

RIGHT TO ENVIRONMENT BY INTERNATIONAL LAW

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Abstract: Right to environment, the right to life and the right to health came together. This right was not initially included in international agreements. However, with the development of environmental awareness in people, the right to environment has started to be defined as a right in the field of human rights. Then the right to the environment has taken place in international contracts or documents. The first international organization on environmental issues was the "United Nations Conference on Human and Environment" in Stockholm, Sweden, in 1972. Article 1 of the Declaration of the Conference states: "Living in an environment of honor and prosperity that provides humanity, freedom, equality and adequate living conditions is a fundamental right." The European Convention on Human Rights does not contain any provisions concerning the protection of the environment. But the European Court of Human Rights has made important contributions to the protection of the environment with positive case-laws. The Court regarded the protection of the environment as an element of general interest. At the same time, the court interpreted many of the rights and freedoms contained in the treaty as "the right of the individual to live in a healthy environment". The court has also given some guarantees that the person can use this right.

Keywords: Right to Environment, Environmental Law, International Environmental Law.

INTRODUCTION

In the world, the process of development of environmental law dates back to the Second World War. With the development of the world, human needs have increased. As a result, environmental disorders have come to the fore. These developments have led to an increase in the importance of the environment and the emergence of the right to the environment. It has also become clear that environmental problems are not a national issue. For this reason, environmental issues have become relevant to all humanity. Because the living developments have increased the technology and the building, some deterioration has happened in the world. The right to the environment has become widespread in the world because it has become a necessity nowadays. The aim is both to protect nature and to fulfill fundamental rights and freedoms. Thus, the link between environmental right and fundamental rights and freedoms has emerged. Due to the environmental problems in the world, it has become compulsory to cooperate on the international scene. For this reason, various organizations have been established and legal regulations have been made on an international scale. Environmental law has developed and gained an international dimension. Together with the rights grab, various lawsuits have been filed in national and international courts. In this work, the emergence of environmental right and environmental law will be explained. It will also deal with how environmental precaution in environmental law is possessed. Together with all the improvements, international organizations' work will be explained and international legislations will be explained. Finally, the decisions of the European Court of Human Rights will be explained together with examples.

1. RIGHT TO ENVIRONMENT

The concept of clean environment is a concept that has been started to be discussed with the rapid and uncontrolled pollution of the rapidly gaining environment of the Industrial Revolution. From the 1950s onward, a considerable international awareness of the global

pollution has quickly emerged and this phenomenon has begun to be dealt with intensively on the scientific platform in the name of environmental science. As a result of the growing social consciousness on environmental problems, the clean environment has begun to be treated as a human right (Akyüz, 2015). The environment is a common problem not only of a nation but of all mankind (Çiçek, 2012). The right to a clean environment is the basic human rights between third-generation human rights (Gibson, 1990). Towards the end of the 20th century, societies faced various problems due to their relations with the environment (Keleş, 2005). Thus, the right to the environment has been regarded as a fundamental right by all people and has taken place among basic human rights (Fitzmaurice and Marshall, 2007).

The basic approach of both human rights and environmental rights is the idea of human protection (Bilgiç, 1993). The aim of the right to the environment is an effort to live for a long time in harmony with nature. The idea is to create a climate for future generations to benefit. Nature is the common value of all mankind. For this reason, the right to environment is an inseparable part of other rights, in particular to the right to life (Güneş, 2009). It means that the right to the environment is a value; the cleanliness of water, air, soil and other environmental assets is clearly defined. In other words, it is necessary to determine the environment in which the pollutants are dirty and establish standards (Keleş, Hamamcı and Çoban, 2012). Only the constitutional right to environmental right is not enough to protect the environment. In addition, it is necessary to make all necessary legal sub-structure in terms of importance of this right (Güneş, 2009).

2. ENVIRONMENTAL LAW

It is not possible to say that many people in the world have fully benefited from basic rights or are free in the face of a long period of fundamental human rights. The destruction of absolute monarchies in the Western countries, the establishment of democratic administrations and the equal rights of all people have only been in the last two centuries (Kılıç, 2012). With the emergence of environmental rights and environmental problems, environmental laws have emerged. Environmental law was originally developed and appreciated after the Second World War (Turgut, 2001). Especially after this period protection of the environment, environmental policies and environmental organizations have gained value. These developments have made various legal arrangements in continental Europe. The purpose of these legal regulations is; to create a decent ecological environment for human health and dignity, to protect the environmental factors that humans are hurting, and to remove all damages (Kılıç, 2001).

All other rights and freedoms along with the environmental right have been developed and widened according to their needs. However, in some countries it is also possible that administrators have a strong reaction against their citizens when these rights are developed. In western societies in the past, protection of the periphery has not been responded to, and even this demand has been seen as romantic demands. Because of industrialization and urbanization, environmental problems have emerged and these problems have started to threaten human life (Kaboğlu, 1996). At the heart of the development of human rights is the desire to lift the status distinctions between existing legal systems and persons and to treat everyone equally. With the development of standards of living conditions for all people, ideas expressing all kinds of discrimination have been rejected. Thus, the need for change was born (Sachs, 2003).

