

JAROSŁAW KOWALSKI,^a ALEKSANDRA KOWALSKA^b

EXPLORING THE NEED TO INCORPORATE THE RIGHT TO ENVIRONMENT INTO INTERNATIONAL LAW

ANALIZA POTRZEBY WŁĄCZENIA PRAWA DO ŚRODOWISKA DO PRAWA MIĘDZYNARODOWEGO

It is necessary to promote green growth in times of climate crisis. The realization of human rights, in particular the right to environment, fosters sustainable development. The article aims to justify the need to include the right to environment in United Nations (UN) legal acts and regional human rights protection systems. The methodological approach involved conducting a narrative literature review to investigate the issue. A well-established and effective regional system for the protection of the human right to environment would strengthen the respect for this right at the national level. The complexity of the UN creates an obstacle to the exercise of this right, as concluding agreements among States at different stages of development is very difficult. However, incorporating the human right to environment into UN legal acts could give momentum to including this right in national legislation. Building a comprehensive and coherent legislative framework for the protection of the human right to environment at global, regional and national levels should contribute to the improvement of the ecosystem and human health, which is key to sustainable development.

Keywords: human rights; right to environment; environmental Kuznets curve; sustainable development; regional human rights systems

W czasach kryzysu klimatycznego konieczne jest promowanie zielonego wzrostu. Realizacja praw człowieka, w szczególności prawa do środowiska, sprzyja zrównoważonemu rozwojowi. Celem artykułu jest uzasadnienie potrzeby włączenia prawa do środowiska do aktów prawnych Organizacji Narodów Zjednoczonych (ONZ) i regionalnych systemów ochrony praw człowieka. Podejście metodologiczne polegało na dokonaniu przeglądu literatury w celu rozwiązania postawionego problemu badawczego. Ugruntowany i skuteczny regionalny system ochrony prawa człowieka do środowiska wzmocniłby poszanowanie tego prawa na poziomie krajowym. Złożoność ONZ stwarza przeszkodę w korzystaniu z tego prawa, gdyż zawieranie porozumień pomiędzy państwami znajdującymi się na różnych etapach rozwoju jest bardzo trudne. Jednakże włączenie prawa czło-

^a Maria Curie-Skłodowska University in Lublin, Poland /
Uniwersytet Marii Curie-Skłodowskiej w Lublinie, Polska
jaroslaw.kowalski@mail.umcs.pl, <https://orcid.org/0000-0002-4731-1928>

^b Maria Curie-Skłodowska University in Lublin, Poland /
Uniwersytet Marii Curie-Skłodowskiej w Lublinie, Polska
aleksandra.kowalska@mail.umcs.pl, <https://orcid.org/0000-0003-3854-951X>

wieka do środowiska do aktów prawnych ONZ mogłoby być impulsem do włączenia tego prawa do legislacji krajowej. Budowa kompleksowych i spójnych ram prawnych dotyczących ochrony prawa człowieka do środowiska na poziomie globalnym, regionalnym i krajowym powinna przyczynić się do poprawy zdrowia ekosystemu i ludzi, co jest kluczowe dla zrównoważonego rozwoju.

Słowa kluczowe: prawa człowieka; prawo do środowiska; środowiskowa krzywa Kuznetsa; zrównoważony rozwój; regionalne systemy praw człowieka

I. INTRODUCTION

It has been proposed that climate change, the critical environmental concern of our time, should be approached from a human rights perspective (Arts, 2017, pp. 58–62). The realization of the human right to environment determines the full enjoyment of the human rights to life, health, food and water. There have been numerous publications concerning the relationship between environmental protection and human rights (Ciechanowicz-McLean, 2019, pp. 311–326; Drzewicki, 1983, pp. 84–94; Kotzé, 2014, pp. 252–275; Krajewski, 2018, pp. 31–46; Stoczkiewicz, 2021, pp. 309–380) but there is a limited number of studies on the incorporation of the right to environment into regional human rights protection systems (Gronowska, 2014, pp. 179–199; Shelton, 2017, pp. 509–544) or the constitutions of the EU Member States. The United Nations General Assembly (UNGA) recognized a clean, healthy, and sustainable environment as a human right for all in July 2022, for the first time in history.¹ This recognition followed the UN Human Rights Council (HRC) Resolution 48/13, which acknowledged the right in October 2021.² The protection of human rights concerns states, international organizations and non-governmental organizations, as well as ordinary people. The issue of human rights protection is gaining importance at a time of climate change and during ongoing armed conflict in Europe, which has generated risks associated with energy security in many countries.

The changing world presents new challenges for the system of human rights protection and new rights come to the fore with time. Issues that were important in the 1960s or 1970s (e.g. slavery, racial discrimination) are losing their momentum. There are new and pressing problems in the field of human rights. In Asia, for example, there are problems with freedom of media or freedom of speech. In Africa, there is a problem with ensuring everyone's right to water, adequate food or the right to quality education (Gizachew, 2019, pp. 192–213; Kowalski, 2020, pp. 233–246; Kowalski & Kowalska, 2021,

¹ United Nations General Assembly [UNGA], The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022). https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf%3Fln%3Den

