

Human right to a favorable environment

Svetlana Miroshnik^{1,*}, *Tatyana Vlasova*¹, and *Svetlana Zgorgelskaya*¹

¹Russian State University of Justice, Novocheremushkinskay str, 69, 117418, Moscow, Russia

Abstract. The relevance of the research topic is caused by the fact that human intervention in nature has reached its peak. Meanwhile, without a clean environment, there can be no man, no society, no state. The purpose of the research is to prove that the human right to a favorable environment is a natural human right, requiring immediate recognition at the international level. In conducting the study, formal legal, logical, systemic methods, as well as methods of interpreting law were used. Empirical material is presented by decisions of international courts. It is concluded that the human right to a favorable environment is the legal basis for the development and implementation by each state of an environmental policy that includes the legal, informational, educational, financial, international aspects. The right to a favorable environment is a natural human right with a complex structure. It naturally follows from the original natural human right - the right to life. The case-law of international courts laid the foundation for the recognition of this human right. It is necessary at the international level to recognize the right to a favorable environment as a natural human right.

1 Introduction

Environmental law has gone a long way in its historical development, the result of which is the transformation of certain regulatory requirements into a super industry, the position of which in the legal system of any modern state is determined by the importance of the social relations regulated by it.

Environmental law has deep historical roots. It originated at the stage of the primitive communal system. Mono norms regulated relations not only between members of a clan, but also determined the nature of relations with the environment. Primitive taboos, a totemic system that has developed among a number of peoples, have become prototypes of future environmental law. Dependence on nature, fear of it gave rise to a special attitude towards it. Man took from nature exactly as much as he needed for life.

Such a reverent attitude to the surrounding reality formed the basis of one of the world religions - Buddhism. Maybe that's why discussions still do not stop: is Buddhism a religion or a philosophy? The central element of Buddhist teaching is the idea of recognizing karma and the cycle of rebirth (samsara). Man's ignorance of his true nature, the nature of his actions is the reason for the soul to stay in the world of samsara. After death, the soul moves to another body, evolving or vice versa de-evolving, passing through

* Corresponding author: miroshnik67@mail.ru

various life forms that allow you to look at the world with completely different eyes - the eyes of insects, plants, animals and even minerals. Buddhist teaching affirms the unity of all living and nonliving things, warns of the consequences of the action of one's karma, of a person's ability in this life to live in harmony with himself and surrounding nature and society.

Already in antiquity, man began to actively intervene in nature, trying to use its resources to satisfy his growing needs. Today in science it is recognized that the first states appeared in the Mesopotamian region due to a number of, first of all, climatic conditions. Eastern despots were distinguished by tough state administration. Many researchers explain this fact by the need to organize and conduct large-scale irrigation work. Thanks to this, there was a real opportunity to harvest two or even three times a year. For man, this was vital. The development of agricultural production made it possible to obtain a surplus product. And these are opportunities for population growth, the development of sciences, and exchange of goods. But no one thought about anything else - the climatic consequences of the irrigation work. Of course, they were, but probably insignificant only because the man of that time could not yet pollute the environment, he was careful about clean water, land, trees, understanding his dependence on the rhythms of nature's life.

Today the situation has changed dramatically. Intervention in the life of nature has reached its apogee. The severe, and in some cases irreparable consequences of this are clearly visible - this is not only pollution of air, water, land, the extinction of many species of flora and fauna, but also a significant climate change, the catastrophic consequences of which we are beginning to gradually realize and feel. Natural fires, typhoons, earthquakes, polluted precipitation became a response of nature to the exorbitant desires of the human community to profit at any cost.

One of the classic features of the state is the territorial organization of the population. Today its sound is becoming somewhat different. The territory of the state is not just a part outlined by state borders. This is a land washed by the waters of various rivers, seas and oceans, with an air column above it, suitable for human habitation and all other living beings.

