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Law – Regions – Development

Tímea Drinóczi,
Mirela Župan (eds.)

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Law – Regions – Development

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Foreword by the President of the Republic of Croatia

It is also a privilege to write forewords to books (conference proceeding) published sequentially that represent coherent and consistent research work as well as a firm and well established co-operation between the two neighboring universities. University of Pécs and University in Osijek started their IPA co-operation within the EUNICOP programme. Croatia was not a member state of the European Union, but as a candidate it could boast at that time that her legal system had been harmonized with the *acquis* of the EU to the maximum extent. It was not enough; we had to prove the ability to implement *acquis* in the practice as well. Universal legal analysis, both scientific and professional, comparison of standards and of the practice with those countries that had already gained experience in the implementation of the *acquis*, was certainly necessary for adopting the *acquis* in such a way that would allow the realization of its *ratio legis*. These were the topics of the two previous proceedings which provided an excellent basis for narrowing as well as widening the research topic at the same time.

This book, a collection of papers titled 'Law – Regions – Development' is dedicated to the issues of regional development and environmental protection; and at the same time, it applies not only a legal approach, in *strictu sensu*, but some economic perspectives as well.

Croatia has recently become EU member state. Due to historical circumstances Hungary joined the EU before Croatia. Hungary was more than heartily supporting Croatia in her efforts to satisfy all the conditions for EU membership, and has been advocating for and encouraging Croatia. As one of the priorities of her EU presidency in the first half of 2011, Hungary set out the completion of Croatian accession negotiations with the EU. Furthermore, Osijek and Pécs are regionally connected and they are constantly emphasizing the importance of universal and quality cross-border relations, not only through the cooperation of their universities, but also through every other form of cooperation. Today, in Europe without borders, cross-border cooperation of Osijek and Pécs will become even more important. Finally, this book has been co-financed by the European Union through the IPA cross-border program Hungary-Croatia, which shows that the EU itself has recognized Osijek and Pécs as centers of jurisprudence that are able to universally analyze particular aspects of regional development and environmental protection.

The publishers and authors certainly deserve praise for the choice of topic, the quality of papers, and the message they are sending to the

Croatian and Hungarian professional and general public. This message is very simple: Croatia and Hungary are part of the common European legal space, countries that are directed toward each other, countries whose resemblances are much greater and much more important than possible differences resulting from the different historical circumstances in which they have followed their European way.

Zagreb, 10 October 2013

Prof.dr.sc. Ivo Josipović

Foreword by Former President of Hungary László Sólyom to the Conference Proceedings of the DUNICOP Project Co-Managed by the University of Pécs and J.J. Strossmayer University of Osijek

1. I gladly joined President Josipović in his gesture of writing a foreword to the volumes reporting on the joint research undertaken by the law faculties of Pécs and Osijek. He did so for each book separately; while today I can see all three research reports at the same time. The earlier forewords by the Croatian head of state were written in the spirit of Croatia's accession to the European Union. The Pécs-Osijek project itself leans on a European Union tender. Cooperation between the two universities has demonstrated both Croatia's preparation and maturity for membership as well as cooperation between the two countries – one might say, cooperation not at an official inter-governmental, but rather a civil level, also providing an example for inter-regional relations. Although we shared only a short period together as presidents of our respective states, the symbolism of these volumes is perhaps enhanced by the fact that it was on the very site of the one-time university in Pécs that in April 2010 the Hungarian, Croatian and Serbian heads of state conducted talks, amongst others, on topics that the University of Osijek and the present University of Pécs had been working on together. Apart from the European Union and environmental protection, such issues were, for example, the collective rights of national minorities or dual citizenship. At their meeting in Pécs the presidents also declared that they recognized and would promote the concept of cultural nation (irrespective of citizenship) within the Union.

2. The three volumes of essays reflect the almost self-organizing thematic development of the research. The first year dealt with rather general, 'cross-border' (common?) legal issues. The second one also deals with 'legal challenges of our era'. These may indeed include almost anything. As a matter of course, each year at least half of the work is taken up by the EU; on the other hand, other topics come up repeatedly, such as local governments, environmental protection and regions. Thus a part of the papers already anticipate the focus of the third year on regional governance. It may be interesting to note the predominance of private law topics in the second volume – which seems to be a single burst of enthusiasm in the light of the theme of the third year. It is apparent that the around thirty essays born every year have mobilized the entire two faculties. This is revealed not only in the rich diversity of topics, but also in the fact that all writings, almost without exception, have been co-

authored between Croatian and Hungarian participants. Consequently, there has been a real dialogue, mutual learning about each other's way of thinking, preparedness, methodology and preferences.

3. And now we have arrived at the key and underlying essence of the whole joint work supported by the Union: can the European Union create a common culture? This question is particularly interesting with regard to the Pécs-Osijek relationship as well as Croatian-Hungarian relations. This is so because the earlier common culture has not yet become totally extinct here – and the legal part of this culture enables us to draw peculiar lessons for the very reason that Croatia always held an autonomous constitutional legal status within the Kingdom of Hungary. As a matter of course, by common culture I do not mean one-time Hungary or the Austro-Hungarian Empire, but rather the Central-European culture which might be referred to as Central-Eastern-European today, but the borders of which from time to time emerge from below the North-South and East-West fault lines of the European Union. This heritage has its effect even if we are unconscious of it or we do not want to be aware of it. However, the question is whether it is powerful enough to renew itself and contribute its own special colour to a new (legal) culture within the EU. Nevertheless, apart from voting quotas on the one hand and the unpredictable effect of specific cultural achievements on the other hand, there are special intermediate possibilities for having a voice especially in the field of law. For the achievements of legal culture may become institutionalized.

We speak of the common constitutional tradition of Europe – she is also referred to by the European Court of Justice. Today's intensive communication provides an unprecedented opportunity, for example, for decisions of a Constitutional Court to become the object of constitutional borrowing; but good practices of governance may similarly exert their influence just like bad practices set as negative examples to be avoided. These practices may become well-established in the soft law of various bodies or may become habitual through adoption. The Pécs-Osijek cooperation experiments with the common culture in the laboratory of a small border region. Still, international queries received from unexpected locations may be monitored on the website of the project: this work is not confined to the region. The reader, to whom I recommend the work of the authors for further contemplation, will himself become a shaper of legal culture.

Budapest, November 2013

László Sólyom

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Preface

The international conference entitled ‘Law – Regions – Development. Legal implications of local and regional development’ was one of the events of the DUNICOP project (**D**eepening **UNI**versity **C**ooperation **O**sijek – **P**écs project; HUHR/1101/2.2.1/005) managed by the two partner law faculties in Pécs and Osijek. DUNICOP is a one-year long common research and curriculum development project between the Universities in Osijek and Pécs in the field of law. The project is co-financed and supported by the European Union through the Hungary-Croatia IPA Cross-border Co-operation Program and by the two participating law faculties. The DUNICOP project is operated in various interrelated areas and through various activities and is regarded as a successful continuation of the previous EUNICOP and SUNICOP projects. The conference, similarly to the previous ones, gave opportunity to Hungarian and Croatian researchers to conduct common research activity and encouraged them to write and present papers together at the conference that was held in Pécs on the 14-15 June 2013. The project made it also possible for researchers to finalize their papers either before or after the conference and adjust them to other papers as well as to the final conclusions of the conference.

Attracting the widest audience possible who can benefit from the research results is also one of the objectives of the project. Therefore, the conference papers have been collected and published in three books in Croatian, Hungarian and English. An electronic version of these books can be found on our websites and printed versions of proceedings in English and Croatian are also available. The Faculty of Law, University of Pécs feels much privileged to have been given the opportunity to host the conference and hopes that cooperation will not cease, but will be continued either at the institutional or personal level.

Pécs – Osijek, 17 October, 2013

the editors

Adrienne Komanovics[*]
Nives Mazur Kumrić[**]

European regional perspective on environment and human rights

I. Introduction

Since the Stockholm Conference in 1972, a remarkable process is noticeable in the field of environmental protection.[1] At the normative level, the number of international treaties concluded in this field is numerous.[2] Similarly, environmental standards in the European Union, now one of the highest in the world, have developed over decades.[3] Despite the increased international concern for environmental protection, implementation of these standards has been less successful.