² United Nations Human Rights Council [UNHRC], The human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13 (18 October 2021). <https://documents.un.org/doc/undoc/gen/g21/289/50/pdf/g2128950.pdf?token=Kx38YRDyFUF7gTOUs&fe=true>

pp. 9–32; Reporters without Borders, 2019). The human right to the environment is becoming a problem of particular importance all over the world. Climate change is having an increasing influence on the health, quality of life, and well-being of current and future generations (Hondula et al., 2015, pp. 144–154; Ryu et al., 2020, p. 98). Global warming creates particularly difficult conditions for management (especially for agriculture) in the countries of the poorer ‘Global South’ (Karaczun & Kozyra, 2020, p. 107) and is the basis for creating new legal regulations in European countries. These are packages of policies and legislative initiatives, including the European Green Deal or Fit for 55, whose implementation aims to make Europe a climate neutral continent by 2050 (Kowalska & Bieniek, 2022, pp. 607–633). There are numerous parallels between sustainable development and international human rights law (see more McGoldrick, 1996, pp. 796–818). Both concepts have been described as issues whose time has come. The realization of human rights contributes to achieving the Sustainable Development Goals (SDGs) that are at the heart of the global United Nations development Agenda 2030. This resolution is being pursued by societies that are based on respect for human rights (including the right to a clean environment; Arts, 2017, pp. 58–62). The growing importance of the sustainable development paradigm in the economy, social systems and global politics makes the boundaries between environmental law, international human rights law and international economic law increasingly redundant.

The effective implementation of the human right to a clean environment is closely related to ensuring energy security, which is part of SDG7 ‘Clean and affordable energy’. Energy security remains a salient concern for sustainable development focused on economic, social and environmental priorities (Alola et al., 2023). Recent increases in retail electricity prices and energy expenditures in Europe are expected to lead to the widespread adoption of clean and alternative energy sources. The realization of the human right to environment through the reduction of CO₂ emissions and developing technologies for CO₂ capture should allow Europe to look to a net zero future with confidence.

The aim of this article is to justify the need for including the right to environment in the UN legal acts and regional human rights protection systems. The methodological approach was to undertake a narrative literature review to investigate and analyse the issue of the human right to environment, with a focus on the content of national and international law.

II. THE PLACE OF THE RIGHT TO ENVIRONMENT IN THE FIELD OF HUMAN RIGHTS

Langley (1999, pp. 143–144) defines ‘human rights’ as moral and legal rights that all people have. They result from belonging to the human family and are part of what it is to be a real human being. Wellman (1997, pp. 12–16) defines human rights as the rights that a person enjoys only because he/she is

a human being, and it is emphasized such a person is entitled to the rights regardless of acts of statutory law, and irrespective of any human actions. Both definitions have a common denominator, namely the human being. Without the concept of a human being, we cannot speak of a person's rights. The human being is the determinant of a person's rights.

In the 1970's, Vasak, a renowned Czech jurist, proposed the division of human rights into three generations. The first group includes personal and political rights, while the second group includes social, economic and cultural rights, and the third group includes solidarity rights (Domaradzki et al., 2019, pp. 423–443; Wellman, 2000, pp. 639–657). According to Vasak, the rights of the first generation have their roots in the eighteenth-century Europe and are closely related to the slogans of the French Revolution. The origins of the second-generation rights are seen in the Mexican and Bolshevik revolutions. The third group of rights complements the first two. A complement to Vasak's the concept of generational human rights is his assumption that 'generations' do not supersede and replace earlier rights, but complement and supplement them. Under this typology, the right to environment or the right to natural environment is included in the third generation of rights.

Changes in the natural environment caused by global warming are increasingly important determinants of the quality of life of people and of economic growth, and they result in the fast development of the system of international law. These changes directly or indirectly affect the right to life, health and environment, the right to water and the right to adequate food, while ensuring all these rights in a sustainable way helps to combat climate change. As civilization develops, we discover and formulate new human rights. After legitimizing political, social and economic rights, lawmakers face a new creed – a right or bundle of rights to a clean environment. Following technological progress and an increase in ecological awareness (Kowalska et al., 2021; Zuba-Ciszewska et al., 2019, pp. 3396–3412), along with the desire to reduce pollution, emissions and other environmentally harmful activities (Fankhauser et al., 2022, pp. 15–21), there has been more and more talk about the right of an individual to live in a clean, friendly environment (Stoczkiewicz, 2021, pp. 309–380). In parallel, climate-related national laws have been developed across the world. By 2020, laws focused on reducing greenhouse gas (GHG) emissions existed in 56 countries responsible for over half of global emissions (Intergovernmental Panel on Climate Change, 2023, p. 19).

The human right to environment is complex because it includes the human right to water and the right to clean air, the provision of which is undoubtedly dependent on a clean environment. It is difficult to clearly define the right to environment. This situation arises from the different terminology used at the level of international law and domestic law. The United Nations Environment Programme (UNEP)³ uses the term 'right to a healthy environment' and

³ United Nations Environment Programme, *The Environmental Rule of Law: First Global Report* (29 January 2019). <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>

states: 'Many countries now recognize a right to a healthy environment as a constitutional or statutory right. This right asserts that the environment must meet certain basic benchmarks of healthfulness and includes affirmative substantive rights, such as the right to clean air and water, and defensive substantive rights, such as the right to be free from toxic wastes or pollution' (pp. 154–156). The right to a healthy environment can be described as a fundamental environmental right and can be expressed in many ways, including the 'right to a clean environment' or the 'right to a sustainable environment that shows due respect for health' (pp. 154–156).

The idea of formulating human rights to environment at the international level first appeared in 1968 when the UNGA recognized that technological changes could threaten fundamental human rights (Thorne, 1991, pp. 301–342). In 1969, the UNGA adopted the Declaration on Social Progress and Development, which examined the interdependence between environmental protection and human rights. In 1972, the UN⁴ officially recognized the right to clean environment for the first time. The same year, the United Nations Conference on the Human Environment was held in Stockholm. The conference adopted the principle that 'man has a fundamental right to freedom, equality, and adequate conditions of life in an environment of quality that permits a life of dignity and well-being' (p. 4). This event caused the issue of human rights to environment to become widely discussed at various levels. The introduction of human rights and environmental issues into public discourse was a major step forward in international human rights law. This event was also a signal for the systems of regional protection of human rights to undertake the codification of this right in international agreements of a regional character. An example of this was the adoption of the Additional Protocol to the American Convention on Human Rights in San Salvador on 17 November 1988.⁵ Article 11 point 1 of the Protocol states that everyone has the right to live in a healthy environment and to access basic public services. The African Charter on Human and Peoples' Rights, adopted in 1981⁶ also contains this right in Article 24. The right to a safe, clean and sustainable environment is also included in point 28(f) of the Association of South-East Asian Nations (ASEAN) Human Rights Declaration of 19 November 2012⁷ concerning the right to an adequate standard of living. The document is not binding in its current form but it is the only regional or rather sub-regional Asian international document on human rights.

