

## New Approach to Environmental Protection and Human Rights from the Perspective of Human Needs

### Nowe spojrzenie na ochronę środowiska i prawa człowieka z perspektywy jego potrzeb

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#### Abstract

Human rights certainly belong to the most ambitious and, at the same time (rightly referred to as) fundamental rights. Without them, all others would only make an efficient instrument of oppression or unequal treatment. Interestingly, environmental protection does not hold an important place among them, although it is the natural environment that determines the existence of each human being. At least for this reason, it deserves more attention and respect. It guarantees satisfying all existential, spiritual and social needs, both in individual and group dimensions; it offers safety and development – in other words, the fundamental needs of every person.

**Key words:** Human needs, human rights, environmental protection

#### Streszczenie

Prawa człowieka z pewnością należą do najbardziej ambitnych, a jednocześnie (słusznie nazywanych) podstawowych. Bez nich wszystkie inne byłyby tylko sprawnym instrumentem opresji i nierównego traktowania. Ciekawe, że wśród nich, ochrona środowiska nie zajmuje poczesnego miejsca, a to przecież od niego zależy egzystencja każdej istoty ludzkiej. Z tego chociażby względu należy się mu więcej uwagi i poszanowania. Ono gwarantuje zaspokajanie wszystkich potrzeb egzystencjalnych, duchowych i społecznych, tak w wymiarze indywidualnym jak i grupowym; oferuje bezpieczeństwo i rozwój – słowem podstawowe potrzeby każdego człowieka.

**Słowa kluczowe:** potrzeby człowieka, prawa człowieka, ochrona środowiska

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#### Introduction

Human rights are an indispensable element of each national and international legal system. They can be found in constitutions and normative acts of higher and lower orders, and they are controlled by state authorities as well as institutions and international organizations of significant impact. The very fact of the need to exercise such control proves both the awareness of the imperfection of the system and the need for constant monitoring in order to successively introduce necessary corrections. However, such judgement must not be made in haste, since the reasons for defective operation can be found somewhere between the erroneous system assumptions and the unpredictable deficiency of entities that have created and copied the given system. The existence

of the second factor is hard to deny. The weakness of a man involved in a network of dependencies often leads to destruction of initially appropriate interpersonal relationships or hinders the establishment of new ones. As a general rule, it results from dissimilarity of priorities and the emergence of conflicts in striving for different or even for the same needs. In effect, the scale of recognized values becomes individualised, and subjectivism in their application becomes the reason for recurrent violation of human rights. Therefore, is it possible that political, social and economic expectations and the need to subordinate to objectives set by those expectations are stronger than the need for the state or the institution to cooperate in harmony? The answer – if it is possible at all – is certainly very complex. It is the fact that the growing volume of human rights violations

reflects the crisis in their applicability. Do they require another approach? A different systematics or perhaps only more realistic justification? Or perhaps (partially) both?

### New insight into human rights

Out of his nature, man, upon achieving a previously established aim, looks for the next goal, and immediately after that, attempts and searches for methods to reach this new target. It seems that we have already arrived at a certain point – or we are just approaching it – we have reached a certain level and are already striving towards another. It is to be understood as an extended circle of freedoms and rights, which an individual wants to ascribe to himself or herself (and to human beings in general), perceiving it as the greatest possibility for self-fulfilment. In order to achieve this, we should change the old framework, which does not correspond to the growing needs, restricting the individual and the community. New social, economic and political challenges demand remodelling the framework, departing from the historically remote ideological banners of the French revolution, but approaching everyday needs that are more real and experienced by everyone. Ordinary needs, which could be made into laws, or the failure to comply with them (or going beyond them) could be met with sanctions (Sitek, 2016, p. XII).

