

Human Right Responsibility of Islamic States in the Fight with the Bioenvironmental Pollutions with an Emphasis on the Air Pollution

Hamid Afrashteh

PhD Student in International Law, Najafabad Azad University, Iran.

*Hamid Reza Jamali**

Assistant Professor of Law, Islamic Azad University, Shahreza Branch, Iran.

Corresponding Author Email: hamidrezajamali1966@gmail.com

Masoud Zamani

Assistant Professor, Department of Public and International Law, Shiraz University, Shiraz, Iran.

ABSTRACT

The issue of the states' responsibility for the air pollution has been a very important issue in the legal system of the western countries and its significance has been constantly increased in the course of time and with the technological progresses. The daily increasing importance of the bioenvironmental issues and the very large dependency of the human life on the environment have caused the emergence of some concerns regarding the immethodical exploitation of the environment hence its destruction. Accordingly, the international community has been compelled to think of strategies in line with the protection and safeguarding of the environment and establishing ecological balance and actively enter the policy-making and legislation in this area. The present article tries presenting a summary of the most important topics posited in the domain of human rights so as to figure out their relationships with the environment and the challenges before them as well as the international interventions with the goal of identifying the importance of these issues. The international and regional conventions that have been approved for the regularization and ordering of the international organizations and governments' commitments in the area of the environment issues will be also dealt with. In this article, we are seeking to find an answer to this question that what are the Islamic states' human rights' responsibilities in the fight with the environmental pollution with an emphasis on air pollution.

Keywords: bioenvironmental, human rights, responsibility, air pollution, states

Introduction

The daily increasing growth in the global manufacturing and industrial activities that have led to the bioenvironmental pollutions and climatic changes stemming from the creation of greenhouse gases as well as serious damages to the nature and air threatens the mankind's life and health on the earthy planet. Nowadays, this issue has been transformed into one of the most important concerns of the human right and environment supporters and its continuation jeopardizes the present generation and the rights of the future generations. Thus, the fear of these pollutions' expansion and their non-control and enforcement of supervision on the industrial pollutants have doubled the necessity of the governments' intervention and international participations and adoption of strategies for reducing the adverse effects that may come about with the continuation of this trend. In line with the investigation of the human rights' evolution in

the past years, we are to elaborate and scrutinize the human rights related to the healthy environment and clean air in this article.

The present study evaluates some of the notions of the European human rights court from the environmental perspectives, including the right of life (article 2), the right of fair trial (article 6), the right of the veneration of the private and familial life (article 8) and the right of ownership (article 1, protocol 1) for these rights have been guaranteed in the European convention on human rights. Considering the creative approach of the European court through the interpretation of the rights guaranteed in the aforementioned convention, an indirect method has been devised for the conservation of the environment and the effective support of the individuals' guaranteed rights based on the convention needs protection of the environment's quality, on the one hand, and the democratic society's public interest for the protection of the environment is a permit for the exertion of limitations on some of the freedoms and rights, on the other hand as an example article 8 and article 1 of the first protocol but this indirect method should not be interpreted for the identification of the right of the healthy environment as the collective rights. The right of the healthy environment is generally considered as being independent of the environment rights. The proponents of the human rights realize the right of environment as an independent human right for the possession of a quality environment. The right of environment both reflects the sublime and fundamental values like the right of life, the right of health and the right of a standard life and it is also closely and organically interrelated with the prerequisites of the current generation and future generation's life continuation such as sustainable development. This article is important and necessary in that it includes the environmental issues and human right obligations of the states in the battle with air pollution with an emphasis on the judicial procedures of the European human rights court and the article will show the factors that are effective in the formation of the spatial systems and supportive systems and, eventually, it will be indicated that what are the goals that have to be pursued in line with the optimal and ideal status of the global environmental future and fight with air pollution and in regard of the states' human rights commitments.