From the early 1990s, further attempts were made to codify the right to environment in the system of the Council of Europe. The main contribution

⁴ United Nations, Report of the United Nations Conference on the Human Environment – Stockholm, 5–16 June 1972. <https://wedocs.unep.org/20.500.11822/30829>

⁵ Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", 17 November 1988. <https://www.refworld.org/docid/3ae6b3b90.html>

⁶ African Charter on Human and Peoples' Rights, June 1981. https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

⁷ ASEAN Human Rights Declaration, 19 November 2012. <https://asean.org/asean-human-rights-declaration/>

to this was made by the Parliamentary Assembly of the Council of Europe, which, through recommendations addressed to the Committee of Ministers, brought this right into force. So far, it has not been possible to formulate the right to environment in a normative act/international agreement within the framework of the Council of Europe. The implementation of this idea can be found in the jurisprudence of the European Court of Human Rights ('ECtHR' or 'the Court'). When examining cases concerning an infringement of Article 8 of the European Convention on Human Rights (ECHR)⁸ regarding respect for private and family life, the Court has repeatedly stated that this right includes the right to environment.⁹ For example in 2020, the Swiss association of senior women took their government to the ECtHR because their health was threatened by heatwaves exacerbated by the climate crisis. On 9 April 2024, the Court found a violation of the right to respect for private and family life in the *KlimaSeniorinnen v. Switzerland* case and this was a milestone decision. The Court found that Switzerland had failed to comply with its obligations under the ECHR concerning climate change. The Swiss government had not acted in time and in an appropriate way to devise, develop and implement relevant legislation and measures for the reduction of greenhouse gas (GHG) emissions. The State had also failed to meet its past GHG emission reduction targets.¹⁰

It is worth pointing out that human rights arguments are increasingly used in climate change litigation, particularly in order to support complaints concerning states' failure to mitigate climate change (Savaresi & Auz, 2019, pp. 244–262). Climate litigation has begun to utilize the Paris Agreement of 2015, which requires all parties to communicate ambitious GHG emission reduction targets to achieve a specific long-term global temperature goal (Preston, 2021, pp. 1–32).

III. THE ECONOMIC AND POLITICAL BACKGROUND FOR THE DEVELOPMENT OF THE HUMAN RIGHT TO ENVIRONMENT

The implementation of the human right to environment does not depend solely on the codification of this right in an international agreement or a normative act of national law. It seems that factors not directly related to the legal system in a given area are of great importance for ensuring the right to

⁸ European Convention of Human Rights, 4 November 1950. https://www.echr.coe.int/documents/d/echr/Convention_ENG

⁹ ECtHR, *Powell and Rayner v. The United Kingdom*, App. no. 9310/81, Judgement of 21 February 1990 (<https://www.bailii.org/eu/cases/ECHR/1990/2.html>); Judgment of 20 April 2004; ECtHR, *Surugiu v. Romania*, App. no. 48995/99.

¹⁰ ECtHR, *KlimaSeniorinnen v. Switzerland*, App. no. 53600/20, Judgement of 9 April 2024. (<https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>).

environment. First of all, it should be noted that the implementation of the right to environment is closely related to the economic development of a given region or country. High levels of economic security and technological advances result in the embracing of post-materialist values in advanced economies, such as care for the environment, and political freedom (Bhattacharyya et al., 2020, pp. 51–71). Thus, it can be assumed that the more economically developed the area, the greater the care for the environment, and the greater the awareness of the people living there about the need to protect this right (Chen et al., pp. 2–11). An example is Europe, where a high level of economic development affects the awareness of Europeans about the need to protect the environment, but also to ensure the right to it. The Eurobarometer (2020) survey revealed that a large majority of EU citizens say protecting the environment is important to them personally, with over half rating it as very important. Furthermore, Europeans want more to be done for the planet – with responsibility to be shared by businesses (in particular big ones), governments and the EU, as well as residents themselves. Therefore, environmental education plays an important role in working towards the sustainable development of emerging economies, which suffer the most from climate change (Karaczun & Kozyra, 2020, p. 107; Manzanedo & Manning, 2020). Furthermore, an increasing share of the private services sector in the European economy eases the stress on the environment and natural resources, as illustrated by the environmental Kuznets curve (Mishra, 2020, p. 5). Nevertheless, the EU countries have developed environmental measures, for example the Corporate Sustainability Reporting Directive entered into force in January 2023 and all large or listed companies were required to disclose information on the social and environmental issues resulting from the companies' operations (European Commission, 2023). The development of the emission trading system has been also an important policy for the EU and China in their efforts to achieve carbon neutrality (Dechezleprêtre et al., 2023; Zhang et al., 2023).