Linkages between human rights and the environment are manifold. Firstly, human rights protected by the various international and regional human rights treaties may be directly affected by adverse environmental factors. Toxic smells, excessive noise, vibration might have a negative impact on the right to life, the right to respect for private and family life as well as the home, and the right to property. Secondly, adverse environmental factors may give rise to certain procedural rights for the individual concerned, including the right of access to information, participation in decision-making, and access to justice in environmental cases. Thirdly, the protection of the environment may also be a

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[1] On environmental law see e.g. P. Sands, et al, *Principles of International Environmental Law* (Cambridge University Press 2012); E. Fisher, *Environmental Law: Text, Cases & Materials* (Oxford University Press 2013).

[2] See e.g. ECOLEX, the gateway to environmental law, operated jointly by FAO, IUCN and UNEP, available at *http://www.ecolex.org/start.php*, or the IEA website of the University of Oregon, available at *http://iea.uoregon.edu/page.php?file=home.htm&query=static* (31.05.2013).

[3] See, e.g. the incorporation of principles of sustainable development and environmental integration in the EU environmental policy and in the EU Treaties in Z. Horváth, 'Greening of Production and Consumption: Towards Sustainability in the EU Integrated Product Policy', in V. Rebreanu, ed., *Sustainability – Utopia or Reality?* (Babes Bolyai University, Sfera Juridica, Cluj-Napoca 2010) pp. 143-173. See also N. de Sadeleer, 'Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases', 81 *Nordic Journal of International Law* (2012) pp. 39-74.

legitimate aim justifying interference with certain individual human rights. Thus, protection of the environment may justify restrictions on the right to property.[4]

Full realization of human rights has a positive impact on the environment, while the effective enjoyment of human rights cannot be realized without a healthy, ecologically sound and secure environment.[5] Human rights defenders and environmental activists are linked by the common goal of reducing the reserved domain of States. Nevertheless, there is a slight friction between these two groups: environmentalists allege that human rights defenders put human rights first, thus in their approach, human rights and the human race enjoy priority over other species and ecological processes, and the environment is regarded important only inasmuch as it benefits humans. This approach is met with disagreement by environmentalists, who argue that human beings are not separated from, and not situated above, the natural environment they live in; and that all species should enjoy the same protection. [6]

This paper highlights the potential for using human rights to address environmental problems. It concentrates on the issue whether, and to what extent, international law provides for a human right to an environment of a particular quality. In doing so, it starts with a brief survey of the evolution of the right to environment in universal and regional human rights treaties, either expressly or through other, closely related rights. Then it goes on to analyse the rights that might be invoked in the protection of the right to environment. The next part sets out the relevant case law of the European Court of Human Rights, focusing on Croatia and Hungary. Finally, in line with the project within the framework of which the research was conducted, the paper describes bilateral relations (in particular bilateral treaties) between Croatia and Hungary.

[4] Council of Europe, *Manual on Human Rights and the Environment* (Council of Europe, Strasbourg 2012) (hereinafter Council of Europe Manual) pp. 7-8.

[5] A. Fabra Aguilar and N.A.F. Popović, 'Lawmaking in the United Nations: The UN Study on Human Rights and the Environment' 3 *Review of European Community & International Environmental Law* (1994) p. 197; Council of Europe Manual, p. 30.

[6] On the criticism of the antropocentric approach, see e.g. C. Redgewell, 'Life, The Universe and Everything: A Critique of Anthropocentric Rights', in A. Boyle and M.R. Anderson, eds., *Human Rights Approaches to Environmental Protection* (Oxford, Clarendon Press 1996).

II. Right to environment in international human rights treaties

International environmental law has little to offer to individual victims of environmental problems. Since international environmental law does not protect individuals as such, the right to environment usually does not appear in environmental treaties: these are formulated as State obligations, and do not grant rights to individuals or interest groups living in that State. Likewise, human rights treaties, with a few exceptions, do not formally encompass a right to a sound, quiet and healthy environment.[7] However, a range of civil, political, economic, social and cultural rights rely on environmental quality for their full realisation. This link provides the basis for the use of human rights to address environmental concerns. The human rights which might be relevant in this context include the right to life; the right to health, adequate standard of living (including food, clothing and housing); the right to family life and privacy; the right to property; culture; freedom from discrimination; self-determination; and just and favourable conditions of work.

This part of the paper provides a brief enumeration of those human rights treaties which contain an express right to environment, then it goes on to list those rights which can be deemed indirect environmental rights, whether of a substantive or a procedural nature.

1. The right to a clean and healthy environment: Express provisions

The African Charter on Human and Peoples' Rights[8] was the first human rights treaty expressly providing for the so-called third generation of human rights. Article 24 provides that all *peoples* shall have the right to a general satisfactory environment favorable to their development.[9]

[7] F. Francioni, 'International Human Rights in an Environmental Horizon', 21 *European Journal of International Law* (2010) pp. 41-55; S. Fiorletta-Leroy, 'Can the Human Rights Bodies be Used to Produce Interim Measures to Protect Environment-Related Human Rights?' 15 *Review of European Community & International Environmental Law* (2006) p. 66.

[8] Adopted in Nairobi, Kenya, 28 June 1981, entry into force: 21 October 1986, available at *http://www.achpr.org/instruments/achpr/* (31.05.2013).

[9] Emphasis added. Other collective rights include right of all peoples to equality and rights, right to self-determination, right to free disposal of wealth and natural resources, the right to economic, social and cultural development, right to national and international peace and security. Arts 19-23.

It should be noted that the right holders of the right to environment are the people. Thus, the right to environment depends on the definition of 'people', and on the justiciability of third generation rights, in general.[10] Furthermore, this right appears in a document of a region especially struggling with the reconciliation of development with environmental protection.[11] Finally, there is an implementation gap: the monitoring mechanism in the African system is somewhat underdeveloped. While the Charter provides for communications other than those of States Parties, which can be submitted to the African Commission on Human and Peoples' Rights,[12] individuals have direct access to the African Court on Human and Peoples' Rights only if the complainant is from a country which made a specific declaration allowing individuals to directly institute cases before the Court.[13] As of March 2013, only six countries had made such a Declaration.[14]

Article 11 of the Protocol of San Salvador additional to the American Convention on Human Rights[15] provides that everyone shall have the right to live in a healthy environment and that States Parties shall

[10] See e.g. I. Brownlie, 'Rights of Peoples in Modern International Law', pp. 104-119, R. Rich, 'Right to Development: A Right of Peoples', pp. 120-135, J. Crawford, 'Rights of Peoples: Peoples or Governments', pp. 136-147, E. Kamenka, 'Human Rights, Peoples Rights', pp. 148-159, all in 9 *Bulletin of the Australian Society of Legal Philosophy* (1985) Special Issue: The Rights of Peoples.

[11] On sustainable development see e.g. the 2002 World Summit on Sustainable Development in Johannesburg, e.g. Johannesburg Declaration on Sustainable Development, A/CONF.199/20, 4 September 2002, available at *http://www.un-documents.net/jburgdec.htm*; Plan of Implementation of the World Summit on Sustainable Development, A/CONF.199/20, 4 September 2002, available at *http://www.un-documents.net/jburgpln.htm* (31.05.2013).

[12] Art. 55 of the African Charter.

[13] Art. 5(3) and Art. 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998).

[14] Those countries are Burkina Faso, Ghana, Malawi, Mali, Rwanda, and Tanzania. – The Court delivered its first judgment in 2009. As of June 2012, the Court has received 24 applications. It has already finalized 12 cases and rendered decisions thereon, available at *http://www.african-court.org/en/index.php/about-the-court/brief-history.* For the list of cases see *http://www.african-court.org/en/index.php/2012-03-04-06-06-00/list-cases* (31.05.2013).

[15] Additional Protocol to the American Convention On Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador', signed in 1988, entry into force in 1999, available at *http://www.oas.org/juridico/english/sigs/a-52.html* (31.05.2013).

promote the protection, preservation, and improvement of the environment. As is obvious from the provision, while the first paragraph uses a rights-based language, the second paragraph is formulated as imposing obligations on the States Parties. Effective realization of the right to a clean environment is, however, curbed by the soft-law language of the Protocol,[16] as well as the weakness of the Protocol's monitoring mechanism.[17]

2. Implicit recognition of the right to a clean and healthy environment

While only a few human rights documents provide for an express right to a clean environment, such a right can be derived from, or implied in, other human rights.[18] Indeed, treaty monitoring bodies have been innovative in the application of human rights to address environmental concerns. While various substantive provisions can be linked to an environmental human right, in many cases procedural rights prove to be just as useful or even more effective tools in the exercise and enforcement of such a right. Nevertheless, a specific human right to environment would represent a cohesive, comprehensive, and effective framework and would afford a proactive engagement with a view to preventing environmental harms.[19]

[16] Article 1 of the Protocol provides that the States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, *to the extent allowed by their available resources, and taking into account their degree of development*, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

[17] Article 19 only provides for State reporting; thus no individual complaint mechanism is envisaged. Individuals have no right of access to the Inter-American Commission or Court. Pursuant to Article 19(7), however, the Commission may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the Protocol in the States Parties.

