, have already solved what weight should be given to the use of natural resources towards nature protection, industrial development against air and water quality, land use development versus preservation of forests and valleys of energy consumption against risk of climate change.

### **5. Protecting the public interest and demand for sustainable development**

Initially, the institutions of the UN human rights tended to give priority to the unconditional right to economic development, leaving the way open for business and corporations implement their development projects, even when they were in opposition and violated human rights related to the environment. Later, it was pointed out on various occasions that directly implicated the manufacturers responsible for violations of human rights to environmental pollution factors. To address this phenomenon revalued states with reasonable care on the basis of the ratio between environmental interests against economic development. Even developed countries had to improve legal regulations, to avoid tolerance in law enforcement, to avoid corruption of the control of balanced against foreign companies in their activities for the extraction of minerals, oil, or natural resources implicating violation of human rights. Thereafter, the idea of sustainable development has consistently led the selection and definition of balanced policies for legal arrangements, for control of businesses and corporations, to strengthen surveillance to environmental licensing permits, to take preventive measures against pollution, in order to such that in each case the public interest in respect of individuals to have a vital environmental quality. In these circumstances, the establishment of control over environmental issues, aimed to strengthen the rule of law and increase the level of account with the object:

- The activity of companies and corporations
- Facilitate access to justice bodies
- The implementation of environmental law and court decisions

Balancing factors such as the state, businesses & corporations and individuals in commitment for sustainable development, expresses the preservation of a healthy environment and curb risks in the long term. In the case of the African Commission Ogoniland by which the performance of foreign investments in unregulated and unexplored only for local economic benefits but at the expense of health, life, property and natural resources of citizens in Nigeria, had led to massive violations human rights. It is also noted that different countries in achieving this balance have followed different policy approaches. Still have wide discretion to states to decide on their policy environment Hatton confirmed the decision of the

ECHR. Moreover, the right to economic development, economic is a legitimate right of producers, regardless of the need for environmental protection and the obligation to respect human rights. In these circumstances, states to respect the public interest, have the discretion to choose those policies that ensure a sustainable balance between the interests of the private sector, public sector and individual rights. Self, international courts, have already confirmed the legitimacy of state governments to decide on these issues, since they are in a better position to assess local conditions and needs about.

#### **6. The initial concept of the environment according to the European Convention on Human Rights**

An important role in protecting the environment from the standpoint of law, jurisprudence has been the impact of the implementation of the European Convention on Human Rights. Originally interpretation of its environment as provided in Article 2, 8, Article 1 Protocol 1 only limited causal link damages stemming from environmental pollution on health, privacy, property of individuals, first victim status. In this context, understanding the environment was too narrow. Consequently, environmental issues often remain unsolved only because the Court found no causal link between the risk that come as a result of environmental pollution and human rights violations alleged. So in case *Kyrtator p.sh* involving the illegal draining of the valley, the ECHR found no causal link to the applicants' claims for violation of the right to private and family life or property rights. Although the complainant lived near that area, they estimated that they lost their unlimited rights to live in a particular environment or surrounding environment have stored indefinitely. This practice has occurred and the Inter-American Commission on Human Rights, which refused the right of a citizen of Panama applicant for protection of a nature reserve to development.

#### **7. The extent of the environment after the entry into force of the Aarhus Convention**

Expanding beyond the literal meaning of environmental substantial means the procedural aspect of the relationship between environment and respect for human rights. The first step to solving procedural aspect was thrown through the Declaration of Rio de Janeiro Conference on Environment and Development (UNCED). According to Article 10 of the Declaration states that environmental issues are managed better when there is a participation of all citizens at national level. Every individual should have the right of 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. Served this purpose and ratification of the Aarhus Convention <sup>8</sup> "For access to information, public participation in decision making

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<sup>8</sup> Xenos, Dimitris (2012). *The Positive Obligations of the State under the European Convention of Human Rights*, Routledge.

and access to justice on environmental issues." The main requirements under the Convention are:

- The right of the public for access to environmental information (points 4 and 5 of the Agreement).
- The right of the public to participate in public decision-making on environmental issues (points 6 and 8 of the Agreement).
- The right of the public to complain in court on environmental issues (paragraph 9 of the Agreement).

This Convention recognizes the right individuals for participation and interaction with government institutions and policy, environmental policy. The aim is to build a society responsive to events in the environment. Any threat posed to the environment is not just a question of state involvement, but it is also a matter for the citizens who have the right to information, participation in decision-making for any initiative related to vital environmental quality. Articles 6-7 of the Convention legitimize decisions for sustainable development in the context of environmental governance. This convention is also significant in predicting Article 9 as reinforces its access to justice and the duty of public authorities to enforce the law. Individuals under Section 9/3 have the right to administrative or judicial appeal the legality of the decision-making on environmental issues. While Article 9/4 of the Convention requires state authorities to provide appropriate means, fair and effective administrative or judicial appeal.