The point is to strive for decoupling gross domestic product (GDP) growth from resource use and carbon emissions in order to ensure green growth (Hickel & Kallis, 2020, pp. 469–486). Using the environmental Kuznets curve (EKC), the relation between economic development and environmental degradation has been presented in the literature (Anwar et al., 2022, pp. 135–145). The EKC hypothesis assumes that there is an inverse-U-shaped relationship between economic activities, usually measured in terms of per capita income, and environmental quality, often measured by per capita CO₂ emission. At the first stage of economic growth, environmental degradation rises with an increase in per capita income, but begins to decrease as the rise in per capita income passes beyond the income turning point. EKC models the phenomenon, meaning that 'as societies become wealthier, concerns shift from economic growth to environmental protection' (Mishra, 2020, p. 4). There are several reasons for this phenomenon, including: (i) more affluent and progressive communities place greater value on a cleaner environment and thus develop institutional and non-institutional measures to achieve it; growth leads to the development of green consumption patterns; (ii) pollution increases in the ear-

ly phase of a country's industrialization, due to rudimentary and inefficient industries; when industrialization starts to achieve more advanced levels until it is sufficiently advanced, the pollution will stop increasing; instead, it will start to make a U-turn; and (iii) the service sector is gaining prominence in more advanced and mature economies, causing a further reduction in pollution (Mishra, 2020, p. 5).

The implementation of the right to environment also depends on the political system of a given area or cultural issues. States with a democratic system are more likely and willing to participate in international organizations dealing with the protection of human rights. Such countries are more likely to take action to protect the environment, and they are also more concerned about their citizens. This is most evident in the country members of the Council of Europe and the Organization of American States. The history of Latin American, African and Asian countries has shown that autocracy facilitates human rights abuses that further cement authoritarian governance (Camacho, 2022, p. 1; Repucci & Slipowitz, 2021, p. 2). It also seems that the right to environment is conditioned by cultural issues. The right to environment is ensured in various forms in all four regional human rights systems. However, there is no such law in Asia (Boer, 2015, pp. 134–179).

An important milestone in the development of the human right to environment was the conference in Rio de Janeiro in 1992. The outcome of the conference was the formulation and adoption of the Agenda 21 document. This document contained a vision of the management of the world's population, taking into account fundamental human rights and environmental protection.¹¹ The Stockholm Declaration and the Rio Declaration have demonstrated the relationship between human rights and the environment and nature conservation.

Despite many years of discussion about the existence of a subjective right to environment, this right has not been explicitly formulated in international law binding on the UN Member States. The situation is slightly better at the level of regional protection of human rights, in particular in America.

At the global level, the UN stands up for human rights. This organization, equipped with a system of human rights protection bodies, monitors the situation and issues recommendations. The advantage of the UN – and at the same time a major problem – is the number of its members. The size of the organization influences the creation of real protection of human rights but, at the same time, the large number of members have a negative impact on the organization itself, as it often makes it difficult to find common political objectives and priorities, for example in the field of environmental protection. Finding a consensus on this issue is hindered, for instance, by different natural conditions which determine the effective use of renewable energy sources.

¹¹ United Nations, Report of the United Nations Conference on Environment and Development Rio de Janeiro, 3–14 June 1992. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N92/836/55/PDF/N9283655.pdf?OpenElement>

IV. THE RIGHT TO ENVIRONMENT IN REGIONAL HUMAN RIGHTS PROTECTION SYSTEMS

There are currently four regional human rights systems. These are: (i) the European system of human rights protection established under the Council of Europe and based on the ECHR; (ii) the American system of human rights protection established under the Organization of American States, the continuation of the Pan-American Union, based on the American Convention on Human Rights¹²; (iii) the African system of human rights protection established under the African Union, based on the African Charter on Human and Peoples' Rights, and (iv) the Arab system of human rights protection functioning under the League of Arab States and based on the Arab Charter on Human Rights.¹³ Within each of these systems, a catalogue of human rights under legal protection has been established. The sets of rights contained in the conventions, charters and additional protocols are not identical and contain different rights depending on the place and time of their adoption.

The European system for the protection of human rights established within the framework of the Council of Europe and based on the ECHR does not explicitly provide for the human right to environment. The first attempt to address this issue was the recommendation of the Parliamentary Assembly of the Council of Europe that 'every person has the fundamental right to the environment and to such living conditions as are conducive to his or her good health, well-being and the full development of the human personality'.¹⁴ The proposal to formulate the human right to environment in the Additional Protocol appeared at the end of the 1990s. This idea has not been implemented. Instead, the 2003 Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers of the Council of Europe prepare an additional protocol to the ECHR of a procedural nature. As part of such a protocol, it was proposed to formulate an individual procedural right of an individual intending to act for the improvement of the environment. The change in the position regarding the codification of the human right to environment resulted somewhat from the position of the ECtHR, according to which real rights should be ensured, not illusory ones. Such a right may be inferred from the case-law of the ECtHR, for instance from the right to privacy enshrined in Article 8 of the ECHR.¹⁵ The Court took a broader view of this issue in the case

¹² American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), 22 November 1969. https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf

¹³ League of Arab States, Arab Charter on Human Rights (unofficial translation). <https://www.ohchr.org/sites/default/files/Documents/Issues/IJudiciary/Arab-Charter-on-Human-Rights-2005.pdf>

¹⁴ Parliamentary Assembly of the Council of Europe, Recommendation 1130 (1990). Formulation of a European charter and a European convention on environmental protection and sustainable development. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?file-id=15164&lang=en>

¹⁵ ECtHR, *Lopez Ostra v. Spain*, App. no. 16798/90, Judgment of 9 December 1994 ([https://hudoc.echr.coe.int/FRE#%22itemid%22:\[%22001-57905%22\]](https://hudoc.echr.coe.int/FRE#%22itemid%22:[%22001-57905%22])).

of *Kyrtatos v. Greece* in 2003.¹⁶ The Court held that ‘Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect’ (*Kyrtatos v. Greece*, para. 52).