[18] M. Fitzmaurice and J. Marshall, 'The Human Right to a Clean Environment – Phantom or Reality? The European Court of Human Rights and English Courts Perspective on Balancing Rights in Environmental Cases' 76 *Nordic Journal of International Law* (2007) p. 105.

[19] Asia Pacific Forum, Human Rights and the Environment. Final Report and Recommendations. The 12th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions. Sydney, Australia, 24-27 September 2007, p. 30.

2.1. Substantive rights

The right to health inevitably encompasses the notion of a healthy environment. The obligation of States to protect and improve health includes the obligation to do so through addressing environmental factors. The right to health appears in various international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Convention on the Rights of the Child (1989).[20] Article 12 of the ICESCR states that the States Parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It also elaborates ways in which States can achieve the full realization of this right, including improving all aspects of environmental and industrial hygiene, and preventing, treating and controlling diseases. Besides these universal treaties, regional documents also recognise the right to health.[21]

The right to an adequate standard of living, provided for in Article 11 of the ICESCR, includes the right to adequate food, clothing and housing, and to the continuous improvement of living conditions. The right to water is a further essential element of this right inasmuch as water is one of the most fundamental conditions for survival.[22]

[20] The text of these core human rights treaties is available at *http://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf,* and *http://www.ohchr.org/Documents/Publications/newCoreTreatiesen.pdf* (31.05.2013). On the protection of human rights in general, see A. Komanovics, 'Protection of human rights at the universal level Pécs-Osijek, 2012', pp. 45. Teaching material developed in the framework of the project 'Strengthening University Cooperation Osijek-Pécs' (SUNICOP), available at www.sunicop.eu. (31.05.2013).

[21] See the European Social Charter and the Revised European Social Charter (Article 11 in both treaties), the African Charter (Article 16), Additional Protocol to ACHR (Article 10).

[22] See General Comment No. 15. (2002) of the Committee on Economic, Social and Cultural Rights, on the right to water (Article 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/2002/11, 20 January 2003. See also para. 4 of General Comment No. 12 of the CESCR on the right to adequate food (Article 11). See also M. Szappanyos, 'Enforcement of the Human Right to Water through the Universal Periodic Review' 40 *Kyungpook National University Law Journal* (2012) pp. 777-806.

Cultural and indigenous rights are relevant from two aspects. Firstly, environmental degradation may affect an indigenous group's traditional practices, such as hunting, fishing, land ownership and use. Thus, resource extraction in rainforest lands inhabited by indigenous peoples threatens the health, culture, and survival of those peoples. Secondly, maintaining their traditional lifestyle and traditional subsistence activities may just as much threaten the environment.[23] In this context, ILO Convention No. 169 provides that subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development.[24]

The UN Declaration on the Rights of Indigenous Peoples stipulates that appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.[25] In its jurisprudence, the Human Rights Committee also recognized that

> 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.'[26]

The scope of the protection of the right to privacy covers a variety of interests, such as private life, family life, home and correspondence. The concept of private life, in turn, covers physical integrity, which has been interpreted by the European Court of Human Rights to include

[23] Asia Pacific Forum, loc. cit. n. 19, at p. 13.

[24] Art. 23 of the Convention concerning Indigenous and Tribal Peoples in Independent Countries, adoption: Geneva, 27 June 1989, entry into force: 5 September 1991.

[25] Art. 32; Res. 61/295 of 13 September 2007.

[26] Communication No. 167/1984 (*Bernard Ominayak, Chief of the Lubicon Lake Band* v *Canada*), views adopted on 26 March 1990, and Communication No. 197/1985 (*Kitok* v *Sweden*), views adopted on 27 July 1988]. See UNHRC General Comment No. 23. The Rights of Minorities. CCPR/c/21/Rev1/Add.5, para. 7. See also L. Heinämäki, 'Protecting the Rights of Indigenous Peoples – Promoting the Sustainability of the Global Environment?' 11 *International Community Law Review* (2009) pp. 3-68.

environmental hazards such as noise, smells, and pollution. Thus, environmental factors may give rise to issues of private life.[27]
Finally, the right to work may also be used to address environmental concerns inasmuch as it includes, among others, the right to safe and healthy working conditions.[28]

2.2. Procedural rights

It can be argued that procedural rights are more effective and flexible in achieving environmental justice.[29] Indeed, full enjoyment of the substantive rights, more specifically, the right to protection against environmental hazards, are facilitated by various procedural rights, including the right to access to information, the right to fair trial, the right to participate in decision-making and the right to effective remedies.[30] These rights are so important that besides existing procedural guarantees in international human rights law, a specific treaty has been developed and adopted in the framework of the United Nations Economic Commission for Europe (UNECE). The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters[31] established various procedural rights of the public (individuals and their associations) with regard to the environment. The Convention has three pillars: the first pillar guarantees the right of everyone to receive environmental information that is held by public authorities (access to environmental information). The second pillar is public participation, which is based on two principles: the early public participation and the effective public participation. The third pillar, access to environmental justice is the least developed area of the Convention.[32]

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[27] See Harris, et al., *Law of the European Convention on Human Rights* (Oxford University Press 2009) p. 367. See also the cases listed below in Part III.
[28] Art. 7 ICESCR.
[29] Fitzmaurice and Marshall, loc. cit. n. 18, at p. 106.
[30] ICCPR Arts 14, 19, 25; ECHR Arts 6, 10, 13, and ACHR Arts 8, 13, 23.
[31] Adopted on 25 June 1998 in Aarhus (Århus), entry into force on 30 October 2001.
[32] Fitzmaurice and Marshall, loc. cit. n. 18, at p. 107. See also the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland), on 25 February 1991, encompassing public participation and consultation, see Art. 2(2) and (6), available at *http://www.unece.org/env/eia/eia.html and http://www.unece.org/fileadmin/DAM /env/eia/documents/legaltexts/conventiontextenglish.pdf* (31.5.2013).

III. The regional approach: case-law of the European Court of Human Rights with relevance to the environment

1. Introduction

In the last 20-25 years, the Court has been frequently called on to decide various applications relating to noise pollution, industrial pollution, deforestation and urban development, and even passive smoking. Development started with the so-called airport noise cases.[33] In the majority of these cases, having regard to the minor nature of the nuisance, and the State measures taken to reduce the impact of the noise disturbance on local residents, the Court found that State authorities had struck a fair balance between the economic well-being of the State and the individual's ability to enjoy his home, private or family life.

The next group of cases is related to neighbouring noise, resulting from e.g. nightclubs, heavy traffic, coal mines and factories, or a commercial centre.[34] In most of them, the Court found that exposure to such noise interfered with the applicant's private and family life, in violation of Article 8. The Court was also invited to consider the issue of industrial pollution caused by e.g. a plant treating waste from the leather industry, a chemical factory producing fertilisers, a mining permit authorising the use of cyanide leaching process for gold extraction, a methane explosion occurring at a rubbish tip, the operation of a big steel plant, emissions

[33] *Arrondelle* v *UK*, application no. 7889/77, admissibility decision of 15 July 1980; *Powell and Rayner* v. *UK*, application nos. 9310/81, judgment of 21 February 1990; followed by *Hatton* v *UK*, application no. 36022/97, judgment of 8 July 2003, and *Flamenbaum and others* v *France*, application no. 3675/04 and 23264/04, judgment of 13 December 2012. On *Hatton*, see H. Post, 'Hatton and Others: Further clarification of the "indirect" individual right to a healthy environment', 2 *Non-State Actors & International Law* (2002) pp. 259-278; H. Post, 'The Judgment of the Grand Chamber in *Hatton and Others* v *the United Kingdom* or: What is left of the "indirect" right to a healthy environment?', 4 *Non-State Actors & International Law* (2004) pp. 135-157.

