

PRACA POGLĄDOWA
REVIEW ARTICLE**SAFE NATURAL ENVIRONMENT AS GUARANTEE OF EXERCISING THE RIGHT TO HEALTH****Antonina H. Bobkova¹, Maryna V. Trotska²**

1LAW FACULTY, DONETSK NATIONAL UNIVERSITY, VINNYTSIA, UKRAINE

2DEPARTMENT OF CONSTITUTIONAL, ADMINISTRATIVE, ENVIRONMENTAL AND LABOUR LAW, POLTAVA LAW INSTITUTE OF YAROSLAV THE WISE NATIONAL LAW UNIVERSITY, POLTAVA, UKRAINE

ABSTRACT

Introduction: The right to health is one of the most important human rights and its proper exercising allows for the exercise of other rights. One of the guarantees of this right is the safe natural environment, which, on the one hand, allows to maintain the health at the proper level without worsening it, and, on the other hand, to improve and prevent negative consequences concerning it. The proper state of the natural environment is reflected through the relevant qualitative characteristics of each of the natural resources that are included in it, and in aggregate, reflected in the corresponding natural interactions between them.

The aim: The study is aimed at inquiring into the right to health and importance of the safe natural environment in order to provide it.

Materials and methods: Statutory regulation and scientific positions of scholars in the field of the above-mentioned issue are studied in this article. The study analyzes generalized information from scientific journals by means of scientific methods from a medical and legal point of view. This article is based on dialectical, comparative, analytic, synthetic and comprehensive research methods. Within the framework of the systematic approach, as well as analysis and synthesis, the concept of the right to health and its place in the provision of the safe natural environment is researched.

Review: The right to health is regarded as a person's awareness of the existence of appropriate ways, means and conditions that enable them to take care of their physical and psychological state by carrying out appropriate actions or refraining from doing so, thereby preventing or eliminating negative consequences that may threaten or do threaten their proper state of health. Along with others, the safe natural environment is a prerequisite that allows their full enjoyment of the right to health.

Conclusions: The guarantee of the right to health must be based on an integrated approach in understanding the nature of the factors, their interconnection and impact on each other in providing it. The safe natural environment is a prime element when implementing the outlined opportunity. Failure to comply with its proper condition, both directly and indirectly, affects its other components while implementing it. The level of its safety is determined by the proper qualitative state of natural resources, their interconnection and impact on human health. Ensuring the safety of the natural environment, both directly and indirectly, means creating requisite conditions for exercising the right to health.

KEY WORDS: health, right to health, natural environment, safe natural environment, environmental risks

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INTRODUCTION

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth...Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself [1].

Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health, and environmental protection, declaring that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being [2]. In fact, one cannot but agree with this principle, since only in the presence of the safe environment one can speak of exercising human rights which allows developing properly, having an appropriate level of living standards in the existence of which there is the fullest possible exercise of the right to health.

In accordance with the Preamble of the Constitution of the World Health Organization [3], the enjoyment

of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. The importance given to the "underlying determinants of health", that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights [4, p. 6]. The idea that all human rights are interdependent is consistent with the public health notion of the social determinants of health, which links to numerous rights – the rights to water, housing, food, health, education, a clean environment, etc. [5]. The right to health is a fundamental part of our human rights and of our understanding of a life in dignity [4, p. 1].

In other words, regardless of any given aspect, the right to health is an opportunity to attain an appropriate state of its highest level, which cannot depend on various factors, on the one hand, but on the other hand, it is interrelated

with other rights that are connected with it both directly or indirectly. In particular, the right to health is one of a set of internationally agreed human rights standards and is inseparable or 'indivisible' from these other rights. This means achieving the right to health is both central to, and dependent upon, the realization of other human rights, to food, housing, work, education, information, and participation [6].

THE AIM

The study is aimed at inquiring into the right to health and importance of the safe natural environment in order to provide it.

MATERIALS AND METHODS

Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable health care of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality [6].

