

## **Principles and content of right to environment (in the light of international documents and conventions)**

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### **ABSTRACT**

*In the second half of the twentieth century, we are witnessing development of concerns related to human rights and violation of these rights in different aspects. Thus in order to prevent the violation of these rights the international society has made some attempts; including ratification of the Universal Declaration of Human Rights and two agreements on Political and Civil Rights and Economic, Social and Cultural Rights. But alongside these international actions and attempts, new necessities have been created and consequently, new rights have been added to the other human rights. The need for existence of a developed society in different fields of economic, social, cultural and...proposed right to development. Need for a healthy environment alongside other human rights and considering threats that human development and industry have made against environment, created right to healthy environment. In the early sixties, new generation of human rights were noted gradually and seriously and came to existence as correlative rights (the third generation of human rights) i.e. those rights that by international assistance and participation of all international institutions and governments achieving these rights would be possible to some extent. The present research intends to study the principles and content of right to environment with regard to international conventions and documents for the purpose of adequate recognition of right to environment as one of the third generation of human rights' (correlative rights) instances.*

**Key words:** Right to environment; principles of right to environment; content of right to environment; Universal Declaration of Human Rights; Stockholm Declaration

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### **INTRODUCTION**

The concept of human rights has always been evolving. Major advances in human rights were obtained after the world war two which Charter of the United States 1945 and following that ratification of the Universal Declaration of Human Rights in 1948 noted the change and progress in the above matter. With the appearance of the Universal Declaration of Human Rights 1948 and after that with ratification of two pacts on Political and Civil Rights and Economic, Social and Cultural Rights in 1966 the human society step into a path in which any event and any thought should be in the light of humanitarian teachings and in case of its contrast with this desire it surely shouldn't exist. Universal mutual and increasing dependency has placed new opportunities and challenges in front of human society that can be mentioned as mankind common interests. Today these mankind common interests are considered in international society, alongside the first and second generations of human rights in form of the third generation of human rights with the title correlative rights. In fact with the birth of this generation of human rights, humanity has up to some extend gotten closer to its intended desire and reality; as this generation of human rights alongside the first and second generations, form a triangle which to imagine it all three of them are not only necessary but also demanding. But the notable point is that mankind may achieve his goals if the environmental conditions and

environment in which he lives in would allow him to do so. As you know one of the most important natural rights of mankind is the right to benefit and right to enjoy natural blessings and healthy living environment. All humanity should be able to justly use natural sources including plants, animals, water, air, earth and ... It's because of this that right to healthy environment appears as an aspect of the third generation of human rights i.e. correlative right and makes the human society observe it. Based on this the first principle of Stockholm Declaration recognizes this right and states 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 ..." With this statement right to healthy environment and its importance in international and internal relations can be considered thus studying theoretical discussions and recognition of its concepts can be useful. This research tries to briefly study the basic concepts of rights to environment in two chapters. The first chapter includes recognition of concept of right to environment and the second chapter will study the principles and content of right to environment. The present study is based on attributive and library research.

## **A- CONCEPT OF RIGHT TO ENVIRONMENT**

For the purpose of precise recognition of right to environment it's necessary to consider basically what this right is and what the legislators' attitude in international and internal law is in relation with this right. As you knew this right is considered as the third generation of human rights in the universal society and is recognized as one of the correlative rights' instances. In fact the third generation of human rights can be known as the future of the new law with the common law in the first and second generation which was considered as human rights in the twenties century. With a review of article 28 of the Universal Declaration of Human Rights which states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" necessity for the creation of this generation can be understood better [12]. Taking the above brief introduction into consideration it seems necessary to study right to healthy environment in international and internal law.