[34] See e.g. *Moreno Gomez* v *Spain*, application no. 4143/02, judgment of 16 November 2004; *Deés* v *Hungary*, application no. 2345/06, judgment of 9 November 2010; *Mileva and others* v *Bulgaria*, application nos. 43449/02 and 21475/04, judgment of 25 November 2010; *Dubetska and others* v. *Ukraine*, application no. 30499/03, judgment of 10 February 2011; *Zammit Maempel and others* v *Malta*, application no. 24202/10, judgment of 22 November 2011; *Pawlak* v *Poland*, application no. 29179/06, judgment of 12 October 2011.

from a plant for the treatment of waste, or an active stone quarry.[35] Again, in the majority of these cases the Court concluded that such activities violated Article 8, or even Article 2.[36]

In *Hamer*, a case relating to a house built in breach of relevant forest legislation, and thus forcefully demolished, the Court used a very strong language:

> '[...] while none of the Articles of the Convention is specifically designed to provide general protection of the environment as such [...], in today's society the protection of the environment is an increasingly important consideration. [...] The environment is a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard. The public authorities therefore assume a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment are not entirely ineffective.'[37]

In view of this, and due to the growing concern of environmental problems, the issue will presumably constitute a permanent item on the Court's agenda.[38]

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[35] See e.g. *Lopez Ostra* v *Spain*, application no. 16798/90, judgment of 9 December 1994; *Guerra and others* v *Italy*, application no. 14967/89, judgment of 19 February 1998; *Taskin and others* v *Turkey*, application no. 46117/99, judgment of 10 November 2004; *Öneryildiz* v *Turkey* [GC], application no. 48939/99, judgment of 30 November 2004; *Fadeyeva* v *Russia*, application no. 55723/00, judgment of 9 June 2005; *Giacomelli* v *Italy*, application no. 59909/00, judgment of 2 November 2006; *Martinez Martinez and María Pino Manzano* v *Spain*, application no. 61654/08, judgment of 3 July 2012.

[36] In the *Öneryildiz* v *Turkey* case.

[37] Para. 79 of *Hamer* v *Belgium*, application no. 21861/03, judgment of 27 November 2007. References omitted.

[38] See also *Tatar* v *Romania*, application no. 657021/01, judgment of 17 March 2009 (a gold mine using sodium cyanide in its extraction process); *L'Erablière* v *Belgium*, application no. 49230/07, judgment of 24 February 2009 (access to court in environmental issues); *Mangouras* v *Spain* [GC], application no. 12050/04, judgment of 28 September 2010 (excessive amount of bail in connection with a

2. Deés v Hungary

The *Deés* v *Hungary*[39] case related to noise pollution, arising from an unregulated heavy traffic in the applicant's street. The facts of the case can be summarised as follows. From early 1997, the volume of cross-town traffic in the applicant's municipality increased since a toll had been introduced on the neighbouring, privately owned motorway. Thus, heavy traffic that would normally have taken a nearby stretch of motorway took an alternative route along the street where the applicant lived. The Government has responded with various measures to alleviate the level of environmental harm.[40] Thus, the initially very high charges had been slightly lowered; then, in 2002, following a partial governmental buyout of the motorway, a sticker system had been introduced entailing a substantial reduction of the toll charges. In addition, further measures were introduced to reduce the adverse environmental effects, including the building of roundabouts, intersections provided with traffic lights, a 40 km/h speed limit at night, and road signs prohibiting access of vehicles of over 6 tons. However, in the applicant's view, these measures were not effectively enforced.

Before the national courts, the court-appointed expert concluded that the level of noise exceeded the statutory limit. Nevertheless, this was found to be not strong enough to cause damage to the applicant's house. In other words, the national court found no causal link between the heavy traffic and the damage to the house; and concluded that the authorities had struck the correct balance between competing interests.[41]

Before the European Court of Human Rights, the applicant complained that cracks appeared in the walls of his house, and because of the noise,

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criminal procedure/a serious environmental offence); *Di Sarno and others* v *Italy*, application no. 30765/08, judgment of 10 January 2012 (state of emergency in relation to waste collection); *Kyrtatos* v *Greece*, application no. 41666/98, judgment of 22 May 2003 (urban development leading to the destruction of physical environment, the scenic beauty and natural habitat for wildlife); and *Florea* v. *Romania*, application no. 37186/03, judgment of 14 September 2010 (passive smoking).

[39] Application no. 2345/06, judgment of 9 November 2010. See also L. Fodor, 'Az emberi jogok európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról [Judgment of the European Court of Human Rights on State measures to limit noise disturbance and on the length of court proceedings]', 3 *JEMA*, (2011) pp. 86-92.

[40] Paras 7, and 19-20.

[41] Paras 9-13.

vibration, pollution and smell caused by the heavy traffic in his street, his home had become almost uninhabitable, in breach of Article 8. Furthermore, though this is less important for our purposes, he complained about the length of the related court proceedings, violating Article 6.

The first issue was whether the complaint fell in the scope of protection of Article 8. Relying on a by now robust case law to this effect, the Court recalled that the right to respect for private and family life and the home implies respect for the quality of private life as well as the enjoyment of the amenities of one's home; and breaches of Article 8 may include noise, emissions, smells, and other similar forms of interference.[42] In this situation, the interference did not concern direct interference by public authorities but involved those authorities' failure to take action to put a stop to third-party breaches of Article 8.[43]

Inevitably, States enjoy a certain margin of appreciation to balance between the interests of road-users and those of the inhabitants of the surrounding areas. The Court recognized the complexity of the State's task; nevertheless, the measures taken by the State authorities were found to be insufficient. The applicant's exposure to excessive noise disturbance over a substantial period of time created a disproportionate individual burden for the applicant. The Court also noted that notwithstanding the fact that the noise significantly exceeded the statutory level; the authorities took no appropriate measures to comply with their own rules.[44]

The applicant's other complaint related to the length of court proceedings, six years and 9 months in the case at hand. The Court agreed with the applicant and found this length to have failed to meet the 'reasonable time' requirement.[45]

Clearly, this case exemplifies the extent of the obligation to remedy violation resulting from a private third party. Even though the Government tried to remedy the situation, the measures taken consistently proved to be insufficient. State authorities have a positive obligation when environmental harm results from private sector activities.

[42] Para. 21.
[43] Para. 23.
[44] Para. 23.
[45] Para. 27.

3. Oluić v Croatia

In the last 30 years, the European Court of Human Rights has delivered judgments in a number of environmental cases. Since the right to a healthy environment is not explicitly codified by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention), the Court has adjudicated on this issue in the context of few other conventional rights: the right to life, prohibition of torture, the right to freedom and safety, the right to a fair trial, the right to respect for private and family life and home, freedom of assembly and association and the right to protection of property.[46]

The case of *Oluić* v *Croatia* is a confirmation of the close link between environmental protection and Article 8 of the European Convention granting the right to respect for private and family life.[47] This Article has become the most frequent legal basis for submitting an application to the Court in cases referring to environmental protection since it provides individuals and their homes with effective protection from negative consequences of inadequate environmental protection.[48]

[46] The list and summaries of the most important cases, including *Deés* v *Hungary* and *Oluić* v *Croatia*, see in Human Rights and Environment, The Case Law of the European Court of Human Rights in Environmental Cases, Legal Analysis – Justice and Environment 2011, November 2011, available at *http://www.justiceandenvironment.org/_files/file/2011%20ECHR.pdf* (31.05.2013). See also L. Collins, 'Are We There Yet? The Right to Environment in International and European Law', 3 *McGill International Journal of Sustainable Development Law and Policy* (2007) pp. 138-139; M. Fitzmaurice, 'Environmental Degradation', in D. Moeckli, et al., eds., *International Human Rights Law* (New York, Oxford University Press Inc. 2010) pp. 628-632; S. Kravchenko and J. E. Bonine, 'Interpretation of Human Rights for the Protection of the Environment in the European Court of Human Rights', 25 *Pacific McGeorge Global Business & Development Law Journal* (2012) pp. 250-276.

[47] Article 8 stipulates as follows: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette (Narodne novine, NN) – International Treaties 18/1997, 6/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010.