At first glance, implementation of this proposal could be perceived as revolutionary, leading directly to chaos: to make rights out of needs. After all, each human being has so many needs, and the great majority of them are unsatisfied. Additionally, one type of need leads to the emergence of new types, and therefore, granting rights according to this principle would trigger an avalanche of demands to be responded to and subsequent rights to be implemented. At the same time, their addressee, i.e. the state, is not able to bear the burden of such a responsibility. However, is it something to be afraid of? Perhaps this proposal is not destructive, but rather constructive. Deliberating about the crisis of human rights without considering new solutions would not bring about much value. It is to be hoped that the already initiated academic discussions on this topic will end in specific results, i.e. either in consolidation of the need to maintain the previous solutions as most predictable, optimal and, at the same time, possible to be achieved, or in paving the way to new ideas, more appropriate for the postmodernist era. It is all the more urgent, given that dynamic economic development goes hand-in-hand with scientific and social progress (Mizerski, 2015, p. 16-44). This results in new achievements and new awareness, which are followed by the natural willingness/need to manage

and to ensure a certain type of protection of this area. This can be exemplified, among others, by proposals, emerging in the doctrine, for setting up the fourth generation of human rights – besides previously formulated rights of the first, second and third generation – which, in the opinion of moralists and personalist bioethics, could include, e.g. protection of *human life at the stage of prenatal development to ensure in future the possibility to exercise any rights at all* (Ciszek, 2010, p. 105-116), or issues related to information *hidden* in the human genome. Others, in turn, would rather classify here the rights of religious minorities to worship freely and practice any religion, and the rights of sexual minorities (to adopt children or to enter into marriage with persons of the same sex). From the perspective of the systematics of human rights based on needs, placing/attributing specific expectations on a specific category seems much easier. Moreover, such a division according to right-needs is also much more *spacious*, capable (of course, upon the common approval) of accepting any other needs aspiring to be regarded as right and satisfying such requirements. It is also possible that a new projection (more flexible, apparently) would at least make it easier to *update* justification of and the procedure to claim at least some among the rights previously somehow rigidly attributed to a specific category.

It is, for instance, the case with the right to a clean natural environment, which is a component of human rights making up a part of the third generation rights. They are the subject of discussion evoked by a growing interrelation between states in the processes of progressive globalisation of the world. This doctrine assumes that generally, such rights are of a collective nature, although they refer to individuals; they can be gradually implemented, and only by a common effort by the international community. Nevertheless, the United Nations has not yet adopted any documents on the human right to clean, healthy, safe and ecologically sustainable environment. The issue of its protection was the subject of meeting of the first global conference addressing the issues of the human environment, which was held in Stockholm (1972). *The Declaration* (B) adopted at that time distinguishes two *forms* of the human environment: the natural environment and the man-made environment. It was also emphasized that people have the right to access and enjoy life in such an environment, the quality of which permits living in dignity and well-being (Principle No. 1 B). This right is followed at the same time by an obligation to undertake protective actions for the sake of future generations (Principle No. 1 B)<sup>1</sup>. In turn, the *Declaration on Environment and Development* (C), adopted at the global conference in Rio de Janeiro (1992), focused on the need to take the environment into account in

an obligation to ensure protection and conservation of cultural and natural heritage of the signatory states, having in mind present and future generations.

<sup>1</sup> Cf. UNESCO *Convention Concerning the Protection of the World Cultural and Natural Heritage* (F) concerning

planning investments, development and economic growth (Principle No. 16 C). A programme of differentiated preventive and protective activities was included in the so-called *Agenda 21* (C). For the international community, it is a specific type of a roadmap, providing an aid for reaching sustainable development. Its implementation is to be supervised by the United Nations Environment Programme established in 1972 (H).

### Individual and group safety

A subjective assessment made by an individual concerning his or her sense of (un)safety refers as a rule to the emotional status of this person, which results from the effect of external and internal factors that are subject to dynamic changes. Consequently, the feeling of well-being and mental comfort accompanies a person staying in an environment that is perceived as safe. This safety, understood as the absence of the feeling of threat from the environment, makes up a part of basic needs of the man, just as even a more primary need to protect oneself against hunger and thirst – dangers that can be avoided depending on the condition and affluence of the living environment chosen or transformed for satisfying one's own existential needs and the needs of the group. The need to satisfy those and other safety-determining needs is related to the willingness to avert risk, transfer the responsibility for risk mitigation to other entities and, therefore, with waiving/losing a part of one's own autonomy and freedom for the sake of others. In this manner, the safety of an individual contributes to the community safety, the safety of the group in which an individual is a member.