Without a clean environment, there can be no man, no society, no state. Everything depends on the state of ecology, and above all, the health of all living things. Scientific studies convincingly indicate that restoring the disturbed natural balance requires a lot of time and effort [1], the consequences of climate change are difficult to predict (for example, the steppes of the Middle Urals have changed over the past 50 years, as a result, the proportion of steppe and forest-steppe flora decreased, invading species characteristic of forest vegetation [2]).

The Stockholm Declaration, adopted at the UN Conference on the Environment in 1972, stated that a person's ability to transform the world around him can bring both good and irreparable damage, which poses a real threat to the life of both humanity and the planet as a whole [3].

International human rights law does not recognize the human right to a favorable environment. Maybe that's why the scientific discussions of Russian and foreign scientists are so different.

Representatives of domestic science argue about its legal nature in the context of consideration as a kind of subjective law or legal interest. Such disputes, according to Alan Boyle, are not in the studies of foreign scientists. Environmental problems are considered in the framework of either environmental or international law [4]. Western scientists pay attention to changes in ecological systems [5], the emergence of models of adaptive relationships of the community with spontaneous forces [6].

Of course, the scientific discussions of domestic experts are not limited to an analysis of the exclusively nature of the human right to a favorable environment. They evaluate, for

example, the effects of commercial fishing on fish resources [7]. Moreover, the conclusions made, in our opinion, are of wide importance. They are true not only for a specific region of the world, they once again confirm the negative influence of the predatory aspirations of a number of companies in relation to nature.

The focus of attention of both Russian and foreign scientists is the case-law of the International Courts on Environmental Affairs.

All of the above suggests that the theory of natural law requires its further development. In legal science and practice, the place of a human right to a favorable environment in the system of natural rights is not clearly defined. Meanwhile, the life of both an individual person and the whole of humanity depends on the degree of his security, the quality of implementation.

2 Materials and methods

In conducting the study, formal legal, logical, systemic methods, as well as methods of interpreting law were used. The empirical material of the article is presented by decisions of international courts.

The position of the International Court of Justice is based on respect for private and family life, home and family. A person may suffer from noise. Environmental pollution does not allow him to use his house. According to a number of researchers, the UN International Court of Justice has indeed developed approaches that protect animate and inanimate nature [8]. But these approaches are indirect, which, in our opinion, gives rise to certain enforcement difficulties, since the criterion of the seriousness of environmental pollution remains unclear.

So, in 2010, the UN International Court of Justice, considering a dispute in a case concerning pulp plants on the Uruguay River (*Argentina v. Uruguay*), noted that neither the 1975 Statute nor general international law clarified the scope and content of environmental consequences. States, in carrying out activities that may cause transboundary damage, should conduct an environmental impact assessment [9].

Giving an evolutionary interpretation of the norms of international law, the UN International Court of Justice recognized that the number of positive environmental obligations has increased significantly. It is difficult to disagree with this conclusion.

Today we have not only the “greening” of the rights and freedoms of man and citizen, but also the following greening of the existing principles and norms of law, the transformation of environmental law into a super industry that rivals in its relevance only, probably, constitutional law.

Environmental factors can influence the realization of human rights and fundamental freedoms in different ways. This can be a direct negative impact on life and health (for example, industrial emissions containing an increased content of harmful substances in the atmosphere), violation of a number of procedural rights (for example, the right to receive reliable information). It is important that at the international level it is recognized that individual human rights may be limited in order to protect the environment [10].

When considering environmental cases, the European Court of Human Rights is guided by several articles of the Convention, but the emphasis is on article 8 [11].

Thus, considering the case of *Dubetskaya and Others v. Ukraine*, the European Court of Human Rights once again emphasized that none of provisions of the Convention guarantees separately the right to protect the environment. Environmental threats are an integral part of urban life. Violations of Article 8 of the Convention occur only when the environmental threat has become serious – it significantly reduces the person’s ability to use his home, to lead private and family life. The court recognized the importance of the evaluation criterion in considering such categories of cases. When resolving a dispute, it is necessary to take

into account all the circumstances of the case, in particular, the intensity and duration of the harm or inconvenience, the nature of the physical or mental impact on human health, the impact on the quality of life [12].

