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Social rights and the environment in decisions of the European Committee of Social Rights

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Abstract. The article analyses the issue of protecting social rights from the perspective of environmental protection, especially the right to a clean environment established in the practice of law. And although this right does not have normative anchorage in international law, its presence is visible in the interpretation of social rights. The decisions of the European Committee of Human Rights were discussed, which led to the conclusion that there is currently a phenomenon of human rights expansionism in the area of the link between social rights and the right to a clean environment. The methods used in the research will be characteristic of the methods used in the social sciences, and in particular in law: the functional method, the formal-dogmatic method, the comparative legal method and the descriptive method.

Keywords: social rights, expansionism of human rights, environmental protection.

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INTRODUCTION

The environment and its protection have increasingly become the focus of the international community. After World War II, the top priorities were economic reconstruction and ensuring lasting peace, including guaranteeing civil and political as well as social and economic human rights. Over the next half a century, however, the environment became a major concern, which also had an impact on international law. Although the main human rights instruments: the Universal Declaration of Human Rights 1948 (A/RES/217A, pp. 71-78), International Covenant on Civil and Political Rights 1966 (United Nations Treaty Series, vol.999, p. 171), and the International Covenant on Economic, Social and Cultural Rights 1966 (United Nations Treaty Series, vol.993), as well as instruments at the European level - Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ETS No. 5.) and the European Social Charter 1961 (ETS No.35) and European Social Charter (Revised) 1996 (ETS No. 163) which were developed long before the emergence of full awareness of environmental issues (Chazournes, 2020, p. 1-5).

Although at the time of drafting the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention") and the European Social Charter (hereinafter "the Charter") the environment was not a primary concern in the system of the Council of Europe and thus these documents do not contain a definition of the environment, the human rights established in these treaties have been interpreted as containing obligations to protect the environment. Thus, although neither the Convention nor the Charter protect the environment as such, the various individual rights provided for in these treaties may be affected by anthropogenic impacts on the environment (European Court of Human Rights, 2020, p.7). Therefore, the question of the precise definition of the environment is not fundamental to understanding the case law of the European Court of Human Rights (hereinafter "the Court") and the conclusions and decisions of the European Committee of Social Rights (hereinafter "the Committee"). In light of the widespread acceptance of the interrelationship between environmental protection and human rights, the Court has recognized that in today's society, environmental protection is of increasing importance (Case Fredin v. Sweden, 1991; European Court of Human Rights (A), 2020, p. 13). It has referred to the rights contained in the Convention, which are undeniably affected by issues such as acoustic disturbance, industrial pollution, urban planning and construction, waste management, water pollution and man-made and natural disasters. At the same time, the Committee considers that a healthy environment is at the heart of the Charter's system of guarantees and may be relevant to the application of various provisions of the Charter in more detail (Case ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland, 22 January 2019). The doctrine also emphasises that environmental deterioration is considered to be a factor affecting the enjoyment of many social rights (Palmisano, 2020, p.1).

Based on Professor Jerzy Menkes' opinion that human rights in the universal space are constantly evolving (Menkes, 2018, p.153) it seems important to redefine the basis of social rights protection from the perspective of environmental protection - namely to determine the legal and axiological justification for adopting a broader normative construction of various social rights in the contemporary system of human rights protection - which is increasingly mainly in soft law standards, case law and decisions of international bodies, and in doctrinal positions. Considering this, it can be hypothesized that social rights must be interpreted from the perspective of the right to a clean environment, which is currently moving from the conceptualisation stage to the standardisation stage.

The authors of this text have analysed the impact of environmental protection, including the implementation of the right to a clean environment, on the normative construction of selected social rights based on the decisions of the European Committee of Social Rights, which show the scope to which environmental protection has been incorporated into the provisions of the European Social Charter.

The methods used in the research will be characteristic of the methods used in the social sciences, and in particular in law: (1) the functional method, its aim will be to create a reconstruction of the values underlying the regulation of social security from the perspective of environmental protection; (2) the formal-dogmatic method, which will use basic forms of interpretation when interpreting legal acts concerning the regulation of the European Social Charter and the Revised European Social Charter and other legal acts; (3) the comparative legal method: comparison of the traditional regulatory approach and the new functional approach to the scope of protection of social rights, with particular attention to the environmental factors that change the current legislation; (4) the descriptive method will be used in describing the decisions of the European Social Committee as well as the adopted legal solutions, as well as the normative approach when assessing the usefulness of the adopted legal solutions.