A person, by nature, lives in a community and fulfils oneself in the community, since it provides efficient protection and a degree of individual safety. It takes place in particular interaction, mutual impact and dependencies, since for efficient realization of this social obligation, the community itself needs appropriate protection and requires its safety to be guaranteed by people who make up that community – their safety contributes to the common safety. Therefore, the group safety is the sum of individual safety aspects.

Collective rights, safeguarding group safety, are the rights to which groups, communities, nations and even minorities are entitled. Therefore, these are joint and several rights, referring to the principles and rights to which both communities (Mik, 1992) and individuals are entitled. It is easy to observe that all of these rights are at the same time the expression of the needs for group safety. Moreover, one depends on others, one results from others and they complete each other. It is not surprising, as those are rights of a community nature. However, they would not have any *raison d'être* if not for an external factor acting in favour of them, which is the living environment.

### The need/right to a healthy and safe environment

The right to a healthy and safe environment, which is also the most important existential need, belongs to the fundamental rights of every person and, in consequence, of all people. It is therefore of a prospective nature, since referring to all, we have in mind both present and future generations. It is understandable, since the natural environment conditions the existence of a human being, who – from the point of view of biology – is only one of its multiple constituents, and not the most important one. Therefore, it is obvious that the natural environment has existed, and can exist, without man; however, man cannot survive without the environment, at least without some of its components. This fact explains the need to intensify protection of natural ecosystems satisfying all basic needs. It is the main reason for which the environment is treated as heritage requiring to be handled from generation to generation. Those future generations, to exist, must also have at their disposal a certain amount of resources ensuring minimum existence. At least for this reason, the need to access and use the resources of nature should be treated as a right.

Today, a reference to the right to the environment triggers associations requiring an adjective describing its condition. Obviously, it would be ideal if it could be described as clean. Therefore, there exists a need to access and to use a clean environment. This is a need which should be (and is) guaranteed by law. Of course, it is not only the question of aesthetics (of which the natural environment is the primary source and point of reference), but also its status, providing the safety indicator (Rodojicic et al., 2012; Kośmicki E., Pieńkowski D., 2013). This need/right is therefore related to the right to life and to health. Consequently, out of concern for the state of environment and human safety, this right should be related to the right to information on its status, the right to public consultation at the stage of planning and preparing decisions that might cause significant changes in abundance and efficiency of individual ecosystems. On the other hand, upon detecting any violation concerning its functionality and/or abundance, it should be associated at least with the right to make an appeal against decisions of administrative authorities. Those few examples of rights in the form of substantive and procedural provisions can be used in both the national and international systems (Sitek, 1998). A human right to the environment is therefore mainly a quality measure, since its condition to a large extent determines the possibility of using it in the quantitative dimension, in the form of products it offers and of the so-called ecological services. Therefore, it is not only about preserving what we still have (forests, water bodies, various forms of life and components of inanimate nature) for aesthetic, spiritual or health purposes, but also about the real

possibilities of exploiting and using everything man needs to live and develop. After all, it is only in theory that such questions can be treated separately, as independent of the others. It is quite easy to observe that the very notion itself, *healthy environment* belongs to the public health category, and depends on many other interdependent factors: clean air, water, quality of food products, the presence of (and contact with) chemical pollutants, efficiency of natural self-repairing and cleaning systems, degree of soil degradation and the biodiversity of land and open waters. The origins of legal and institutional protection of natural environment do not belong to remote history. The 19<sup>th</sup> century was a time of extraordinary expansion of mankind. Scientific progress was accompanied by parallel changes in agricultural and industrial production systems. Since that time, mineral assets and renewable resources have been used (water, air) without awareness of ecological effects or health consequence for people. Observable and discernible results of unorganized ecological policy in the form of degradation of multiple habitats and deterioration of living conditions gave rise to the need to protect it out of concern for further development and protection against uncontrollable actions of man. As a matter of fact, it was only at the beginning of the 20<sup>th</sup> century that people began to realize that the state cannot ignore the natural factors, which determine the operation and progress of major sectors of economy: agriculture and industry. Therefore, it became necessary to revise the relationship of the state towards the environment and to assume responsibility for it. However, the need to undertake systemic protection was perceived relatively late, as only in the 1970s. Apart from sometimes symbolic (sometimes more significant) national initiatives, the largest (international) contribution to the establishment of the system of legal environmental protection can be attributed to United Nations<sup>2</sup> and European Union (and earlier to the European Community)<sup>3</sup>.