## **1- RIGHT TO ENVIRONMENT IN INTERNAL LAW**

Due to recognition of right to environment in internal law of countries including our country and its acceptance by international institutes, these governments in their international positions gave an external feature to the internal acceptability toward environmental issues and considerations and presented it on an international level. On the other hand, sometimes internal law has had the role of transition of international positions in reflection of the human and environment connection matter, especially after Stockholm Conference and subsequent international environmental sessions, establishment of foundations of environmental human rights in universal public opinion, certain countries believed in this connection and made the internal law of right to healthy environment receptive to this right and above all governments appointed it in their highest level of legal system i.e. in their constitutional laws[5]. Our country is one of the countries which in its internal laws notes and emphasizes on the rights to healthy environment and recognizes this right. In Iran right to environment has been considered in the Constitutional Law. In the Islamic Republic of Iran's Constitutional Law right to environment is recognized as a common heritage of mankind. The Islamic Republic of Iran's Constitutional Law discusses environment as a public wealth that is considered as important as health, hygiene and education and is valuable. It can be said that this matter is specially recognized in article 50 of the Constitutional Law. This article states that: "the preservation of the environment in which the present as well as the future generations have a right to flourishing social existence is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or causes irreparable damage to it are therefore forbidden". As you can see article 50 of the Islamic Republic of Iran's Constitutional Law explicitly notices environment and the right of having a healthy environment and this article can be known as the legal principle of right to healthy environment in Iran which specially considers right to healthy environment. Alongside article 50 of the Constitutional Law that explicitly mentions the above right, aspects of environment are considered implicitly in some other articles of this law. Including article 45 of the Constitutional Law that is related to public wealth and property. This article states that: "public wealth and property such as uncultivated or abandoned land, mineral deposits, seas, lakes, rivers and other public waterways, mountains, valleys, forests, marshlands, natural forests, unenclosed pastures, legacies without heir and property of undetermined ownership and public property recovered from usurpers shall be at the disposal of the Islamic government for it to utilize in accordance with the public interest and law will specify detailed procedures for the utilization of each of the foregoing items". Although this article doesn't name environment explicitly, it is obvious implicitly, when we speak of public interest it means preservation of this public wealth; in a manner that no harm would come to it and it would be possible to benefit from it in the way that public interest requires. Thus the mentioned wealth is common

heritage of mankind and in other words it's considered a part of environment that its preservation is the government's responsibility [14].

In addition, article 20 of the Constitutional Law can also be noted: "all citizens of the country both men and women equally enjoy the protecting of the law and enjoy all human political, economic, social and cultural rights in conformity with Islamic criteria". Naturally one of the rights that citizens can enjoy; is right to healthy environment. Also implicit recognition of public right to enjoy healthy environment at the same time public division in trying to create and preserve environment and considering different generations' rights and their right of birth in an appropriate and healthy environment for sustainable life and prediction of sustainable development principle are the most important results of this article [5]. The second part of article 50: economic and other activities that inevitably involve pollution of the environment or causes irreparable damage to it are therefore forbidden and it seems that it illustrates the existence of the important principle of sustainable development which will be mentioned in detail in the second section. This principle is the result of sum of economic progress and growth circumstances with environmental necessities. Above principles mentioned in the Constitutional Law about rights to environment (explicitly or implicitly) the second and third and fourth Development Plans can be considered in recognition of right to environment and its preservation in line with sustainable development. In its eighty-second note, the second Development Plan 1994/4/19 states that: "during application, all economic and social activities should be conducted with regard to environmental considerations and for this purpose the following tasks are required". As it can be observed, in this note the legislator on one hand considers the social and economic development process and on the other hand all these actions must occur for the purpose of environment preservation and establishment of sustainable development. Also the third Development Plan 2001/2/5 has noted environmental and right to healthy environment matters.