1. Bioenvironmental Pollution Defined:

the term "pollution" has been derived from the Greek word "Plutus" (Springer, 1977, p.550) which means uncleanness. Therefore, by pollution, a process is intended that causes the addition of the harmful or dirty materials to the land, air, water, environment and so forth in such a way that it becomes not optimal for use. The term "pollution" or "pollution damage" is often used instead of the environmental damages but it can have a more extensive concept [5]. Damage to the environment has been defined in the legal documents on environment and it includes all the side effects incurred by the human beings, artefacts and environment [1]. Negative changes in the environment along with the dangerous or harmful things constitute a simple definition of pollution. In the principles of 1972 Stockholm declaration and 1992 Rio declaration, it has been only pointed out that the "pollution" should be prevented for protecting the environment but no explicit and clear-cut definition has been offered. According to environmental program agency (EPA) definition, "pollution is the presence of a matter in the environment due to the reason that the chemical compounds or quality prevent the proper functioning of the natural processes and exert adverse environmental and sanitary effects (Environmental, 2011, p.66).

2. Air Pollution Laws Defined:

Air pollution law is considered amongst the specialized domains of a newly emerging approach to the environment laws and, by it, a set of rules and regulations as well as principles governing the control and protection of clean air is intended (Lothar, 2002, p.270). Efforts are made in this science to use the basics, instruments and methods in the various fields of science of law for analyzing the legal system governing the atmospheric pollutions (Noah, D. Hall, 2007, p.668).

Considering the other definitions that the scholars of the environment have presented for air pollution, it can be stated that the air pollution's definition is technically different and it has to incorporate various scales and criteria (Musavi, 1992, p.52). However, it seems that the selection of such criteria as being "harmful" and "damaging" that the air pollution means disordering of the ordinary composition of air in such a way that it causes harms to the health and environment. In a more comprehensive perception, air pollution can be defined in the following words: "the existence and dispersion of any compounds,

including gas, solid, liquid and/or a mixture of them that directly endanger the human health and hygiene depending on the source of production, nature, concentration and duration of presence in air and damage the animals and plants and other elements of the environment and, generally, disrupt the public welfare and comfort and the natural balance of the environment” (Mashhadi, 2012, pp.12 and 29).

3. Definition of Air Pollution in the Europe’s Legal System:

In the laws of Europe and before the enactment in May, 1974, there was no clear-cut and explicit definition for air pollution in the legal documents and texts. The background of the definition stipulated in this enactment, as well, dates back to the European Council’s enactments (Abdollahi, 2012, p.291).

In the resolution passed on 8th of March, 1998, European Council offered a definition of air pollution and it was similarly repeated in the second paragraph of article 1 passed on 13th of May, 1974, in relation to the control of the pollutants’ dispersion in air. In this enactment, air pollution has been defined in the following words: air pollution includes the dispersion of such pollutants as certain harmful or poisonous or odorous gases or solid and liquid materials in such a way that they feature a dangerous nature for the public health or environmental quality or agriculture, forest and so forth. Air pollution can be also defined as any change in the ideal ingredients that can eventually bring about changes in the quality of air in such a way that it is rendered harmful to the public health (Prieur, Michel, 2001, p.492).

However, the legal definition that has recently formed the basis of the substantiations and has been also used in the most important and most complete law related to air pollution in France can be found in article 2 of the law passed on 30th of December 1996 that is pertinent to air pollution and logical use of energy and it has also been inserted in article 202-2 of France’s code of environment (Mashhadi, 2001, p.89).

“Air pollution is the direct or indirect entry of the materials into the air and closed spaces by the human beings and it may have harmful effects on the natural environment hence be dangerous to the human health and biological resources and ecosystems influencing the climatic changes and, eventually, cause damages to the properties and objects and bring about extreme olfactory interferences” (Romi, 2001, p.9).