The European Court of Human Rights emphasized that, according to paragraph 1 of the Convention, the state has a positive obligation to take the necessary measures to protect the life of persons under its jurisdiction. Of particular importance in this regard are preventive measures, among which the right of society to receive clear, unambiguous information that allows people to assess the dangers threatening their life and health is highlighted. In this case, the state not only provides information, but also provides accessible and effective procedures for obtaining the necessary data [13].

We support the view that the case-law of international courts, indeed, laid the foundation for the recognition of the human right to a favorable environment [14].

3 Results

The human right to a favorable environment opens a categorical series. It determines the content and forms of the implementation of environmental policy and its direct implementation in the environmental function of the state.

The vigorous activity of man, due to the achievements of the scientific and technological revolution, has led to the fact that today one state simply cannot cope with the consequences of anthropogenic character, natural disasters. Fires, raging periodically in different parts of our planet, vivid confirmation of this.

When considering the environmental policy of the state, it is important not to forget about its financial component. It is not enough to publicly urge the need and importance of environmental protection, adopt appropriate legal acts, and sign international treaties. It is important that the norms contained in these forms of expression of environmental law are implemented, the planned measures are carried out, and sufficient financial resources must be allocated for this.

Accordingly, environmental policy includes legal, informational-educational, financial, international aspects.

Legal aspect is expressed in the concretization and implementation of environmental law, recognition of its significance on a par with constitutional law. Informational and educational aspect is connected with the timely provision of reliable information, implementation of huge educational work among the population and government representatives, carried out under the slogan "We have only one planet and it needs to be kept and saved for our children and grandchildren, their life depends on it!".

Environmental policy will remain largely on paper if it is not financially supported.

The effectiveness of environmental policy largely depends on the combined efforts of different countries, their skills and desire to change the situation for the better.

Environmental policy consists of a number of stages, namely:

development of program documents at the international and national levels aimed at ensuring the natural rights of man and citizen to a favorable environment;

their legal registration;

implementation of environmental law in a variety of forms of expression;

resolution of environmental disputes;

summing up preliminary results, adjusting the environmental policy pursued, based on strategic and tactical goals and objectives, due to the current concrete historical situation.

External expression, the mode of environmental policy existence, are the forms of its implementation. In our opinion, we can talk about four forms:

law-making (carried out both at the national and international levels);

enforcement;

resolution of environmental disputes;
legal education (the formation of environmental justice, first of all, among representatives of public authorities, called to implement law-making and law enforcement).

Each form of implementation of environmental policy is characterized by subjective composition, a specific goal, means of achieving it.

For example, environmental law norms contained in a unified developing system of forms of national and international law are a means of law-making; acts of implementation of environmental law are the means of enforcement; judicial resolution of environmental disputes is implemented through the adoption of judicial decisions, their proper execution.

Ecological education has a special sound today. To achieve the goals of its implementation, we can use the opportunities of environmental enlightenment, education. It is thought that environmental education should become an integral part of state ideology, since only the rule of law can have a significant impact on all members of society, forming a conscious need for their exact and strict observance and implementation.

The purpose of environmental education is to inculcate a caring, attentive attitude to animate and inanimate nature, to form an understanding of the value of natural resources, their exhaustibility and irreparable.

Environmental education programs should be developed taking into account the age features of people. The beginning of their development should be laid back in the period of preschool education. In addition to traditional lessons for children, excursions to botanical gardens and zoos will be interesting. Popular science films can also make a significant contribution.

The practice of work in the university shows that new teaching methods play a significant role in the process of legal education. Students enjoy reading special literature, preparing for video filming on legal topics.

Interestingly constructed excursions to museums of natural sciences allow you to get acquainted with various ecosystems. Geological exhibits reflect the diversity of rocks. They provide an opportunity to expand the understanding of the minerals of your small and large homeland.

Environmental education contributes to the formation of environmental culture, which includes spiritual and material values related to natural reality. Environmental culture is facing the past, present and future.

Ecological culture is not only a result, but also a mode of activity, a certain way of thinking that shapes human behavior.

Ecological culture may be collective (characteristic of a certain social community) and individual.