The situation is different in the American regional human rights system. The human right to environment is enshrined in the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights. Article 11 of this Protocol (the so-called Protocol of San Salvador) provides that ‘1. Everyone shall have the right to live in a healthy environment and to have access to basic public services’ and ‘2. The States Parties shall promote the protection, preservation, and improvement of the environment.’

In the African system, the human right to the environment has been provided for in a slightly different form. Article 24 of the African Charter of Human and Peoples’ Rights states that ‘All peoples shall have the right to a generally satisfactory environment favourable to their development.’ This right belongs to nations/tribes and not to individuals. This solution is different from the one adopted in the American system, which results from a different culture and tradition. Articles 16 and 18 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa again refer to the right to environment. The regulation states: ‘Women shall have the right to live in a healthy and sustainable environment’ (Article 18 para. 1).¹⁷ The wording of this right in the African Charter and its repetition in more detailed regulations deserves special recognition.

Also, the system based on the Arab Charter of Human Rights provides for the human right to environment. Article 38 states: ‘Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States Parties shall take the necessary measures commensurate with their resources to guarantee these rights.’ This right is reiterated in Article 39, according to which the State is to take measures to combat environmental pollution and ensure adequate sanitation systems.

The mere formulation of the right to environment is not sufficient for such a right to be fully implemented. Effective implementation of the right to environment at global and regional levels requires compliance with several requirements. The first factor is the creation of a supranational court whose task would be to deal with cases related to infringement of the guaranteed rights. The second element is the legal instruments that allow this right to be exercised. Examples of such tools could be an individual application, an interstate application, independent investigations, a reporting mechanism, or

¹⁶ ECtHR, *Kyrtatos v. Greece*, App. no. 41666/98, Judgment of 22 May 2003. <https://hudoc.echr.coe.int/ENG#%7B%22itemid%22:%5B%22001-61099%22%5D%7D>

¹⁷ African Union, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 11 July 2003. https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf

advisory opinions (Table 1). These instruments allow people, non-governmental organizations and governments to take active measures when the right to environment is violated. The third factor is the political cooperation of States and international organizations. The human right to environment can be implemented only when international courts, legal instruments and effective political cooperation are well-developed at the international level.

At the regional level, not all systems have developed their own courts and legal tools to ensure the implementation of the right to environment. For example, such a court has not yet been created in the Arab system. Despite the formulation of the right to environment, it remains more in the sphere of ideas than reality.

The situation is different in the African system of human rights protection. Under this system, there is a court, and there are legal tools to exercise this right. However, the problem is the mutual will of African States and the level of economic development in many of them. Armed conflicts between States or civil wars are also an obstacle to the implementation of the right to environment. The way in which the right to environment was formulated also generates some problems. This is because the creators of the Charter, instead of the right to a clean environment, used the phrase ‘generally satisfactory’ (Tignino & Mbengue, 2022, pp. 3–6). Such a solution significantly weakens the strength of the Arab Charter of Human and Peoples’ Rights in this regard.

Table 1

Summary of the main elements of the control mechanism in regional human rights protection systems

Regional systems of human rights protection	Control machinery				
	Individual applications	Interstate applications	Reports	Independent investigation / investigation	Interim measures
The European regional system of human rights protection		✓	✓	✓	✓
The American regional systems of human rights protection	✓	✓	✓	✓	✓
The African regional systems of human rights protection		✓	✓	✓	✓
The Arabic regional systems of human rights protection	–	–	✓	–	–

Source: the author’s elaboration based on European Convention of Human Rights (1950), American Convention on Human Rights, ‘Pact of San Jose, Costa Rica (1969), African Charter on Human and Peoples’ Rights (1981), and Arab Charter on Human Rights (2005).

Only the American regional system of human rights protection generally meets all the requirements needed to fully implement the right to environment, as a court was created within it and legal tools were created in the form of an individual and interstate application. Cooperation and involvement at the political level of the States signatories to the American Convention on Human Rights are also visible.

V. THE HUMAN RIGHT TO ENVIRONMENT IN POLAND AND OTHER EUROPEAN COUNTRIES

Certain regulations concerning the human right to environment are provided for in the legal system of the European Union. Article 37 of the Charter of Fundamental Rights (CFR) states that ‘a high level of environmental protection and an improvement in its quality must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development’.¹⁸ Until 2010 the CFR was a solemn proclamation and after that date its character changed. It now contains treaty standards.

The right to environment is enshrined in the domestic laws of all EU Member States. The right to environment is enshrined in the constitutions of 15 Member States (Table 2). In other countries, the right to environment has been formulated in lower-ranking acts. The provisions in individual constitutions differ significantly. For example, the French Constitution does not include the right to environment. This right is enshrined in the 2004 Environmental Charter annexed to the Constitution.¹⁹ In the Polish legal system, the right to environment is provided for in the Constitution of the Republic of Poland. This right consists of the rights and obligations of the citizen and the corresponding obligations of the State. The Polish citizen is obliged to take care of the natural environment, which is a ‘common good’ (Trzciński, 2018, pp. 23–31).

Article 74 of the Polish Constitution establishes the subjective right to environment. Trzewik (2021, pp. 57–63) argued that this subjective right protecting personal goods related to the environment was properly formulated. Paragraph 1 of this provision states that public authorities shall pursue policies which ensure the ecological security of current and future generations. This supports intergenerational equity, which is the central concept of sustainable development. Paragraph 2 of Article 72 places the obligation to protect the environment on public authorities. Paragraph 4 of Article 68 is a specific provision which requires the competent public authorities to combat epidemic diseases and prevent the negative health consequences of degradation of the environment.²⁰

¹⁸ Charter of Fundamental Rights of the European Union, Official Journal of the European Communities C 364, 18.12.2000. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹⁹ Constitution de la République Française, Texte intégral de la Constitution du 4 octobre 1958 en vigueur. <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur>

²⁰ Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997, Journal of Laws of the Republic of Poland 1997, No. 78, item 483 as amended.

