

States' Human Right Obligations in the Fight with Air Pollution with an Emphasis on the Judicial Procedures of the European Human Right Court

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ABSTRACT

The issue of the states' obligations regarding air pollution has been of a high importance for years in the legal system of the western countries and the passage of time and the technological progresses have always added to their importance. Air pollution is one of the essential problems of the today's industrial and urban communities and it is one of the most primary subjects dealt with in the environmental laws. Nowadays, air pollution is amongst the essential challenges and crises of many of the cities and human ecosystems. In line with this, the human beings' confrontation with this topic and the enforcement of the essential and principled solutions in the fight with this crisis are indicative of the necessity of paying particular attention thereto. The existence of the regulations with high efficiency and effective deterrence contributes to the elimination of many of these problems. In our country, as well, there are enacted and enforced rules and regulations for the fight with the air pollution. The law on the environment conservation and reclamation, the law on the method of preventing air pollution and the Islamic penal code of law are the legal instruments for the confrontation with the air pollution.

KeyWords: air pollution, European human right court, human right, judicial procedure, environment.

Introduction

Air pollution is presently a major bioenvironmental concern of the states and the confrontation with it has been given a national priority in many of the developing countries. This pollution is one of the first and most important bioenvironmental problems and it has been created following the increase in the use of various kinds of fossil fuels and invention and daily increasing manufacturing of the automobiles and expansion of the industries, especially in the crowded cities, hence a solution should be sought for controlling and fight with it. On the other hand, besides being an environment destroying factor, this pollution is also considered as a sanitary problem and it is enumerated amongst the serious threats for the human health and general hygiene, especially for the children and the old people and the natural environment. Therefore, air pollution is not a subject that can be simply disregarded. Accordingly and through informing and discussing by the scientists concerning the outcomes of the air pollution and following the piling up the public thoughts' pressure, the air pollution and the fight with it were placed atop of the primary concerns of the policy-makers and statesmen. After the formation of some sensitivities to this subject that was going to jeopardize the public health and environment, various rules and regulations were enacted for the governments' fight with it. The mankind is faced in the entire world

with huge bioenvironmental challenges, including the earth warming and air pollution, loss of the biodiversity, de-forestation and deserts' development. The daily increasing ecological crisis that our generation is witnessing might be even exacerbated. Based on "Living Planet's report", the earth's regeneration cannot keep pace with the demands placed thereto for the speed of the earth dwellers' conversion of the resources to garbage is faster than the nature's speed of the garbage's retransformation into the resources. Nowadays, the mankind is not earning a living by spending the profits obtained from the nature rather he is spending the main capital. Up to now, the global bioenvironmental subjects have been taken into consideration in respect to the mechanisms existent in the international environmental laws. However, even with the existence of a mass of international bioenvironmental treaties and declarations as well as the national bioenvironmental regulations and policies, a question might be raised as to what other tasks can be done for reversing the destruction course of the natural ecosystems and supporting the human beings, particularly supporting of the most deprived and most vulnerable destructor and plunderer of the environment?

1. Air Pollution and its Laws:

The forthcoming sections try introducing the intention by the air pollution laws and also the concepts related to the elements of the concept, to wit pollution and air.

Defining the Air Pollution Laws:

Air pollution laws constitute a specialized domain of a newly emerging law on environment and, by it, the collection of the rules, regulations and principles governing the control and conservation of the clean air is intended [1]. Efforts are made in this science to analyze the legal system governing the atmospheric pollutions by the use of the basics, tools and methods that are applicable to the various fields of the science of law.

1.1. Etymology and Literal Meaning of Pollution:

Pollution has been derived of a Greek word that means dirtiness and uncleanliness. Therefore, the term "pollution" includes the process in the course of which "the harmful or dirty materials are added to the land, air, water, environment and so forth in such a way that they are rendered unfavorable for the optimal use". It has been stated in a definition that pollution is created when the concentration of a chemical factor reaches to the extent in the environment that causes the physiological reactions by the living beings and consequently brings about ecological variations [2].