The highest level of the personality's environmental culture is active, legitimate behavior that is safe for humans and the environment. A person consciously carefully and attentively refers to his health, the "health" of flora and fauna. He is ready to sacrifice his interests to achieve the common good.

Environmental culture can be considered in two aspects, as:
estimated (axiological)
informative.

In the first case, it is understood as a quality state of society.

This quality state is characterized in that:

- there is a developed environmental law (norms of environmental law fully fulfill regulatory and protective functions),
- law-making and law-enforcement activity is based on the Constitution, principles and norms of international law, harmoniously enhancing each other's actions,
- personality, society and the state are united in achieving environmental goals.

In the axiological aspect, environmental culture is the knowledge and understanding of environmental law as a tool to ensure the human right to a favorable environment.

Environmental education is an integral component of the ideological function of the state. With the development and improvement of statehood, new ways of influencing the behavior of an individual appear.

In addition to the state, the family, school, universities, public organizations, parties and movements participate in the formation of environmental culture. Only by combining their efforts is it possible to create a positive motivation for each person to perceive the fragility of nature, to develop the need for self-education.

In recent years, in many countries there has been an increase in ecotourism. Its results are evaluated ambiguously. On the one hand, an urbanized person strives to be closer to nature, and on the other hand, not everyone understands the fragility of socio-ecological systems. Therefore, when deciding the question about the expansion of ecotourism, all risks must be taken into account. This is important because Russian and foreign understanding of ecotourism do not coincide.

The Russian approach is based on the fact that ecotourism allows you to learn more about the customs of the inhabitants of the area, get acquainted with their way of life, history, traditions.

The World Tourism Organization understands ecotourism as all forms of natural tourism when, for example, tourists are given the opportunity to live in wildlife and observe the life of animals in protected areas.

Accordingly, Russian legislation in this part requires improvement in terms of a clear legislative distinction between natural and ethnographic tourism.

4 Discussion

Environmental policy is the direction of public activity, expressed in the development and legalization of measures aimed at realizing the natural rights of man and citizen to a favorable environment.

The right to a favorable environment is a natural human right. It naturally follows from the original natural human right - the right to life.

Environmental policy is aimed at ensuring and realizing the individual's right to a favorable environment. This right includes:

the right to demand from state authorities and local self-government bodies the proper fulfillment of their responsibilities for the development, adoption and implementation the norms of environmental law;

the right to appeal to the courts of various instances for the protection of a measure of possible conduct;

the right to receive reliable information about the environmental situation, measures taken to ensure the environmental safety of the state;

the right to participate in public discussion of draft regulatory legal acts containing the norms of environmental law.

Environmental policy is a legally recognized ideas of developing an environmental system as an essential element of a decent life for a person and citizen.

Environmental policy, like other varieties of public policy, has two aspects of its expression: internal and external. But their peculiarity is expressed in the fact that today these aspects have merged into one.

In order to achieve the goals and objectives of the environmental policy pursued, the state implements an environmental function. According to the territorial criterion, it belongs to the category of both internal and external functions of the state.

Moreover, both the internal, and the external aspect of the ecological function is due not only and not so much to national as to nationwide interests. A technogenic accident that occurred on the territory of one state responds painfully to others, since the Earth, no matter how large the planet, is a single whole. And the violation of the natural balance in one part of it will sooner or later affect the state of all living and inanimate nature.

In science, attention is drawn to the fact that, unfortunately, quite often environmental issues are of a pronounced political nature. So, Shelley Welton, Joel Eisen pay attention to the problems of clean energy, which today leads actually to potential inequality. They rightly ask the question: will the green economy be fairer [15]?

It will, but for this, it is necessary that ecology and rationality become inalienable signs of state activity. It is difficult to disagree with the position of Nathaniel Levy, which states that politicians should put the climate first [16].

Climate change has a significant impact on the nature of political and social processes [17]. This must be considered by all countries.