[48] See M. Pallemaerts, 'A Human Rights Perspective on Current Environmental Issues and Their Management: Evolving International Legal and Political Discourse

Environmental pollution can have various sources, for instance hazardous waste, air polluters, noise or vibrations. In order to be subsumed under the provisions of Article 8 of the European Convention, the Court has to confirm that respective forms of environmental pollution severely violate national and international environmental provisions (e.g. they are not regarded as occurrences inherent to contemporary urban life), while their intensity and duration can directly jeopardize the physical and mental health of individuals and the quality of their life. The burden of proof is on the applicant. The particular value of Article 8, which facilitates its efficiency and broad application in environmental pollution cases, lies in the fact that it imposes on states the positive obligation to protect individuals from interference with the right to protection of their private and family life and home. It should be noted that this provision does not provide for protection of the environment as such but for protection of the right of an individual who can be exposed to environmental pollution and inadequate environmental standards.[49]

The scope of the case of *Oluić v Croatia* referred to noise pollution coming from a night club, which used to exceed national and international standards for years.[50] The application was based on the applicant's allegation that the state had failed to protect her and her family from the noise coming from a neighbouring club for which the sanitary inspection had confirmed on several occasions that it had exceeded the noise levels prescribed by the Bylaw on the Maximum Permitted Levels of Noise in Areas Where People Work and Live.[51] Excessive exposure to noise resulted in violation of the applicant's right to protection of her home and such interpretation was possible because the relating right does not refer only to an actual physically defined area, but also to a quiet enjoyment of the respective area. For that reason, the breach of the right to home does not exclusively entail activities of a physical nature (such as unauthorized entry into a person's home) but also noise, emissions, smells and other interferences with one's

on the Human Environment, the Individual and the State' 2 *Human Rights & International Legal Discourse* (2008) pp. 152-162.

[49] Human Rights and Environment, op. cit. n. 46, at pp. 29-30.

[50] *Oluić v Croatia*, Application no. 61260/08, Judgment, Strasbourg, 20 May 2010 (final, 20 August 2010).

[51] Bylaw on the Maximum Permitted Levels of Noise in Areas Where People Work and Live, NN 145/2004.

enjoyment of home amenities. The harmfulness of the repercussions of such interferences can be assessed by comparing the interest of the individual with the interest of the community as a whole. In this light, the Court is guided by the fact that conventional rights should be practical and effective and not theoretical and illusory. The epilogue of the case was a unanimous judgment of the Chamber confirming violation of Article 8 of the European Convention, which represents a significant contribution of the Court to setting environmental standards according to which excessive noise fits into the category of environmental pollution and in the scope of Article 8 of the European Convention.[52] Further confirmation of those standards can be found in the judgments delivered in the cases of *López Ostra* v *Spain*[53], *Moreno Gómez* v *Spain*[54], *Borysiewicz* v. *Poland*[55], *Deés* v *Hungary*[56], *Mileva and Others* v *Bulgaria*[57], *Grimkovskaya* v *Ukraine*[58] and *Zammit Maempel* v *Malta*.[59]

However, the Court's practice is not uniform with regard to condemnation of excessive noise pursuant to Article 8 of the European Convention, so there are cases in which such noise has been regarded as tolerable and excusable. For instance, the judgments in the cases of *Powell and Rayner* v *the United Kingdom*[60] and *Hatton and Others* v *the United Kingdom*[61] in which the court was deciding upon the permissiveness of high levels of noise coming from London Heathrow Airport, reflected the Court's view that enormous economic and transportation interests of the community related to the most important international airports have priority over the right to protection of family life and home. A similar judgment was delivered in the case of *Flamenbaum and Others* v *France*[62] in relation to the noise from the

[52] *Oluić* v *Croatia*, loc. cit. n. 50, paras. 44-47, 65-66.
[53] *López Ostra* v *Spain*, loc. cit. n. 35.
[54] *Moreno Gómez* v. *Spain*, loc. cit. n. 34.
[55] *Borysiewicz* v *Poland*, Application no. 71146/01, Judgment, Strasbourg, 1 July 2008 (final, 1 October 2008).
[56] *Deés* v *Hungary*, loc. cit. n. 34.
[57] *Mileva and Others* v *Bulgaria*, loc. cit. n. 34.
[58] *Grimkovskaya* v *Ukraine*, Application no. 38182/03, Judgment, Strasbourg, 21 July 2011 (final, 21 October 2011).
[59] *Zammit Maempel* v *Malta*, loc. cit. n. 34.
[60] *Powell and Rayner* v *The United Kingdom*, loc. cit. n. 33.
[61] *Hatton and Others* v *The United Kingdom*, loc. cit. n. 33.
[62] *Flamenbaum et autres* c. *France*, loc. cit. n. 33.

airport of the French town of Deauville. A comparison can be drawn between the above-mentioned aircraft noise tolerance cases and the judgments in which the Court dealt with the permissiveness of noise, the sources of which were an electric transformer, a wind turbine, a tailor shop, a truck maintenance workshop and a workshop for cutting and grinding metal, and a dental surgery.[63] In the context of (aircraft) noise, one can also, for the sake of comparison, pay attention to the fact that such noise was also connected with serious environmental pollution in some cases of the Court of Justice of the European Union, e.g. *European Air Transport SA v Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale.*[64]

4. The regional approach: conclusions

Applicants have relied on various provisions of the Convention to address environmental concerns. Analysis of these cases shows the crystallization of numerous principles. Thus, the Court's case law on Article 2 demonstrates that States have a positive obligation in the context of dangerous activities, including nuclear tests, the operation of chemical factories with toxic emissions, or waste-collection sites. This obligation is applicable irrespective of whether carried out by public authorities or by private companies. In addition, States are also required to hold ready appropriate warning and defence mechanisms in relation to natural disasters. In both circumstances, public authorities must provide an adequate response (investigation, punishment of those liable, etc.).[65]

Jurisprudence relating to Article 8 shows that environmental problems may trigger the applicability of this provision. Environmental degradation in itself is not enough to constitute a breach of Article 8. Environmental factors must directly and seriously affect private and

[63] Examples of these cases see in *Oluić* v. *Croatia*, loc. cit. n. 50, para. 50.

[64] *European Air Transport SA* v. *Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale*, C-120/10, Judgment of the Court (First Chamber), 8 September 2011. For more details on the EU noise policy and on noise as a source of environmental pollution see L. Krämer, *Casebook on EU Environmental Law* (Oxford and Portland, Hart Publishing 2002) pp. 275-282. See also The EU Policy on environmental noise, available at *http://ec.europa.eu/environment/noise/home.htm* (31.5.2013).

[65] Council of Europe, Manual on Human Rights and the Environment, loc. cit. n. 4, at pp. 18-19. See e.g *Öneryildiz* v *Turkey* [GC], judgment of 30 November 2004; *Budayeva and others* v *Russia*, judgment of 22 March 2008.

family life or the home. Protection of private life also entails positive obligations for States.[66]

The linkage between the protection of property and the environment is twofold. Firstly, the protection of the environment can justify certain restrictions on the individual right to the peaceful enjoyment of one's possession. At the same time, protection of the right to property may require positive steps by of public authorities, such as to ensure certain environmental standards.[67]

Access to information regarding environmental matters is instrumental to the full realization of the environmental aspects of Articles 2 and 8. The obligation to ensure access to information guaranteed by Article 10 is complemented by the positive obligation of the public authorities to provide information on dangerous activities or to inform the public about life-threatening emergencies, including natural disasters.[68]

Finally, as far as procedural rights are concerned, the effective enjoyment of any right is dependent on its justiciability and enforcement probability. In this context, the right of access to court (Article 6), as well as the right to an effective remedy (Article 13) play a crucial role. In addition, in case of very serious environmental offences, there is a strong public interest to prosecute those responsible.[69]

IV. Bilateral Croatian-Hungarian relations within the sphere of environmental protection

1. Regional agreements on environmental protection

Bilateral agreements represent an important addition to environmental protection since the respective legal regulations defined at regional or

[66] Council of Europe, Manual on Human Rights and the Environment, loc. cit. n. 4, at pp. 19-20. See the cases listed above, including *Powell & Rayner*, *Moreno Gómez*, *Giacomelli*, *Hatton*, *Deés*, *Fadeyeva*, *López Ostra*, *Tatar*, *Guerra*.

[67] Council of Europe, Manual on Human Rights and the Environment, loc. cit. n. 4, at p. 21. See e.g. *Pine Valley Developments Ltd and others* v. *Ireland*, judgment of 29 November 1991; *Fredin* v *Sweden*, judgment of 18 February 1991; *Kapsalis and Nima-Kapsali* v *Greece*, decision of 23 September 2004; *Hamer* v *Belgium*, judgment of 27 November 2007; *Öneryildiz* v *Turkey*; *Budayeva and others* v *Russia*.

[68] Council of Europe, Manual on Human Rights and the Environment, loc. cit. n. 4, at p. 22. See e.g. *Öneryildiz* v *Turkey* [GC], *Budayeva and others* v *Russia*; *Guerra and others* v *Italy*; *Tatar* v *Romania*.