Along with others, one of these determinants is the proper condition of the natural environment which may be different in terms of its qualitative characteristics, starting with the minimum that meets the safety criteria, which in turn will allow saving the possibility of realizing the vital functions of the human body, and on the other hand, it is such a state of it that does not only preserve the vital functions of the human body but also has a positive effect on it, which allows it to recover and heal. For instance, under section 8 of paragraph 1 of the Additional Provisions of the Law of Health [7], one of the components by which promotion of health is provided is an environmental one, namely, a safe condition of the natural environment. Environmental degradation plays a decisive role in many conflict situations; it can contribute to the outbreak of a conflict and result in the infringement of fundamental human rights, such as the right to life and the right to health [8]. The goal to study of certain aspects of the influence of the relevant factors on human health, which concerns exercising the right to health in one way or other, has been pursued by various authors [9-13].

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment [14, p. 155]. The right to health is not a right to be healthy, but rather a right to a health system – including health care and the underlying determinants of health – that provides the opportunity for people to attain the highest possible standard of health (paragraph 8 Committee on Economic, Social and Cultural Rights General Comment 14 [15]) [5].

Analyzing this definition, we can conclude that safety of the environment, in general, is one of the components

of the complex conception of factors having a direct or indirect effect on the exercise of this right.

The human rights principles of universality, equality and nondiscrimination, participation, accountability and interdependency, together with the right to health framework of availability, accessibility, acceptability and quality, provide a human rights framework for assessment of policy, program and project proposals [5]. One cannot but agree that each of the above components cannot be implemented as effectively as possible if the natural environment does not meet the necessary quality requirements. Measuring the health of the country's natural environment is vital in understanding the role that it can play in protecting a community and reducing the impacts from hazard events [16].

REVIEW AND DISCUSSION

The human right to health is provided for in part 1 of Art. 25 of the Universal Declaration of Human Right [17] which stipulates that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widow-hood, old age or other lack of livelihood in circumstances beyond his control. Pursuant to part 1 of Art. 12 of the International Covenant on Economic, Social and Cultural Rights [18], the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In accordance with part 1 of Art. 24 of the Convention on the Rights of the Child [19], States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services and others. When analyzing these provisions with respect to the consideration of the safe environment, in general, and the natural one as an important component in exercising the right to health, in particular, it can be noted that each of them directly or indirectly refers to any given characteristics through which one can assert its significance. In a point of fact, the wording of the availability of a respective living standard consists of certain characteristics (part 1 of Art. 25 of the Universal Declaration of Human Right), the realization of which is not possible in the natural environment, which is a threat. For instance, according to part 2 of Art. 12 of the International Covenant on Economic, Social and Cultural Rights, the measures ensuring the right of every person to the highest achievable level of physical and mental health include (b) the improvement of all aspects of environmental and industrial hygiene, which also confirms the special attention paid to the proper condition of the environment, in general, and the natural one, in particular. In addition, according to part 2 of Art. 24 of the Convention on the Rights of the Child, in order to exercise the right of the child to the enjoyment of the highest attainable standard

of health and to facilities for the treatment of illness and rehabilitation of health, the following measures are specified: (c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents. These provisions constitute grounds for arguing that the proper state of the natural environment is both directly and indirectly reflected in exercising the right to health.

Excessive concentration of industrial facilities leads to extremely anthropogenic pressure on the environment and consequently adversely affects public health [20, p. 26].

Before we decide on the conception of what kind of the environment is a safe one, let us mention that the natural environment is the complex of atmospheric, geological and biological characteristics found in an area in the absence of artifacts or influences of a well-developed technological, human culture [21]. The natural environment is the thin layer of life and life supports, called the biosphere, that contains the earth's air, soil, water, and living organisms [22]. Natural environment is the sum-total of natural factors which directly or indirectly affects human life and economic activity (the Preamble of the Law on Environmental Protection [23]). The "environment" is everything that creates natural conditions of the existence of organisms including Man and it is a precondition of their further development. Its components are mainly the air, water, minerals, soil, organisms (Art. 2 of the Environmental Protection Act [24]). "Environment" means the whole of mutually related elements functioning in nature (the earth's surface and underground, air, water, soil, flora, fauna, organic and inorganic material, anthropogenic components), as well as the natural and anthropogenic systems uniting them (Art. 1 of the Environmental Protection Law [25]). In other words, one of the components of the environment is its natural element and the exercise of the right to health will be considered through the prism of its influence.

The health and vitality of the natural environment are critical when measuring vulnerability to each identified hazard. A healthy and productive natural environment can provide excellent protection from a variety of hazards, while a damaged and unhealthy natural environment can reduce protection from specific hazards and, in some cases, increase a hazard's impact [16].

