JANKUV, Juraj. *Legal Mechanisms of Protection of the Human Environmental Rights in Public International Law, Law of the European Union and Legal Order of the Slovak Republic*, Leges, Praha, 2018, 200 pp.

Review by
Naděžda Šišková

DOI: 10.2478/iclr-2019-0027

Jean Monnet Centre of Excellence in EU Law, Faculty of
Law, Palacký University Olomouc, Czech Republic

nadezda.siskova@upol.cz

The global climate changes draw the attention of the experts and general public to the different aspects of the protection of the environment all over the world. In this light it can be very welcomed the new monograph of Juraj Jankuv, who belongs to the leading authors and well-known legal experts in the field of the protection of human environmental rights..

Especially the author deals in his monograph with the topic of mechanisms of protection of human environmental rights under public international law, European Union law and Slovak legal order. The monograph is written in the Slovak language with a summary in English language.

The topic of the enactment and protection of environmental human rights in public international law, European Union law and Slovak national law is a very interesting and up-to-date topic that is currently being developed and completed.

The scientific aim of this monograph is to identify the enshrining and mechanisms of protection of six human environmental rights – human right to environment, human procedural environmental rights, human right to water and human right to sanitation in public international law, European Union law and Slovak municipal law in order to summarize the current state of protection of human environmental rights under the above-mentioned legal systems and branches and to consider possible changes *de lege ferenda* that may improve provisions of these legal systems and branches in the mentioned area. This aim author formulates in the first part of the monograph named “Introduction”.

In order to follow the aim of the monograph author further divides the monograph to three main chapters and conclusion. The first chapter, named „Mechanisms of Protection of Human Environmental Rights in Public International Law“ author devotes to the enactment of mentioned human environmental rights in public international law (later shortly international law). Author explains that the first of the mentioned rights – substantive human right to environment was implemented to the international law at the beginning of the sev-

enties of the twentieth century in the scope of international environmental law. The legal arrangement of this human right was later logically connected with the international human rights law. The international mechanisms of protection of this right are therefore contained in two subbranches of international public law – international environmental law and international human rights law. That is why this problematic is considered like an interdisciplinary topic of both mentioned subbranches of public international law. The author pertinently points out, that right to environment was firstly mentioned by the Principle 1 of the non-binding Stockholm Declaration of the United Nations Conference on the Human Environment and was anchored also in binding documents in the scope of the United Nations, Organisation of American States, African Union or European Union.

Coming up from the analysis of the relevant international documents the author comes to conclusion that the human right to environment is anchored in international law in substantive form. He comes up to the conclusion that this right exist in international law mainly in a declaratory form. Author further finds out that there are even other mechanisms of protection of this right anchored in international human rights instruments as the International Covenant on Civil and Political Rights (1966) and the European Convention on Human Rights and Fundamental Freedoms (1950). These mechanisms enable the indirect protection of right to environment through the widened explanation of different human rights as is the right to respect for private and family life, the right to liberty and security, the rights of members of minorities to enjoy their own culture, the right to prohibit torture, inhuman or degrading treatment and so on.

Author further states that the human procedural environmental rights are protected under international law in a more profound manner. These rights could by protected directly through provisions of binding international treaties. Author then correctly comes to conclusion that these rights have been invented for the purpose of protection of substantive human right to environment. Procedural environmental rights include the right to access to information about environment, the right to public participation in decision making in environmental matters and the right to access to justice in environmental matters. These rights are enshrined in the most profound manner in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998, so called Aarhus convention) concluded under the auspices of the UN Economic Commission for Europe. Author further finds out that there are even other indirect mechanisms of protection of procedural environmental rights similar as in the case of the substantive human right to environment. The procedural environmental rights could be protected by the widened explanation of different human rights as is the right to information, right to a fair trial or right to effective remedy, anchored in international human rights instruments like the International Covenant on Civil and Political Rights

(1966) and the European Convention on Human Rights and Fundamental Freedoms (1950).

Author further comes to conclusion that the human right to water and the human right to sanitation (safe hygienic conditions of the environment) originated in international law as well. Both these rights are closely linked. These rights have found their expression in international law in both non-binding documents and binding international treaties, which include e.g. the procedures of individual communications to be lodged to the quasi-judicial authorities created by these conventions. These international treaties include International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989) and Convention on the Rights of Persons with Disabilities (2006).

In this context author states, that there is a close link between the right to water, right to sanitation (safe hygienic environmental conditions) and the right to environment. Practical application of the right to environment could attribute to protection of both the right to water and right to sanitation. The right to environment exists rather in a declarative form. However, the right to water and the right to safe hygienic environmental conditions are more firmly anchored in international law and can therefore be protected more effectively. The protection of these rights contributes retrospectively to the protection of human right to environment. All three rights can be protected through procedural environmental rights, including the right to access to environmental information, the right to participate in the environmental decision-making process and the right to remedy in the event of violation of these rights.