As asserted by Professor Rosh, this definition of air pollution is very extensive and vast and it is more advanced, more perfect and more exact in comparison to the previous definitions that had been offered in the rules and regulations. The forthcoming section deals with the prominent properties of this definition:

1) The natural air pollutions have been excluded in France’s laws by stating the expression “by human beings¹” from the legal definition of the air pollution. In other words, the air pollution stemming from the natural phenomena like volcanic eruption and dust and aerosols originating from storm, natural fires, plants’ pollination and so forth are legally beyond the discussions on air pollution in case of not being caused by the human beings. This issue has been neglected in the laws of Iran. However, it has to be noted that the exclusion of the natural air pollution from the air pollution does not mean non-enforcement of any criteria and regulations in such situations rather it seems that if natural air pollutions occur to the extent that is harmful to the environment and environment, the governments have to control these pollutions, especially those caused by the natural unpredicted events (David, Kemp, 1998, p.16).

2) Unlike what has been stated in the laws of Iran that only consider air pollution as encompassing the open spaces, the definition presented in the laws of France explicitly mention “closed spaces” and it seems that the reason for such a consideration, unlike in Iran’s rules and regulations, has been the existent laws, including the regulations pertinent to the fight with tobacco use, regulations related to construction and, particularly, the air pollutions stemming from glass wool, industrial environment and workplace and so forth that will be analyzed in the upcoming sections in details (William, 1998, p.23).

3) The other point is the foregrounding of the effect of air pollution on climatic changes that actually emphasizes on the importance of air pollution in the global level and its relationship with the domestic interventions and policies to the performance of which France is committed (Sean, Paul, 1990, p.3).

4. Extensive Identification of the Relationship between Human Rights and Environment in the International Area:

Since the human rights’ treaties have often been codified before the transformation of the environment conservation into an international concern, there are made a few references in the international human

¹ *Par l’homme*

rights documents to environment but the terms like life and health have been frequently mentioned (Blake, 2006, p.3). Despite the fact that the first multilateral convention on the international environmental laws was held in relation to the protection of the birds useful for agriculture in 1902, the public awareness for the development of the effective and comprehensive regimes in this regard dates back to the late 1960s. the pollution of the atmosphere and seas and the reduction of the species, dangers of the nuclear energy and bioenvironmental, social and health problems are just part of the dimensions overshadowing the international community on the path of the creation of a legal and effective system and finally protecting the mankind against the environmental disasters (Brayan, 2004, p.77). Some of the environment experts believe that the ultimate goal of the environmental laws is environment-oriented. Put differently, the environmental issues and, eventually, protection of the earth's ecosystem are the primary foundations of this legal branch with the obligations and duties imposed on the governments, companies, individuals and groups being directed at the achievement of such goals. As an example, the antarctica treaty (1959), the world heritage convention (1972), the convention on international trade in endangered species (1973) and the world charter for nature (1982) are not exclusively related to the useful issues for the mankind rather they are related to the exploitation of the environment. On the other hand, the human-oriented perspective believes that the environment protection is directed predominantly as an instrument for the safeguarding of the human beings and not the environment itself (Mckinney, 2003, p.803). It has to be stated in this regard that the environment conservation can solely negatively meet the short-term needs and help accomplishing of the human beings' ultimate goals. The governments and the individuals should note that the negligence of such issues as economic development and environment conservation can expose them to the risks (Parker, 2001, p.375). This issue gains more importance, especially in the developed countries, since the part of people's entanglement with poverty is often a lot more important than such a subject as environment conservation because the governments should corroborate their ability for the competition in the global economic market. Additionally, the approval of the declaration "right of development" by the general assembly of UN can limit the claim for any individual's right of environment (Emili, 2005, p.54). However, since the human beings' right of development should not cause the restriction of their right of environment, the international community should establish a balance between these two and, in case of success in this issue, the right of environment and development would not be any more in conflict rather they would supplement each other. This is what briefly termed "sustainable development"².