Environmental risks to health are defined as "all the physical, chemical and biological factors external to a person, and all related behaviors, but excluding those natural environments that cannot reasonably be modified". These factors include as follows: - pollution of air (including from second-hand tobacco smoke), water or soil with chemical or biological agents; - ultraviolet (in particular, protection

from) and ionizing radiation; - noise, electromagnetic fields; - occupational risks, including physical, chemical, biological and psychosocial risks, and working conditions; - built environments, including housing, workplaces, land-use patterns, roads; - agricultural methods; - man-made climate and ecosystem change; - behavior related to environmental factors, e.g. the availability of safe water for washing hands, physical activity fostered through improved urban design [26]. Pursuant to part 4 of paragraph 23 of the General Part of the Environmental Code Act [27], the non-compliance of the environment with the health and well-being needs is presumed if the limit value of the quality of the environment has been exceeded. That is to say that the safe natural environment is the one that does not endanger human lives and health as well as does not contain any risks of different nature of origin that would not allow the proper exercise of the right to health.

When exercising the right to health to confirm the importance of the proper state of the natural environment it would be appropriate to refer to the decisions of the European Court on Human Rights (hereinafter, the ECHR) concerning the outlined issue. Before doing that, we should note that in cases tried in the context of violation of the requirements concerning protection of the natural environment and, as a result, impossibility of proper exercise of the right to health, reasoning is justified with reference to violations of Art. 8 "Right to respect for private and family life" of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention) [28]: everyone has the right to respect for his private and family life, his home and his correspondence (part. 1). 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 (part. 2).

In the decision of the ECHR (the case of *López Ostra v. Spain*) there is a complaint alleging the Spanish State's failure to protect the home, private and family life of one of its citizens from the pollution caused by a waste treatment facility. It specifies the violation of the right to respect for home, private and family life; relationship between the right to a healthy environment and the right to respect for private life, home and family life; state accountability for actions by private companies in its jurisdiction. This case is significant because it shows the interdependence between civil and political rights on the one hand, and economic, social and cultural rights on the other hand. In many cases, protecting civil rights, such as the right to private and family life, and to respect for the home, involves also protecting economic, social and cultural rights, such as the right to a healthy environment and the right to health. The European Court ruled that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private

and family life adversely” [29]. In other words, the relevant state of the environment, in general, and the natural one directly or indirectly affects not only the proper exercise of the right to health but also other rights.

In the case of *Guerra and Others v. Italy*, the applicants made two complaints one of which concerned with the fact that authorities had not taken appropriate action to reduce the risk of pollution by the chemical factory and to avoid the risk of major accidents; that situation, they asserted, infringed their right to life and physical integrity as guaranteed by Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In this case, the question was whether national authorities had taken the necessary steps to ensure effective protection of the applicants’ right to respect for their private and family life. Severe environmental pollution could affect the individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. It concluded that the respondent State had not fulfilled its obligation to secure the applicants’ right to respect for their private and family life [30].

Under the factual background of the next case, the ECHR also concluded that under Art. 8 of the Convention the human right was violated. To the Court’s opinion, “... the fact remains that for several years her right to respect for her home was seriously impaired by the dangerous activities carried out at the plant built thirty meters away from her house. Having regard to the foregoing, and notwithstanding the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant’s effective enjoyment of her right to respect for her home and her private and family life” (the case of *Giacomelli v. Italy*) [31].

Consequently, analyzing the provisions worded in the above decisions, it can be noted that ensuring the possibility of exercising the right to health depends on the proper qualitative state of the natural environment. Moreover, safety is expressed in the proper condition of both respective natural resources, which are its components, and its state in general.

CONCLUSIONS

Exercising the right to health, a person has to approach such an opportunity comprehensively taking general care of various factors that directly or indirectly allow it to realize the indicated opportunity as fully as possible. The safe environment, in general is a primary element with the proper existence of which it becomes possible to create other conditions that are important in the process of exercising the right to health.

Effectiveness of administering liability for violating human rights in case of pollution of the natural environment depends on the selection of types of liability which fully ensure the restoration of rights of the aggrieved.

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CORRESPONDING AUTHOR

Maryna V. Trotska

Department of Constitutional, Administrative,
Environmental and Labour Law,
Poltava Law Institute of
Yaroslav the Wise National Law University
Poltava, Ukraine
tel: +380954909415
e-mail: marinatrockaa@ukr.net

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