The second chapter of this law is titled "Environment Preservation, Land Provision and Regional Balance". This chapter explicitly recognizes environmental preservation and having healthy environment. Article 59 of the fourth Development Plan states: "Management and Planning Organization is required, with cooperation with Environment Preservation Association and other relevant agencies, in order to estimate the economic value of natural resources and environmental and the cost of pollution and environmental degradation in the development process and the calculation of it in national accounts, to set guidelines for calculating value and cost of the priority items such as forests, water, soil, energy, biodiversity and environmental pollution in sensitive areas, and have it approved by authorities. Also article 61 of the fourth Development Plan states: "The government in order to strengthen and empower the structures related to environment and natural resources has to set and establish the necessary mechanisms to develop environmental public and professional education in all higher educational centers and units, protect and invest in environmental and naturally resources' section, create and strengthen appropriate structures for environmental activities in effective systems on environment." In this article the legislator binds the government to preserve and guard environment using the techniques that it mentions. Including using educational means for the purpose of preserving and protecting environment as one of the important techniques which will be considered in subsequent discussions. Thus as it shows environment preservation and having healthy and adequate environment is noted as one of the citizen's rights. Considering the mentioned matters, it can be said that internal laws of the Islamic Republic of Iran including Constitutional Law recognize right to healthy environment and asks to observe it. Noting the existing laws and regulations which some of them were mentioned and also Iran's accession to some of the international environment conventions, this matter is understandable. Now the fact that up to what extent in the line of existing laws and regulations this right can be ensured and healthy environment can be made in the society depends on the government and all citizens' actions so that this important issue could be achieved with the help of existing regulations or creation and amendment of required laws.

## **2- RIGHT TO ENVIRONMENT IN INTERNATIONAL LAW**

In the recent century the universal society has been rapidly on the move in different fields of economic, social, politic and ... With development of human society, the matter of environment and also its preservation were noted considering increasing of destruction of environment because of development of industry, economic and .... The matter of environment as an international and universal issue was noticed seriously and tangibly in the seventies and public concerns towards environment destruction process led to introduction of healthy environment and the right of having it as a human right in an international scale. Considering the increasing importance of environment in the international society, the first universal conference of the United Nations on human and environment known as Stockholm was held in Stockholm on June 5, 1972. The result of the conference's work was ratification and publication of a declaration containing 26 principles. In this declaration environment rights i.e. the right to enjoy

healthy environment is recognized as human right and equal in rank with human rights. The first principle of the Stockholm Declaration states: "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, and he bears a solemn responsibility to protect and improve the environment for present and future generations..."As it shows in this article (principle) the right to have healthy environment alongside other fundamental rights of mankind is recognized as one of the human rights and also the universal society has considered this right as one of the correlative rights. In addition articles 14 and 15 of the draft articles of the International Pact of Correlative Rights notice the right to environment. Article 14 states that: "Each and every human gregariously has the right to enjoy a balanced and healthy environment from an environmental point of view and favorable for economic, social, cultural and legal development". Article 15 also states: "the governments that are members make a commitment not to inflict adverse changes to life natural conditions that harms human health and social welfare; a harm that is necessary for social development and there is no way to avoid it, is acceptable" [12]. Considering the matters mentioned above it can be pointed out that article 14 of the declaration explicitly recognizes right to enjoy healthy environment and considers it as human right. Also article 15 of the pact binds the governments to protect and preserve this human right and notifies them to be diligent in preservation and enjoyment of human of this human right. In addition right to enjoy healthy environment is recognized in two binding regional documents as human rights. Article 24 of the African Charter on Human Rights 1981 states: "All people have the right to enjoy a satisfactory, comprehensive and adequate environment for their development."Additional Protocol to the Human Right American Convention on economic, social and cultural rights November 14,1988 about 11 titled right to healthy environment states: "Each individual has the right to live in a healthy environment and benefit from fundamental public services. The governments make a commitment to promote guarding, preserving and improving environment."Considering different documents and conventions on rights to environment and enjoying healthy environment and the acceptance of these documents and conventions by the governments of the universal society, today this right is recognized as one of the important human rights in an international scale and it has placed itself in the domain and scope of the third generation of human rights (correlative). Although this right is accepted as an unbinding right in some of the conventions but considering the existing process in the universal society it can gradually be noticed and accepted as one of the common customary laws in the international society.