[69] Council of Europe, Manual on Human Rights and the Environment, loc. cit. n. 4, at pp. 24-25. See e.g. *Öneryildiz* [GC], *Hatton* [GC], *Mangouras* v *Spain*.

global level are accommodated to the specific needs and particularities of contracting parties.[70] Generally speaking, international cooperation in the field of environmental protection is a relatively new aspect of interstate relations, which emerged in its distinctive form only in the last century. Its positioning among the main forms of contemporary interstate cooperation is a feature of the last three to four decades.[71]

The origins of international cooperation between Croatia and Hungary, on the grounds of which common environmental policies have been shaped, date back to the very beginnings of Croatian statehood in the early 1990s. Soon after Hungary had recognized Croatian independence on 15 January 1992, both countries signed the *Agreement on Friendly Relations and Cooperation* (on 16 December 1992).[72] As suggested by

[70] For more details on international agreements on environmental protection at a regional and global level see D. M. Ong, 'International law for environmental protection', in B. Çali, ed., *International Law for International Relations* (New York, Oxford University Press Inc. 2010) pp. 308-310; R.K.M. Smith, *Textbook on International Human Rights* (New York, Oxford University Press Inc. 2010) pp. 377-378; C. Redgwell, 'International Environmental Law', in M. D. Evans, ed., *International Law* (New York, Oxford University Press Inc. 2010) pp. 689-717; J. Crawford, *Brownlie's Principles of Public International Law* (Oxford, Oxford University Press 2012) pp. 355-356, 360-364.

[71] E. R. DeSombre, 'The Evolution of International Environmental Cooperation' 1 *Journal of International Law and International Relations* (2004-2005) p. 75. See also Pallemaerts, op. cit. n. 48, at pp. 169-170; C. W. Henderson, *Understanding International Law* (Malden-Oxford-Chichester, Wiley-Blackwell 2010) pp. 320-324.

[72] Act on the Ratification of the Agreement between the Republic of Croatia and the Republic of Hungary on Friendly Relations and Cooperation, NN – International Treaties No. 13/1993. The Act came into force on 21 December 1993. See Announcement of the entry into force of the Agreement between the Republic of Croatia and the Republic of Hungary on Friendly Relations and Cooperation, NN – International Treaties No. 10/2000. The conclusion of this Agreement of a general character was preceded by several agreements which codified specific segments of the bilateral cooperation such as road transportation of passengers and goods, commercial and economic relations and cooperation, reception of people at the joint state border, fight against terrorism, smuggling, drug abuse and organized crime. See Regulation on the Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on the International Road Transport of Passengers and Goods, NN – International Treaties No. 2/1993; Regulation on the Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Trade and Economic Relations and Cooperation, NN – International Treaties No. 8/1993; Act on the Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of

its name and explicitly confirmed in its Preamble, the Agreement resulted from the friendship between the Croatian and Hungarian state and their nations and is as such a foundation of future joint endeavours, implying a wish for deepening cooperation in all areas preliminarily indicated therein.[73] A certain number of these areas has (or may have) implicit repercussions for environmental protection, though the most valuable contribution of the Agreement to this segment of the interstate cooperation refers to its Article 14 which explicitly codifies the roots of the environmental policies of the two states. The respective provision stipulates that the contracting parties shall pay particular attention both to elimination of imminent threats to the environment and to environmental protection. For that purpose, the states are bound to exercise their influence to harmonize their regional and international environmental strategies and thus cater for permanent environmentally friendly development within Europe.

The Agreement was in principle made for a period of time of ten years, foreseeing the possibility of its extension for a subsequent five years if

Hungary on the Acceptance of Persons at Common State Borders, NN – International Treaties No. 10/1993; Act on the Ratification of the Agreement on Cooperation between the Government of the Republic of Croatia and the Government of the Republic of Hungary in the Fight Against Terrorism, Smuggling and Drug Abuse and Against Organized Crime, NN – International Treaties No. 10/1993.

[73] For instance, supporting the idea of European integration based on human rights, democracy and rule of law (Article 3), decreasing the armed forces and armament and exchanging opinions on state safety and defense issues (Article 5), strengthening the cooperation within the framework of international organizations (Article 7), encouraging the bilateral cooperation at all levels, meaning between state bodies and institutions, social and other organizations, including local bodies (Article 8), encouraging the relations and experience exchange between the parliaments (Article 9), supporting cooperation between regions, towns, municipalities and other territorial units (Article 10), supporting the economic relations (Article 11), developing and deepening scientific cooperation (Article 13), providing assistance to each other in case of disasters and severe accidents (Article 15), cooperation aimed at improvement of traffic connections (Article 16), respecting national minorities protection standards (Article 17), cooperation in the field of education, science, culture, sports and tourism (Article 18), cooperation in providing legal aid in criminal, civil, status and administrative matters and in combating all forms of crime, particularly the organized one, international terrorism, illegal entry into and transit through the state and trafficking in drugs (Article 20), etc. Act on the Ratification of the Agreement between the Republic of Croatia and the Republic of Hungary on Friendly Relations and Cooperation.

neither party cancels it prior to its expiration [Article 23(2)].[74] Since there was no cancellation, the Agreement has kept on being one of the key legal foundations of the cooperation between Croatia and Hungary.

The multilateral *Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters* of 1992 signed, beside Hungary and Croatia, by Austria, Italy, Poland and Slovenia, can be considered part of the corpus on environmental protection as well.[75] The Agreement was determined by the awareness of the danger of natural and technological disasters which each signatory state was exposed to. Its effective implementation is reviewed by a Joint Committee that was entitled, if necessary, to nominate subcommittees in charge of particular sectors.

Moreover, taking into account the highly delicate issue of watercourse pollution, the Governments of the Republic of Croatia and the Republic of Hungary concluded the *Agreement on Water Management Relations* in 1994. This Agreement regulates issues and activities having immediate impact on the status of the environment and the quality of the water in the watercourses constituting the joint state border. Like the aforementioned agreement, this agreement also foresees the establishment of a (Permanent) Hungarian-Croatian Committee in charge of water management, the competences of which include issues, measures, and works which are of significant importance for the water regime, the status of waters and aquatic habitats.[76]

In the chronological overview of the bilateral codification framework for environmental protection, the *Treaty on Cooperation towards Protection from Natural and Civilization Catastrophes* signed in

[74] Since the cooperation between Croatia and Hungary was proactive even prior to the succession of the former Yugoslavia, the Agreement foresaw legal continuity of the documents concluded between the Socialist Federal Republic of Yugoslavia and People's Republic of Hungary within the framework of the relations between Hungary and Croatia, bearing in mind the notice that the two states are to make a subsequent agreement on their validity and application [Article 23 (3)].

[75] Regulation on the Ratification of the Cooperation Agreement between the Government of the Republic of Croatia and the Governments of the Republic of Austria, the Republic of Italy, the Republic of Hungary, the Republic of Poland and the Republic of Slovenia on the Forecast, Prevention and Mitigation of Natural and Technological Disasters, NN – International Treaties No. 14/1993.

[76] Regulation on the Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Water Management Relations, NN – International Treaties No. 10/1994.

Budapest by the Croatian minister of foreign affairs and the Hungarian minister of interior on 9 July 1997 is distinctive due to its dramatic content entailing the complexity of environmental issues.[77] Its purpose encompasses the protection of life, safety, and material goods of the population (Article 1) from natural and civilization catastrophes which are designated as natural disasters, industrial accidents and other harmful events of a natural and civilization origin with devastating effect, which to a great extent and severely cause damage to or directly endanger life, its conditions, material goods and *the natural environment* and in case of which special protective measures need to be undertaken (Article 2. A).

The performance of the tasks set forth in the Agreement was entrusted to a Permanent Mixed Croatian-Hungarian Committee.

The *Agreement on the Early Exchange of Information in the Event of a Radiological Emergency* signed in Zagreb on 11 June 1999 is complementary to the Treaty on Natural and Civilization Catastrophes.[78] The former Agreement is binding for Croatia and Hungary in terms of timely information and exchange of best practices on nuclear safety, safety of radiation sources, and protection from radiation originating from various plants and activities. The facilities exhaustively listed in the Agreement are nuclear reactors, any other plant used for nuclear fuel cycle, plants utilized for nuclear waste treatment and radioactive isotopes intended for agricultural, industrial, medical, and related

[77] Decision on the Proclamation of the Act on the Ratification of the Treaty between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation Towards Protection from Natural and Civilization Catastrophes, NN – International Treaties No. 6/1998. The Agreement came into force on 1 May 1998. See Announcement of the Entry into Force of the Treaty between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation Towards Protection from Natural and Civilization Catastrophes, NN – International Treaties No. 8/1998.