4.1. Stockholm Treaty:

The cornerstone of the modern international laws on environment was laid in the UN conference on the mankind's environment in Stockholm (1972) and it was approved in the form of a consensus but in a legally indispensable manner and, in spite of the fact that this conference failed in explicit declaration of a right for the mankind over the environment, the whereabouts are reflective of the international community's concerns about the bioenvironmental issues and, more importantly, a framework was set for the future agreements and innovations (Hafner, 2001, pp.6-7). In order to investigate the humans' right of healthy environment, reference can be made in this conference to two principles that more vividly express these rights. The first principle of the declaration stipulates that the fundamental right includes freedom and proper and equal life conditions as well as life in a healthy environment enabling a proper and comfortable life. The act 7 of Stockholm declaration states that the governments should be required to take measures in line with preventing environmental pollutions by materials that are harmful to the human health. However, as it has been stated, Stockholm declaration is just an onset for the wave of the regulations pertaining to the environment in the international domain (Beygzadeh, 2006, p.15).

² *In the third part of this writing, the sentences issued by the European court of human rights in regard of these two rights' interferences will be dealt with. In the judicial procedures, regional courts like the European court of human rights, the governments have been required to adopt special strategies for the economic development in line with the preservation of the individuals' rights as well as not causing damages following the limitation of the development right; these strategies have considerably contributed to the maximal sublimation and guarantee of the individual rights and creation of balance between them and the right of development.*

4.2. Global Environment and Development Commission:

This commission was established in 1983 with the order of the UN's general assembly and as an independent and related institute but in an extra-organizational manner and it became later on known as Brundtland Commission. Its duty is investigation of the relationship between environment conservation and economic development as well as codification of realistic suggestions for the reconciliation or balance between these two areas as well as codification of a novel format of international cooperation in these domains for influencing the policies parallel to required changes and enhancement of the knowledge and level and elevation of the commitments to the interventions by the individuals, organizations, business firms and governments. The result of this commission's performance in its report was the need for a mixed and comprehensive perspective in the area of the developmental programs and policies and, as stated, it would lead to the sustainable economic development in the developed and developing countries in case of being environmentally harmless. This report also emphasized on the need for giving more priority to the prevention of such problems. Based on the report, sustainable development means a sort of development that considers the environment rights of the present and future generations when defining development goal. In the end, it concludes that neither social justice nor sustainable development can be actualized without the fair dividing of the profits and environment conservation costs in and between the countries (Trends in Sustainable, 2006, pp.6-17).

4.3. Rio De Janeiro Conference:

Brundtland Commission's report guided the UN towards the holding of a second global conference in the area of environment in Rio De Janeiro, Brazil, under the title of "UN conference on the environment and development". This declaration is notable in many respects. Especially, its mixed approach includes economic and social development and environment conservation but the reason for its famousness is its incorporating of the human right consideration in respect to sustainable development. By identifying the procedural rights like public participation, access to information and judicial trial for the environmental issues, Rio declaration also authenticated the important role played by the enforcement of human rights in sustainable development. Chapter 23 of this declaration asserts that the individuals, groups and organizations should have access to the information related to the environment and development as provided by the general authorities, including the information related to the products and activities that have important potential or active effects on the environment as well as the information pertinent to the issues of environment conservation. The preface of the 23rd chapter, as well, speaks about the extensive general participation in the decision-making as one of the necessary prerequisites for the accomplishment of the sustainable development. This one also includes individuals, groups and organizations and their participation in the evaluation of the bioenvironmental effects in their living and work environments (Laura, 2002, pp.16-18).

In this declaration, the emphasis is more on the concept of development than on the human rights. In fact, the phrase "human rights" has been repeated thrice in this declaration. This declaration has authenticated the right of development in its third article. It asserts in its fourth article that "in order to achieve sustainable development, environment conservation should form an integral part of the development process and it should not be considered apart from it. This same issue has caused individuals like Dinah Shelton assert that there is no clear-cut border between human rights and environment in this declaration and, in its best state, the act 10 of this declaration can be considered as introducing a participatory right³. In her mind, this issue is reflective of the idea that the environmental issues, "in their best state, are guaranteed through the participation of the entire citizens and the governments are obliged to provide effective access to the judicial and administrative organs" (Azarang, 2014, p.18). Considering these, Rio declaration emphasizes on the right of sustainable development but through being mostly directed towards development and there is observed no substantive and vivid right over the healthy living environment (Perkins, 2001, p.6).

