

# Legal Framework for Environmental Protection in the Context of Sustainable Development

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## Abstract

Modern society is characterized by dramatic climate changes and environment changes. There is an intensive use of natural resources and an increase in environmental pollution. The legal framework and its continuous development are essential for the protection of the environment and its sustainable development. The legal framework is a tool for identification and prevention of natural pollution sources, the prevention of environmental threats to the health of the population and the improvement of the quality of life of people in general. The volume of environmental legislation has increased significantly in recent years, but shortcomings in its implementation and enforcement are not sufficient to address environmental issues. The world community has relatively little knowledge of the potential for improving the legal regulation to strengthen environmental security by addressing global environmental risks.

*Keywords: environment, legal framework, sustainable development, natural resources.*

## 1. Introduction

The aim of the article is to analyse the principle of sustainable development in the context of environmental legislation. The essence of the environmental issue lies in the thesis of the UN 2005 Environmental Study that “this planet is fragile and its inhabitants are vulnerable” (Rekacewicz, 2006). Environmental regulation is an important means of addressing environmental challenges. The legal framework is designed to protect the environment, society and people. Environmental law is understood as a set of rules of social behaviour governing the behaviour of individuals and legal entities in the field of environmental protection. Environmental law is a relatively new and complex area of public law which includes provisions of constitutional, criminal, administrative, procedural and administrative law, including effects on private law.

The legal framework for environmental components covers a wide range of relationships and sites. The objective of environmental law is to balance the economic interests of nature conservation, the protection of human health and the use of natural resources. Theoretical and practical aspects of the legal regulation of the environment are pronounced. The first is related to the doctrinal approach of environmental law, where natural resources are recognized as the essential basis for the sustainable development of civilization. The system of public values is being refocused on choosing and following an environmentally friendly behaviour model. In turn, the practical environmental legal framework determines specific means of addressing environmental

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issues, such as water and waste management, environmental noise and air quality management systems, subjective environmental law, liability for environmental damage, etc. Today, our age is characterized by the complexity of the challenges (global crises, the ecological crisis, the effects of urbanization, climate change, the outbreak of the COVID-19 pandemic, migration and social problems, etc.), which have a significant impact on society and the individual. It is not for nothing that the societal development processes are identified by the term “risk society”, which is diverse. Moreover, it should be noted that most global crises and disasters have an environmental dimension, whether they are affected by the global energy crisis or, to a greater extent, local conflicts. Environmental issues are inseparable from the geopolitical and socio-economic context (Simotett Otto, 2007 Foreword). In the context of the effects of the COVID-19 pandemic, the EU Environment Action Programme refers to the multidisciplinary One Health approach, which recognises that human health depends on the state of the environment and is related to its components and factors (Decision of the European Parliament (EU 2022/591)).

We will note not only the adverse effects of the COVID-19 on the environment and society as a whole, but also the current state of war of the Russian Federation in Ukraine. The Economic and Social Committee of the European Union considers that the **environmental impacts caused by the conflict**, as a consequence of bombings, oil/gas leaks, incidents in chemical factories, or nuclear plants, are of major concern, for both the Ukrainian and EU population. The EU institutions must therefore help to protect and restore environmental damage caused by the war and sanction environmental crimes, as they will have inevitably long lasting consequences (War in Ukraine and its economic, social and environmental impact).

## 2. Materials and Methods

Descriptive and analytical methods of cognition, as well as methods of interpreting legal norms are mainly used by the authors. The method of descriptive and statistical data analysis is also used in the study. The authors analyze the problems of the environmental regulatory framework based on the study of international and national legal acts. The results and summaries of foreign and national research are used in the study. The authors, on the basis of the opinions and findings of experts, examine various directions of development of the legal regulation of environmental protection in the context of sustainable development of society.

## 3. Results and Discussion

Three key aspects may be distinguished in the context of the legal framework for environmental protection. Firstly, this is the process of global environmental transformation and its potential and actual damage features. Secondly, these are the trends of the legal framework aimed at preventing negative environmental damage and minimizing its consequences. Thirdly, what are the prospects of the future legal framework for environmental protection in the sustainable development of society? It can be acknowledged that the scope of environmental legislation has increased significantly in

recent years. In terms of sustainable development of society increased attention is paid to various areas of environmental threats and potential risk factors. However, the practice of adopting and implementing legislation and the provision of resources in this area are not sufficient to fully address environmental issues.

