

## ORIGINS OF ENVIRONMENTAL REGULATION

Aurelija Pūraitė

Mykolas Romeris University, Faculty of Public Security,  
Department of Law  
Putvinskio 70, LT-44211 Kaunas, Lithuania  
Telephone (+370 37) 303 655  
E-mail: aurelija\_puraite@yahoo.com

Received on 5 April, 2012; accepted on 19 June, 2012

***Abstract.** During the last twenty – thirty years there has been unprecedented demand for new legal regulation in the field of environmental protection, which influenced the immense growth in both the body of environmental legislation and in re-thinking the idea and principles of the environmental protection itself. The provisions of environmental law are passed, accepted and obeyed with a great resistance in the society. On the one hand, environmental law may be defined as a value system that seeks to induce humans to act as stewards of nature rather than only its exploiters, and therefore the environmental provisions are construed in a manner that the main instruments are limitations of different activities in order to prevent the disruption of natural systems. On the other hand, by doing so the environmental law places nature and future generations (those categories commonly do not have any legal personality) and not the human (the sole addressee and the beneficiary of the traditional legal system) in the centre of environmental regulation. This concept radically transforms the relationship between nature and mankind by subordinating the initiative to benefit from legal regulation. By doing so, the environmental provisions make the opposite and evolve tension in respect of such rights as the right to property, the right to personal life, or individual welfare. In the present research the aim is to disclose the origins and the most important principles of international and regional legal regulation of environmental protection, and to analyse the essence of environmental law in the context of public interest.*

*The environmental law is analysed in the context of such human rights as the right to property and the right to personal life.*

**Keywords:** *environmental law, international and regional legal regulation, human rights, right to property.*

---

## Introduction

*Relevance of the Topic.* It could be strange to acknowledge, but laws concerning environmental protection have a long history. Nevertheless, during the last twenty - thirty years there has been unprecedented demand for new legal regulation in the field of environmental protection, which influenced the immense growth in both the body of environmental legislation and in re-thinking the idea and principles of environmental protection itself. Nowadays it is almost impossible to follow all changes of environmental regulation because of the enormous number of regulations, directives, treaties and other legal instruments passed on international, regional and national levels. Regulation in the environmental field may take many forms – from the general international treaties, foreseeing only the main principles of environmental issues, to the detailed provisions at the EU level for different kinds of activities (for example, waste management), and finally to the imposition of fixed product standards or licensing of particular activities. The environmental law has subsequently developed also as a scientific discipline. As Michael I. Jeffery, Professor of Environmental Law and Head of UWS Social and Environmental Responsibility Research Group, University of Western Sydney said that “public fixation with climate change has served as a catalyst for the remarkably rapid expansion in the literature associated with this relatively new discipline of law, which has only existed since the 1960s. [...] Environmental law embraces a curious mixture of domestic pollution legislation and a plethora of multilateral environmental agreements that are administered and enforced through a complex and often *ad hoc* system of courts, tribunals, arbitral panels, and directives”<sup>1</sup>. It could be noted that prior to 1960s environmental law existed only as a philosophical or ideological doctrine rather than a legal concept.

It should be noted that the immense growth of the environmental law is connected not only with the number of passed instruments of legal regulation, but also with the doctrinal change in the understanding of the mission, tasks and even of the object of the environmental protection. Environmental issues during past decades have been analysed and reflected in numerous works of scholars. The main dialogue could be observed between scholars of the conservative viewpoint and the ones with the more revolutionary attempt to interpret environmental law. The tendency to reveal unexpected

---

1 Birnie, P.; Boyle, A.; Redgwell, C. *International Law & The Environment*. New York: Oxford University Press, 2009, p. 595.

issues, or to analyse familiar topics in an unfamiliar way in environmental proceedings could be observed recently. In this sense of research discussion the works of S. Coyle, K. Morrow, R. Macrory, P. Birney, A. Boyle, C. Redgwell, G. Palmer, and others could be mentioned.

The touchstone of the environmental law is the impact and harm of human activity to the surrounding environment. Broadly termed, environmental law intends to regulate human activities “in order to limit ecological impacts that threaten public health and biodiversity”<sup>2</sup>. In other words, the provisions of environmental regulation seek to influence the kind, degree and pace of transformations in the environment arising from human activity, though there is no presumption that any human activity is unlawful *per se*. The intent to regulate human activity in order to protect the public interest is not new, its origins could be found even in the eighteenth century. However, before the nineteenth century and even the beginning of the twentieth century there was no clear idea that different aspects of ecosystems should be the subject of special legal protection. Only after the World War II the philosophical idea that protection of water, atmosphere, soil, and ecosystems must have specific legal regulation developed into a separate legal concept. Since then, many non-governmental institutions have been established and different number of legal acts and instruments have been developed by making environmental law not only an important element of domestic law, but also as an evolving component of international law.

Nevertheless, it should be noted that the provisions of environmental law are the ones that are passed, accepted and obeyed with a great resistance in society. This is a paradox that needs to be observed more closely. On the one hand, environmental law must be defined as a value system that seeks to induce humans to act as stewards of nature rather than only its exploiters and therefore the environmental provisions are construed in a manner that the main instruments are limitations of different activities in order to prevent the disruption of nature systems. On the other hand, by doing so the environmental law places nature and future generations (those categories commonly do not have any legal personality) and not the human (the sole addressee and the beneficiary of the traditional legal system) in the centre of environmental regulation. This concept radically transforms the relationship between nature and mankind by subordinating the initiative to benefit from legal regulation. By doing so, environmental provisions make the opposite and evolve tension in respect of such rights as the right to property, the right to personal life, or individual welfare. As it may be noticed, “many of the values advanced by environmental regulations are not tied to enhancement of human dignity, human welfare, the protection of property or the maintenance or social order”<sup>3</sup>. This unique feature of environmental law is rarely analysed in research of modern scholars; nevertheless its importance is obvious and must be observed, as it has huge impact on the creation, and what is more, the observance of environmental provisions on domestic as well as on international level.