## **B- PRINCIPLES AND CONTENT OF RIGHT TO ENVIRONMENT**

### **1- PRINCIPLES OF RIGHT TO ENVIRONMENT**

#### **First Clause: Right to Life**

Creatures of this planet and on top of them mankind have a special welfare that can be reinforced or harmed by human actions. When we say that creatures have a special welfare it means that these creatures that are affected by human actions can be harmed or benefit from these actions. What can benefit human and other creatures is something that has a good output on enforcing or preserving human life and his comfort and what is bad for human and other creatures are actions that may harm human and his comfort and even other creatures' life and comfort. Among this, right to life is one of the rights that not only human but even any other creature has the right to enjoy it and should be able to enjoy this right on this planet. According to article 3 of the Universal Declaration of Human Rights: "Each person deserves a right to life, liberty and security of person".And also according to article 6 of the International Covenant on Civil and Political Rights that states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", it can be understood that right to life is a definite right that is officially and explicitly recognized by the international society. Consequently this issue (right to life) can be respected when conditions to observe it be also prepared. One of the conditions that should exist so that humanity can enjoy right to healthy life is the existence of an adequate and healthy environment which this adequate and healthy environment and enjoyment of it can be ensured under having right to healthy environment. Naturally enjoyment of the right to healthy life is also in the light of having a healthy environment since it is a healthy and full of harmful and toxic environment that gives us enjoyment of the right to life. Otherwise humanity will be deprived of its fundamental right to life. With relation to this the introduction of the Declaration of the United Nations Conference on the Human and Environment notifies: "Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. 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 the right to life itself". "Also according to creatures' natural value principle including mankind any creature that is a part of life complex on earth regardless of its type has natural value and right to life. Thus preservation and reinforcement of the value is natural and also

preservation of creatures' right to life is one of the fundamental values" [9]. Thus as long as we consider creatures and mankind having natural value and respect their rights we must act in a way that the creatures' general and natural values in relation with their own good and interest (benefit) are preserved. Therefore we should accept honoring and respecting creatures' right as a fundamental ethical perspective. When we accept honoring a person perspective and know it as an adequate perspective to each human, we'll value accomplishment of fundamental interests and rights. So we make a commitment to act in a manner in which rights of human society including their right to life be observed and commit to a system of standards and regulations that are observed by all human. (in order to preserve their interests and rights) Preservation of a healthy environment and the right of enjoying it are one of this regulations and standards.

### **Second Clause: Preservation of Human Prestige and Dignity**

Mankind is a creature of reason and wisdom; a gift that is given to him by God so that he would be able to accomplish his necessary needs and facilities and also to regulate social matters. It is because of this wisdom and thinking that mankind is superior to all creatures. Religious texts have continuously noted and mentioned human prestige and dignity. God has paid a lot of attention to mankind and religious texts have continuously mentioned human prestige and dignity as the lord of all creatures; "from the very beginning and forever human dignity with all of its glory has been considered by God. Based on this any offense against this gift in human, is similar to hostility towards God's presence and a kind of disrespect to the creator [6]. For this value that God has given mankind he has made him his successor. In Koran's point of view human are of such greatness that God has commended all other creatures to be conquered by human beings. The sun and moon, wind and rain, mountains and valleys, forests and meadows, animals and other land resources all obey human by God's command. According to verses, human beings have an extraordinary value and worth but they do not have the right to destruct and waste away their rights [3]. Thus considering the emphases on human respect, value and dignity in religious texts, this creature is worthy of benefiting from necessary rights that it should have. Now considering the issues that were mentioned before it should be said that a creature that has such prestige and value from God's point of view should also have the right to live honorably in an environment that is fit and suitable for him. Right to healthy environment and enjoying it should be preserved for humanity considering human prestige and dignity and in the meantime any act that can lead to bringing harm to environment should be denied. It doesn't matter who destructs and harms the environment or if it's personal (person or government) because no matter who has operated negatively towards the environment (legal entity or natural entity) its effects will involve all human beings. In this regard international documents and conventions have also considered human prestige and dignity alongside enjoying a healthy environment. In this context the first principle of Stockholm Declaration states: "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 ...". This principle mentions a life of dignity and well-being in a healthy and adequate environment which can state the concept that humanity with value and dignity should live his life in an environment that fit and suits him (in an environment of a quality that permits a life of dignity and well-being) and suits his dignity. In addition in regard with sustainable development the second principle of the Johannesburg Declaration states: "We agree to establish the universal society in manlike, equal and responsible manner so that it would be suitable for human standing." This principle also mentions humanly and socially standing that is favorable and intended by human beings.