### **3.1. Environmental Transformation Process and its Harmful Features**

It should be acknowledged that the effects of climate change are a real and acute problem that has a negative impact on human life and threatens it. By modeling potential developments and forecasting the near future, the World Health Organization has drawn attention to the fact that between 2030 and 2050, climate change is expected to cause approximately 250 000 additional deaths per year, from malnutrition, malaria, diarrhoea and heat stress. The direct damage cost to health is estimated to be between USD 2-4 billion a year by 2030 (Climate Change and Health. World Health Organization). Extreme weather conditions are already among the most significant impacts of climate change affecting the health of population. In addition, flood and heat wave-related mortality is expected to increase, especially in Europe. Heat stress is a very dangerous condition that affects an individual's energy, efficiency and health. Heat makes people lethargic, apathetic and tired. There are symptoms such as headache, dizziness, mild irritability, including carelessness, confusion, nausea, vomiting, diarrhea, and so-called heat rash. By 2050, heat waves are projected to cause 120,000 premature deaths each year in the European Union, with economic costs of € 150 billion if no further action is taken. This high figure is not only determined by more frequent and higher air temperatures, but also by demographic changes in Europe. Today, around 20% of the EU population is over the age of 65, and their share of the total population is expected to increase to around 30% by 2050 (Klimata pārmaiņu ietekme uz cilvēka veselību. Eiropas Vides aģentūra).

It should be accepted that climate change is caused by human activity. Countries are also one of the entities contributing to climate change as a result of their action (Timperley, 2020). Countries around the world have enacted laws and adopted policies that describe national and international responses to climate change. But the current levels of both climate ambition and climate action are inadequate to meet the challenge. As a consequence, individuals, communities, nongovernmental organizations, business entities, subnational governments and others have brought cases seeking to compel enforcement of those laws, replace them with stronger ones (and sometimes weaker ones), extend existing laws to address climate change, or define the relationship between fundamental rights and the impacts of climate change (Global Climate Litigation Report: 2020 Status Review).

Climate change affects the quality of life of the population in many different ways. In addition, environmental damage is often imminent or takes decades to restore to its original state. There are direct and indirect effects, as well as those whose effects are immediately visible and those that only become apparent over time. Environmental damage is increasingly seen as a societal problem, and it should be stressed that environmental problems go beyond policy boundaries. At national level individuals take legal action against the state, demanding them to be more active in implementing regulations that would effectively mitigate the effects of climate change. Given that the damage caused by climate change is affecting every country in the world. International

Law Association has pointed that states shall protect the climate system in accordance with their common but differentiated responsibilities and respective capabilities. All States have a common responsibility to cooperate in developing an equitable and effective climate change regime applicable to all, and to work towards the multilaterally agreed global goal (Legal Principles Relating to Climate Change, 2014).

The planet is threatened by environmental damage. Professor Juris Bojārs points out: “We live in a world of unprecedented change. Our growing demand for raw materials, food, clean water and energy needs be met. However, in doing so, we have significantly reduced our natural capacity to continue to provide us with everyday needs. It first threatens the poorest sections of humanity. Living standards in the world continue to rise, but very unevenly. Some 2.7 billion people – 40% of the world's population - live in poverty or extreme deprivation, with less than USD 2. Another 850 million are often starving. However, it is necessary to ensure that there is food for each of the world's 6.4 billion inhabitants” (Bojārs, 2008). Human activity has fundamentally changed ecosystems to meet the growing demand for everyday resources: food, water, timber, medicine, fuel, and more. Globalization calls for an international solution to environmental problems. One of the most frustrating things about the climate crisis is that the fact that earlier action could have prevented it. With every passing year of inaction, the emissions cuts needed to limit global warming to relatively safe levels grow steeper and steeper (Timperley, 2020).

It is recognized in the Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage) that there are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future.

The annual report "Environment of Peace" on the level of global threat to peace of The Stockholm International Peace Research Institute (SIPRI), published on May 23, 2022, acknowledges that “Forests logged out of existence, mountain glaciers melting away, plastic pollution permeating land and ocean. More deaths in conflict, more money spent on weapons, more people going hungry. Human society may be richer than it was, but it is also markedly less secure. Governments have been looking the other way, and in some cases making matters worse by actively stoking insecurity, fear and environmental degradation. Without a fresh approach, the twin crises can only deepen” (Annual Report “Environment of Peace”).