#### **8. Integrating the environment by reference to the Aarhus Convention in the European Human Rights**

The advantage of Aarhus in relation to the European Convention on Human Rights, is that individuals create procedural guarantees of access to justice in defense of the right to life, health and family life. Moreover Aarhus further extends the concept of public interest by activating and NGOs. Thus the procedure provided under Article 15 non-judicial and non-confrontational counseling, where members of the public or NGOs can appeal before an independent committee, whose members may be elected by the NGOs. Forecasts by the Aarhus Convention are widely referred to in the interpretation of the ECHR. In this way solutions to environmental issues have overcome European consensus on a wider global plane. In terms of expanding the environment, the European Convention already operates when there is a sufficiently direct connection to environmental issues and civil rights, especially when one reaches the level of risk probability mass that makes the outcome of the proceedings directly decisive about the interests of individuals. These interests may be economic, but also should be individual and not spread a wide margin of public interest. Environmental issues, as can be: the mass of water pollution from dangerous substances, illegal discharges of waste and illegal transportation of their unlawful destruction of a protected residential area, illegal trade and use of substances that damage the layer ozone, etc. associated with the prosecution of those responsible, especially when there is a strong link with the general interest.

### **9. The positive obligation of States under the ECHR to environmental issues**

According to the interpretation of the right to life (Article 2), the right to private and family life (under Article 8), freedom of expression (under Article 10), right to an effective remedy to appeal (by Article 13), right property (Article 1 Protocol 1), states have the obligation to take positive remedial measures:

- to protect the lives of those who are within its jurisdiction;
- to provide all guarantees for the protection of property, including a certain extent and ensuring environmental standards;
- to ensure respect for the rights to private and family life;
- to provide access to information, participation in decision making and access to justice.

The positive obligation of the state means the state's involvement with responsibility even when the threat comes from private individuals or other activities not directly related to the state. It is dangerous activities as nuclear tests, the action of chemical factors with toxic radiation, or landfill sites. State authorities determine the level of knowledge of the risk of dangerous activities or harmful, risk and predictability of life. In this respect the legislative and legal framework are important for determining the content of the specific features of a dangerous situation or activity and the level of risk and potential for life, dealing with licensing, establishment, operation and safety supervision of such activities. Emphasis is placed on public information as a fundamental right in cases such activities, provision of fair procedures for identifying gaps in technical processes and accountability for mistakes made by those involved.

### **10. Environment under Article 2 of the Convention**

In case of loss of life, the right tools are required and appropriate for establishing justice and punishment accordingly. Tools civil, administrative or disciplinary and should be sufficient. In case "*& others v Budayeva. Russia*", the European Court held that there had been a violation of the right to life under Article 2 because state authorities had not taken steps to evacuate the families living near the area where the massive slide occurred earth, and therefore some people had died.

### **11. Environment under Article 8 of the Convention**

Environmental degradation associated with the violation of the right to private life quality under Article 8 of the Convention even though not expressly provided under this obligation for environmental protection and nature conservation. When certain activities that have been proven direct impact on the quality of the environment and consequently in the vital area of an individual causing damage, the European Court has decided that it is interference environment in the sense of Article 8 of the Convention. In case "*Guerra & others v. Italy*", violated Article 8 of the danger emanating from toxic radiation caused by factories.

As in the case "v Brandusa. Romania", Article 8 take effect on the environment and vital cells for prisoners. Pollution that came in the applicant's cell as a result of waste drum qelisës down his window had violated the right to privacy for a vital environmental quality. In another case "v Tatar. Romania", has been a violation of Article 8 of the Convention because of the pollution that came in the waters, transboundary rivers and roads, and the state did not take protective measures against the activities of a company to extract gold after using techniques that require the use of sodium cyonide. Even in the case "Moreno Gomez v. Spain", found a violation of Article 8 as a result of pollution caused by acoustic noise coming from bars and discos.

## **12. Environment first procedural aspect under Article 8 of the Convention**

The European Convention also recognizes that decision making on environmental issues should be based on the consent of individuals whose interests may be affected by them. At this point the public representation of great importance to public authorities. Decision-making procedures, depending on the degree of risk, should be associated with investigations and studies on environmental impact assessment, as well as to enable the authorities to establish a fair balance between the various interests may face. In case "k Grimkovskaya. Ukraine's "has been a violation of Article 8 of the Convention because of a procedural individuals were not allowed to participate in decision-making procedures during the construction of a road motorbikes that contained no drainage system, pavement and place of detention. The same attitude expressed in the European Court in the case of "Di Sarno & Others v.. Italy ", which deals with the current situation in Naples, Italy, where the people who lived and worked were infected as a result of the impact of pollution come from dysfunctional waste for a period from February 1994 to December 2009, the situation which was greatly exacerbated in 2007-2008. Treatment of waste according to the facts of this case, was entrusted to private companies and their collection was provided by state companies. The Court therefore found a violation of Article 8-1 in the substantive aspect of the right to private life and home, because the authorities had failed to ensure the collection, treatment and proper management of waste. The Court also found a violation in the procedural sense, about the positive obligation of authorities to inform people about the potential risks to nearby residents came to the area where they were deposited piles of garbage.