Table 2

Presence of regulations on the right to environment in the constitutions of the EU Member States

EU Member State	Name of the legislative act and date of entry into force	Article
Austria	Verfassungen Österreich: Bundes-Verfassungsgesetz, 1920	<i>Not regulated</i>
Belgium	De Belgische Grondwet, 1831	<i>Not regulated</i>
Bulgaria	Конституция на Република България, 1991	Article 55
Cyprus	Σύνταγμα της Κυπριακής Δημοκρατίας, 1960	<i>Not regulated</i>
Czech Republic	Ústava České Republiky, 1992	Article 35
Denmark	Danmarks Riges Grundlov, 1953	<i>Not regulated</i>
Estonia	Eesti Vabariigi põhiseadus, 1992	<i>Not regulated</i>
Finland	Suomen perustuslaki, 1999	Article 20
France	Constitution de la République Française, 1958	<i>Not regulated*</i>
Greece	Σύνταγμα της Ελλάδας, 1975	Article 24**
Spain	Constitución Española, 1978	Article 45
Netherlands	Grondwet voor het Koninkrijk der Nederlanden, 1814	Article 21
Ireland	Constitution of Ireland, 1937	<i>Not regulated</i>
Lithuania	Lietuvos Respublikos Konstitucija, 1992	Article 53, 54
Luxembourg	Constitution du Grand-Duché de Luxembourg, 1868	Article 11 bis***
Latvia	Latvijas Republikas Satversme, 1922	Article 115
Malta	Kostituzzjoni ta' Malta, 1964	<i>Not regulated</i>
Germany	Grundgesetz für die Bundesrepublik Deutschland, 1949	<i>Not regulated</i>
Poland	Konstytucja Rzeczypospolitej Polskiej, 1997	Article 68, 74
Portugal	Constituição da República Portuguesa, 1976	Article 66
Romania	Constituția României, 1991	Article 35
Slovakia	Ústava Slovenskej republiky, 1992	Article 44, 45
Slovenia	Ustava Republike Slovenije, 1991	Article 72
Sweden	Grundlagarna, Regeringsformen, 1974	<i>Not regulated</i>
Hungary	Magyarország Alaptörvénye, 2011	Article XXI
Italy	Costituzione della Repubblica Italiana, 1947	Article 9, 41****

* Environmental Charter, 2004, which was adopted on 1 March 2005, has supplemented the constitution with the right of access to environmental information held by public authorities and to participate in public decisions affecting the environment [Loi constitutionnelle n° 2005-205 du 1 mars 2005 relative à la Charte de l'environnement]. ** Article 24 section 1 and 2 were amended in 2001. *** Amended in 2007. **** Amended in 2022.

Source: the authors' elaboration.

It is worth highlighting that constitutional protection in Italy was extended to environment and ecosystems in February 2022. Piscitelli et al. (2022, pp. 1–2) suggested that the developed model could be valuable for other Eu-

ropean countries to redesign their legal framework regarding environmental issues. The authors underlined that including environmental protection in the Italian Constitution means increasing the level of protection for citizens' health. This is in line with 'One Health Approach' based on recognizing the interdependence of the health of people, animals and the environment.

VI. CONCLUSION

Since the effects of climate change are becoming more frequent and severe, sufficient measures that support green growth are vital for decoupling economic growth from environmental degradation. Furthermore, there is a strong interdependence between the health of humans and ecosystems.

Including the human right to environment in Constitutions and/or lower-ranking laws is insufficient to guarantee that the right will become a reality. Incorporating the right to environment into regional human rights systems will entail that people who live in States that provide weaker protection in this field can assert their rights before international courts. American, African and Arab systems explicitly provide for the human right to environment. Although the ECHR does not expressly guarantee a right to a clean and healthy environment, it offers a certain degree of environmental protection (Ciechanowicz-McLean, 2019, pp. 311–323; Cliza & Spătaru-Negură, 2020, pp. 122–134). Effective regional protection of any human right requires the existence of a supranational court and legal tools that allow the right to be exercised (individual and interstate application, independent investigation, etc.), as well as the well-functioning cooperation of states and international organizations. It can be concluded that only the American system meets the requirements. This means that human beings and Member States are entitled to make a complaint against the violation of the human right to a healthy environment. If the court finds this application admissible and well-founded, the country which committed the breach will have to change its environmental legislation.

The human right to environment is not formulated in any international law binding on the UN Member States. This right has been a *soft law* at global level, which means that numerous non-binding resolutions or declarations regarding the human right to environment have existed alongside *hard law* provisions promoting this human right (Ciechanowicz-McLean, 2019, pp. 311–323). These include international conventions and agreements on ensuring quality air, the protection of species of wild fauna and flora, marine environment protection, the protection of soil and groundwater, waste management, and so on. Incorporating the right to environment into a multilateral international agreement concluded by the UN could give momentum to including this right in national laws. Above all, however, the states parties would be obliged to respect this right.

Well-established international protection of the human right to environment would likely have positive impacts on the health of ecosystems and thus

contribute to a sustainable development. The recent UN recognition of the human right to a healthy environment should help to speed up the evolution of international law concerning this issue. It is worth adding that there is a particular challenge with the realization of the right to environment in times of the ongoing climate-change crisis, and this might be the subject of further interdisciplinary studies.