1.2. Legal Perception:

The definition of the pollution from the legal perspectives should be sought in the documents and regulations and occasionally in the legal doctrine. Pollution has been defined in numerous regulations amongst which article 9 on the conservation and improvement of the environment, passed in 1974, along with its later amendments and note to the article 688 of the Islamic penal code of law can be pointed out¹. Moreover, some relevant international documents can be also pointed out in this regard (Mashhadi, Ibid, p.33). In the doctrine, as well, this word is usually applied along with the term "interference" by the combination of which an extensive concept is intended and it includes the voluntary and involuntary human actions that cause damage to the natural elements and environment and they can be determined and identified such as air pollution, water pollution, soil contamination and so forth [3].

Comprehensive Definition:

Considering the other definitions that have been provided by the scholars of the environment about air pollution, it can be stated that the air pollution differs technically and it can be assessed using various scales and criteria. However, it seems based on the selection of such criteria as "damage" and "harmful" that the disordering of the natural composition of the air in a health-harming manner is intended by the air pollution. In a more comprehensive perception, air pollution can be defined in the following words:

Legal Definitions of Air Pollution:

Considering the different and various technical definitions that exist for the air pollution, it has to be noted disregarding the technical discussions in the environmental laws that the acceptable criteria is as

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introduced in the definition by the legislator (including the national or international authorities) for a bioenvironmental phenomenon [3].

This is useful in that the legal definition can put an end to all of the disagreements about the definitions, especially in the implementation domain, on the one hand, and, as it will be pointed out in the analysis of the definitions, the legal definition reveals the criteria, principles and scales as well as goals intended by the legislators, on the other hand; however, this does not mean that there should be no discrepancies about the legal definitions of a bioenvironmental phenomenon rather these definitions might be different from a country to another and from a law to another considering the level of the standards, scales and goals of the legal system. Therefore, there is still this problem in the environmental laws that the technical definitions mostly differ from the legal definitions and this is occasionally accompanied by a problem or another. However, the criterion in the environmental laws is the legislator's definition of the air pollution.

Definition of Air Pollution in the Laws of Iran:

1. Study Background:

Before the enactment of the procedures on the prevention of air pollution, passed on 17th of July, 1975, there was no clear-cut definition of the air pollution. However, reference had been made in the law on the environment conservation and reclamation, passed in 1974, (articles 6&9) to the air pollution. Particularly and considering the concept of the first section in article 9 that dealt with the environment pollution, it was possible to generalize its purport to the air pollution, as well.

In 1913, the first international natural resources conservation conference was held and the international union for conservation of nature (IUCN) was established after 35 years in 1948 and, since them, conferences are held in continental and universal levels every year for the determination of the common policies for the conservation of the countries' natural resources [4].

2. Defining the Procedures of Air Pollution Prevention:

Second paragraph of article 1 in the procedures of air pollution prevention, passed in 1975, has offered the first definition of the air pollution and it seems that it has been excerpted from article 9 of the law on the environment conservation and reclamation. Corresponding to this article, air pollution includes "the existence of one or several polluters in the open air for an amount and duration that can change its quality in a way harmful to the human beings and/or other living creatures or plants and/or artworks and buildings".

Law's Definition of Method of Air Pollution Prevention:

It was with the enactment of the law on the method of air pollution prevention, passed on 23rd of April, 1995, that air pollution was defined with more precision and its examples were developed. As the legislator's latest definition, this definition of air pollution is currently the criterion for the today's investigations. Corresponding to article 2 of the law on the method of air pollution prevention, air pollution means the existence and dispersion of one or several pollutants, including solid, liquid and gas and/or radioactive and non- radioactive radiations into the open air for an amount and duration that its quality is changed in a manner harmful to the health of the human beings and/or other living beings and/or plants and/or the artworks and buildings [5].