3. INTERNATIONAL INSTITUTIONS AND REGULATIONS

3.1. THE UNITED NATIONS

The United Nations is the most important institution in the international organization of the region. According to the United Nations, the environment is a set of issues that need to be addressed in order to achieve its purpose. The United Nations has set out from the fact that the human being is a single world. In addition, all countries that are members of the community have moved to act together on the environment (Hamamcı, 1997). As a result, various meetings were held between countries to protect the environment and to prevent pollution. As mentioned earlier, after World War II, meetings were held about the states of the world's lands. In addition, in 1965, advisory boards of the United Nations specialized agencies were established. In 1971, some studies were started before the United Nations concerning protection of the environment and environmental pollution (Dabak, 2015).

* 1971 Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat,

* 1972 Stockholm Human Circle Declaration,

* 1972 Paris World Cultural and Natural Heritage Conservation Convention,

* 1985 Vienna Ozone Layer Conservation Agreement,

* 1992 Rio Declaration,

* 1992 Rio Convention on Biological Diversity,

* 1992 Rio Climate Change Convention,

* 1998 Aarhus Convention Public Participation in Decision-Making and Access to Justice in Environmental Matters.

3.2. THE COUNCIL OF EUROPE

* 1979 The Bern Convention on the Conservation of European Wildlife and Natural Habitats,

* 1985 The Granada Convention for the Protection of the Architectural Heritage of Europe,

* 1992 The Strasbourg European Urban Charter,

* 1992 The Valetta European Convention on the Protection of the Archaeological Heritage,

* 2000 The European Landscape Contract,

* Covenant Protection Convention Through Criminal Law,

* Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

3.3. THE EUROPEAN UNION

The European Union has put more emphasis on the environment since the 1970s. As a result, the issue of environment was discussed at the meeting of government presidents on 19-20 October 1972. At this meeting it was decided to prepare an action plan for the environment (Hamamcı, 1997). As a result of these developments, the First and Second Five-Year Environmental Action Programs were prepared. These programs are the basis for the European Union's environmental policies. These programs consist of 11 environmental management initiatives. These principles are (Yaşamış, 1995):

1) It is necessary to prevent pollution, not to clean the polluted environment.

2) Factors affecting the environment should be taken into account when making the decision.

3) Ecological balance must be preserved.

4) Scientific studies should be developed.

- 5) The pollutant principle should be applied.
- 6) The environment of another country should not deteriorate due to the environmental activity to be performed by an country.
- 7) The environmental policies of the Member States of the European Union should not harm the environmental policies of the developing countries.
- 8) On an international and global basis, environmental conservation work should be supported.
- 9) Environmental education must be mandatory.
- 10) Protective boundaries of the environment should be made in the best possible way.
- 11) Environmental measures at the national level should be compatible with those of the Member States of the European Union.

Environmental policies are not only a national policy issue for the European Union countries. These policies have become a common policy of the European Union and have been the subject of primary law.

- * 1992 The Maastricht Convention,
- * 1997 The Amsterdam Convention,
- * 2004 The European Constitution,
- * Community Regulations,
- * Guidelines,
- * Decisions.

3.4. THE ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

The purpose of the OECD is to promote the development of countries and to make better use of resources. The OECD is a centre for general economic policies. The main body of the organization is the Council. The council may establish secondary organs. Today, the number of these organizations is very high (Kılıç, 2001). The OECD has linked the basic solution to environmental problems to the development of international cooperation. The OECD has divided environmental policies into three main pillars in its published declarations. These principles are (Keleş, Ruşen and Hamamcı, 1997):

- 1) Economic growth can not be a reason to ignore the environment.
- 2) Preventive policies can prevent environmental problems before they occur.
- 3) Economic growth and development of the economy are closely linked.

3.5. THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

- * 1990 Charter of Paris for a New Europe.

3.6. MEDITERRANEAN AND BLACK SEA

- * 1976 The Barcelona Protection of the Mediterranean Sea against Pollution and its Protocols,
- * 1992 The Bucharest Convention on the Protection of the Black Sea against Pollution.

4. THE EUROPEAN COURT OF HUMAN RIGHTS DECISIONS

There is no provision in the European Convention on Human Rights for the protection of the environment and the environment. However, the European Court of Human Rights, in its case-law, interpreted some rights and freedoms expressed in the European Convention on Human Rights as “the individual has the right to live in a healthy environment.” In addition, the European Court of Human Rights examines the majority of environmental claims in respect of various rights, including the right to privacy and the right to life, the right to a fair trial and the right to information. For this reason, there is no environmental information in the European Convention on Human Rights. However, the European Court of Human Rights has indirectly contributed to the protection of the environment with all its rights (Güneş, 2014).