### **Third Clause: Preservation of the Peace**

One of the rights that can definitely be considered for human beings is the right to peace and the right of having a world free from war and violence. The introduction of the Universal Declaration of Human Rights considers the issue of the right to peace and states: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, the General Assembly declares this Universal Declaration of Human Rights a common goal for all nations...." Also introduction of the International Convention On Economic, Social and Cultural Rights further emphasizes the right to peace and states: "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in world". This issue is also emphasized in the Covenant on Civil and Political Rights.

In addition the United Nations approved the Declaration on Human Right to Peace in 1984 and also in 1995 it named a week "week of peace". Provisions of the Declaration on the Right of People to Peace approved by the General Assembly of the United Nations which the whole of the resolution 39/11 was approved on November 12, 1984, makes it obvious that the main purpose of the United Nations while recalling fundamental principles of



international law in the Charter of the United Nations, is just international peace and security. It is also mentioned in this resolution that the will and goal of people is elimination of war from life and humankind [16]. As you can see the right to peace is a natural and recognized right for mankind which all human beings should enjoy it. But alongside the right to peace, right to environment must be mentioned. In other words the matter should be addressed in such a way that right to healthy environment and right to peace are two inseparable and interdependent rights. Meaning, to have a healthy environment and the right to enjoy it the world should be free from war and peace must rule the world. Principle twenty-six of the United Nations' Conference on the Human and Environment states: "Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons." This principle emphasizes on means of mass destruction (nuclear weapons), means that would have horrible effects on environment. During the usage of nuclear weapons and their explosion, large amount of heat is produced along nuclear radiation and range of radioactive elements caused by fission process. " explosion and fission of radioactive materials and dispatched radiation from them can be very dangerous for creatures and any creature that is exposed to nuclear explosion will die. Therefore the damage would be unthinkable and irreversible [2]. In addition chemical weapons usage has also have very serious risks on human and other creatures' life and their environment. Today's documents show the fact that not only chemicals can create dire effects on health but also their long-term effects cause cancer and birth of deformed infants and also recognition and introduction of certain important dangers in the environment which with increasing concerns have created a special situation. Not only the scope of the above dangers leaves immediate effects on creatures but also includes long-term toxic effects on human and other creatures (chemical weapons) [4]. In this regard existence of a healthy environment and the right of having it is possible when sustainable peace and security rule the world and it's in the shadow of having peace that experiencing a healthy environment and using it in the best way are also possible.