---

2 Lazarus, R. J. *The Making of Environmental Law*. The University of Chicago Press, 2004, p. 1.

3 Tarlock, D. A. *History of Environmental Law. Environmental Laws and Their Enforcement*. Vol. 1. Encyclopedia of Life Support Systems. 2009, p. 13.

*The Object of the Research* is the general ideas and principles that determined the origin of environmental law, and their collision with classical legal conceptions, such as property law.

*The Objective of the Research* is therefore to disclose the origins and the most important principles of international and regional legal regulation of environmental protection, and to analyze the essence of environmental law in the context of public interest. It should be stated that this article is constructed as theoretical background for targeted future researches of the author in this field; consequently, it is more theoretical and designated for the surveillance of the topic.

In order to achieve the determined aim, the following *tasks* are settled:

1. To review the most important international and regional legal documents regulating environmental issues;
2. To analyse the main principles of environmental law, and to determine the ones with the largest impact on legislative processes.
3. To determine the relation between the origination of the environmental law and its conflict with particular human rights, specifically the right to property.

*Methodology of the Research.* In the course of reaching the objective of the research, theoretical methods of scientific research were employed—the methods of systemic, analytical-critical, and linguistic analysis. In addition, the methods of documentary analysis and generalisation were used.

## 1. Origin and Development of Environmental Law: Short Overview

As it has been already mentioned, the environmental law is not a new concept. Law has already been used for some centuries to manipulate the shape and use of the environment for political ends. Initially, government action was focused on agriculture and different limitations in this field; later on the initiatives broadened the scope of action to the improvement of governance, by making provisions for the development of roads, canals and railways. After the sudden growth of industry in Europe in the eighteenth to nineteenth centuries, the attention shifted to urbanisation and pollution issues<sup>4</sup>. Industrial urbanisation was led by poor sanitary conditions in over-crowded districts of towns, epidemics of different diseases, infant mortality, therefore deliberate governmental control was consolidated, and those regulations generated incidental benefit for the environment. The growth of specific concern about environmental issues is associated with legislative innovations, and legal regulation of the environmental issues required reconciliation of interests of diverse groups.

The middle of the twentieth century is the baseline for a conceptually and qualitatively different approach to environmental issues, and is significant in terms of

---

4 Basen on Coyle, S.; Morrow, K. *The Philosophical Foundations of Environmental Law. Property, Rights and Nature*. Oxford and Portland: Hart Publishing, 2004, p. 107–109.

rapid growth of sophisticated environmental ideology and creation of legal measures on the control of human activity. During 1960s and 1970s major elements of a state based regulatory framework, consisting of command and control regulation in the form of clean water, clean air, and contaminated land legislation, were introduced. The 1970s also heralded the introduction of the environmental impact assessment methodology, with the enactment of different international environmental policies in special international and non-governmental organisations. In the 1980s, the focus turned to holding corporate management responsible for the environmental regulatory offenses committed by the corporations that they headed. This was done through the introduction of the concept of “strict liability”, as well as directors’ and officers’ liability, which could result in personal fines and/or imprisonment. These concepts have their origin and further ideological development in the United States. The late 1980s and the 1990s provided backdrop for the integration of the interconnection on the environmental stage of trade and the environment, as well as the insertion of human rights as an important element in the environmental equation — particularly in the context of international environmental law. This interconnectedness, particularly in the case of trade and human rights issues — including the right to potable water, secure food supply, clean air to breathe, alleviation of poverty, etc., — involves all of the rights that are now widely accepted as underpinning the efforts of all interested stakeholders in finding viable solutions to the global environmental problems that are afflicting all forms of life on this planet<sup>5</sup>.

Of utmost importance in developing environmental legislation were some international conferences, during which some very important guidelines, principles or even treaties were adopted, for example, United Nations Conference of 1972 on the Human Environment, World Commission on Environment and Development of 1983, the United Nations Conference on Environment and Development of 1992 and World Summit on Sustainable Development of 2002 have been particularly important. The role of non-governmental organisations has likewise contributed significantly to the development of international environmental law. The International Union for the Conservation of Nature<sup>6</sup> (once known as the World Conservation Union) is comprised of both non-governmental organisations and governments. Established in 1948, it is one of the oldest conservation organisations, and, arguably, the most influential. The list of other governmental and non-governmental organisations influential in

- 
- 5 Based on Alder, J.; Wilkinson, D. *Environmental Law and Ethics*. London: Macmillan, 1999; Dobson, A. *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice*. Oxford: Oxford University Press, 1998; Smith, R. *Property Law*. London: Longman, 2003; Stallworthy, M. *Sustainability, Land Use and Environment: A Legal Analysis*. London: Cavendish, 2002.
- 6 International Union for Conservation of Nature and Natural Resources (IUCN) is an international organisation dedicated to finding pragmatic solutions to our most pressing environment and development challenges. The organisation publishes the IUCN Red List, compiling information from a network of conservation organisations to rate which species are most endangered. IUCN is the world’s oldest and largest global environmental network - a democratic membership union with more than 1,000 government and NGO member organisations, and almost 11,000 volunteer scientists in more than 160 countries [interactive]. [accessed on 2012-03-17]. <<http://www.iucn.org>>.

modern environmental issues and creation of legal regulation is huge. The most important worldwide intergovernmental organisations are Intergovernmental Panel on Climate Change (IPCC)<sup>7</sup>, United Nations Environment Programme (UNEP)<sup>8</sup>, Earth System Governance Project<sup>9</sup>, Global Environment Facility (GEF)<sup>10</sup>. There also are many NGOs acting in different fields of environmental protection, for example, Anti-Nuclear Movement, Bioversity International, Conservation International, Earth Charter Initiative, Forests and the European Union Resource Network (FERN), Fauna and Flora International, Friends of Nature, Friends of the Earth, Green Cross International, Greenpeace, International Union for Conservation of Nature (IUCN), International Network for Sustainable Energy (INFORSE), Society for the Environment (SocEnv), The Climate Project, The Nature Conservancy, The Resource Foundation, Wildlife Conservation Society, World Conservation Union (WCN), World Resources Institute (WRI), World Union for Protection of Life (WUPL), World Wide Fund for Nature (WWF), etc. All of those institutions are notable actors shaping the concepts and regulation of modern environmental law.