COMPLAINTS CONSIDERED BY THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS UNDER THE EUROPEAN SOCIAL CHARTER

The European Social Charter (hereafter: ESC and Charter) was adopted in the legal system of the Council of Europe in 1961 (ETS No. 35.). This treaty defines social and economic rights and freedoms and establishes a supervisory mechanism to ensure compliance by States parties. Following the revision of the ESC in 1996, the so-

called Revised European Social Charter (hereafter: ESCR) entered into force in 1999, gradually replacing the original treaty (ETS No. 163). Today, the two treaties are in force, legally coexisting and interrelated. Currently, forty-four member states of the Council of Europe have ratified the Social Charter or its revised version. The implementation by States Parties of their obligations under the Charter is supervised by the European Committee of Social Rights. Its 15 independent and impartial members are elected by the Committee of Ministers of the Council of Europe for a term of six years, renewable once. The European Committee of Social Rights monitors compliance with the Charter through two complementary mechanisms: through collective complaints by the social partners and other NGOs (Collective Complaints Procedure) and through national reports drawn up by the Contracting Parties (Reporting System). The decisions and conclusions of the European Committee of Social Rights must be respected by the States concerned even though they are not directly enforceable in national legal systems, they define the law and can form the basis for positive changes in social rights through legislation and jurisprudence at the national level.

The Committee, which is a quasi-judicial body (Brillat, 2005, pp. 32-37), has over the years developed a "jurisprudence" ("case-law" is the term used by the Committee itself) consisting of all the sources in which the Committee sets out its interpretation of the provisions of the Charter. This means that the decisions made by the Committee as a result of considering collective complaints should be recognised as an important voice in the international debate, influencing the wider interpretation of social rights from an environmental perspective. The decisions of the Committee thus show that the states' negligence of environmental issues is tantamount to a failure to fulfil the obligation to respect these rights, and that the failure to take measures to avoid or limit the deterioration of the environment may in itself constitute a violation of certain social rights Palmisano, 2020, p. 1).

The complaints in which the Committee was obliged to take a position on the issue of environmental threats to social rights were very few – the most important (only six) complaints were brought by national NGOs, i.e.: Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Case Marangopoulos Foundation for Human Rights (MFHR) v. Greece, 6 December 2006), a complaint brought by a national NGO - European Roma Rights Centre (ERRC) v. Bulgaria (Case European Roma Rights Centre (ERRC) v. Bulgaria, 3 December 2008), a complaint brought by Médecins du Monde - International v. France (Case Médecins du Monde - International v. France, 11 September2012), International Federation of Human Rights Leagues (FIDH) v. Greece (Case International Federation of Human Rights Leagues (FIDH) v. Greece, 23 January 2013), European Roma and Travellers Forum (ERTF) v. Czech Republic (Case European Roma and Travellers Forum (ERTF) v. Czech Republic, 17 May 2016), and ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland (Case ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland, 22 January 2019). Thus, in the end, there were only five complaints examined on the merits, directly referring to environmental issues as conditions for the proper and effective respect of social rights.

COMPLAINT LODGED BY THE MARANGOPOULOS FOUNDATION FOR HUMAN RIGHTS (MFHR) AGAINST GREECE (DECISION ON THE MERITS 06/12/2006)

The complaint brought by the Marangopoulos Foundation for Human Rights (hereinafter as: MFHR) concerned the activity of a lignite mine and lignite-fired power plants and pollution of the natural environment and their effect on human health, thus leading to violations of social rights guaranteed under the European Social Charter (Case MFHR).

The complainant organization accused Greece of failing "to comply with its obligation to protect public health against air pollution, in accordance with Article 11§1 of the Charter", allowing operation of lignite mines and power stations fuelled by lignite, without taking sufficient account of the environmental impact and without taking all necessary steps to reduce this impact (Case Marangopoulos, para.11). The MFHR maintained in their complaint that Greece had failed to comply with its obligation to protect public health against air pollution, in accordance with Article 11§1 of the Charter, by authorising the Public Power Corporation (DEH) to operate lignite mines and power

stations fuelled by lignite, without taking sufficient account of the environmental impact and without taking all necessary steps to reduce this impact. Moreover, according to the MFHR, the state failed, in breach of Article 11§2 of the Charter, to "provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health" (Case Marangopoulos, para.79).