³ *Shelton, D. Environmental Right's, Oxford University Press*

4.4. The Other International Organizations:

- 1) The international court of justice asserted in one of its files that “the enjoyment of the international human rights is based on the environment conservation”⁴. It has been stated in the corresponding notion that “environment conservation ... is one of the most vital parts of the human rights’ teachings because it is the prerequisite to many of the human rights such as the right of health and life” (Dinah Shelton, 2002, p.21).
- 2) The UN convention on the elimination of all forms of discrimination against women, as well, requires the states to make sure of the women’s enjoyment of all the proper and appropriate life conditions, particularly in relation to the supply of healthy water (Alan Boyle, 2009, p.52).
- 3) Article 12 of the treaty on the economic, social and cultural rights explicitly realizes the right of health as entailing the governments’ taking of steps in line with the improvement of all the aspects of environmental and industrial sanitation and prevention, treatment and control of the epidemic diseases thereby to establish a relationship between the right of health and right of environment.
- 4) The UN convention on the children’s rights, as well, asserted that the obliged states are required to fight with the diseases and malnutrition through the codification of regulations in the area of the nutritional foodstuff and healthy drinkable water.
- 5) The assertion by the committee of the economic, social and cultural rights in the area of the drinkable water and healthy environment and its effect on the right of health also includes the followings: the humans’ right of water is an inherent right and a ground for the actualization of the other human rights. The human beings’ right of water knows every individual as deserving to have sufficient, healthy, acceptable, available and extractable water for personal and home-based consumption. It has also been ordered that a proportional amount of healthy water is necessary for preventing death and reducing the risks stemming from the dirty water and also for such purposes as drinking, food-cooking, personal use and home consumption (Murray, 2004, p.12).
- 6) In the years 2008 (7/23), 2009 (10/4), 2010 and 2011 (18/22), the human right council issued four resolutions about the relationship between the human rights and climatic changes and asserted that the climatic changes have direct and indirect effects on the humans’ enjoyment of the human rights (an introduction, 2009, p.32).
- 7) In 2010, the general assembly of the UN authenticated the human beings’ right of healthy drinkable water and the resolution no.64/292 made assertions regarding the importance of the sufficient and healthy drinkable water and recounted it as being the integral part of the human rights’ actualization (John, Litton, 2011, p.41).

5. Identification of the Relationships between the Human Rights and Environment:

In many of the countries and in line with the identification of the relationship between human rights and environment, the legislators have taken measures parallel to the codification of many constitutional and legal regulations. More than 100 constitutions in the world have identified the governments’ obligations for the environment conservation as well as the rights of life, health and balanced environment. About half of these constitutional regulations have adopted right-oriented perspectives towards this subject and the others have dealt with the expressing of the governments’ duties (Prieur, loc.cit, p.515). The constitutions have been accommodating the discussions related to the environment conservations in their regulations since 1970 and, in fact, the constitutions that have been enacted after 1959, explicitly point to environment conservation. These regulations differ in their contents but they generally fall in one of the following three categories:

- 1) Some of the rules and regulations require governments to take measures in line with the safeguarding of the environment and simultaneously determine their general policies.
- 2) The second set of the constitutions have taken measures in line with the establishment of a fund for the environmental programs or delegating the natural resources to the public agency sector.
- 3) The third set of the constitutions explicitly authenticate the citizens’ right of healthy and clean environment.

⁴ *Gabcikovo Nagymaros project*

The relationship between the human right and environment conservation is mutual and multidimensional. The following cases have been generally accepted in the legislation and judicial procedures.

4) Failure in guarding, guaranteeing and actualizing the internationally and domestically warranted human rights by ignoring the needs of the individuals and groups that can be effective in the environment conservation and economic development or can get involved in the adoption of decisions about the activities, programs and policies influencing the environment in their periphery and preventing the destruction of the environment. Failure in the conservation of the natural resources and biodiversity by the destruction of the resources and ecosystem services on which many of the people, particularly the native people, are dependent and this can neutralize the human rights. Economic activities and the other general performances, programs and policies that can meet the goals of environment conservation, human rights and sustainable development and simultaneously bar their accomplishments. Failure in the providing of information or consultations that can influence the individuals and this can be followed by adverse effects for both the human rights and also environment conservation. Conversely, environment conservation supports the human rights via supplying the constant accessibility of the necessary natural resources and ecosystem services (Murray, 2004, p.12).