#### **Fourth Clouse: Right Preservation of the Future Generations in Environment Usage**

The environment that we live and continue to live in has secured our needs for millions of years and it's through this planet that human beings have eased their growing process in life, but today this environment is exposed to danger and destruction due to technology and industrial extraordinary progress and without any solution a lot of the resources and facilities will be destructed in the next few years. For this reason in this regard we must pay attention to the future generations' rights of having a healthy environment, since all mankind and even other creatures (weather present or future generation) have an equal right of living and florescence on this planet. When we pay attention to our environment (the present generation) we should use its resources in the best way, avoid destruction of the environment, prevent uncontrolled pollution, then up to some extend we have observed the future generations' rights to enjoy a healthy environment and using it and in fact we have helped the preservation of human generation and mankind, since as mentioned before this world doesn't belong to just us, in the same way that it didn't belong to past generations, but also the planet belongs to the future generations that will live in the world after us. Therefore we must act in a way that they would also be able to continue natural process of their life and would be active in human society development. Stockholm Declaration on Environment and Human 1972 mentions the rights of future generations to enjoy an appropriate environment in its first principle: "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, and he bears a solemn responsibility to protect and improve the environment for present and future generations...". This principle notes that while preserving and improving his environment and in the shadow of having a healthy environment human beings also preserve this right for future generations so that they can too enjoy this human right (the right to have a healthy environment). In regard with this matter the Johannesburg Declaration also mentions in its third and fourth principle that the third principle: "At the beginning of this Summit, the children of the world spoke to us in a simple yet clear voice that the future belongs to them, and accordingly challenged all of us to ensure that through our actions they will inherit a world free of the indignity and indecency occasioned by poverty, environmental degradation and patterns of unsustainable development." The fourth principle "As part of our response to these children, who represent our collective future, all of us, coming from every corner of the world, informed by different life experiences, are united and moved by a deeply felt sense that we urgently need to create a new and brighter world of hope. "The third principle of the Johannesburg Declaration explicitly states that the next generations that have right to live on earth also have the right to enjoy a healthy environment. Thus it's our duty to pass this environment to them in a condition that is fit to human standing. Shortly, when we use the environment resources in a proper and balanced manner, prevent need-less destructions and be diligent in improvement of environment, avoid environmental pollution and generally if we as a human being recognize right to enjoy healthy environment for ourselves, than while enjoying a healthy environment by taking logical and rational actions, we

have recognized the future generation's right to enjoy a healthy environment with efficient resources and in this manner we won't deprive the future generation from this natural and God-given right.

## 2-Content of Right to Environment

Content of right to environment is formed from different elements, these elements are recognized and considered according to different international documents and conventions. The elements that can be named as right to environment supporter elements (constitutive elements of content of right to environment) are divided into three groups:

- 1- The right of having information on environment preservation;
- 2- Participation in environmental decision making;
- 3- Pleading for justice toward environment offense (access to the courts in environmental issues)

### First Clause: The Right of Having Information on Environment Preservation (right to information)

Access to environmental information as one of the constituent elements of content of right to environment is one of the rights that citizens shall enjoy. Right to information (having environmental information) was specially noticed in Rio Conference. This Rio Declaration states in its tenth principle: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities...". Thus access to environmental information was officially noticed in Rio Convention and also after that different documents and conventions paid special attention to this matter. Access to environmental information means that all people regardless of their citizen relationship, nationality, residency and without having to prove any legal interest, can freely attain the environmental information that they want. According to article 2 of the Sofia guiding principles (1995) environmental information include: "any written, audio, visual available information or data base on water, air, soil, animals, plants, earth and natural sites' status, activities or measures that are incompatible with these elements and probably have destructive effect on environment and also all measures for preservation of the above elements including environmental management and ministerial measures programs." Also Lugarno Convention (1993) emphasizes on citizens' access to information in regard with civil liability for damages resulting from environmental hazardous activities.

According to article 13 of this convention "Public authorities must take measures in regard with environmental information attainment of any applicant without having to have proven interests in this respect [17]. It seems like considering that environment is recognized as mankind common heritage and isn't peculiar to one particular person or group, even people who are not beneficiary in environmental issues and problems, can attain environment information regardless of citizen relationship, being beneficiary, nationality and etc.. As not being beneficiary is mentioned in article 13 of the Lugano Convention. In 1990 the European Union Act on environmental information access was approved by this union. The goal of this act was to ensure freedom of environmental information access that is kept by public authorities. And that information publication is done without discrimination and equally. This act defines public authorities in a broad sense: "any public and ministerial authority in national, regional or local level, responsible and in possession of information in regard with environment". (Article 2, paragraph b). But the principle of freedom of environmental information access has some exceptions according to article 3 of the European Union Act. According to article 3 of this act "parties to this act may reject the request of reception of environmental information due to the following reasons:

- 1- The measures and information of the public authorities being confidential in international relations;
- 2- National security;
- 3- The information being private and them being confidential;
- 4- Request of a third country which the parties to the European Act are not legally obligated to reply to them"

As you can see this act includes some exceptions of freedom of information access. This act states; if the information request includes paragraph 2 of the third article it can be rejected by the state party to the act [8]. Generally due to insufficiency of international documents and conventions in regard with content of right to environment, Denmark Convention (Aarhus) was approved in 1998. This convention titled Convention on Access to Information, Public Participation Access to Justice in Environmental Matters is the first binding document in this

field and was approved by the European Union and 35 other countries. In the introduction of this convention following the acceptance of article 1 of Stockholm Declaration, right to environment was once again emphasized.