Recognizing Greece's violation of the Charter, it is worth emphasizing that the striking thing in the Committee's decisions is the ECSR's multi-thread modelling on the ECHR in the interpretation of the European Court of Human Rights. And just like the ECtHR's attitude towards ECHR, in its MFHR decision the Committee concludes that "the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact", which is why it "interprets the rights and freedoms set out in the Charter in the light of current conditions" (Case MFHR, para.192). Given the exceptional dynamic movements of the environmental problems, adopting this assumption is quite significant by serving an on-going update of necessary opinions and decisions. Importantly from the point of view of this research, the Committee interprets from its body of decisions "the growing link that states party to the Charter and other international bodies now make between the protection of health and a healthy environment" which allows them to interpret Article 11 of the Charter "as including the right to a healthy environment" (Case MFHR, para.195). Therefore, in its MFHR decision the Committee proceeds to "its own interpretation of the right to a healthy environment", referring, inter alia to the decisions of the European Court of Human Rights which did not construct such a right in the ECHR. When it comes to non-compliance with Article 11 of the Charter, the Committee stated that in order to clarify its interpretation of the right to a healthy environment, it takes account of the principles established in the case-law of other human rights supervisory bodies, namely the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights at the regional level, and the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights at the global level (Case MFHR, para.196). In view of the scale and level of detail of the European Union's body of law governing matters covered by the complaint, it has also taken account of several judgments of the Court of Justice of the European Communities (Case MFHR, para.196).

Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The Committee sees a clear complementarity between Article 11 of the Charter and Article 2 (right to life) of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (Conclusions 2005, §5). Measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution (Case MFHR, para.202). In its decision, relying on its previous case-law, the Committee points to obligations of national authorities in the context of the environment's harmful effect on people's health, emphasizing in particular the obligation to:

- develop and regularly update legislation, especially environmental regulations);
- take specific actions, e.g. modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to develop reduction processes on a global scale);
- ensure appropriate supervisory machinery
- inform and educate the public, including pupils and students at school, about both general and local environmental problems;
- assess health risks through epidemiological monitoring of the groups concerned" (Case MFHR, para.203).

Moreover, taking this case as a basis, the MFHR maintained that Article 3§1 of the Charter was violated because Greece "failed to issue safety and health regulations" that would take account of health issues related to the operation of mines and quarries (Case MFHR, para.92). The Committee noted that Article 3 of the Charter grants everyone the right to safe and healthy working conditions - this right stems directly from the right to personal integrity (Case MFHR, para.223). States' first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Paragraph 1 of this article requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid

down in Community and international regulations and standards (Case MFHR, para.224). The Committee recalled that even though Greece had legislation in place on health security and protection pursuant to Article 3§1 of the Charter, the compliance with the Charter cannot be ensured solely by a theoretical operation of legislation if this is not effectively applied and rigorously enforced and supervised (Case MFHR, para.228). The Committee held that Greece had failed to honour its obligation to effectively monitor and enforce regulations on health and safety at work in the context of air pollution under Article 3§2 of the Charter, especially as the Government recognised the lack of inspectors in the mining sector whereby it was unable to supply precise data on the number of accidents in the mining sector.

It also accused Greece of violation of Article 2§4 of the Charter arguing that lignite miners are particularly exposed to high levels of air pollution, especially in the form of fine particles, and that irrespective of their place of residence they are more subject to rhinitis than other categories of worker. In addition, it is believed that high concentrations of mineral substances in fly ash are considered responsible for pneumoconiosis among coal miners. This is why the MFHR maintained that the state had not met its obligations under Article 2§4, either directly, as law-maker, since lignite miners had no statutory entitlement to reduced working hours or additional paid holidays, or indirectly, as de facto manager of DEH , since it had failed in its duty to include such provisions in its employment contracts, whether individual or collective (Case MFHR, paras. 108-109).

Therefore, the Committee pointed out in the MFHR case that "even taking into consideration the margin of discretion granted to national authorities in such matters", "Greece had not managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest" (Case MFHR, para.221). The Committee is aware of the complexity and difficulty of the problem of environmental pollution and "overcoming pollution is an objective that can only be achieved gradually. States party must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal" (Case MFHR, para.204).