6. International Responsibility of the Damages Stemming from Air Pollution:

Based on the first paragraph of article 2 in UN charter, the international laws are laid on the equality of the states' governance. Therefore, we are faced in the international community with equal members who voluntarily accept many of the international commitments but, after accepting the voluntary obligations, these same members are obliged to observe them. International responsibility is considered as the protector of the international commitments in the international laws. In this regard, the draft prepared in 2001 about the governments' international responsibility, the draft prepared in 1997 about the responsibility in the area of the international laws and in regard of the damages imposed onto the environment, the draft prepared in 1998 about the international liabilities stemming from the harmful actions unprohibited in the international laws and the draft prepared in 2006 about the transboundary harms stemming from the dangerous activities have all been offered by the commission on the UN's international laws and rights and these have codified international regulations in this regard. The common law's regulations realizes any damage to a member of the international community as a result of the violation of an international commitment as a cause for the filing and creation of the governments' international responsibilities. In relation to the climatic changes, the international laws are faced with damages that have come about following the violation of the extant international obligations; these commitments encompass requirements in line with the reduction of the greenhouse gases' emission.

In this regard, the convention on the UN's framework for the climatic changes and Kyoto protocol are the most important documents that encompass these obligations. It seems that the international laws are proper tools for the investigation of the present and future effects of the climatic changes in case that a legal format can be offered for the countries influenced by the climatic changes in line with the reduction of the effects or creation of the governments' international responsibilities for their participation in the climatic changes. However, when faced with a complex status like the compensation of the losses stemming from the climatic changes, these international laws are not well-prepared. Vague constitutional regulations, numerosity of this domain's actors, various kinds of damages and indirect causation are all important challenges in the traditional laws on the governments' international responsibilities (Prieur, 2001, p.519).

7. The Effects of the Bioenvironmental Obligations' Violation on the Fight with Air Pollution:

The governments' liability for the bioenvironmental damages and the results and effects of such obligations' violations have been drawn on the general international regulations hence it is concluded that the same legal principles and solutions that have been posited in the general international laws for the victimized countries can be also applied for the violations of such obligations. The enforceable principles in this regard are those pointed out by the permanent international court of justice for the case of Chorzow Factory in an explicit manner. Based on these principles, every country that has been held liable internationally for its perpetration of a wrong action (violation of an international commitment) should compensate the imposed losses. In this case, the permanent international court of justice issued its most

well-known sentence regarding the issue of the effects stemming from the violations (in international terms). In line with this, it also elaborated the limits and goals of loss compensation in the laws of the governments' liabilities (Alexander, Kiss, Shelton, *Op.cit.*, p.22).

In its sentence, the court asserted that "the loss compensation should maximally incorporate all the (legal) effects of the illegal action and restore the situation to a status before the violation and, in case of its being excusable, the violator is to pay equivalent sums of money within the specified date, to with an equivalent price of the situation's restoration to its prior state (Chorzow Factory (Indemnity) Case (1928), P>C.IJ. ser. A. No.17, P.29, P.47). This principle has also been similarly reconfirmed in a number of the lawsuits filed to the ICJ, including the Gabchio-Nagi Marosh Project (ICJ, reports, 1997, pp.7-8) as well as the skin lawsuit against Serbia about genocide convention (ICJ, reports, 2007, Para.460).