[78] Regulation on the Proclamation of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on the Early Exchange of Information in the Event of a Radiological Emergency, NN – International Treaties No. 11/1999. The Agreement came into force on 10 December 1999. See Announcement of the entry into force of the Agreement between the Republic of Croatia and the Republic of Hungary on the Early Exchange of Information in the Event of a Radiological Emergency, NN – International Treaties No. 3/2000.

scientific and research purposes as well as for electricity generation in space facilities.[79]

Although most of the aforementioned legal documents foresee the establishment of a monitoring body, Hungary and Croatia opted, by a separate Protocol of 25 January 2002, for the establishment of a Joint Committee for cooperation with very broad competences.[80] The purpose of the Committee is to complement the work of the existing joint committees regarding bilateral issues for which those committees do not have competences. A broad range of these issues correlate to those stated in the 1992 Agreement on Friendly Relations and Cooperation, so this assertion casts doubt upon the real efficiency of the body responsible for a plethora of various areas: from agriculture, Euro-Atlantic integration, and protection of monuments to environmental protection and rescue from civilization catastrophes.[81]

In line with the already existing Hungarian-Croatian intergovernmental regional cooperation, the Trans-Border Regional Forum for Coordination was founded in September 2009 based on an Agreement concluded in Barcs.[82] The task of the Forum as a coordinative body refers to the development of cooperation, the foundations of which were laid down in 2007 by the *Agreement on Cooperation between the Central State Office for Administration of the Republic of Croatia and the Ministry of Local Government and Regional Development of the Republic of Hungary*.[83] Article 2 (1) of the Agreement stipulates that the Forum shall encourage sustainable development of the border areas of

[79] Preamble and Art. 1(2).

[80] Decision on the Proclamation of the Protocol between the Government of the Republic of Croatia and the Government of the Republic of Hungary on the Establishment of a Joint Committee for Cooperation, NN – International Treaties No. 4/2002.

[81] Art. 4.

[82] Regulation on the Proclamation of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on the Establishment of the Trans-Border Regional Forum for Coordination, NN – International Treaties No. 10/2012. The Agreement came into force on 20 January 2013. See Announcement of the entry into force of the Agreement between the Republic of Croatia and the Republic of Hungary on the Establishment of the Trans-Border Regional Forum for Coordination, NN – International Treaties No. 1/2013.

[83] In this context, the activities of the Forum are based on the ideas of both respective internal legal documents and regional codifications such as the European Charter of Local Self-Government (1985) and the European Framework Convention on Cross-border Cooperation of Territorial Communities and Authorities (1980).

the contracting parties, coordinate Croatian and Hungarian ideas beyond a local and regional level, support local initiatives and realization of projects that have effect on both sides of the border via inclusion of all interested parties at the state, regional and local level and all the other institutions and professional associations which express the wish to participate therein and put efforts into catering for a broad range of cooperation in the border areas of the contracting parties.

Environmental protection is singled out as one of the priority areas of the Forum's activities [Article 2(3)]. The Agreement reinforces the synergy of the Forum with the Joint Committee in which the Forum represents a link with the representatives at regional and local level [Article 2(4)]. It is interesting to point out that the range of the cooperation of the parties anticipated by the Agreement has exceeded the competences of the Joint Committee [Article 2(5)]. Established in such a way, the Forum could become the intersection point of Croatian-Hungarian interests in the context of environmental protection. However, there is the issue of real implementation of the Agreement and thus of the efficiency of the Forum due to the fact that the members of this body with broad competences are only obliged to meet once a year, with no indication of how many workdays this meeting shall last [Article 4(1)]. What is positive is the fact that the Agreement, as a certain form of monitoring mechanism, prescribes annual programmes for the parties regarding the allocation of stipulated tasks [Article 4(6)].

Despite the importance of the abovementioned international agreements, the most important *lex specialis* in the domain of environmental protection at the bilateral Croatian-Hungarian level is the *Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation in the Field of Environmental Protection and Nature Conservation* concluded in Budapest on 26 January 2006.[84] The Agreement regulates cooperation aimed at prevention and joint evaluation of harmful impacts on the

[84] Regulation on the Proclamation of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation in the Field of Environmental Protection and Nature Conservation, NN – International Treaties No. 4/2007. The Agreement came into force on 10 May 2007. See Announcement of the entry into force of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation in the Field of Environmental Protection and Nature Conservation, NN – International Treaties No. 6/2007.

environment, sustainable use of natural resources, finding solutions for long-term advancement of the environment and nature, and obtaining international and EU funds. *In concreto*, the determined cooperation areas include general affairs and environmental and nature policy; the process of the Croatian accession to the European Union, regional cooperation in the capacity of member states; monitoring, assessment and comprehensive analysis of the environment and nature, access to information on the environment; protection of environmental media, sustainable use of natural resources, particularly in border areas; environmental safety, mutual assistance in case of emergencies with cross-border effects; waste management; protection, development and maintenance of the nature and landscape; climate protection; environmental and nature protection education, participation of the public; development of direct relations between local authorities, institutions and organizations in charge of environmental and nature protection; and research and development (Article 2). The monitoring of the implementation of these tasks was entrusted to the Croatian-Hungarian Joint Committee for Environmental Protection and Nature Conservation[85] which, after the entry into force of the Agreement, substituted the Subcommittee for Environmental Protection of the Joint Committee that held its last session in July 2007.[86] The contracting parties are bound to contact each other in case of emergencies with cross-border effects and/or a danger of their occurrence. The transparency of the action of the contracting parties in the sphere of environmental protection is enhanced by their obligation to inform the public on the status of the environment and measures undertaken for the purpose of prevention, monitoring and mitigation of harmful effects on

[85] The activities of the Committee encompass preparation of cooperation programmes and their coordination, and these activities shall be performed in compliance with state bodies: Croatian and Hungarian Ministries of Environmental Protection. The Committee is constituted of seven representatives of competent ministries and institutions of each contracting party and they meet at least once a year, one year in Croatia and the other in Hungary, with the possibility of summoning special sessions if required by either contracting party. The Committee acts via its two Subcommittees: for environmental and nature protection, while an *ad hoc* expert group is foreseen for dealing with some specific issues. In line with Article 3(3) of the Agreement, the first session of the Committee was planned within six months after the entry into force of the Agreement.

[86] Ministry of Environmental Protection of the Republic of Croatia, Hungary, available at *http://www.mzoip.hr/default.aspx?id=7498* (31.05.2013).

the environment and prevention of accidents which might have a cross-border effect.[87]
The intention and idea of the Agreement are compatible with some key international documents and initiatives in the field of environmental protection: the strategic objectives stated in the Environment for Europe process (commenced in 1991), the UN Conference Declaration on Environment and Development (the so-called Rio Declaration) of 1992, regional agreements concluded within the framework of the UN Economic Commission for Europe and relevant standards and policies of the European Union.[88]

2. Regional environmental initiatives

Cross-border cooperation bridges anachronistic frontiers and contributes to the cohesion of the European continent, having a stimulating effect on the creation of innovative socio-economic solutions and regional development in general.[89] This makes the support provided lately to regional initiatives by the most important international organizations, primarily by the United Nations, the European Union, and the Council of Europe, altogether logical.[90] These tendencies are reflected in the Croatian and Hungarian efforts to implement the abovementioned multilateral and bilateral agreements on environmental protection in practice through designation and establishment of specific joint mechanisms of cross-border cooperation. The most recent activities in this field have resulted in proclamation of the 'Mura-Drava-Duna' Transboundary Biosphere Reserve which was bestowed with the official status of protected area by the UNESCO at the 24th session of the International Co-ordinating Council of the 'Man and the Biosphere (MAB) Programme' of 11 July 2012. For both states, this is the first bioreserve of a transboundary character which caters for successful

[87] See Article 8 of the Regulation on the Proclamation of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation in the Field of Environmental Protection and Nature Conservation.
[88] See the Preamble.
[89] M. Dziembała, 'The Regional Cooperation in the Enlarged European Union – Towards a United and More Competitive Europe' 7 *Romanian Journal of European Affairs* (2007) p. 33.
[90] C. Mătuşescu, 'European Juridical Instruments of Territorial Cooperation – Towards a Decentralized Foreign Policy in Europe' 87 *AGORA International Journal of Juridical Sciences* (2012) pp. 87-93.

foundations for pentalateral cooperation since this area is expected to be officially expanded to three river basins in Austria, Serbia, and Slovenia in June 2013.[91] The purpose of the proclamation of the Reserve is the comprehensive preservation of unique ecosystems and development and modernization of environmental management and tourism, which is to provide the locals with better living conditions in accordance with nature and economic prosperity.[92]

The institutionalization of the cooperation between Croatia and Hungary in the field of environmental protection is developed within several regional initiatives and international organizations among which the Central European Initiative (CEI) and the Regional Environmental Centre for Central and Eastern Europe (REC) should be particularly emphasized due to their activities and relevance.