COMPLAINT LODGED BY THE INTERNATIONAL FEDERATION OF HUMAN RIGHTS LEAGUES (FIDH) AGAINST GREECE (DECISION ON THE MERITS 23/01/2013)

It may be concluded that when it comes to reference to the "right to a healthy environment", the Committee goes further in its decisions that the ECtHR and it does it consistently as it takes this issue into consideration in another case. In its FIDH decision, the Committee states that "The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights" (Case FIDH, para.50 and 202). It even goes a step further because it recognises that 'the right to protection of health guaranteed in Article 11 of the Charter also complements Article 8 (Right to respect for private and family life) of the European Convention on Human Rights as interpreted by the European Court of Human Rights" (Case FIDH, para.51). It adds that "severe environmental pollution may (...) constitute a violation of Art 8". "The state must take appropriate regulatory measures as well as monitoring activities to ensure compliance of regulation", so that "where there are risks to health from environmental pollution, persons who are affected have a right to obtain information about these risks from the relevant authorities" (Case FIDH, para.51). The ECSR formulated their own criteria for the assessment of the situation: "the seriousness of the pollution and the related health risks and consequences, the number of people and interests concerned, the various levels of public administration involved and the resources needed to remove the causes of ill-health and prevent diseases" (Case FIDH, para.127).

In the International Federation of Human Rights Leagues (hereinafter as: FIDH) v. Greece the complainants allege that water pollution in the River Asopos had harmful effects on local residents. The Committee recalled that the right to a healthy environment was included in the European Social Charter, which was confirmed in MFHR v. Greece and that the right to protection of health under Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights, given that health care is a prerequisite for human dignity, and also

Article 8 of the Convention (Case FIDH, paras.50-51). The Committee emphasized the government's obligation to take preventive measures and believed there where are threats of serious damage to human health, lack of full scientific certainty should not be used as a reason for postponing appropriate measures (Case FIDH, para.145). When a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection established by Article 11, that are to prevent these potentially dangerous effects (Palmisano, 2020, p.3). Requiring the application of the principle of caution, the Committee applied one of the environmental protection principles in the area of social rights ((Palmisano, 2020, p.1). The Committee considered that the Greek State had failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases (Case FIDH, para.153). This was concluded on the basis of, i.a., delays with which Geek authorities acknowledged the seriousness of the pollution of Asopos River and its negative effects on the health of the population (Case FIDH, para.130); delays in taking initiatives to remedy the problems at stake, which exacerbated the causes of ill-health and hampered the prevention of diseases (Case FIDH, para.130); the deficiencies in the implementation of existing regulations and programmes regarding the pollution of Asopos River and its negative effects on health; the difficulties encountered in the co-ordination of the relevant administrative activities by competent bodies at national, regional and local level; the shortcomings regarding spatial planning; the poor management of water resources and waste; the problems in the control of industrial emissions and the lack of appropriate initiatives with respect to the presence of Cr-6 in the water (Case FIDH, para.153).

Moreover, in the FIDH v. Greece case the Committee acknowledged that the competent Greek authorities should have required the design and implementation of a systematic information and awareness-raising programme for the population concerned, with the active and regular contribution of all the administrative institutions concerned - at national, regional and local level (Case FIDH, para.157). The Committee concluded that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Case FIDH, para.158). Moreover, States must demonstrate through concrete measures that they implement a public health education policy in favour of population groups affected by specific problems (Case FIDH, para.158). Thus the Committee acknowledged that states must recognize as priority in the public health realm to disseminate information about the environment's harmfulness by awareness-raising campaigns and education.

In the FIDH decision the Committee spoke about Greece's other specific shortcomings. Noting the adoption in 2010 of "environmental quality standards for Asopos River and threshold values for the emission of liquid industrial waste into the Asopos catchment basin", the Committee accused Greece of not making this document a reality, including the lengthening of the "procedure for allocating new environmental terms" and the fact that the Environmental Inspector's Office had not been established (Case FIDH, paras.131-132). Given the above, the Committee pointed out to Greece that, first, "the implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein"; and second, that they "ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery" (Case FIDH, para.133).