## **13. Implementation of environmental policy in Albania**

### ***13.1 Institutional Framework***

In Albania, Ministry of Environment, Forestry and Water Management is responsible for the design and implementation of policies, strategies, plans and national environmental protection legislation. Other institutions which have an important role in the implementation of environmental policy, including climate



change policy are the Ministry of Economy, Trade and Energy, Ministry of Agriculture, Food and Consumer Protection, Ministry of Public Works, Transport and Communications, Ministry of Health, Ministry of Finance and Ministry of Education and Science. The National Environment Agency is the competent authority for the management of the National Network of Environmental Status Monitoring, which plays the role of the headquarters of reference for environmental monitoring and for providing high quality services and general reference laboratory. Inspectorate of Environment is the competent authority to ensure the fulfillment of the relevant license conditions of the environment through control and monitoring of industrial activities that cause air downloads. Institute of Public Health is committed to continuously monitor the quality of urban air.

### ***13.2 The main conventions in the field of environmental protection which Albania is a party***

Albania is also active in the negotiations for the adoption of the final text of the Convention during the years 1996-1998<sup>9</sup>. It has contributed to the content of the agreement, and is ranked among those countries that have signed the Convention on 25 June 1998 in Aarhus, and among those countries that have ratified it before it can enter into force - on June 27, 2001. Since 1998 and especially after 2000, when the Albanian Parliament ratified, the agreement implementation activities were intensified. First Information Centre Aarhus officially opened on 13 December 2006. Later, in 2008, was created, three office called the Aarhus Information Centre in Tirana, Shkodra and Vlora. Albania has acceded to the Convention of the United Nations Framework on Climate Change in December 1995 and in January 2005 Albania joined the Kyoto Protocol. Climate change constitutes a global scale, which requires the efforts and cooperation of all countries of the world despite the contribution that the concentration of greenhouse gases in the atmosphere and the negative impacts of these downloads. Total greenhouse gas emissions in Bangladesh in 2000 was around 2:47 or 7619.90 Gg CO<sub>2</sub> eqv tons. per capita. Energy Sector is the leading issuer (44.00%) through transport, followed by agriculture (27.12%) and Land Use Change and Forestry (21.60%). Monitoring of urban air quality is achieved for the main indicators of air quality, PM<sub>10</sub> (particles less than 10 microns), LNP (suspended solid substance), NO<sub>2</sub>, SO<sub>2</sub>, O<sub>3</sub>, Pb, CO and Benzene in Tirana, Durres, Elbasan, Shkodra, Korca, Vlora and Fier. Stops automatic European standards for monitoring urban air quality are set only in 4 cities Durres, Vlora and Korca.

### ***13.3 Indicators of environmental issues***

In the implementation of Article 108 of the SAA, are working on the approximation of legislation on environmental impact assessment in the European Union countries. Parallel to the completion of legal procedures are provided for assessment of the impact on the environment, environmental permit approval and

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<sup>9</sup> Rehmain Javaid, "International Human rights law", Perqson educqted Limited, 2003.

strengthening national capacities for the implementation of horizontal legislation. While it is currently processing its National Policy of long-term waste management at national, regional and local levels.

### *13.4 Evaluation of environmental situation in Albania by EU*

EU progress report for 2012 estimates that there has been little progress in the alignment of legislation with the *acquis communautaire* in the field of environment, and little progress in the area of climate change. Preserving the concept of consent to *heshtjeështë* contrary to the spirit of European law. The existing legislation does not fully implemented. Noted progress in the field of justice in environmental matters. Observed lack of financial and human resources. Currently lacking a fund for the environment as well as the expansion of investment required in equipment, strengthening the capacity of environmental permits licensing, permits monitoring, environmental monitoring and law enforcement in this area. Public awareness initiatives and legal advice, or public investment is weak. Current resources are limited, and environmental needs should be integrated into other policy areas such as energy and transport. Budget sector to improve air quality and capabilities for measuring water quality are low. Regional management plans are still pending waste and lack of procedures for management and control of waste areas. While there is progress in the field of industrial pollution control, risk assessment, as well as civil defense sectors of chemicals, noise.

### **Conclusions**

The economic development of states is already a complex issue. State policies should be adjusted depending on a proportional test of conservation and protection of a healthy environment. The vision of sustainable development requires a constant performance and prudent economic policies interdependent with environmental policy for generations to come in the future. Developments in technology, infrastructure, energy and transport policies require compliance with environmental quality. Individuals, corporations and the state should cooperate to achieve as close to a right balance in creating a social environment, economic development and respect for human rights, in the name of public interest. Given the communist past, Albania should feel good until it reached currently in the environmental field. Although about 40 years behind in efforts to protect the environment, current achievements are encouraging. In the future, with the outbreak of the rapid pace of economic development, political calculations should be able to properly manage the new impulses versus expectations for a quality and healthy environment as a condition for protection of the public interest.

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