Development of environmental international law was one of the most important factors in the protection of nature. International treaties are the most effective force

- 
- 7 Intergovernmental Panel on Climate Change (IPCC) is a scientific intergovernmental body first established in 1988 by two United Nations organisations, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP), and later endorsed by the United Nations General Assembly. Its mission is to provide comprehensive scientific assessments of current scientific, technical and socio-economic information worldwide about the risk of climate change caused by human activity, The main activity of the IPCC is publishing special reports on topics relevant to the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), an international treaty that acknowledges the possibility of harmful climate change. Implementation of the UNFCCC led eventually to the Kyoto Protocol [interactive]. [accessed on 2012-03-17]. <<http://www.ipcc.ch/>>.
  - 8 The United Nations Environment Programme (UNEP) is an international organisation that coordinates environmental activities of the UN, assisting developing countries in implementing environmentally sound policies and practices. It was founded as a result of the United Nations Conference on the Human Environment in June 1972. Its activities cover a wide range of issues regarding the atmosphere, marine and terrestrial ecosystems, environmental governance and green economy. UNEP has also been active in funding and implementing environment-related development projects. UNEP sponsors different environmental programmes [interactive]. [accessed on 2012-03-17]. <<http://www.unep.org/>>.
  - 9 The Earth System Governance Project is a long-term, interdisciplinary social science research programme developed under the auspices of the International Human Dimensions Programme on Global Environmental Change, and started in January 2009. It will terminate in 2018. The aim of the Earth System Governance Project is to address with cutting-edge science the large, complex challenge of governance in the face of intensifying global environmental change and earth system transformation, and to create a better understanding of the role of institutions, organisations and governance mechanisms by which humans currently regulate their relationship with the natural environment and global biochemical systems [interactive]. [accessed on 2012-03-17]. <<http://www.earthssystemgovernance.org/>>.
  - 10 The Global Environment Facility (GEF) unites 182 member governments — in partnership with international institutions, non-governmental organisations, and the private sector — to address global environmental issues. Established in 1991, the GEF is today the largest funder of projects to improve the global environment. The GEF has allocated \$9.2 billion, supplemented by more than \$40 billion in co-financing, for more than 2,700 projects in more than 165 developing countries and countries with economies in transition. Through its Small Grants Programme (SGP), the GEF has also made more than 12,000 small grants directly to non-governmental and community organisations, totalling \$495 million [interactive]. [accessed on 2012-03-17]. <<http://www.thegef.org/gef/>>.

in promoting environmental ideas. Many of the conventions have been promoted by the United Nations or its organisations (such as the United Nations Environment Programme (UNEP), the Organization for Economic Cooperation and Development (OECD), etc.). The origins of the modern international environmental law and policy date as far back as the *Declaration of the United Nations Conference on the Human Environment*, proclaimed in Stockholm in 1972. It is worth mentioning that there is no clear standard regarding the validity, enforcement level or obligatory powers of different international environmental conventions; whilst some may be limited in their application by different parameters<sup>11</sup>, others may extend to cover the whole international community or very important issues<sup>12</sup>. Bearing in mind different kinds of environmental issues, covered by international conventions<sup>13</sup>, it could be stated that the most explicit regulation of international law has been established for the four “traditional sectors” of the environment: water, soil, atmosphere, and biological diversity<sup>14</sup>. Some authors point out that although the subjectmatter and geographical scope of environmental treaties varies, such treaties have some common characteristics, use similar legal techniques, and often are interrelated. The main characteristics which these treaties share are as follows<sup>15</sup>: (1) an absence of reciprocity of obligations; (2) interrelated or cross-referenced provisions from one instrument to another; (3) framework agreements; (4) frequent interim application; (5) the creation of new institutions or the utilisation of already existing ones to promote continuous cooperation; (6) innovative compliance and non-compliance procedures; (7) simplified means of modification or amendment.

Another source which has had and now has a particular impact on the development of environmental ideas and regulation principles is the European environmental law.

11 For example, Paris Convention for the Protection of Environment of the North-East Atlantic (1992) [interactive]. [accessed on 2012-03-17]. <[http://www.ospar.org/html\\_documents/ospar/html/OSPAR\\_Convention\\_e\\_updated\\_text\\_2007.pdf](http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf)>.

12 For example, the United Nations Convention on the Law of the Sea (UNCLOS) (1982, entered into force on 16 November 1994) [interactive]. [accessed on 2012-03-17]. <[http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>.

13 We could suggest the list of the most important international conventions in the field of environmental law: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989); Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 1972); Convention on Supplementary Compensation for Nuclear Damage (1997); Convention on Biological Diversity (1992); Convention on the Prevention of Marine Pollution by the Dumping of Waste and Other Matter (1972); International Convention for the Prevention of Marine Pollution from Ships (1973); International Convention for the Prevention of pollution of the Sea by Oil (1954); International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels, as amended by the Protocol signed in London on November 27, 1992 (Liability Convention); International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (1996); Kyoto Protocol (1998); Oslo-Paris Convention for Protection of the Marine Environment of the North East Atlantic (OSPAR) (1992); Paris Convention for the Protection of Environment of the North-East Atlantic (1992); United Nations Convention on the Law of the Sea (UNCLOS) (1982, entered into force November 16, 1994); Rio Convention on Biodiversity (Biodiversity Convention or CBD) (1992); United Nations Framework Convention on Climate Change (Climate Change Convention) (1992).