The Committee unanimously recognized that Greece had violated the right to health guaranteed under Article 11 of the Charter since "the Greek State has failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases" (Case FIDH, para.153-154). It considered here: the delay mentioned earlier, the deficiencies in the implementation of existing regulations and programmes, the difficulties in the co-ordination of the relevant administrative activities at national, regional and local level; the poor management of water resources and waste; as well as shortcomings in the control of industrial emissions (Case FIDH, para.153). The Committee additionally recognized a violation of Article 11§2 of the Charter, pointing out that "public information initiatives were not only initiated too late, but also, in most cases, sporadic and insufficiently co-ordinated", while "the scale of the pollution of the Oinofyta region and its effects on human health, should have

required the design and implementation of a systematic information and awareness-raising programme for the population concerned, with the active and regular contribution of all the administrative institutions concerned" (Case FIDH, para.157).

COMPLAINT LODGED BY A NATIONAL NON-GOVERNMENTAL ORGANIZATION - EUROPEAN ROMA RIGHTS CENTRE (ERRC) V. BULGARIA (DECISION ON THE MERITS 03/12/2008)

In the case of the European Roma Rights Centre (ERRC) v. Bulgaria, the Committee appreciated the Bulgarian health insurance system and efforts taken to ensure access to health care for certain social groups that are most disadvantaged (Case ERRC, paras. 41-42). The Committee recognized that there was sufficient evidence which showed that Roma communities do not live in healthy environments and it attributed this situation partly to the state's failure to take appropriate preventive measures. The Committee also considered that there had been a lack of systematic, long-term government measures to promote health awareness (Case ERRC, paras. 48). Therefore, the Committee recognized that Bulgaria had failed to meet its positive obligations to ensure that Roma enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services (Case ERRC, paras. 49). This was a violation of Article 11§§1, 2 and 3 of the Revised Charter in conjunction with Article E - non-discrimination (Case ERRC, paras. 51).

COMPLAINT LODGED BY MÉDECINS DU MONDE - INTERNATIONAL V. FRANCE (DECISION ON THE MERITS 11/09/2012)

In the case brought by the organization Doctors of the World v. France, Doctors of the World complained that the environmental risks to which the migrant Roma in France are exposed were linked to their living conditions in the camps (Case Médecins du Monde, para.154). The international non-governmental organization states that living conditions were degrading, since harmful and polluting piles of waste, lack of access to drinking water, the general state of dampness, poor ventilation and harmful effects of heating methods (resulting from the authorities' failure to install electricity) caused infectious respiratory, cutaneous and gastrointestinal diseases and scabies (Case Médecins du Monde, para.154). Moreover, the international non-governmental organization concluded that the poor living conditions were the reasons for many accidents, such as burns, gas poisoning and fires (Case Médecins du Monde, para.156). When analysing the evidence the Committee came to a conclusion that Roma communities did not in fact live in healthy environments and recalled that states parties had to take appropriate measures to prevent such situations (Case Médecins du Monde, para.158).

Because France failed to meet its positive obligation to deal with specific problems of Roma communities resulting from unhealthy living conditions, to raise adequate awareness on environmental health issues and to take specific measures to remedy specific problems, the Committee held that Article E in conjunction with Article 11§§1, 2 and 3 was violated (Case Médecins du Monde, paras.144-145, 152-153, 163-164).

In Médecins du Monde - International v. France, the Committee also addressed the Recommendation of the Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe, concluding, inter alia, that Member States should take measures to combat any forms of segregation on racial grounds in environmentally hazardous areas (Case Médecins du Monde, para.21). This includes investing in the development of safe locations and taking steps to ensure that Roma communities have practical and affordable housing alternatives, so as to discourage settlements in, near or on hazardous areas (Recommendation Rec(2005)4, para. 21; Case Médecins du Monde, para.21). Roma who are permanently and legally settled in derelict or unhealthy surroundings should receive assistance in order to improve the sanitary conditions of their homes, including improvement of their environment, and Member States, through their relevant authorities, should ensure that Roma

housing is located in areas that are fit for habitation or in ecologically healthy surroundings Case Médecins du Monde, para.21). The existing settlements which cannot be removed from unsuitable locations should be improved by appropriate and constructive environmental measures (Case Médecins du Monde, paras.21 and 48). Therefore, the Committee recognized that there was a violation of Article E read in conjunction with Article 31§1, that is the right to housing, due to a lack of access to housing of an adequate standard and degrading housing conditions (Case Médecins du Monde, para.183).