References

- Alola, A. A., Özkan, O., & Obekpa, H. O. (2023). Examining the patterns of disaggregate energy security risk and crude oil price: The USA scenario over 1970–2040. *Resources Policy*, 82, Article 103514. <https://doi.org/10.1016/j.resourpol.2023.103514>
- Anwar, M. A., Zhang, Q., Asmi, F., Hussain, N., Plantinga, A., Zafar, M. W., & Sinha, A. (2022). Global perspectives on environmental kuznets curve: A bibliometric review. *Gondwana Research*, 103, 135–145. <https://doi.org/10.1016/j.gr.2021.11.010>
- Arts, K. (2017). Inclusive sustainable development: A human rights perspective. *Current Opinion in Environmental Sustainability*, 24, 58–62. <https://doi.org/10.1016/j.cosust.2017.02.001>
- Bhattacharyya, A., Biswas, K., & Moyeen, A. (2020). Determinants of pro-environmental behaviours – a cross country study of would-be managers. *Australasian Accounting, Business and Finance Journal*, 14(2), 51–71. <http://dx.doi.org/10.14453/aabfj.v14i2.5>
- Boer, B. (2015). Environmental law and human rights in the Asia-Pacific. In B. Boer (Ed.), *Environmental law dimensions of human rights: Collected courses of the Academy of European Law* (pp. 134–179). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198736141.003.0006>
- Camacho, G. (2022). *The connections between corruption, autocracy and human rights in Latin America*. Transparency International. https://knowledgehub.transparency.org/assets/uploads/kproducts/Connections-between-corruption-autocracy-and-human-rights-in-Latin-America_Final.pdf
- Chen, X., Huang, B., Lin, & Lin, Ch-T. (2019). Environmental awareness and environmental Kuznets curve. *Economic Modelling*, 77, 2–11. <https://doi.org/10.1016/j.econmod.2019.02.003>
- Ciechanowicz-McLean, J. (2019). Zasady globalnego prawa środowiska [Principles of global environmental law]. *Gdańskie Studia Prawnicze*, 42, 311–323. https://gsp.ug.edu.pl/index.php/gdanskie_studia_prawnicze/article/view/5278
- Cliza, M-C., & Spätaru-Negură, L-C. (2020). Environmental protection derived from the European Convention for Human Rights and from the European Social Charter. *LESIJ – Lex ET Scientia International Journal*, 27(2), 122–134.
- Dechezleprêtre, A., Nachtigall, D., & Venmans, F. (2023). The joint impact of the European Union emissions trading system on carbon emissions and economic performance. *Journal of Environmental Economics and Management*, 118, Article 102758. <https://doi.org/10.1016/j.jeem.2022.102758>
- Domaradzki, S., Khvostova, M., & Pupovac, D. (2019). Karel Vasak’s generations of rights and the contemporary human rights discourse. *Human Rights Review*, 20(4), 423–443. <https://doi.org/10.1007/s12142-019-00565-x>
- Drzewicki, K. (1983). Trzecia generacja praw człowieka [The third generation of human rights]. *Sprawy Międzynarodowe*, 10, 84–94.
- Eurobarometer. (2020). Attitudes of Europeans towards the environment. <https://europa.eu/eurobarometer/surveys/browse/all/series/14861>
- European Commission. (2023). Corporate sustainability reporting. https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en
- Fankhauser, S., Smith, S. M., Allen, M., Axelsson, K., Hale, T., Hepburn, C., Kendall, J. M., Khosla, R., Lezaun, J., Mitchell-Larson, E., Obersteiner, M., Rajamani, L., Rickaby, R., Sed-