Governments currently spend around USD 5-7 trillion a year on activities that can harm the natural environment, such as fossil fuel subsidies, destructive fishing and deforestation. Governments have promised to phase out fossil fuel subsidies, but have generally failed to implement it.

### **3.2. Legal Framework for Environmental Protection**

The legal framework for environment and nature protection is a complex system with a number of unifying objectives, which creates opportunities to assess both the role of the national state and the role of the international community. The legal system includes

a significant number of laws and regulations in national law, as well as the impact of international law and European Union law on the national legal system. Thus, the application of the legal framework of environmental protection can be extended to international level, regional or European (European Union) level and national level.

At present, countries, international organizations and individuals realize the urgent need to take measures to preserve the human and natural environment so that the situation does not deteriorate. In the past, the problem had not been identified for three main reasons: 1) The development of the industry had not yet spread pollution and environmental damage on a particularly large scale; 2) States in their international relations maintained their traditional relations as between sovereign entities, each pursuing its own selfish interests, political, economic and ideological objectives and not wanting other states to interfere in their internal affairs, resource management, and did not care for the common interests of states; 3) Public opinion was not yet as sensitive to the potential dangers to a healthy environment posed by industrial and military development.

In the second half of the twentieth century, the legal framework for the environmental protection has become one of the most important areas of law enforcement in the world, as arms competitions, weapons of mass destruction, unreasonable industrialization, nuclear power, urbanization, and agricultural chemistry have led to a rapid deterioration in the natural environment needed for human life (Bojārs, 2008).

Environmental security belongs to the most important basic human needs and contributes to its quality of life. It should be acknowledged that the first international agreement confirming understanding of environmental issues of the countries, their global nature and the need to co-operate, namely that the protection of the environment required concerted action, was recorded in 1972 at the Stockholm Conference. Two acts of international significance were adopted: the Stockholm Declaration on the Human Environment and the Action Plan for the Human Environment. The declaration accepted not only the basic declaration and the detailed resolution on institutional and financial measures, but also 109 recommendations, including an ambitious action plan, that “the environment was essential for the enjoyment of basic human rights, even the right to life”. This has led to the introduction of legislation in many countries to ensure fuller environmental protection. The Stockholm Declaration was an important basis for addressing environmental and sustainability issues. The Stockholm Declaration was approved by the UN General Assembly on December 14, 1972 by Resolution No 29951 (Stockholm Declaration). As a result, the principles stated in the Declaration gained legitimacy and became the basis for the development of future international tools and instruments (declarations, resolutions and international agreements).

In turn, the Action Plan for the Human Environment adopted in Stockholm contributed to the approval of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter in 1972 (1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other matter), followed by the International Convention for the Prevention of Pollution from Ships (MARPOL).

There is no doubt that the United Nations has played a key global role in organizing environmental measures. The Rio Declaration on Environment and Development was adopted in 1992, marking a significant change in the understanding of environmental protection and became a major milestone in the further development

of environmental law. Environmental protection has been identified as a key element in the sustainable development of society. The Rio Declaration laid down 27 very important principles in the field of environmental protection. The first principle states that sustainable development primarily concerns people who are entitled to a healthy and productive life in harmony with nature. People are at the centre of concerns for sustainable development. They have the right to a healthy and productive life in harmony with nature (Rio Declaration on Environment and Development). Article 11 is of importance for the development of environmental legislation, which calls on states to enact effective environmental legislation. Article 15 sets out the precautionary principles, which should be “widely applied by States according to their capabilities” and the wording of the “polluter pays” principle. These rights are also enshrined in the constitutional law of many countries. They oblige countries not only to develop a regulatory framework that avoids further environmental degradation, but also to promote investment in sustainable development. According to the Environmental Justice Report, in 2017, 176 countries have enacted environmental laws, 150 countries have incorporated environmental protection or the right to a healthy environment into their constitutions, and 164 countries have established Cabinet-level institutions responsible for environmental protection. In addition, more than 350 environmental courts and tribunals have been set up in more than 50 countries (Environmental Laws Impeded by Lack of Enforcement, First-ever Global Assessment Finds).

### 3.3. Legal Aspects of Prevention of Environmental Damage

There is no doubt that effective regulation and mitigation of adverse climate change is in the common interest of every country, and countries have a responsibility to prevent environmental and other damage that has a negative impact on climate change. The case law of the UN International Court of Justice shows an increasing number of cases related to environmental law issues. This also reflects the growing interest of countries in protecting these values and ensuring environmental protection at international level. It should be acknowledged that international environmental law has already been recognized in legal literature as a special right in the process of codification of the Article on State Responsibility (Crawford, 2002). In particular, it was recognized that human rights obligations and environmental obligations are separable from other obligations and should be specifically protected.