COMPLAINED LODGED BY THE EUROPEAN ROMA AND TRAVELLERS FORUM (ERTF) V. THE CZECH REPUBLIC (DECISION ON THE MERITS 17/05/2016)

The Committee came to similar conclusions in the case of the European Roma and Travellers Forum (ERTF) v. the Czech Republic. The Committee considered there was sufficient evidence, which showed that Roma communities in the Czech Republic in many cases did not live in healthy environments (Case ERTF, para.124). Like in the complaint against Bulgaria, this situation was in part attributed to a failure to adopt relevant policies by the State, for instance lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as to inadequacy of measures to ensure public health standards in housing in such neighbourhoods (Case ERTF, para.124). Even though the Czech Republic adopted the Strategy for Combating Social Exclusion 2011-2015 which included the health concept as an element of Roma integration, it yielded little effect and little progress in the exercising of these rights, which constitutes a breach of Article 11§§ 1, 2 and 3 of the 1961 Charter in light of the Preamble, epidemic, endemic and other diseases and accidents (Case ERTF, paras.125-126, 128 and 159). Because the Czech Republic failed to meet its positive obligation to deal with specific problems with the Roma communities resulting from unhealthy living conditions, to raise adequate awareness on environmental health issues and to take specific measures to remedy specific problems, the Committee held that Article E in conjunction with Article 11§§ 1, 2 and 3 was violated (Case ERTF, paraa.144-145, 152, 163-164).

INTERRELATIONSHIP BETWEEN SOCIAL RIGHTS AND THE RIGHT TO A CLEAN ENVIRONMENT IN THE DECISIONS OF THE COMMITTEE ON SOCIAL RIGHTS - HUMAN RIGHTS EXPANSIONISM?

Over the last two decades, there has been a clear expansion of the international debate, including scientific debate, on the approach to environmental change from a human rights perspective, which is related to the increasingly direct impact of environmental pollution, including climate change, on the daily functioning of individuals. An analysis of legal doctrine, especially foreign legal doctrine, reveals two approaches that recognise the human dimension in environmental protection: the rhetorical and legalistic approaches (Lewis, 2018, pp.171-180).

The first of these, the rhetorical approach, which is presented in the literature by B. Lewis, D. Bodansky or S. Atapattu - emphasises that the ethical and moral dimension of human rights protection mainly serves to divert public debate from problematic economic and political considerations towards a human-centred perspective, but without concrete action in this area (Lewis, 2018, p.152-160; Bodansky, 2010, p.517; Apatatu, 2016, p.98). From this perspective, the conceptualisation of environmental changes to the human rights problem therefore only has a symbolic, mostly political function.

The second, legalistic approach is associated with the expansion of the *corpus iuris* of human rights, which is why it is referred to in legal doctrine as the broad expansion of human rights. In principle, the legalistic approach aims to identify the subjects of human rights protection and their rights, the subjects of obligations and their corresponding responsibilities, as well as potential legal means by which specific claims can be asserted. The legalistic concept is divided into two strands in doctrine: narrow and broad. Both legalistic approaches recognising the human dimension of climate change in the context of human rights can be considered as two sub-forms of the so-called expansion of human rights.

The narrow strand of the legalistic concept covers two planes of analysis: Firstly, legal human rights standards can expand internally through the gradual interpretation of pre-existing human rights norms or the development of new human rights standards; secondly, human rights can enter with their standards into areas as diverse as different branches of international law, e.g. environmental law, commercial law or the law of armed conflict (Pathak, 2014, p.17). In a narrow sense, the focus is therefore mainly on identifying potential human rights standards and the associated obligations of the state arising from the already existing system of human rights protection. An example of a narrow legalistic approach is the concept of a dynamic interpretation of existing international human rights law by using the positive obligations of states to counteract environmental pollution, including climate change, in the context of human rights. It should be emphasised here that the narrow approach within the legalistic concept faces several important challenges, namely the question of establishing: the cause-and-effect relationship between the lack of environmental protection or climate change and the violation of a specific law or human rights, the legal standing of the victim or the extraterritorial application of human rights standards.