Contemporary problems related to the requirement to satisfy the human right/need to access and to use the environment generally results from its excessive exploitation. The occurrence of disasters that are not attributable to man, causing damage to property and nature, should be treated as natural mechanisms for self-recovery and rejuvenation of ecosystems; self-destruction phenomena (volcanic eruption, tsunami, earthquakes, flood and fire) are of a negative nature only from the point of view of human interests and

safety. However, man has no influence on that (or only a slight influence). He should therefore focus more on those phenomena in which – to some extent – he is the perpetrator and, above all, a culpable victim. Certainly, this refers to emission of greenhouse gases, the production of huge amounts of municipal and production waste (Zębek, 2012), pollution and wasted drinking water, applying crop protection chemicals<sup>4</sup>, commercial breeding of slaughter animals, degradation and soil pollution, etc. These are only some of the significant problems with which the right of environmental protection attempts to cope, still unable to respond to various needs of individuals and communities, resulting from the need to use natural resources necessary for their normal existence. The scale of these problems and the problems themselves are not trivial. The emission and presence in the atmosphere of the so-called greenhouse gases changes the climate, leading to discernible (mainly materially) weather anomalies, destruction in infrastructure, losses in the economy, in food production, and finally, to casualties. Incidental events caused by a sudden change in the weather are not easy to predict, and it is rather difficult to protect oneself against it. Nevertheless, gradual (certainly, to some extent, also caused by human thoughtlessness) climate warming results, among others, in reduced precipitation. This, in turn, leads to significant water shortage in areas suffering from droughts, which forces a reduction (or even cessation) of food production and causes famine. In effect, we are dealing with a failure to meet the fundamental needs/rights of the people living there. The right/need to live forces them to look for more convenient places, which – hopefully – will be more favourable for them than the one they have just left. In this way, they are deprived of their rights to a house, ownership, work, safety and even to freedom, (their needs being denied at the same time) as they became hostages of others (at best, in terms of compassion and generosity, at worst, of intolerance and dishonesty). In such a case, it seems redundant to talk about the right to freedom or to respect dignity, if the basic need, which is the need of freedom and respect for human dignity, through ignorance of individuals and defective policy towards entire nations, cannot be satisfied.

Using more or less the same logic, the issue of waste (occupying increasingly more space and involving great amounts of means) can be considered. A cer-

<sup>2</sup> A specific feature of environmental risks is their cross-border nature. For this reason, the only methods for preventing them are international. This is the aim of the United Nations Environmental Programme (H) (UNEP, 1972). The effect of international cooperation also include the: *Final Act of the Conference on Security and Co-operation in Europe* (A) (Helsinki 1975), Geneva Conference (1979, 1984), Munich Conference (E) (1984), Earth Summit in Rio de Janeiro (1992) with *Agenda 21* – a programme establishing methods for counteracting environ-

mental degradation and promoting sustainable development.

<sup>3</sup> Standards dictated by EU regulations are among the highest in the world. This policy contributes to the construction of an ecologically-oriented and sustainable economy, creating protection zones and ensuring fundamental needs in this regard, affecting the health and quality of life of inhabitants.