It is noted that international environmental law has evolved over time in modern society and in the perception of countries, and has become an interest whose protection has the nature of *erga omnes* obligations. The concept of *Erga omnes* is one of the concepts of national responsibility that is rarely applied in the case law of the UN International Court of Justice. Despite the identification of this concept in the Barcelona Traction case in 1970, the UN International Court of Justice has, for the first time, brought a case for breach of national *erga omnes* obligations only in 2019. The UN International Court of Justice initially identified five obligations that are *erga omnes* in nature. However, given that the list of obligations provided by the UN International Court of Justice is not exhaustive and given that international environmental law is a legal sector that has developed rapidly and has become an important part of international law, certain

obligations under international environmental law are subject to the nature of *erga omnes* (Šantare, 2021).

All basic human activities – social life, professional activity, family life, culture, etc. are related to life, vitality, health and the quality of the environment (Milts, 2000). Environmental protection has a clear relationship with human rights. The peculiarity of human rights that distinguishes them from other subjective rights is that they are based only on human existence as such and are absolutely subjective rights. Therefore, Matthias Koenig points out that the usual understanding of human rights could be clarified in the meantime: human rights refer to the right of claim for certain objects which, on the basis of human beings, are directed against others and can be achieved if necessary (Kēnings, 2010). Environmental protection and human rights are closely linked. People have the right to a healthy and productive life in harmony with nature (Rio Declaration on Environment and Development).

Complaints about climate change are also currently being filed with the European Court of Human Rights (ECHR). In the cases *Duarte Agostinho and Others v. Portugal and Others*<sup>4</sup> and *Verein KlimaSeniorinnen Schweiz and Others v.* the claims are raised against the states of the Council of Europe for human rights violations resulting from failure to act. States have failed to fulfil their obligations under international environmental law, with the result that climate change has led to a violation of the human rights of claimants. Under Article 34 of the European Convention on Human Rights (individual complaints) a court may receive a complaint from any natural person, non-governmental organization or group of natural persons alleging that a Member State of the Council of Europe has violated their rights under the Convention or its protocols. In addition, the Member States of the Council of Europe undertake not to hinder in any way the effective exercise of this right. With regard to those requirements Ole W Pedersen, Professor of Environmental and Energy Law at Newcastle Law School, has pointed out that the fact that claimants have directly addressed the ECHR, without the involvement of national courts, is likely to cause problems. The European Convention on Human Rights stipulates that the claimants must use all internal legal remedies, as well as the requirements for the admissibility of the complaint do not foresee the type of *action popularis* claim made by the complaints, but are based on the principle of subsidiarity (Pedersen, 2020). It should be noted that in the cases *Verein KlimaSeniorinnen* and *Duarte Agostinho* claimants ask ECHR to assess their claims in the light of the Paris Climate Agreement, which aims to limit global average temperature rise to 1.5°C. It should be emphasized that the ECHR is an instrument for the protection of human rights, does not explicitly provide for the right to a clean environment, and implicitly protects human rights in the event of environmental violations by interpreting the ECHR in the light of international environmental law. The ECHR is applied as a "living tool" whose content is influenced by the development of public opinion in the member states of the Council of Europe (Eicke, 2021). Therefore, the Paris Climate Agreement could also serve as a tool to interpret the rights enshrined in the ECHR. One possible solution to justify national jurisdiction in cases where a climate change claim is lodged against several countries would be to invoke Principle 4 of the Principle of Shared State Responsibility, but the main obstacle to the application of this solution is the fact that the concept of shared responsibility provides for a derogation from the idea of national sovereignty on which the ECHR system is based. Consequently, there is a contradiction

between the ECHR system and the Principles on Shared State Responsibility (Pinsone, 2022).

The case law suggests that conflicts may arise between the interest in protecting natural resources and the interest in living in a healthy environment, for example, the greatest possible availability of natural resources in everyone's life, but at the same time expanding the living space.