To limit oneself to a narrow legalistic concept of the relationship between human rights and climate change – despite the lack of a normative standard for the right to a safe climate – would be a certain unjustified narrowing of the analyses devoted to this issue. Therefore, it is necessary to draw attention to another area of doctrinal debate, namely the proposal to include the right to a safe climate as a broad understanding of the legal concept in the light of environmental change and the protection of individual rights. This category directs the way of thinking about the role of human rights in the system of international law, based on the idea of M. Lachs, who emphasises that among the ever-new chapters of international law, which are a reflection of ever closer cooperation on a regional and global scale, human rights play a special role in the development of international law (Lachs, 1992, p. 18–24). In the legalistic concept in a broad sense, doctrinal positions postulate the adoption of a normative standard of autonomous right to a clean environment. As indicated above, issues relating to environmental change pose a far-reaching challenge to the international human rights protection system. The questions that arise in the context of the rules for demonstrating a cause-and-effect relationship, the legal standing of the victims of violations, the issue of the state's positive obligations or extraterritoriality in the investigation of human rights in the context of environmental pollution changes indicate that the postulate of defining the normative construction of the right to a safe environment in international human rights law is increasingly justified. Under this law, states could be held liable for the lack of mitigation or adaptation measures to the effects of environmental change (Caney, 2008, p. 252). An autonomous right to a clean environment would make it possible to define uniform legal standards applicable to all claims that could arise for human rights violations resulting from the negative effects of environmental change (Kahl, 2022, p.18).

These decisions of the European Committee of Social Rights are undoubtedly not only an essential, but also a necessary and very practical contribution to approaching the impact of the state of the environment on social rights and also clarify the Committee's jurisdiction ratione temporis concerning positive obligations under the Charter. It means that the Committee places the right to a healthy environment in relation to social rights in the trend of human rights expansionism. However, what is most important is the fact that they place the right to a healthy environment in the mainstream of human rights. First of all, given the fact that most of collective complaints so far have concerned economic rights, these cases were a relatively rare opportunity for the Committee to develop case law on social rights guaranteed under the Charter from the perspective of right to a healthy environment. In reality, these decisions are the first but significant step in this realm and the Committee expressly used the opportunity to present its dynamic interpretation of the right to a healthy environment in the light of provisions of the Charter. As emphasized by the Committee in Marangopoulos v. Greece, environmental protection has already been presented as one of the key elements of assessment of state actions under the Charter's reporting procedure, i.a. in terms of implementation of the right to health (Case MFHR, paras. 202-203). In a few conclusions on national reports, the Committee pointed out that measures required under Article 11 should be designed to remove the causes of ill-health resulting from environmental threats such as pollution. However, it was important that the Committee's

interpretation be addressed also in a quasi-judicial context of the complaint procedure to show how it may be applied in a specific situation. What is more, after taking a decision on a collective complaint, the Committee systematically investigates the issues addressed in a complaint in periodical reports in each of the states-parties to the Charter (Brillat, 2005, pp. 31, 36). It is important in a sense that in Marangopoulos v. Greece the Committee established a precedence for investigating the a Member State's compliance with environmental obligations resulting from the Kyoto Protocol, and then uses these results to conclude that this state similarly violates obligations under the Charter. The same line of argumentation may be now found in the Committee's conclusions on national reports concerning the right to protection of health. The most important aspect of the Committee's decisions is, however, their impact on the substantive content of social rights - the Committee in principle removes the right to a healthy environment from the limited sphere of so-called third generation rights and introduces them to mainstream human rights. This is done by linking it with the social right to health and also with a "classical" human right to life, the right to safe and healthy working conditions, the right to privacy, etc. At the theoretical level, this decision may be understood as strong confirmation of the indivisibility and interrelations of all human rights (Akandji-Kombe, 2015, p. 36, 89-90.). The Committee's frequent reference to the ECtHR case-law additionally emphasizes the links that arise between two European pillars of protection of human rights, that is the Charter and the ECHR (Case MFHR, para.223). Impact of environmental pollution on exercising human rights has already been investigated by the Court in Lopez-Ostra v. Spain, in which it decided that the right to respect for private and family life was violated (Case Lopez-Ostra, paras.1-58). In the analysis of effects that the Committee's decisions have in the context of states-parties respecting the Social Charter from the point of view of environmental determinants, we may go a step further and think about consequences that such an approach may ultimately have on national law. The Committee's approach influences the national interpretation of rights because it is quite universal in the national decision-making process to interpret rights in the light of international obligations of states in terms of human rights. While not many European constitutions clearly provide for the right to a healthy environment (Poland does not have such a regulation in its constitution), interpretation consistent with the Committee's approach may be a basis for including the right to a healthy environment to constitutional guarantees. It is all the more reasonable since the Charter is not the only international treaty that has addressed environmental obligations under treaties in the context of social rights. Quite the opposite, the Committee places it in a more general context of the European and international law, discussing at the same time many international instruments. Within this framework, state activities under one treaty may be used as an indicator of its readiness and capability (or lack thereof) to comply with international obligations resulting from other, thematically related treaties. The Committee achieves here the so-called synergy effect obtained thanks to a multifaceted use of treaty basis which may not only strengthen the implantation of other treaties but may also constitute an important basis for creating standards and organization in a state's activity in the realm of national law and tactics. For example, under the Kyoto Protocol, states that do not meet their emissions targets may be penalized (Report, 2021). Therefore, failure to make any significant reduction in emissions is equal to a violation of human rights under the Charter. In other words, the obligation of result flowing from the Kyoto Protocol is supported by the obligation to act according to the Charter.