Definition of Air Pollution in the Laws of Europe:

1. Background of Air Pollution Definition:

In the laws of Europe and before the enactment in May, 1974, there was no clear-cut and vivid definition of air pollution in the legal documents and texts. The background of the definition stipulated in this enactment dates back to the European council's enactments. In resolution approved on 8th of March, 1998, European Council has offered a definition for air pollution and a similar definition was repeated also in the second paragraph of article 1, passed on 13th of May, 1974, related to the controlling of the pollutants dispersion into the air. In this enactment, air pollution has been defined in the following words: air pollution includes the dispersion of the pollutants, including gas, solid materials, or special liquids that are harmful, poisonous or stinky in such a way that they feature a dangerous nature for the public health or the environmental quality or agriculture or forest and so forth. Air pollution can be also defined as any change in the ideal ingredients that cause changes in the quality of air in such a way that it becomes harmful to the public health [6].

2. Definition in the Article 202-2 of France's Environmental Code of Law:

But the legal definition that is the basis of the today's substantiations and has been mentioned in the most important and most complete air pollution laws in France pertains to article 2 of the law passed on 30th of December, 1996, pertaining to air and logical use of energy and it has been inserted in the article 202-2 of France's environment code of law. In this article, air pollution has been defined in the following words: Air pollution is the direct or indirect entry of the materials into the air and closed spaces by the human beings with it being followed by the harmful effects on the natural environment hence being dangerous to the mankind's health and biological resources as well as the ecosystems influencing the climatic changes and also detrimental to the properties and objects and also causing the creation of the extreme nasal annoyances".

Definition of Air Pollution in the International Documents:

Reference to the international documents' definition is important in that the air pollution is not firstly solely limited to the borders of a country; secondly, the governments have international obligations for the transboundary air pollutions and climatic changes and greenhouse effect but these obligations are to be usually enforced within the realm of the domestic laws. In this regard, both Iran and France have obligations stemming from their membership in the international conventions. Thus, the most important air pollution definitions and their outstanding points will be pointed out as stated in the international documents [7].

Definition by Geneva Convention:

Article (1a) of the Geneva Convention on 13th of November, 1979, pertains to long-range transboundary air pollution and defines air pollution in the following words: "air pollution means direct or indirect entry of the materials or energy into the air by human beings and it leads to harmful effects and endangers the human health and damages the living resources and ecosystem and materials and prevents the access to the welfare tools as well as making other legitimate uses of the environment".

International Labor Organization's Protocol:

Amongst the other international documents that deal with the air pollution definition is the protocol no.148 that was proposed on 20th of June, 1977, by international labor organization for the protection of the workers against the occupational risks stemming from the air, noise and vibration pollution of the workplaces. This protocol was approved in the 63rd session of the general assembly of the international labor organization and, as it is clear from its title, it is pertinent to the protection of the laborers against the occupational risks, including air pollution. Air pollution has been defined according to the paragraph (a) of the article 3 in this protocol.

Air Pollution In the European Human Rights with an Emphasis on the Judicial Procedure:

Europe is the place wherein many of the claims related to the mankind right and environment have been resolved. The European human right convention that was passed in 1950 makes no reference to the environment but it is a "live instrument" by which the changing social values can be reflected in the judicial procedure. The European convention on human rights has stipulated that "this convention should be interpreted in the light of the day's conditions". This is the very task performed by the courts for the issues related to the environment. This convention remarks that "this convention has not been codified to provide general protection of the environment and it does not explicitly guarantee the right for having a healthy, sound, safe and useful environment". However, there are various articles that indirectly influence the claims related to the environment and the most important of them are the life right, the right of the familial and private life's veneration, peaceful enjoyment of the properties and assets and the right for fair trial. The followings are the principles that have been pointed out in this convention:

- Legislation and control of the bioenvironmental issues and enforcement of the regulations
- Access to and enjoyment of the information
- Protection of the environment as the intended goal (in the position of conflict with the other goals)
- Enforcement of the regulations in the transboundary areas

Nowadays, the citizens' enjoyment of a sound environment devoid of pollution is a part of their human rights and it has been underlined in the international and domestic documents. Corresponding to the first act of Stockholm declaration, "human beings should enjoy fundamental rights for having freedom and

equality and proper life conditions in an environment that allows them to live honorably and felicitously". Thus, based thereupon, the citizens' right of having healthy and clean air devoid of pollution and its guarantee in line with the "right of having healthy environment" are amongst the preliminary rights of every citizen. The right of clean air is amongst the sub-branches of the right for having a safe and sound environment and the right of breathing in clean air has been authenticated in some of the regulations. Based on this right, every citizen has the right to breathe in a clean and healthy air and the governments are obliged to adopt strategies for its guarantee.

The Primary Reasons of the Fight with Air Pollution:

The quality of the peripheral environment and, particularly, the set of the elements that are directly related to the life of the humans, animals and plants needs protection and control. There is no doubt that the element of air, as the most important factor of life on the planet earth, needs more protection and care in contrast to the other factors. This natural resource is so vitally important that there would be no possibility of life without it even for a few minutes. In other words, one may continue living for several days without water and food but there is no possibility of continuing life even for several instants without the existence of air. This is expressive of why this element of life should be protected and why its pollution and wastage should be prevented. The upcoming parts deal with the priorities that force us to fight with the factors of air pollution with a legal approach [8].

1. Protection of the Environment Against Pollution:

As it was stated in the above discussions, air pollution exerts detrimental effects on the human and natural life environment. In order for the environment and its elements to be kept immune of the dangers stemming from air pollution and the animals, forests, properties, buildings and others are imposed with lower damages by the environment, the communities need to adopt strategies for preventing and fight with air pollution [9].

2. Air Protection and Cleaning:

One of the first goals of the enactment of anti-pollution rules and regulations can be the guarantee of the minimum damage to the elements of the environment on which the life of all the animals, plants and human beings is dependent. Due to the same reason, as well, article 1 of the law on the method of preventing air pollution introduces the air cleaning and air protection from and against pollutions as the goal of laws. In the France's rules and regulations on the fight with the air pollution, the goal "human health" has been concomitantly mentioned along with "environment cleaning and protection" wherever things have been stated about the air pollution and the necessity of the fight therewith. As a specimen, the outstanding example of this case can be the international efforts for the fight with the global effects of the air pollution on the nature, including ozone layer, climatic change and greenhouse impacts [10].

3. Protection of the Public Sanitation and Health:

Air pollution is considered as a sanitary problem for the health of the citizens especially in critical cases thereof and, currently, this dimension of the air pollution has made governments exhibit reactions and enact standards and criteria for the control of the side effects of the air pollution on the citizens. In the international level, as well, the world health organization has been active in this area and it has suggested particular programs for the fight therewith [11].

4. Guaranteeing the Right Of Healthy Environment:

Nowadays, the citizens' enjoyment of a sound environment devoid of pollution is a part of their human rights and it has been underlined in the international and domestic documents. Corresponding to the first act of Stockholm declaration, "human beings should enjoy fundamental rights for having freedom and equality and proper life conditions in an environment that allows them to live honorably and felicitously". One of these cases is the citizens' enjoyment of the healthy and clean air and its guarantee in line with the right of sound environment as a part of the preliminary rights of the citizens [9&12].