- don, N., & Wetzler, T. (2022). The meaning of net zero and how to get it right. *Nature Climate Change*, 12, 15–21. <https://doi.org/10.1038/s41558-021-01245-w>
- Gizachew, G. W. (2019). Minority and federalism: An assessment of the right to political participation of 'non-indigenous' peoples in Benishangul-Gumuz regional state, Ethiopia. *International Journal of Human Rights and Constitutional Studies*, 6(3), 192–213. <https://doi.org/10.1504/IJHRCS.2019.097963>
- Gronowska, B. (2014). O prawie do środowiska w systemie Europejskiej Konwencji Praw Człowieka – refleksje na tle najnowszego orzecznictwa strasburskiego [On the right to environment within the system of the European Convention on Human Rights – reflections in the light of recent Strasbourg case-law]. *Przegląd Prawa Ochrony Środowiska*, 1, 179–199. <https://doi.org/10.12775/PPOS.2014.007>
- Hickel, J., & Kallis, G. (2020). Is green growth possible? *New Political Economy*, 25(4), 469–486. <https://doi.org/10.1080/13563467.2019.1598964>
- Hondula, D., Balling, R., Vanos, J., & Georgescu, M. (2015). Rising temperatures, human health, and the role of adaptation. *Current Climate Change Reports*, 1(3), 144–154. <https://doi.org/10.1007/s40641-015-0016-4>
- Intergovernmental Panel on Climate Change. (2023). Synthesis Report of the IPCC Sixth Assessment Report (AR6). <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>
- Karaczun, Z. M., & Kozyra, J. (2020). *Wpływ zmian klimatu na bezpieczeństwo żywnościowe Polski* [The impact of climate change on Poland's food security]. Wydawnictwo SGGW w Warszawie.
- Kotzé, L. J. (2014). Human rights and the environment in the Anthropocene. *The Anthropocene Review*, 1(3), 252–275. <https://doi.org/10.1177/2053019614547741>
- Kowalska, A., & Bieniek, M. (2022). Meeting the European Green Deal objective of expanding organic farming. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 17(3), 607–633. <https://doi.org/10.24136/eq.2022.021>
- Kowalska, A., Ratajczyk, M., Manning, L., Bieniek, M., & Maćik, R. (2021). “Young and Green” a study of consumers’ perceptions and reported purchasing behaviour towards organic food in Poland and the United Kingdom. *Sustainability*, 13(23), Article 13022. <https://doi.org/10.3390/su132313022>
- Kowalski, J. (2020). The right to water as a fundamental human right in Poland and worldwide. *International Journal of Human Rights and Constitutional Studies*, 7(3), 233–246. <https://doi.org/10.1504/IJHRCS.2020.109251>
- Kowalski, J., & Kowalska, A. (2022). The realization of the human right to food: Preliminary remarks on assessing food security. *Przegląd Prawno-Ekonomiczny*, 1, 9–32. <https://doi.org/10.31743/ppe.13009>
- Krajewski, P. (2018). Biogospodarka – rozwój gospodarczy i ochrona zasobów naturalnych w kontekście ochrony praw człowieka. *Studia Prawnoustrojowe*, 39, 31–46.
- Langley, W. E. (1999). *Encyclopedia of human rights issues since 1945*. Routledge. <https://doi.org/10.4324/9780203058633>
- Manzanedo, R. D., & Manning, P. (2020). COVID-19: Lessons for the climate change emergency. *The Science of The Total Environment*, 742(7577), Article 140563. <https://doi.org/10.1016/j.scitotenv.2020.140563>
- McGoldrick, D. (1996). Sustainable development and human rights: An integrated conception. *The International and Comparative Law Quarterly*, 45(4), 796–818. <https://doi.org/10.1017/S0020589300059704>
- Mishra, M. K. (2020). *The Kuznets Curve for the sustainable environment and economic growth*. ZBW – Leibniz Information Centre for Economics. <https://hdl.handle.net/10419/216734>
- Piscitelli, P., Costa, S., Costa, A., Emiliano, M., Caputo, N., Schittulli, F., Bonabello, M., Pollice, F., Uricchio, A. F., Scania, A. P., & Miani, A. (2022). Italian Constitution amended to include environmental and health protection: A model for Europe. *The Lancet Regional Health – Europe*, 16, 1–2. <https://doi.org/10.1016/j.lanepe.2022.100367>
- Preston, B. J. (2021). The influence of the Paris Agreement on climate litigation: Legal obligations and norms (Part I). *Journal of Environmental Law*, 33(1), 1–32. <https://doi.org/10.1093/jel/eqaa020>
- Reporters without Borders. (2019). 2019 World Press Freedom Index – A cycle of fear. RFS Reporters without Borders. <https://rsf.org/en/2019-world-press-freedom-index-cycle-fear>

- Repucci, S., & Slipowitz, A. (2021). Democracy under siege. Freedom House. https://freedomhouse.org/sites/default/files/2021-03/FIW2021_Abridged_03112021_FINAL.pdf
- Ryu, H., Coscieme, L., Droste, N., Ghosh, S., Nilsson, L., Rana, S., & Shrestha, U. (2020). Assessing nature's contributions to people. *Frontiers for Young Minds*, 8, Article 98. <https://doi.org/10.3389/frym.2020.00098>
- Savaresi, A., & Auz, J. (2019). Climate change litigation and human rights: Pushing the boundaries. *Climate Law*, 9(3), 244–262. <https://doi.org/10.1163/18786561-00903006>
- Shelton, D. (2017). Human rights, environmental rights, and the right to environment. In S. Vanderheiden (Ed.), *Environmental rights* (pp. 509–544). Routledge. <https://doi.org/10.4324/9781315094427>
- Stoczkiewicz, M. (2021). *Prawo ochrony klimatu w kontekście ochrony praw człowieka* [Climate protection law in the context of human rights protection]. Wolters Kluwer Polska.
- Thorne, M. (1991). Establishing environment as a human right. *Denver Journal of International Law & Policy*, 19(2), 301–342. <https://digitalcommons.du.edu/djilp/vol19/iss2/3/>
- Tignino, M., & Mbengue, M. M. (2022). Climate change at the crossroads of human rights: The right to a healthy environment, the right to water and the right to development. *Review of European, Comparative & International Environmental Law*, 31(1), 3–6. <https://doi.org/10.1111/reel.12440>
- Trzcíński, J. (2018). Rzeczpospolita Polska dobrem wspólnym wszystkich obywateli [The Republic of Poland – the common good of all citizens]. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 80(1), 23–31. <https://doi.org/10.14746/rpeis.2018.80.1.3>
- Trzewik, J. (2021). Prawo do życia w czystym środowisku umożliwiającym oddychanie powietrzem atmosferycznym spełniającym standardy jakości jako dobro osobiste — glosa do zagadnienia prawnego zarejestrowanego w Sądzie Najwyższym, III CZP 27/20 [The right to live in a clean environment that allows for breathing atmospheric air that meets quality standards as a personal good — a gloss on the legal issue recorded in the Supreme Court, III CZP 27/20]. *Przegląd Ustawodawstwa Gospodarczego*, 4(874), 57–63.
- Wellman, C. (1997). Seeking a theory of rights. In C. Wellman (Ed.), *An approach to rights: Studies in philosophy of laws and morals* (pp. 1–48). Springer.
- Wellman, C. (2000). Solidarity, the individual and human rights. *Human Rights Quarterly*, 22(3), 639–657. <https://doi.org/10.1353/hrq.2000.0040>
- Zhang, H., Zhang, D., & Zhang, X. (2023). The role of output-based emission trading system in the decarbonization of China's power sector. *Renewable and Sustainable Energy Reviews*, 173, 113080. <https://doi.org/10.1016/j.rser.2022.113080>
- Zuba-Ciszewska, M., Kowalska, A., Manning, L., & Brodziak, A. (2019). Organic milk supply in Poland: Market and policy developments. *British Food Journal*, 121(12), 3396–3412. <https://doi.org/10.1108/BFJ-11-2018-0750>