It is also worth pointing to certain similarities to the national constitutional case-law in the scope in which the Committee's reasoning is based on the challenge of states failing to monitor and enforce procedural safeguards of social rights from the environmental perspective. For example, we may point to decisions of the German Constitutional Tribunal concerning "procedural extent of rights" (Beschluß, 1979), where it is said that the state is obliged to introduce procedural safeguards necessary to effective protection of rights. Failure to establish or implement these safeguards may lead to a violation of a given right, like in cases where the Committee declared a violation of rights under the Charter for the same reason. At the same time, importantly, the Charter's signatories are not, of course, obliged to apply the Committee's interpretation of rights under the Charter in national systems of legal protection. This may, however, be helpful in meeting international obligations, not only under the Charter but also under related international treaties.

CONCLUSIONS

It is a well-known fact that changes in the natural environment can affect all human rights and freedoms – including social rights. However, in doctrine, doubts are expressed as to whether only some human rights can be linked in terms of effectiveness of implementation to changes in the natural environment, and if so, which rights? Against this background, the new right to a clean environment is of great importance in terms of international human rights protection procedures. It is inevitable that judicial or non-judicial bodies will have to deal with human rights violations caused by environmental changes and will face important questions. Which human right or conglomerate of human rights is affected by the violation and to what extent? Will standards relating to a given human right be applied or conditions related to the specifics of environmental changes (where the issue of cause and effect, legal standing, etc. is significantly different)? The lack of clear standards in these areas may ultimately lead to different decisions by international bodies.

The evolution of human rights as a continuous phenomenon, taking place in line with the changing modern world - and most importantly - based on the most important legal and moral value, which is human dignity. The perception of social law from the perspective of the right to a clean environment is also part of the discussion on the so-called 'new human rights and places it in the perspective of considerations *de lege ferenda.* It is worth pointing out here that there are standards on the subject of 'qualitative control of new human rights', formulated in the resolution of the UN General Assembly entitled 'Establishing International Standards in the Field of Human Rights' (Resolution 41/120 , p.179). The resolution lists five premises: compliance with the existing system of international human rights regulations; having a fundamental character and deriving from the inherent dignity and value of the human person; sufficient precision to enable the formulation of specific and practical rights and obligations; ensuring, where appropriate, a realistic and effective implementation mechanism; the possibility of ensuring broad international support. The concept of 'new human rights', which includes the right to a clean environment, seems important in the field of clarifying specific social rights, which is the basis for legal reflection and an important background for building a broader normative construction of social rights, as expressed in the decisions of the European Committee of Social Rights. The concept of the right to a clean environment is an important starting point for analyses of the extent to which the current normative standard of social rights protection should be redefined in the face of environmental processes. The former Secretary-General of the United Nations, U Thant, from Myanmar, clearly articulated the thesis that future life on Earth may be endangered in the 1969 report *Man and His Environment,* which went down in history as the 'U Thant Report' (Chajbowicz, 2020, p. 392). The paradox is that more than fifty-five years later, in the 21st century, this message is still relevant despite the enormous progress made in science, technology and changes in awareness and knowledge of real threats (Chajbowicz, 2020, pp. 392-393).

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