#### **Access to Information in Denmark Convention (1998)**

According to article 4 of this convention "all organizations of the European Union are responsible for request for environmental information. Making such information available to the public includes copies of the actual documentation containing such information". Environmental information in this convention is also considered in a broad sense and includes "a diverse range of data that refer to environmental status, environmental damages on environment interests, environment improvement measures and results of environmental measures and damages and also information on human health and safety" [2]. In regard with information preparation and publication article 4 of this convention states "parties to the convention agree to information gathering and publication and responding to citizens' request", but preparing and publishing information requires taking some measures by states that are members to the convention, to prepare the requested information states that are members to the convention must ensure that preparing and gathering the information is done by public authorities, this issue requires establishing a binding system for presenting suggested information and activities that can have important effects on environment by each state [5]. In this convention public authorities are defined in a broader sense than previous conventions and documents. In addition to states and other public institutions, it's any natural or legal entities having public responsibility or performing public services that are directly or indirectly in relation with the environment [17].

In regard with method of presenting information, the convention states that the public authorities should commit to presenting the requested information in the requested shape and form. Unless the information was previously published in another shape and form or changing it to another form is impossible. Time limit for responding to information is within a month utmost, but in exceptional cases this period is augmentable up to three months and information must utmost be given to the applicant within this period. Generally it must be said that usage of freedom of access to information mechanism and other right to environment' supporter elements that have been mentioned in different documents and conventions, are mechanisms for preservation of citizens' human rights to enjoy healthy and clean environment.

#### **Second Clouse: Participation in Environmental Decision-making**

Participation in environmental decision-making is considered another one of the elements that form content of right to environment. Participation in decision-making is a right that should be granted to the citizens as a member of the society and to people who live in the environment. Naturally using citizens' point of view and making use of these ideas in creating environmental regulations by the government can help the government itself in useful and affective legislation for the purpose of environment preservation. In fact it can be said that legal right to citizens' participation in environmental decision-making has a close relationship with democratic commitment of the international society (government) and contribution to democracy advancement of these countries. Also environmental participation, especially by NGOs in environmental decision-makings leads to creation of public awareness and participation right of citizens. In regard with this matter principle 23 of the Nature Charter states: "Each person by himself or with others in accordance with his state's law and regulations would be able to participate in making decisions that are directly related to environment and in case of destruction or damage can refer to judicial authorities for compensation". Considering this principle "citizens' participation in environmental preservation in certain and determined cases, is true fulfillment of right to environment. This participation allows citizens to demand rights that they enjoy and also perform the responsibilities that they have in this area, at least up to some extent [1]. The right that is given to the citizens in this matter can be a mechanism for expansion and development of democracy idea for the purpose of public interests improvement. Principle 10 of the Rio Declaration also emphasizes on citizens' participation in environmental decision-makings. also people shall be able to participate in the decision process. Public right and successful participation and attendance and ministerial methods should be in such manner that would make healthy environment and execution of regulations possible". Denmark Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus 1998) that is the first binding document in this area, in its article 7 emphasizes on participation in decision-making. According to this article public participation in plans, programs, policies and also participation in binding legal documents in environmental matters must be ensured in each phase of the decision-making process.