14 Burnet-Hall, R.; Jones, B. *Burnet-Hall on Environmental Law*. Second edition. London: Thomson Reuters, 2009, p. 2.

15 Kiss, A. C.; Shelton, D. *International Law*. Third edition. Transnational Publishers Inc., 2004, p. 70.

Basically they are different directives and other regulatory means enacted by the European Community. The European Community in particular has provided the base for developing a substantial body of legally binding environmental instruments over the last twenty-five years<sup>16</sup>. It is worthwhile to mention that the original treaties<sup>17</sup> of the European Community had no mention of environment. It was only with the adoption of the Single European Act<sup>18</sup>, which came into effect on 1 July 1987, that a specific provision was introduced in the Rome Treaty with regard to environmental concerns. The principal amendments in this respect were the incorporation of a new Article 100a providing the following: “The Commission, in its proposals envisaged in Paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection”. Three new articles were also enacted, namely Articles 130r, 130s and 130t, setting out the basic principles of the Community environmental law. These last three were revised by the Maastricht Treaty. They have also been renumbered following the Treaty of Amsterdam. The relevant Articles are thus now Articles 174, 175 and 176 respectively<sup>19</sup>. The latest EU document of prime importance, the Treaty of

16 Macrory, R. *Regulation, Enforcement and Governance in Environmental Law*. Oxford and Portland: Hart Publishing, 2010, p. 196.

17 The ESCS Treaty (“The Treaty of Paris”), establishing the European Coal and Steel Community, signed on 18 April 1951 in Paris, entered into force on 23 July 1955 and repealed from 23 July 2002; European Economic Community Treaty (“EEC Treaty”), establishing the European Economic Community, signed in Rome on 25 March 1957, entered into force on 1 January 1958; the European Atomic Energy Community Treaty (“The Euratom Treaty”), establishing the European Atomic Energy Community was signed at the same time as the EEC Treaty and the two are jointly referred to as the Treaties of Rome. Other important Treaties of European Community: The Treaty on European Union (TEU, “the Maastricht Treaty”), signed on 7 February 1992; The Single European Act (SEA), signed in Luxembourg and the Hague, entered into force on 1 July 1987; the Treaty of Amsterdam, signed on 2 October 1997; Agreement on the European Economic Area (EEA Treaty), signed on 20 May 1992; the Treaty of Nice, signed on 26 February 2001; the Treaty of Lisbon (“The Reform Treaty”), signed on 13 December 2007.

18 The Single European Act (SEA), signed in Luxembourg and the Hague, entered into force on 1 July 1987. OJ L 169 of 29.6.1987.

19 Article 174 of Amsterdam Treaty:

1. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. [...]

3. In preparing its policy on the environment, the Community shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Community,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Community as a whole and the balanced development of its regions.” [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E174:EN:HTML>>.

Lisbon amending the Treaty on European Union<sup>20</sup> (TEU), which entered into force on December 1, 2009, states in Article 3(3) as one of the objectives of the European Union “a high level of protection and improvement of the quality of the environment”. In the same paragraph, sustainable development is stated as one of the aims of the Union. The objectives are completed by the specific environmental ones in Article 191 of the Treaty on the Functioning of the European Union<sup>21</sup> (TFEU), indicating high level of protection, a prudent use of natural resources, a contribution to human health and the promotion of environmental protection at international level.

Neither of those provisions define “environment”; it follows from Articles 191(1) and 192(2) of the TFEU that the environment includes human beings, natural resources, land use, town and country planning, waste and water. These categories include all areas of the environment, in particular fauna and flora, which are part of natural resources, and climate. The inclusion of issues concerning town and country planning underlines that environment is not limited to natural elements, but also includes the man-made environment<sup>22</sup>. There is no aim in this research to closely analyse the EU environmental provisions, therefore only a short overview of the most representative provisions is presented. Thus, an obvious trend is that while the development of the EU environmental law is largely positive, the perspectives are not that optimistic. The main reason for this is the contraposition of the environmental provisions with the individual interests of each member of the society. The protection of environmental issues in almost every state has been left for the administrative level, which acts by issuing different permissions, performing monitoring, control, and other functions. However, for different reasons the governmental administration is not the best defender of the environment.

## 2. Impact of Environmental Law to Property Right

It must be stated that environmental ideas are not always accepted as sound and legitimate ones; they inevitably are closely tied to the prevailing legal conceptions of property and property rights. At the superficial level, it is easy to identify the direction of influence: conceptions of property rights tend to delimit the scope of legitimate legal concern with the use of property in ways potentially harmful to the environment<sup>23</sup>. Environmental ideas and regulation inevitably influence other traditional legal dimensions, such as property law. The trend is obvious – environmental provisions

20 Lisbon Treaty amending the Treaty on European Union and the Treaty establishing the European Community. Signed on 13 December 2007, entered into force on 1 December 2009. OJ C 306 of 17.12.2007 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>>.

21 Treaty on the Functioning of the European Union. Signed on 25 March 1957. OJ C 115/199 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>>.

22 Krämer, L. *EU Environmental Law*. Seventh Edition. London: Sweet & Maxwell, 2011, p. 1.

23 Coyle, S.; Morrow, K. *The Philosophical Foundations of Environmental Law. Property, Rights and Nature*. Oxford and Portland: Hart Publishing, 2004, p. 5.

almost always limit someone's property rights in one or another way. Therefore the tension between individual and public (which are most often declared as the reason of environmental protection) interests arise. If more philosophical in the beginning of the international interdisciplinary discussion, this doctrinal conflict nowadays could be preserved even in legislative level.