<sup>4</sup> In the European Union states, about 145,000 tonnes of pesticides are used every year for crop protection.

tain difference lies perhaps in the much more easily observed (at least in several states) presence of organized crime, seeing a profitable business in waste trade, particularly regarding hazardous waste. It is also here that the human rights are clearly infringed, as people are deprived of the need for the sense of personal, biological, ecological and epidemiological safety. The accumulation of waste and/or its improper utilization increases the risk of disease, poisoning and pollution of groundwater, surface water and soil. Wars can bring similar results (for the environment and human beings). Destruction caused by wars lasts for many years, and the weapons employed (e.g. agent orange<sup>5</sup>, anti-personnel mines (G)) do not always make it easy (or possible) to reclaim the environment and ecosystems affected. Therefore, the question is how to satisfy the need to access and to use the natural environment, since great areas of the Earth (mainly in Africa and South-East Asia) are still inhabitable and not available for crop production. The issue of the right to safety and health for those people simply does not exist; most have probably never even heard about it.

Paradoxically, serious changes in the environment are caused as a result of apparently ecological-friendly behaviour of man. It particularly refers to supposedly low-impact intervention of man in nature, namely, various forms of relaxation. Unfortunately, it is often related to gradual destruction of particularly interesting places, rare objects and objects valuable for their biodiversity. Therefore, since tourism has assumed the form of mass activity of people aiming at satisfying their recreation needs, recovery or health improvement, it has become an important branch of the economy. In effect, and also for those reasons, effective legal and institutional protection had to be ensured for the natural environment. The task is not easy, since the numerous needs of the man force him to incessantly use the values offered by nature and this inevitably leads to its successive destruction.

One of the most significant effects is unstoppable erosion of agricultural biodiversity. This, just like many other natural values, has been disappearing at an alarming rate. This is the factor determining food production in the world – its taste and nutritional variety and the predictability of crops – in short, general food security. The execution of the right to live, and all other rights resulting from that, depend to a significant degree on satisfying fundamental needs related to the occurrence of still too numerous areas of hunger and malnutrition. In this context, the perception of modern biotechnologies is not clearly defined as, on one hand, they are presented as a panacea for preventing the risk of global starvation and, on the other, as a potential ecological threat of uncertain effect on the life of humans, animals, plants and entire ecosystems. It is assumed that food pro-

duced in this manner will intensify the occurrence of health problems in people. The environment, in turn, will suffer from getting to the critical level of species diversity (Krajewski, 2009, p. 192). At this point, the question can be asked about the justification of the undertaken directions in research, the development of sciences and technology if, in striving towards satisfying some needs/rights, their addressee is exposed to unnecessary, real or hypothetical risks.

The remarks concerning the risk of violating fundamental human rights as a result of changes in environment lead to the reflection of a particular binomial combining human rights with human needs. The latter are obviously prior in relation to the former, they somehow reflect the reality of man and his priorities, which, fortunately, at a certain time became rights. Therefore, their infringement is always related to a denial to satisfy a need. Those involving restriction on access or use of goods and ecological services prove particularly nagging, even dangerous, since they directly harm the existence, as well as the possibility of safe and ecologically sustainable development.

## Conclusion

These remarks concerning the multidimensional, yet particular, dependencies and relations between man and the natural environment (which today are very difficult – if possible at all – to be framed within the legal regulations) force us to consider the relevance of adopted and applied projection. Due to incessant infringement of human rights on the environment and to development following his own (and environmental) interests, the temptation emerges (and at least a willingness to undertake a theoretical attempt) to introduce changes in the hierarchical distribution of those rights. However, this time, it will not be achieved according to the generation key (i.e. I, II and further generations) but in relation to the human needs behind them. But is it justified? What is more urgent – the need to change the projection of rights, or perhaps spreading of the awareness concerning needs and what they involve? It is most important to remember that infringing the right to the environment, regardless of the form, consisting in restricting the access to goods and ecological services or their use, proves particularly troublesome, as it directly affects the safety and the very existence of the subjects of this right. Mentioning the basis of existence – in this context – seems redundant. The problem is both important and complex. Perhaps addressing it not as a legal regulation, but also as a set of vital needs (for the environment, for individuals and for the community) which would make us understand it better and, consequently, implement it. One thing is absolutely certain: the discussion of these issues is necessary, since it always enriches us and keeps us

<sup>5</sup> A toxic defoliant used during the Vietnam war.

vigilant, alert and ready to introduce changes when necessary.

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