### **3.4. Prospects for the Future Legal Framework for Environmental Protection in the Sustainable Development of Society**

The principle of sustainable development requires decisions aimed at: 1) the well-being of society 2) the integrated and balanced development of the environment and the economy, with a view to meeting the current needs of society and protecting the environment without compromising future generations. As an example the Sustainable Development Strategy of Latvia until 2030 or the project "Latvia 2030" can be mentioned. It states that the only way to successfully respond to global challenges within the sustainability model is to develop a development policy that would balance the need to promote economic growth and improve the quality of life of every member of society, the need to ensure social cohesion and security, and the need to protect the ecological environment for our future generations (Latvijas Ilgtspējīgas attīstības stratēģija līdz 2030.gadam).

The main dilemma is between policy liberalization and reaching an economic-ecological consensus. This can be ensured by an optimal legal framework. Frederick Buttel, a sociologist for rural and natural resources, acknowledges that sustainability should be understood as a process, including a framework, rather than a result. It recalls that there will be new ways to "keep systems ecologically sound, economically viable and socially just" (Buttel, 2006).

In the context of environmental sustainable development the theory of ecological modernization can be outlined. Legal policy and environmental policy makers can use incentives and benefits to activate pro-social collective action. Bioeconomy that links rather than disagrees with those involved in the forestry sector in the spirit of ecological modernization (Hodge, Brukas & Giurca, 2017). For example, in Swedish forest policy, where sustainable management is positioned, the ideas of ecological modernization, the strengthening of the rule of law and the optimistic view that existing resources can be increased are influencing the "little of everything" path. The researchers' findings suggest that this prioritises the economic and legal dimension of sustainability (Lindahl et al., 2015).

One of the most recent and important decisions of the European Union on the Environmental Action Programme is the General Union Environment Action Programme to 2030, adopted by the European Parliament and the Council on April 6, 2022 (Environmental Action Plan). The Environmental Action Plan recognizes that increasing global population and the demand for natural resources should lead to sustainable development of economic activity, not only to harm, but, on the contrary, to reverse climate change, to protect, restore and improve the environment, including: halting the loss of biodiversity, preventing environmental degradation, protecting health and well-being from negative environmental risks and impacts, preventing and minimizing



pollution, thereby preserving and enriching natural capital and promoting a sustainable bioeconomy, thus ensuring an abundance of renewable and other resources. At the same time, degradation of land and soil based on human activities, such as poor land management, land use change, unsustainable agricultural practices, land abandonment, pollution, unsustainable forestry practices and soil sealing, continues both within the Union and worldwide, and due to the loss of biodiversity and climate change, often compounded by other factors, thus reducing the ability of land and soil to provide ecosystem services and functions. The plan emphasizes that thematic priorities should be set in the areas of climate change mitigation, adaptation, protection and restoration of terrestrial and marine biodiversity, a non-toxic circular economy, zero pollution and minimizing the environmental impact of production and consumption in all sectors of the economy. These thematic priorities, which address both the drivers and impacts of environmental damage, are interlinked and therefore require a systemic approach.

#### 4. Conclusion

Environmental issues and challenges are playing an increasingly important role in modern society. They are becoming one of the most important elements in the sustainable development of society. Legal protection of the environment is becoming one of the most important law enforcement areas in the world.

The authors point out that achieving sustainable results includes the following elements: - understanding climate needs; - identifying and tackling the root causes of problems rather than tackling their consequences; - systemic approach in the proposed solutions.

In society, there are certain conflicts developed between the interest in protecting natural resources, while ensuring their availability and the expansion of human living space, which may endanger intact natural resources. Contradictions and risks are growing in society, among which the risks of an ecological nature are.

The legal framework for environmental protection at international (UN, EU) and national levels is sufficiently developed. Environmental regulation is an important tool for solving environmental issues. However, shortcomings in their implementation and enforcement do not provide the necessary environmental solutions. Poor performance is a global trend that is exacerbating the escalation of environmental threats and hazards.

Studies and summaries show that the international community and law enforcement have failed to collectively address the key challenges of environmental threats and adverse climate change, resulting in the loss of natural resources and growing insecurity. As the global population grows and the demand for natural resources grows, economic activity should develop in a sustainable way so as not to harm the environment.

One of the most recent and important decisions of the European Union is the Environmental Action Plan (2030). The plan emphasizes diverse and overarching thematic priorities. The plan strengthens the rule of law, including the application of effective, dissuasive and proportionate penalties for non-compliance with environmental law, with a view to reducing infringements and breaches.

In the context of legal environmental protection ecological education of the society, raising awareness of the irreversible consequences of natural hazards, balancing

individual needs with common values that ensure its sustainable development are essential.

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