5 Conclusions

Human right to a favorable environment

Relationship with internationally recognized natural human rights	Arguments	Suggestions	The practical relevance of the suggestions (legal implications)
Not legally fixed	Derived from the human right to life; it has been recognized by case-law of the International Courts that environmental degradation is increasingly affecting the quality of human life	Recognize as a natural human right by amending the UN Charter, the Convention on the Rights and Fundamental Freedoms	Increasing the degree of protection of this right, strengthening the responsibility of states for its implementation, basis for the effective resolution of environmental problems by the international community

References

1. I.N. Mikhailova, *Initial Stages of Recovery of Epiphytic Lichen Communities After Reduction of Emissions from a Copper Smelter*, Russian Journal of Ecology **48**, 4, 335-339 (2017) DOI: 10.1134/S1067413617030110
2. N.V. Zolotareva, M. P. Zolotarev, *The phenomenon of forest invasion to steppe areas in the Middle Urals and its probable causes*, Russian Journal of Ecology **48**, 1, 21-31 (2017) DOI: 10/1134/S106741361606014X
3. Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972 [https:// legal.un.org/avl/ha/dunche/dunche.html#3](https://legal.un.org/avl/ha/dunche/dunche.html#3)

4. A. Boyle, *Human Rights and the Environment: Where Next?*, The European Journal of International Law **2**, 3, 613-642 (2012) doi: 10.1093/ejil/chs054
5. S. Cogos, S. Roturier, L. Östlund, *Forest fire and indigenous sami land use: place names, fire dynamics, and ecosystem change in northern Scandinavia*, Human Ecology **47**, 1, 51-64 (2019) DOI: 10.1007/s10745-019-0056-9
6. J. Abrams, E.J. Davis, K. Wollstein, *RANGELAND Fire protection associations in great basin rangelands: a model for adaptive community relationships with wildfire?*, Human Ecology **45**, 6, 773-785 (2017) DOI: 10.1007/s10745-017-9945-y
7. A.I. Tatarikin, V.G. Loginov, M.N. Ignat'eva, V.V. Balashenko, *A method for assessing the consequences of commercial fishing for fish resources of Yamal*, Russian Journal of Ecology **47**, 6, 580-581 (2016) DOI: 10.1134/S1967413616060126
8. Dr. Ivana Krstić, Dr. Bojana Čučković, *Procedural aspects of article 8 of the ECHR in environmental cases - the greening of human rights law*, Belgrade Law review **63**, 3, 170-189 (2015)
https://www.researchgate.net/publication/314486216_Procedural_aspects_of_article_8_of_the_ECHR_in_environmental_cases_The_greening_of_human_rights_law
9. International Court of Justice docket: Pulp Mills on the River Uruguay (Argentina v. Uruguay) <https://www.icj-cij.org/files/case-related/135/135-20100420-JUD-01-00-EN.pdf>
10. *Manual on human rights and the environment*, Council of Europe 1-196 (2012)
https://www.echr.coe.int/Documents/Pub_coe_Environment_2012_ENG.pdf
11. Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950 https://www.echr.coe.int/Documents/Convention_ENG.pdf
12. Resolution of the ECHR 10.02.2011 «Dubetska and Others v. Ukraine» (complaint N 30499/03) <http://www.echr.coe.int>
13. Resolution of the ECHR 24.07.2011 «Brincat and Others against Malta» (complaint № 60908/11, 62110/11, 62129/11, 62312/11 и 62338/11) <http://www.echr.coe.int>
14. I. Cenevska, *A thundering silence: environmental rights in the dialogue between the EU Court of justice and the European court of human rights*, Journal of environmental law **28**, 2, 301-324 (2016) doi.org/10.1093/jel/eqw013
15. S. Welton, J. Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, Harvard Environmental Law Review **43**, 2, 307-371 (2019) <https://harvardelr.com/>
16. N. Levy, *Juliana and the Political Generativity of Climate Litigation*, Harvard Environmental Law Review **43**, 2, 479-506 (2019) <https://harvardelr.com/>
17. P. Howard, A. Michael, *Livermore Sociopolitical Feedbacks and Climate Change* Harvard Environmental Law Review **43**, 1, 120-174 (2019) <https://harvardelr.com/>