However, the environmental dimensions of human rights law are rarely discussed in academic treatments of human rights. Nevertheless, growing environmental caseload of human rights courts indicates their appreciation of the importance of the topic: in effect a greening of human rights law has taken place. For example, The European Court of Human Rights regularly examines complaints in which individuals argue that a breach of their Convention (European Convention on Human Rights<sup>24</sup>) rights is the result of adverse environmental factors<sup>25</sup>. Now it is understood and accepted as nonnegotiable canon, derived from the case – law practice of the European Court of Human Rights, that “protection of the environment is a legitimate objective that in appropriate cases can justify limiting certain rights, including the right to private life and the right to possessions and property”<sup>26</sup>.

The case-law practice of the European Court of Human Rights could be seen as the most representative example of the connection and conflict between ideas of environmental protection and private property. The most often applicable provisions in this sense are Article 8 (The right to respect for private and family life and home) and The provisions of Protocol 1<sup>27</sup> to the Convention relates to the environment in instances where environmental issues interfere with a person's peaceful enjoyment of property. Until 2012, there were approximately 5 cases solved in European Court of Human Rights involving Article 1 Protocol 1, where environmental issues were analyzed, and approximately 19 cases involving Article 8, where environmental issues were analyzed (this article is perhaps the main expansion possibility for environmental cases under the Convention because it can protect individuals and their homes from impairment arising out of poor environmental conditions. Typically, this takes the form of nuisance-related claims that involve, for example, hazardous waste, airborne pollutants, or excessive noise and vibrations).

As it was stated, environmental issues in regard of the property right often rise when environmental decisions or events violate the right to property of the person.

24 European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR).

25 *Manual on human rights and the environment: Principles emerging from the case-law of the European Court of Human Rights*. Council of Europe Publishing, 2006 [interactive]. [accessed 2012-03-24]. <[http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit\\_aliasid=2126](http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2126)>.

26 Boyle, A. Human Rights and the Environment: A Reassessment. *Fordham Environmental Law Review*. 2008, 18: 471–511.

27 Article 1 of Protocol No. 1: “1. 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. 2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

*Öneryıldız v. Turkey*<sup>28</sup> shows that if authorities are aware of a significant and imminent threat to property, their failure to take any actions may violate Article 1 of Protocol No. 1. This case also demonstrates that there may be a duty to protect the property of individuals even if they are living illegally in a slum, particularly if the government implicitly permits this living arrangement. The Court reasoned that the State had a duty to take positive measures to protect the possessions of the applicant, which includes the applicant's dwelling. The Court concluded that the State breached this duty because, rather than implementing mechanisms to protect the applicant's dwelling, their gross negligence actually resulted in its destruction. Another case *Ivan Atanasov v. Bulgaria*<sup>29</sup> demonstrates the importance of submitting solid evidence of an interference with a property right that is more than theoretical. If an individual claims that illegal environmental activity resulted in a decrease in property value in violation of Article 1 of Protocol No. 1, they must produce supporting evidence. While the applicant argued that the reclamation scheme had a negative effect on his agricultural practices and, due to publicity of the environmental problems, decreased his property value, the Court did not find a violation because the applicant did not submit any evidence of any reduction in value. The Court noted that the right to protection of property does not protect a general right to a pleasant environment, so without proof of decreased property value, the applicant did not have a valid claim.

### 3. General Principles of Environmental Law

There is no definite list of environmental principles, although the impact of the most important ones is unquestioned, though not all principles have the same legal value. Some of them constitute only general guidelines for environmental policy, nonbinding

28 *Öneryıldız v. Turkey*, Application No. 48939/99. 30 November 2004. The applicant lived in the slum quarter of Kazım Karabekir in Istanbul, which was surrounded by a rubbish tip (i.e. a landfill). A 1991 expert report concluded that the rubbish tip did not conform to relevant regulations and thus posed a serious health risk, especially because of the potential for a methane explosion. Authorities did not act on this information, and a methane explosion in April 1993 destroyed ten houses, including the applicant's house, killing nine of his relatives. While two mayors were given criminal sentences for failures to prevent to accident, the court commuted their prison sentences to fines, which were unenforced. The applicant initiated a claim, and an administrative court awarded the applicant about 2,207 Euros in non-pecuniary damages and 208 Euros in pecuniary damages. The applicant alleges that the failure of officials to prevent the explosion and the subsequent insufficient remedies constitute violations of Article 2, Article 1 of Protocol No. 1, and Article 13.

29 *Ivan Atanasov v. Bulgaria*, Application No. 12853/03. 2 December 2010. The applicant is a farmer who lives about one kilometer and farms four kilometers from a 98.3 hectare tailings pond from a copper-ore mine. To clean up pollution, authorities accepted a reclamation scheme that would use sludge from a wastewater treatment plant. While environmental authorities gave this reclamation scheme a negative opinion because the sludge could be hazardous and the effectiveness was questionable, the relevant authorities still chose this scheme because of other benefits. An environmental impact statement was never completed. Testing of the sludge in May 2000 recorded illegal levels of toxic substances, and 2007 water tests showed heavy metals above allowable levels. The applicant alleges violations of Article 6, Article 8, and Article 1 of Protocol No. 1. Also see *Budayeva and Others v. Russia*, Application No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. 20 March 2008.

theoretical rules, while others oblige and require from states to take active measures and could be enforced directly. Some principles, for example, the “polluter pays”, or “precautionary” principle, had a great impact on international, regional and even national legislation in the environmental field. It should be noted that some principles are more developed on international, while some on regional level; though the European approach had the largest influence on the ideology of environmental impacts. In this research, the most important principles that express the most precise concept of environmental protection and have mostly dominated in the legislation shall be revealed and discussed.

*The integration principle.* This principle is the one that is important at the level of the EU environmental law. Article 6 of the Treaty of Rome<sup>30</sup> states as follows: “Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities, [...] in particular with a view to promoting sustainable development”. The Maastricht Treaty<sup>31</sup> has elaborated the principle and it is expressed as follows: “Environmental protection requirements must be integrated into the definition and implementation of other Community policies”. Those “other activities” include commercial policy, agriculture and fisheries policies, transport policy, competition policy, fields of energy, civil protection, tourism. The integration principle requires taking into account environmental issues each time the provisions in other fields are enacted, though environmental requirements may not prevail over other requirements. The integration idea is based on the concept that “environmental requirements and, subsequently, environmental policy cannot be seen as an isolated green policy which groups specific actions on the protection of water, air, soil, fauna and flora”<sup>32</sup>.