### **Third Clouse: Right to Pleading for Justice toward Environment Invasion (access to the court) in Environmental Issues**

Another element that is mentioned in content of right to environment is right of access to the court (right to pleading for justice) in environmental issues and problems. Usage of this right by citizens can be effective as means to control ministerial activities and public authorities or even other private law entities in relation with environmental damages, since by exercising this right we can avoid actions that are against environmental laws and regulations. As mentioned before citizens should enjoy the right to access information, but if a state doesn't meet this obligation, citizens must have the right to access the courts in order to receive this right. In relation with this matter, article 14 of the Lugano Convention (1993) on civil liability for damages due to environmental hazardous activities states: "Anyone who his request of attainment of environmental information is with no reason denied by the public authorities, will have the right to refer to the courts or other ministerial authorities that are responsible to investigate this matter according to the law, so that their request would be investigated". In addition, according to article 9 of the Denmark Convention (1998) "Anyone who his request for attainment of information is not replied without any reason should have the right to access the courts for the purpose of investigating his request" [8]. In addition to the contents mentioned, the right to access the courts displays more when the environmental damages are due to the public authorities or private entities' actions, or a breach is made against environmental laws and regulations that led to occurrence of an environmental crime. Here the issues of compensation and investigating environmental crimes are considered and consequently the right to access the courts for compensation and the matter of punishment of violators arises.

As you know damages and injuries due to economic and industry activities are increasingly observed. In this context access to the courts can have an effective role as means for avoiding damages or compensation and their reduction [11]. In this context article 13 of the Lugano Convention emphasizes on compensation and states: "Anyone who has suffered environmental damages due to other's actions, has the right to refer to competent court for compensation".

Also in regard with this matter article 9 of the Denmark Convention states: "governmental authorities and private entities that act against environmental laws and regulations, should be tried in the court of law by individuals or non-governmental organizations". As you can see, for compensating environmental damages and violation towards environment this right to file a suit in the competent court for restoring their right has been recognized for the citizens. Meanwhile the important role of environmental NGOs in filing a suit in order to compensate and violation of environmental laws and regulations can be noted. Environmental litigation by NGOs can be a service toward raising public awareness and understanding of citizens of their rights, in fact non-governmental organizations can protect the citizens' rights in this case as people's representative.

In this context the Denmark Convention emphasizes on the role of non-governmental organizations in environmental litigation. Paragraph 2 of article 9 of this convention states: "the NGOs that are included in this article, should be assumed in a way that they enjoy sufficient interest for the purpose of litigation in relation with violation of environmental laws". Therefore the right to file a law suit in different environmental issues and violations due to ministerial actions is recognized in this binding convention for the NGOs [10]. but compensation by the court and based on paragraph or article 9 should be based on justly, sufficient and effective and timely (tense related) compensation. An issue that should be noted in legal procedures is that legal expenses shouldn't be a barrier to filing law suits by individuals or non-governmental organizations. Costs such as expenses related to experts, attorneys, witnesses and...

### **CONCLUSION**

Considering the discussed topics it can be said that the recent study is a legal study but in the present world no kind of legal study can be free from politic effects and impressions leading to an effective action in the outside world. According to anarchic structure of the international system, no central organ can be an assurance for execution of international general laws and in an environment that the competitor states with their preventive performance, pursue their national and special interests, raising the motto "mankind common heritage" in matters such as environment is an ideal subject that is not practical in the current situation; since, when each country guides its actions according to its national interests in economic and military development, debating topics like environment preservation, women rights and epidemic contagious diseases as post-modernity issues are considered by the states, symbols that are just cumbersome laws in their economic development. Even though they confirm it in the scope of mottos and signing international law conventions. From this point of view as long as states are considered the exclusive players in the international system and act in a competitive environment and according to Hobbes fight

against each other, we can't trust advancement of such concepts. But when this idea that the exclusive right to act and react in the structure of international system doesn't just belong to the states and individuals, associations, governmental and non-governmental organizations are also a part of this structure and the international civil society will somehow extend, be accepted in international societies, then we can consider these issues thoughts turned to action. Where states no longer can think of only their own special interests and what is considered in the present world as mankind common concern would be placed in their policy making context.

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