The Central European Initiative was founded in Budapest in 1989 as the first forum promoting regional cooperation between central and eastern European countries aimed at the enhancement of the socio-economic and political capacities of its member states, particularly of non-EU Member States.[93] Environmental protection and sustainable development as well as appertaining interregional and cross-border

[91] United Nations Educational, Scientific and Cultural Organization, Ecological Sciences for Sustainable Development, Mura-Drava-Danube, available at *http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/europe-north-america/croatiahungary/mura-drava-danube/* (09.05.2013); International Union for Conservation of Nature (IUCN), Transboundary UNESCO Biosphere Reserve 'Mura-Drava-Danube', available at: *http://iucn.org/about/union/secretariat/offices/europe/?10560/Transboundary-UNESCO-Biosphere-Reserve-Mura-Drava-Danube* (09.05.2013); Amazon of Europe, A Transboundary Biosphere Reserve for the Benefit of Nature and People, available at *http://www.amazon-of-europe.com/en/menu20/* (09.05.2013).

[92] United Nations Educational, Scientific and Cultural Organization, Ecological Sciences for Sustainable Development, Mura-Drava-Danube (Croatia/Hungary), available at *http://www.unesco.org/new/en/media-services/multimedia/photos/mab-2012/croatiahungary/* (10.05.2013).

[93] Along with Austria and Italy, Croatia and Hungary were the founders of this international organization (Croatia indirectly as a federal republic of the former Yugoslavia), the formal legal origins of which can be found in the Joint Declaration on the Forming of the Quadrigonal. Today, this Initiative has 18 member states. For more details see Central European Initiative, available at *http://www.cei.int/content/cei-glance* (12.05.2013); Republic of Croatia, Ministry of Foreign and European Affairs, Multilateral relations, available at *http://www.mvep.hr/hr/vanjska-politika/multilateralni-odnosi/srednjoeuropska-inicijativa-(sei)/* (12.05.2013).

cooperation belong to the corpus of key activities and priority areas that were most recently defined in the Action Plan 2010-2012. The CEI is an example of a horizontal instrument for coordination of the activities of its member states and dissemination of achievements at subregional and local levels[94] and reaffirms the strong connection between various international actors in the field of environmental protection. Namely, in order to conduct its task to promote environmental protection and sustainable development, the Initiative acts in synergy with the UN Economic Commission for Europe, the UN Environment Programme, the Organization for Economic Co-operation and Development, the European Union, etc.[95]

The Regional Environmental Centre for Central and Eastern Europe has gradually developed into a significant platform for the harmonization of environmental policies, and Hungary played a key role in its establishment in 1990. The REC promotes cooperation between key stakeholders involved with environmental protection: governments, non-governmental organizations, private sector entities, etc. It deals with information by providing the public with the possibility to participate in decision-making processes and helps finding environmental and sustainable development solutions at a global, regional, and local level.[96]

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[94] Central European Initiative Plan of Action 2010-2012, Meeting of the Heads of Governments of the Member States of the Central European Initiative, Bucharest, 13 November 2009, available at *http://www.cei.int/sites/default/files/attachments/docs /CEI_PoA_2010-12.pdf* p. 22. (13.05.2013)

[95] Republic of Croatia, Ministry of Environmental and Nature Protection, Central European Initiative (CEI), available at *http://www.mzoip.hr/default.aspx?id=9927* (14.05.2013).

[96] Beside Hungary, the USA and the European Commission were the cofounders of the Regional Environmental Centre for Central and Eastern Europe. The special Hungarian contribution to the Centre establishment was given credit by choosing the town of Szentendre for the Centre's seat. The wide network of activities is reflected in the establishment of regional offices in 17 member states, including those in Croatia and Hungary. It was the Hungarian presidency of the Council of the European Union in 2011 that provided the Centre with new horizons related to EU priorities in the field of environmental protection such as participation in the meeting of the Council of the European Union dedicated to the environment. Regional Environmental Centre, Mission Statement, available at *http://www.rec.org/about.php?section=mission* (15.05.2013); Charter of the Regional Environmental Center for Central and Eastern Europe (REC) – consolidated version, January 2011, available at *http://documents.rec*

The Croatian accession to the European Union in the near future will result in the creation of a new dimension of cross-border cooperation. Among 35 thematic chapters of the *acquis communautaire* defined within the framework of the Croatian pre-accession negotiations, Chapter 27 comprised the *acquis* in the field of environmental protection, i.e. the liability of harmonization of the Croatian legislation with more than 200 legal documents in the domain of horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms, noise, and forestry. The results of the screening by the European Commission conducted in 2006 have been published in a separate report which also relates to Hungarian-Croatian environmental activities. By way of example, the report specifies that the bilateral agreements aimed at the partial incorporation of Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances and of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources into Croatian legislation.[97] The pathway of the harmonization of Croatian environmental legislation with the *acquis communautaire* corresponds with the Hungarian one[98] and it is very likely that the two states will be experiencing a similar epilogue in this view. Namely, the greatest share of national legal environmental regulations is directly related to the implementation of EU documents: to be more precise, 80% of them have been determined by EU environmental regulations.[99]

/about/2011_01_Consolidated _Version_of_the_REC_Charter.pdf (15.5.2013); Regional Environmental Centre, Annual Report 2011: Lasting Impressions, available at *http: //documents.rec.org/publications/AR2011_ENG_Sep12.pdf* (15.05.2013).

[97] Screening Report – Croatia, Chapter 27 – Environment, 1 February 2007, available at *http://www.mzoip.hr/doc/EI/Screening_report_2007.pdf* pp. 2, 11, 12 (20.5.2013).

[98] Gy. Bándi, et al., *The Environmental Jurisprudence of the European Court of Justice* (Budapest, 2008) p. 9.

[99] Bándi, et al., op. cit. n. 98, at p. 12; Gy. Bándi, 'ECJ Environmental Jurisprudence – The Role of Explanatory Provisions', in G. Bándi, ed., *The Impact of ECJ Jurisprudence on Environmental Law* (Budapest, 2009) p. 10.

V. Conclusion

Even though it constitutes one of most recently developed areas of international law, international cooperation in the field of environmental protection is ranked highly on the scale of activities which are of fundamental importance for the functioning and existence of the international community. Environmental issues are becoming more complex and dynamic, and in the process of trying to accommodate the existing legal framework to new circumstances and tendencies, these issues have gradually become some of the most codified and propulsive areas of international law. The link between environmental law and human rights has turned out to be particularly significant in this context both at universal and regional level. European states have done their fair share in the evolution of this interrelation.

The European regional environmental perspective has been shaped by common key actors on the international stage: the Council of Europe and the European Union. Although the Convention for the Protection of Human Rights and Fundamental Freedoms does not contain an explicit provision on the right to a healthy environment and its protection, the case law of the European Court of Human Rights has reaffirmed that this right has been incorporated into the provisions on the right to life, to respect for private and family life and home, and the protection of property and health. Due to the significance and publicity of environmental law in the 21st century and the fact that it is the *conditio sine qua non* for the exercise of a number of the above-mentioned rights, it seems possible that the provision on the right to a healthy environment will get explicitly incorporated into the European Convention in the future.

With the aim of enriching the international law framework of environmental protection tailored at universal and regional level, and adapting it to their specific needs and circumstances, Croatia and Hungary have concluded several important international agreements which directly or indirectly deal with environmental protection. The core of these bilateral relations is the 2006 Agreement between the Government of the Republic of Croatia and the Government of the Republic of Hungary on Cooperation in the Field of Environmental Protection and Nature Conservation. Previous experiences facilitate the optimism and faith that the good-neighbourly relations between the two countries with respect to the designation of environmental law standards will intensify after the Croatian accession to the European Union. Due

to the transnational character of the greatest share of environmental issues, cross-border cooperation seems to be an inevitable necessity.