*The precautionary principle.* Article 174(2) of the Rome Treaty proclaims that Community policy on the environment shall be “based on the precautionary principle”<sup>33</sup>. The origins of this principle are not clear, it is not explained in neither of the Community Treaties, therefore the practice and jurisprudence of the European Commission and of the European Court of Justice on the meaning and content of this principle is of great importance<sup>34</sup>. That principle is also expressed in Rio Declaration

- 
- 30 European Economic Community Treaty (“EEC Treaty”), establishing the European Economic Community, signed in Rome on 25 March 1957, and entered into force on 1 January 1958 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- 31 The Treaty on the European Union (TEU, “the Maastricht Treaty”), signed on 7 February 1992, entered into force on 1 November 1993. OJ C 191 of 29.07.1992 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- 32 Krämer, L., *supra* note 22, p. 20.
- 33 Reference to the precautionary principle was inserted into the Treaty of Rome in 1993 as a consequence of an amendment made by the Maastricht Treaty.
- 34 There are several very important cases on the precautionary principle at the European level, such as *Pfizer Animal Health SA v. Council* (Case T-13/99 [2002] ECR II-3305) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999A0013:EN:HTML>>; *Alpharma Inc. v. Council* (Case T70/99 [2002] E.C.R. II-3495) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999A0070:EN:HTML>>; *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (Case C-127/02 [2004] ECR I-7405) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:262:0002:0002:EN:PDF>>.

on Environment and Development<sup>35</sup>, Article 15 of which states: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. The essence of the precautionary principle is that it may be legitimate to take action in order to prevent environmental harm from occurring even where science has yet to establish a direct causal link between the activity in question and the relevant harm. Rather than waiting until that link has been established, the precautionary principle justifies taking action at an earlier stage in the interest of environmental protection<sup>36</sup>. In Rio Declaration, the precautionary principle has some limits; it would only apply in the event of a threat of “serious or irreversible damage”. In addition, it is limited to requiring the taking of “cost effective” measures to prevent environmental degradation”. This means that measures, the benefits of which are outweighed by their costs would not need to be taken under this “soft” formulation of the principle. A “strong” formulation of the principle would shift the burden of proof upon those who wish to undertake a particular activity to show that the available scientific evidence supported the intentions. Either way the principle is the important foundation of environmental law and a useful tool in decision making.

*The preventive action principle (or prevention principle).* This principle is closely connected with the precautionary principle; if action is not possible by means of the precautionary principle, it is impossible by means of the prevention principle either. Those principles are often used interchangeably. According to this principle, measures preventing possible harm to the environmental surrounding are to be taken at an early stage. The principle is inserted in the Treaty of Rome, Article 174(2) of which provides that the Community policy on the environment shall be based on the principle that “preventive action should be taken”. Compliance with this principle is also cost-effective, as it is likely more economical to prevent possible harm than to deal with harmful consequences. Though it might seem that this principle is no more than a declaratory statement, it is incorporated in several EU Environmental Directives<sup>37</sup>, which gives the principle its legitimate power.

*The “polluter pays” principle.* This principle is known on international as well as on the European level of environmental protection. The “polluter pays” principle states that whoever is responsible for damage to the environment should bear the costs associated with it. This principle is expressed in the 16 Principle of the Rio Declaration on Environment and Development<sup>38</sup>. A correct interpretation of the polluter pays principle

35 Rio de Janeiro Declaration on Environment and Development, 16 June 1992. [interactive]. [accessed on 2012-03-17]. <[http://www.unesco.org/education/information/nfsunesco/pdf/RIO\\_E.PDF](http://www.unesco.org/education/information/nfsunesco/pdf/RIO_E.PDF)>.

36 Burnet-Hall, R.; Jones, B., *supra* note 14, p. 53.

37 For example, Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste. OJ L 365 of 31/12/1994 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0062:EN:NOT>>.

38 Principle 16 of Rio Declaration on Environment and Development: Internalization of Environmental Costs. “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment”.

would define pollution as any by-product of a production or consumption process that harms or otherwise violates the property rights of others. The polluter would be a person, company, or other organisation whose activities are generating that by-product. And finally, payment should equal to the damage and be made to the person or persons that suffered harm. Unfortunately, the “polluter pays” principle that is currently guiding public policy has lost its concept with regard to the fact that environmental problems are essentially about interpersonal conflicts over the use of property. The notion of property rights as *the rights that human beings have to property* has been replaced with the idea that somehow *the property itself has rights* that are being violated by productive human activity<sup>39</sup>.

The “polluter pays” principle is also known as extended polluter’s responsibility (EPR). EPR seeks to shift the responsibility dealing with waste from governments (and thus, taxpayers, and society at large) to the entities producing it. In effect, it internalises the cost of waste disposal into the cost of the product, theoretically meaning that the producers will improve the waste profile of their products, thus decreasing waste and increasing possibilities for reuse and recycling.