In the second chapter called “Mechanisms of Protection of Human Environmental Rights in the scope of European Union Law” author analyses the mechanisms of protection of environmental rights in the scope of the European Union. These mechanisms were developed by several directives and regulations, i.e. by the secondary law of European Union. Those rules are oriented mostly to the protection of the procedural environmental rights. Most of them were issued in the continuity with the fact of signature and ratification of the Aarhus Convention by the European Union. The other means of protection of both of mentioned groups of rights are represented by the mechanisms of the European Convention on Human Rights and Fundamental Freedoms (1950), which is respected by the EU like a binding document, and by the Charter of Fundamental Rights of the EU (2009) through its article 37. The human right to water and the human right to safe hygienic conditions of the environment have found their expression in the rules of EU law as well in both non-binding documents and binding rules. Protection of the six environmental human rights at the level of EU law can also be supported in the scope of proceedings before the Court of Justice of the EU.

Author further states that in the EU law, there are six environmental human rights included, as it is in international law. Protection of each of those rights individually *de facto* contributes to the protection of the others. In addition, all of these six environmental human rights can be *indirectly* protected through a wider interpretation of human rights enshrined in binding rules of EU law like the right to respect for private and family life, the right to liberty and security, the rights of members of minorities to enjoy their own culture, the right to prohibit torture, inhuman or degrading treatment, the right to information, the right to a fair trial, moral and mental integrity, and so on. To the protection of these rights contribute the rules of EU environmental law in general since their rules protect environment as such.

The third chapter named “Mechanisms of Protection of Human Environmental Rights in the scope of the Slovak Legal Order” is focused on analysis of the Slovak legal order as far as the protection of human environmental rights is concerned. These rights were included to the Slovak legal order in continuity with the relevant rules of international law and EU law binding for the Slovak republic. The Constitution of the Slovak republic No. 460/1992 Coll. of Laws as amended includes the right to environment in Article 44 in the formulation “Everyone has the right to a favourable environment.” The Constitution also enshrines one of the procedural environmental rights – the right to full and timely information on the state of the environment and the causes and consequences of this condition in Article 45. More detailed legal arrangement of procedural environmental rights is contained in the Slovak ordinary laws. The Constitution of the Slovak republic protects the human right to water in the Article 4 indirectly as well.

Another level of the penetration of human environmental rights from public international law and EU law into the legal order of the Slovak Republic is provided by the provisions of the Slovak legal order concerning the relationship of international law (including EU law) and Slovak municipal law, represented in particular by the provisions of Article 1 paragraph 2, Article 7 paragraph 2 and Article 7 (5) of the Constitution of the Slovak Republic. In the context of these provisions, the rules of international public law and EU law of a contractual nature prevail over ordinary laws and become part of the Slovak legal order.

Author correctly states that following these national regulations, it is possible to register the relatively solid case law of the Slovak national courts on application of national rules enshrining human environmental rights as well as the rules of public international law and EU law in this area. It is also possible to identify the case law of the Aarhus Committee, Court of Justice of the European Union and European Court of Human Rights on the application of human environmental rights in the legal order of the Slovak Republic.

In the last part of the monograph named “Conclusion” author summarizes the most important conclusions as for the scientific aim of the monograph and

formulates possible *de lege ferenda* proposals for improvement of the mentioned legal arrangements of international law, European Union law and Slovak law in the area of protection of human environmental rights. Author presents several key proposals *de lege ferenda*. International law on the protection of human environmental rights could be greatly enhanced by the rigorous enshrining of substantive human right to the environment in the form of an Additional Protocol to the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights or in the form of a special convention devoted to this human right or human environmental rights as a whole. If the international community chose the form of a special convention on human environmental rights, the International Court on Human Environmental Rights could be set up equipped by the control mechanism of the Convention e.g. with the power to receive complaints against states from individuals or interested public, including non-governmental organizations. Such a court could relatively significantly help deal with the increasing number of complaints against violations of human environmental rights, as we register them before the regional European and American human rights courts.

The amendment of European Union law on the protection of human environmental rights could also be greatly enhanced by the rigorous enshrining of substantive human right to the environment but also of other human environmental rights in the Charter of Fundamental Rights of the European Union. An amendment of the restrictive position of the Court of Justice of the European Union in relation to the application of actions for annulment of an act of the institutions and bodies of the Union under Article 263 Treaty on the Functioning of the European Union could also help to protect those rights. Under this Article, any natural or legal person may bring an action against acts which are addressed to him or which are of direct and individual concern to him and against regulatory acts which concern him directly and which do not need for implementing measures. Unfortunately at the time being the restrictive interpretation of this norm from the side of Luxembourg Court doesn't enable to apply this norm in the case of other acts, than of non-legislative character.

The monograph, which is dealing with the extremely actual issues and is elaborated at the high scientific level, can be strongly recommended for different groups of readers – researchers, students, experts from practice and other persons, who are interested in these issues.