The European Court of Human Rights takes into account the legislation of the Council of Europe, the United Nations, the European Union and the Organization for Security and Cooperation in Europe in environmental protection cases. In addition, the European Court of Human Rights does not ignore national constitutional and Supreme Court decisions (Özkan, 2006). The requirement to file a case at the European Court of Human Rights depends on the signing of the European Convention on Human Rights of the States (Peters, 2008). In a decision that the European Court of Human Rights had given, “today's society is more concerned about the preservation of the periphery” (The European Court of Human Rights, *Fredin/Sweden*, n° 12033/86, 18.02.1991, par. 48). The court, in another decision, said that “the protection of the environment is of permanent and unchanging importance in the eyes of the people and the state” (The European Court of Human Rights, *Hamer/Belgium*, n° 21861/03, 27.11.2007, par. 79). The Court has not neglected environmental considerations when interpreting the European Convention on Human Rights, taking environmental development into account.

The impact of the European Court of Human Rights on the protection of the environment is limited. The Court has said that the right to seek the protection of the environment or the right to live in a fully healthy environment is not protected under the European Convention on Human Rights. On the *Kyrtathos* case, the Court held that “Article 8 of the European Convention on Human Rights (protection of private life and family life) and another provision generally guarantees protection of the environment.” (The European Court of Human Rights, *Kyrtatos/Greece*, n° 41666/98, 22.05.2003, par. 52). In the case of *Fadeyeva*, the Court said, “The rights and freedoms contained in the Convention do not include the right to demand protection of the environment.” In addition, the European Court of Human Rights has stated that it has sought rights or freedom violations because of the application of the European Convention on Human Rights (The European Court of Human Rights, *Fadeyeva/Russia*, n° 55723/00, 09.06.2005, par. 68).

In the *Chapman* decision, the European Court of Human Rights talked about the protection of the environment and did not base this right on the European Convention on Human Rights. At the same time, the court accepted that the applicant had been interfered with (The European Court of Human Rights, The Grand Chamber, *Chapman/United Kingdom*, n° 27238/95, 18.01.2001, par. 102). The Court does not regard the general protection of the environment as a right. In addition, the court is hesitant to explicitly acknowledge the existence of the right to the environment. In *Hatton* and other decisions, the European Court of Human Rights “The

Convention does not clearly define the right of a healthy and calm environment.” However, the Court has argued that “if a person is directly and severely subjected to noise or other forms of pollution, it may be covered by Article 8.” Furthermore, the Court did not accept the existence of an independent environmental right (The European Court of Human Rights, The Grand Chamber, *Hatton and others/United Kingdom*, n° 36022/97, 08.07.2003, par. 96).

In *Fredin's* case, the applicant has many land, sand and gravel quarries. A law was enacted in order to protect nature and it was demanded to stop the operation of this fire the applicant alleges that the application of this law violated the right to property. The European Court of Human Rights has found it appropriate to stop the work, in the best interest of the Court. Because the purpose is to protect the environment (The European Court of Human Rights, *Fredin/Sweden*, n° 12033/86, 18.02.1991, par. 48 and 55). A similar decision was made by Pine Valley Developments Ltd. on the case. The applicant company did not get permission to construct an industrial warehouse under protected area known as “Green Belt”. For this reason, the company has argued that the right of ownership has been violated. As in *Fred's* case, the court said, “The aim is to preserve the environment of the regulatory scheme.” The Court also affirmed that the judgment was in accordance with general interest and ruled that there was no violation (The European Court of Human Rights, *Pine Valley Developments Ltd and others/Ireland*, n° 12742/87, 29.11.1991, par. 57).

In the case of *Hamer against Belgium*, the Court ruled that 27 years before the case, a house built in the village was destroyed. The court “at the same time this decision is not contrary to the right of property” he said. The Court also said that “some fundamental rights, such as economic necessities and even property rights, should not be considered superior to the protection of the environment.” It has been accepted that this rule is valid for the State to make special arrangements to protect the environment. As a result, the Court has ruled that it is a legitimate and justified cause and has ruled that the European Convention on Human Rights is not violated (The European Court of Human Rights, *Hamer/Belgium*, n° 21861/03, 27.11.2007, par. 79 and 81).

CONCLUSION

Along with the increase in environmental problems, various steps have been taken on the international scene. With the steps taken, the environment has been taken for protection and it has become important nowadays. Thus, a new law was born called environmental law. Environmental law has developed in both national and international law. New laws and regulations have been issued. In addition, various international agreements have been signed. The Stockholm and Rio agreements, especially signed by the United Nations, have contributed to the development of environmental law in the world. International treaties are the biggest factor in the development of environmental law.

However, the activities of various international organizations have increased the importance of environmental law and contributed to the development of environmental law. In addition, the contribution of non-governmental organizations to the environment cannot be ignored. International treaties as well as international legislation and judicial decisions have added value to environmental law. Judicial decisions usually involve the interests of the whole humanity and the environment, not the interests of the person or persons. In the developing world, however, environmental law has not yet reached the exact desired level. In order for

environmental law to reach the desired place, it is necessary for states, societies and various organizations to make efforts.

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