On the European level, this principle was introduced in the Treaty establishing the European Community, and in particular Article 175(1), in 1987. It is difficult to determine the content of this principle: who is the polluter? Who is to pay for emission or damage caused? How much should be paid? This demonstrated the economic essence of the “polluter pays” principle. In reality the clean-up of the environment is seen as a task for public authorities who exist independently from the question of whether a polluter can be identified as asked to pay for pollution<sup>40</sup>. The “polluter pays” principle is also found in The Directive 2004/35 on environmental liability<sup>41</sup>. The Directive establishes a framework for environmental liability based on the “polluter pays” principle, with a view to preventing and remedying environmental damage. The principle of liability applies to environmental damage and imminent threat of damage resulting from occupational activities, where it is possible to establish a causal link between the damage and the activity in question. The Directive therefore distinguishes between two complementary situations, each one governed by a different liability scheme: occupational activities specifically mentioned in the Directive and other occupational activities. The Directive provides for a certain number of exemptions from environmental liability. The liability scheme does not apply in the case of damage or imminent damage resulting from armed conflict, natural disaster, activities covered by the Treaty establishing the European

39 Cordato, R. E. *The Polluter Pays Principle: A Proper Guide for Environmental Policy*. Washington: Institute for Research on the Economics of Taxation Studies in Social Cost, Regulation, and the Environment: No. 6, 2001, p. 4.

40 Krämer, L., *supra* note 22, p. 27.

41 Directive 2004/35. OJ L 143 of 30.4.2004 [interactive]. [accessed on 2012-03-17]. <[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=2004&nu\\_doc=35](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2004&nu_doc=35)>.

Atomic Energy Community, national defence or international security activities or activities covered by the international conventions listed in Annex IV of the Directive.

*The principle of rectification of damage at source.* The principle that environmental damage ought to be rectified at source was originally set out in the Community's First Environmental Action<sup>42</sup> programme as follows: "The best environment policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects. To this end, technical progress must be conceived and devised so as to take into account the concern for protection of the environment and for the improvement of the quality of life at the lowest cost to the community. This environment policy can and must be compatible with economic and social development". Therefore, it could be stated that the present principle is close to the preventive principle. But it must be noted that no further Community document has specified the content of this principle, it was revised only in a few cases of the European Court of Justice. The principle was inserted in Article 174(2) of the Treaty of Rome<sup>43</sup> by the Single European Act. The 1987 Single European Act introduced a new "Environment Title" in the Treaty of Rome, which provided for the first clear legal base for the Community's environment policy. It is not clear what "rectified" means. The EU and national institutions have a large discretion as to what measures they wish to take, and the timespan and content of these measures<sup>44</sup>.

## Conclusion

Development of environmental international law was one of the most important factors in the protection of nature. International treaties are the most effective force in promoting environmental ideas; another source which has had and now has particular impact on the development of environmental ideas and regulation principles is the European environmental law. Thus, an obvious trend is that while the development of the EU environmental law is largely positive, the perspectives are not that optimistic. The main reason for this is the contraposition of the environmental provisions with the individual interest of each member of the society. The problems of modern environmental law could be identified on different levels – the lack of political will to engage in unpopular actions and establish such provisions; complex, uncoordinated national laws that are difficult to apply; non-functioning control and monitoring measures of application of environmental law; conflict between large businesses and environmental interests; insufficient interest of the society in environmental problems; incompatibility of environmental issues and personal interests of a particular human being. The protection

---

42 First Environmental Action Programme. OJ C112 [1973] [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1973:112:FULL:EN:PDF>>.

43 Article 174(2): "Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay".

44 Krämer, L., *supra* note 22, p. 25.

of environmental issues in almost every state has been left to the administrative level, which acts by issuing different permissions, performing monitoring, control, and other functions. Environmental ideas are not always accepted as sound and legitimate ones; inevitably, they are closely tied to the prevailing legal conceptions of property and property rights. The evolution of legal responses to environmental problems reveals the main idea, namely that the impact of human activity on the natural environment is usually seen as constituting not only a conflict between individual rights and collective interests, but a complex of moral problems invoking notions of value and responsibility. The main question when discussing about the right to decent environment is whether the protection of humans and their rights should remain central focus, and therefore the environmental issues would only mean a “greening” of the rights to life, private life, and property; or should environmental issues have direct protection and environmental rights should be as rights *per se*, in other words a right to have the decent environment itself should be protected? There is no definite list of environmental principles, although the impact of the most important ones is unquestioned. Those principles have an unprecedented and doubtless impact on the creation of binding legal provisions in the European and international environmental law.

## References

- Alder, J.; Wilkinson, D. *Environmental Law and Ethics*. London: Macmillan, 1999.
- Alpharma Inc. v. Council* (Case T70/99 [2002] ECR II-3495) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999A0070:EN:HTML>>.
- Birnie, P.; Boyle, A.; Redgwell, C. *International Law & the Environment*. New York: Oxford University Press, 2009.
- Boyle, A. Human Rights and the Environment: A Reassessment. *Fordham Environmental Law Review*. 2008, 18.
- Budayeva and Others v. Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. 20 March 2008.
- Burnett-Hall, R.; Jones, B. *Burnett-Hall on Environmental Law*. Second edition. London: Thomson Reuters, 2009.
- Coyle, S.; Morrow, K. *The Philosophical Foundations of Environmental Law. Property, Rights and Nature*. Oxford and Portland, Hart Publishing, 2004.
- Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. OJ L 143 of 30.4.2004 [interactive]. [accessed on 2012-03-17]. <[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=2004&nu\\_doc=35](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2004&nu_doc=35)>.
- Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste OJ L 365 of 31/12/1994 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0062:EN:NOT>>.
- Dobson, A. *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice*. Oxford: Oxford University Press, 1998.
- European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into