Background of the Researches on the Evolutions in the Laws on Air Pollution:

Although air pollution has had a greater manifestation and legislators have paid more attention thereto recently, it has been existing from the past and some regulations have been posited and observed sporadically in this regard. One of the first and most well-known regulations that have endeavored to curb air pollution in a specific manner is the law that the England's king persuaded the congress to enact it in

1273. This law prohibited the use of soft coal that produced smoke, ash and smug when being burnt in London and the historical evidence is reflective of the idea that this law was enforced intensively and carefully in such a way that it has been stated that one person was sentenced to death for acting against the foresaid law. Edward I issued a writ and stipulated the death penalty for the burning of coal. Historically and in the course of the codification of the legal warrants, the fight with air pollution gained a lot of importance.

1) An article termed “the criticism and investigation of the gradual change in the laws of the international environments and the governments’ duties” by Musavi (2006) has been published in the seasonal journal of law that belongs to the political and law sciences faculty of Tehran University.

2) Navazi (2010) has written an article titled “the right of enjoying healthy environment in the trap of the global warming” and it has been presented to Mexico’s Cancan Conference and published in the journal of legal studies. Investigating the dangerous outcomes of the global warming and its environmental threats, the author underlines the right to have healthy environment. Mexico’s Cancan conference was one of these same sessions wherein the states agreed to take effective steps for the environment protection. However, from the perspective of the author, these measures are not enough and the countries should take more effective steps in the area of the environment. This article, as well, covers part of the subject discussed herein.

3) An article called the “public interest in the bioenvironmental claims” has been written by Hosseini Akbarnejad who has investigated the procedures of the regional human rights courts and national courts; the article has been published in the journal of legal studies. In this article, emphasizing on the necessity of the protection of the environment, the author realizes it as one of the priorities of all the governments. He finds the filing of lawsuit in favor of the general public’s interests to the domestic courts and international authorities like the American human right court and others as a way for the requiring the countries to the observance of the international regulations on the non-pollution of the environment. This article investigates the procedures of the courts when trying the public interests’ claims and it is somewhat similar to the subject of the present study but it still does not cover all the subject proposed herein.

4) The article titled “the liability stemming from the bioenvironmental damages” by Katouziyan and Ansari (2011) has been published in the seasonal journal of law that belongs to Tehran University’s political and law sciences. In this article, the authors have emphasized on the right of using the healthy environment for the mankind. The protection of the environment has also been imagined as a public duty therein. Emphasizing on the regulations of the laws on the traditional civil liability and stating that they cannot respond to the bioenvironmental damages and harms and also mentioning that the European parliament and council enacted directives in 2004 in this regard, this article investigates the guidelines. So, it covers again part of our intended discussions [14, 15 and 16].

European Laws: General Regulations about the Air Pollution:

- General Regulations:

The intention by general regulations here is the set of the general and overall rules and regulations that deal with the air pollution, including the general rules and regulations approved in the domestic, international and EU’s general instructions that have been summarized below:

- The General Domestic Regulations:

The most important general domestic rules and regulations about the air pollution include four important laws that have been respectively enacted in 1917, 1932, 1961 and 1996. The forthcoming parts point to them and simultaneously try investigating the legal guarantees predicted for them [17].

1) Importance and Position:

The law related to the dangerous, unhealthy and interfering installations, passed on 19th of December, 1917², is one of the first and most traditional regulations of France that can be generally enforced about the air pollution, as well. This is while this law is currently not enforced following the enactment of the

² *La loi du 19 décembre 1917 relative aux établissements dangereux insalubres ou incommodes(J.031 december1917)*

later regulations, including the law that was approved on 19th of July, 1976, on the classified installations and the law passed on 2nd of August, 1961, as well as the later approved regulations [18]. However, in terms of the history, the legal evolutions in the area of the sanctions pertinent to the environment pollution are of an undeniable importance in the laws of France in such a way that this law has become the premise of the formation of the regulations related to the classified installations [19].

2) Law Content:

In this law, a combination of the penal sanctions and liability stemming from the “non-ordinary interferences stemming from adjacency” has been predicted for responding to the air pollution that had been created by the industrial institutions and it ruled that of all the harmful activities and non-sanitary performances of these institutions (including the industrial, business, artistic and private activities) can be sued. Based on this law, the victim of pollution could refer to one of the penal or civil courts [20].

