ABSTRACT

“Should European Convention on Human Rights have a Protocol about protection of human environment?”

Mentor: doc. dr Damir Banović

Written by: Delila Islamović

Sarajevo, September 2020.
In the new day and age, there are many questions are rising about the protection of the human environment and how it affects human rights.

European Convention on Human Rights (hereinafter referred to as ECHR or just “The Convention”) does not have a separate Protocol on this matter. It only indirectly protects the human environment and thus every potential violation is protected indirectly under the existing articles.¹

From all of the above one question rises in particular: "Does the European Convention on Human Rights need a new Protocol on environment protection?"

We will view this question from two sides, firstly, why it should be considered as a possibility of including one new Protocol, which we can name the pro stan point of view. And second, from a point of the said Protocol not being necessary and why existing articles are more than enough at protecting the human environment, which we can name the con stan point.

One of the arguments that could go in hand with the con stan point is the extensive case law of the Europen Court of Human Rights (hereinafter referred to as ECtHR or just “The Court”) that showcase the needed and adequate protection.

The argument that could be used on the pro side is the situation that many new situations arise and are difficult to lead under the existing articles. Sometimes the Court is left to the broad interpretation of some articles and to implement the Convention as a living instrument which can sometimes present itself as a problem. In cases like Stafford v The United Kingdom it is stated that the ECHR needs to be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory and that a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement. But even with the interpretation of the Convention in a practical manner, many other questions can occur that the Court could have difficulties addressing.

Also, there are many more questions on which the pro and con arguments can be built upon, for instance, the problem of transboundary pollution, health problems of individuals caused by pollution, and effective remedies for victims of such violations of human rights.

Regarding the transboundary pollution ECtHR has no established case law so in those cases the Court has to interpret the Convention extensively or use the case law of other international bodies for instance Inter-American Court of Human Rights.\(^2\)

In Europe, most of the victims bringing cases to the ECtHR and the former Commission have invoked either the right to information (Art.10) or the right to privacy and family life (Art. 8).\(^3\)

Nearly all global and regional human rights bodies have considered the link between environmental degradation and internationally guaranteed human rights. In nearly every instance, the complaints brought have not been based upon a specific right to a safe and environmentally sound environment, but rather upon rights to life, property, health, information, family and home life. Underlying the complaints, however, are instances of pollution, deforestation, water pollution and other types of environmental harm. It may be asked whether or not a recognized and explicit right to a safe and environmentally sound environment would add to the existing protections and further the international values represented by environmental law and human rights.\(^4\)

This research presents only a theoretical possibility of the future of human rights in case of protecting the human environment and new challenges that come with it.

---

\(^2\) Advisory Opinion on Environment and Human Rights, IACrtHR, Oc-23/17, 15 November 2017, question (II), § h.
\(^4\) Ibid., p. 166.