- force 3 September 1953). ETS 5; 213 UNTS 221 (ECHR).
- European Economic Community Treaty (“EEC Treaty”), establishing the European Economic Community, signed in Rome on 25 March 1957, entered into force on 1 January 1958 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- Ivan Atanasov v. Bulgaria*, Application No. 12853/03. 2 December 2010.
- Kiss, A. C.; Shelton, D. *International Law*. Third edition. Transnational Publishers Inc., 2004.
- Krämer, L. *EU Environmental Law*. Seventh Edition. London: Sweet & Maxwell, 2011.
- Landelijke Vereniging tot Behoud van de Wad- denzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (Case C-127/02 [2004] ECR I-7405) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:262:0002:0002:EN:PDF>>.
- Lazarus, R. J. *The Making of Environmental Law*. The University of Chicago Press, 2004.
- Lisbon Treaty amending the Treaty on the European Union and the Treaty establishing the European Community. Signed on 13 December 2007, entered into force on 1 December 2009. OJ C 306 of 17.12.2007 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>>.
- Macrory, R. *Regulation, Enforcement and Governance in Environmental Law*. Oxford and Portland, Hart Publishing, 2010.
- Manual on human rights and the environment: Principles emerging from the case-law of the European Court of Human Rights*. Council of Europe Publishing, 2006 [interactive]. [accessed 2012-03-24]. <[http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit\\_aliasid=2126](http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2126)>.
- Öneryildiz v. Turkey*, Application No. 48939/99. 30 November 2004.
- Paris Convention for the Protection of Environment of the North-East Atlantic (1992) [interactive]. [accessed on 2012-03-17]. <[http://www.ospar.org/html\\_documents/ospar/html/OSPAR\\_Convention\\_e\\_updated\\_text\\_2007.pdf](http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf)>.
- Pfizer Animal Health SA v. Council* (Case T-13/99 [2002] ECR II-3305) [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999A0013:EN:HTML>>.
- Rio de Janeiro Declaration on Environment and Development, 16 June 16 1992 [interactive]. [accessed on 2012-03-17]. <[http://www.unesco.org/education/information/nfsunesco/pdf/RIO\\_E.PDF](http://www.unesco.org/education/information/nfsunesco/pdf/RIO_E.PDF)>.
- Stallworthy, M. *Sustainability, Land Use and Environment: A Legal Analysis*. London: Cavendish, 2002.
- Tarlock, D. A. *History of Environmental Law. Environmental Laws and Their Enforcement*. Vol. 1. Encyclopedia of Life Support Systems, 2009.
- The Single European Act (SEA), signed in Luxembourg and the Hague, entered into force on 1 July 1987. OJ L 169 of 29.6.198 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- The Treaty of Amsterdam, signed on 2 October 1997; entered into force on 1 May 1999 OJ C 340 of 10.11.1997 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- The Treaty on the European Union (TEU, “the Maastricht Treaty”), signed on 7 February 1992, entered into force on 1 November 1993. OJ C 191 of 29.07.1992 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/en/treaties/index.htm>>.
- Treaty on the Functioning of the European Union. Signed on 25 March 1957. OJ C 115/199 [interactive]. [accessed on 2012-03-17]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>>.
- United Nations Convention on the Law of the Sea (UNCLOS) (1982, entered into force on

16 November 1994) [interactive]. [accessed on 2012-03-17]. <[http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)>.

## APLINKOS APSAUGOS REGULIAVIMO IŠTAKOS

Aurelija Pūraitė

Mykolo Romerio Universitetas, Lietuva

**Santrauka.** Pastarieji dvidešimt–trisdešimt metų pasižymėjo beprecedenčiu naujo teisinio reguliavimo poreikiu aplinkos apsaugos srityje. Tai prisidėjo prie nepaprasto aplinkos apsaugos teisės aktų skaičiaus augimo ir pačios aplinkosaugos koncepcijos transformavimosi bei aplinkosaugos principų raidos. Aplinkos apsaugos teisės nuostatos dažnai yra leidžiamos, priimamos ir joms paklūstama su dideliu visuomenės pasipriešinimu. Viena vertus, aplinkos apsaugos teisė gali būti apibrėžiama kaip vertybių sistema, kuri siekia, kad žmogaus veikla būtų gamtą saugojanti ir tausojanti, o ne tik savo privačius interesus tenkinanti nepaisant visuomenės interesų ir gamtos apsaugos problemų. Todėl aplinkos apsaugos nuostatos dažniausiai pasižymi tuo, kad pagrindinės reguliavimo priemonės yra įvairūs žmogaus veiklos apribojimai siekiant užkirsti kelią įvairių gamtos sistemų sutrikimui. Kita vertus, nustatydama veiklos apribojimus aplinkosaugos teisės transformuoja įprastinę teisės subjektų subordinaciją reguliavimo centru įvardindama ne asmens privačius interesus (vienintelį adresatą ir tradicinę teisinės sistemos naudos gavėją), bet gamtą ir ateities kartų poreikius (šios kategorijos dažniausiai neturi jokio teisinio subjektiškumo). Ši koncepcija iš esmės transformuoja gamtos ir žmogaus santykį ir todėl aplinkos apsaugos teisės normos dažnai sukuria priešpriešą ir kelia įtampą tokių asmens teisių kaip teisė į nuosavybę, teisė į asmeninį gyvenimą, teisė į asmeninę gerovę atžvilgiu. Todėl šiame tyrime siekiama atskleisti, kokios priežastys ir idėjinės nuostatos nulėmė būtent tokią aplinkosaugos teisės raidą, kokie yra pagrindiniai aplinkos apsaugos teisės šaltiniai. Šio tyrimo tikslas – atskleisti tarptautinio ir regioninio aplinkos apsaugos teisinio reguliavimo ištakas ir svarbiausius principus bei išanalizuoti aplinkos apsaugos teisės aktų esmines ypatybes.

**Reikšminiai žodžiai:** aplinkosaugos teisė, tarptautinis ir regioninis teisinis reguliavimas, žmogaus teisės, teisė į nuosavybę.

---

**Aurelija Pūraitė**, Mykolo Romerio universiteto Viešojo saugumo fakulteto Teisės katedros docentė. Mokslinių tyrimų kryptys: administracinė teisė, aplinkosaugos teisė, žmogaus teisės, aukštojo mokslo valstybinis reguliavimas.

**Aurelija Pūraitė**, Mykolas Romeris University, Faculty of Public Security, Department of Law, Associate Professor. Research interests: administrative law, environmental law, human rights, state regulation of higher education.