Barriers and Challenges to the Enforcement of Civil Sanctions in the Area of Air Pollution in Europe's Judicial Procedures:

On the one hand, the properties of the atmospheric pollutions are specific for their being transboundary and also due to their gradual damages and the numerosity of the resources; on the other hand, there are difficulties in proving the cases in a serious manner. So, these problems are in such a way that one cannot hope for the rendering pervasive of the enforcement of this set of sanctions in the area of the atmospheric pollutions and compensation of the damages stemming thereof. The following section deals with the most important of these problems.

Essential Legal Solution for Solving the Air Pollution Problem:

1) Essential Steps:

Countries adopt various procedures for the fight with the pollutions and prevention of the intensification of their effects. The resolving of the air pollution problem entails common efforts that might be different in every region or city from the others. This issue is in its first stages in need of changes in the behaviors and legalizations capable of exerting a large deal of effect in both the short and the long terms. The experts believe that the enforcement of the solutions for the reduction of the air pollution should be concentrated on a set of interventions by the use of various kinds of technologies, regulations and policies so that changes can be brought about in the behaviors [21].

2) Individual Commitment Along with Green Energy:

The international collaborations in the UN and EU have also caused the enforcement of the bioenvironmental problems and these were accompanied by pollution reduction [22]. “The law of the clean air passed by the agency for the environment conservation” was amongst these measures that were taken in some of the countries. In addition, the protocols of the air quality control or buying of the permission for polluting, as well, were strategies that exerted a considerable deal of effect on the fight with the air pollution or reduction of its effects [23].

3) Successful Global Experiences:

In the entire world, states are pursuing regulations for the fight with air pollution and green energy development. The increase in the investment in the wind and solar energy resources and reduction of the use of fossil energies are considered amongst the most important measures. On the other hand, increase in the companies' commitment and granting of pollution responsibility to the manufacturing industries, particularly those that produce cars, can play an important role in the pollutions' control. China is one of the most successful countries fighting with air pollution in the cities and it has made an extensive investment for the reduction of the use of fossil energies.

Conclusion

As it was explained in the article, there are various regulations for confronting with the violators of the environment conservation, especially the polluters of the air. However, each of these rules and regulations has its own strong and weak points as also explicated in the article. If the legislators deal with the summation of these regulations through a serious revision and strengthen the strong points and eliminate the weak points and remove the extant ambiguities, it can be expected that they can thoroughly and appropriately punish the violators along with building of a culture for such violations' prevention

following which reduction in the environment destruction can be witnessed. The other notable point in this regard is that the individuals' right for the access to the required information has been limited based on the constraints existent in the tenth article unlike what is commonly imagined and it can be possibly stated that, except for one case and as repeatedly underlined in the court's procedures, this right solely includes access to the information that the others can or want to share with the claimant. The adoption of such an innovative approach has caused an unexampled balance between the states' interests and expediencies of the governing issues with the individuals' interests in the access to the required information. The issue of the governments' obligations for the bioenvironmental pollutions have been very important in the legal system of the western countries and its significance has been increased in the course of time and with the technological progresses but it has to be eventually stated that this issue has not been unfortunately seriously posited in our country and the sporadic efforts, if any, in this area have solely been limited to the codification of the indispensable regulations that are recommended not within the framework of the principles of the obligations stipulated for the governments but within the format of the procedural obligations and necessity of the citizens' general participation in this process and/or informing about the citizens' rights in this regard. It is recommended that efforts should be made by the institutes proctoring the ordinary required interventions along with the adoption of the preliminary strategies in this regard for informing the citizens about their rights and possibility of their filing of lawsuits in cases of their rights' violation. This issue would cause dynamicity that has been the missing chain of the limited interventions made in our country.

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