On the other hand, the general legal principles in this regard have been inserted in the articles of the draft on the international law commission about the governments' liability stemming from the violations from the perspective of the international matters in 2001 and, particularly, in the second section of its first chapter. This part includes six articles that offer the legal outcomes of the governments' international violations in a general manner and present a framework for the delimitation of the international liabilities of the governments with the violation of the environmental obligations not being excluded from these general principles. Based on article (29) of the aforementioned principles, the legal effects of the international violation have no effect correspondingly on the continuation of the responsible governments' obligations for the fulfillment of the violated commitment. Article 29 of the draft to the article 2001 of the international laws commission about the governments' responsibilities expresses this general principle that the legal effects of the international violations have no effect on the continuation of the governments' duties for the fulfilment of the violated commitment. As a result of the international violation, a series of novel legal relations is established between the responsible government and the other states interested in the fulfilment of the commitment but it does not mean that the relationship between the rights stemming from the preliminary commitment are removed. Even if the liable governments take measures in line with their commitments and stop violation and thorough reparation of the imposed damage, they cannot be still exempted from the duty of fulfilling the violated commitment (Philippe, 1990, p.337).

Based on article 30 of the articles' draft (2001) presented by the international law commission about the international liabilities stemming from the international violations, the governments responsible for the international violation are obliged to stop the violation in the first place and in case of its being continued and, secondly and in case of the requirement by the conditions, they should offer proper guarantees for non-repetition of them. Therefore, the ceasing of the violation and, on the other hand, the offering of the proper guarantees and warrants for non-repetition of the violation can be proposed as two separate but related topics in respect to the violation of an international commitment. The emphasis on the two aforementioned subjects can be also observed in the article 30 of the draft (2001) about the governments' responsibilities in the judicial procedures. As an example, reference can be made to Rainbow Warbeck Arbitration case in which the ceasing of the violation has been explicitly underlined (Rainbow Arbitration Case, v.20, 1990, p.217). Furthermore, in the Legrand Case (Germany against the USA), the ICJ emphasized on the offering of proper guarantees for the non-repetition of the violation by the US (Malcom Show, *Op.cit.* p.800). The other part of the article 31 of the draft (2001) prepared by the international law commission is related to the international liabilities stemming from the violating actions. It stipulates that "1) the government is obliged to perfectly repair the damage stemming from the international violation; 2) the damage can include any sort of harm such as material and intellectual and it has to have come about following the international violation by a government. The government that has perpetrated an international violation cannot resort to its domestic laws as ruled in article 32 for justifying default in the fulfillment of the obligations it has had to shoulder based on this section. The pattern of article 32 has been drawn on that of the article 27 of Vienna's convention on the laws and rights of commitments and it stipulates that one of the treaty's parties cannot substantiate on the domestic regulations for the justification of default in the enforcement of the treaty's contents (Malcom, Show, *Op.cit.*, p.800).

8. Government's Commitments for the Environmental Pollutions in the Sentences of the Court in Respect to Air Pollution:

As it was stated in the introduction and overview, the daily increasing importance of the bioenvironmental issues and the very large dependency of the human life thereon have caused the emergence of some concerns about the immethodical exploitation of environment hence destruction thereof and this made the international community think of strategies for the protection and safeguarding of the environment and establishment of ecological balance and actively enter policy-making and legislation in this area. Efforts have also been made for offering a summary of the most important topics posited in the area of the human rights and their relationship with the environment as well as their challenges and also the international interventions that have been made with the objective of the identification of these issues' importance and also the international and regional conventions that have been approved in the area of the environmental issues. But, as it was mentioned before, such regularizations have possibly not been proposed and chased in any other places worldwide as seriously as in European continent as well as in the framework of the European countries' union. The investigation of the reason for this situation neither can be done by us in this article nor it is within the patience of this article (Alexander, Op.cit, p.350) rather the intention herein is the investigation of the trends of the emergence, continuation and evolution of this subject within the framework of the European convention and, specifically, the Aarhus convention which is not satisfactory as a result of daily increasing number of the lawsuits pertinent to the violation of the bioenvironmental rights by the countries and the demands for the fulfillment of the obligations and loss compensation by the citizens of the involved governments and the feeling of a necessity for the existence of the regulations that can be enacted in this regard quite contrary to the other international interventions and conventions that are not either indispensable or, otherwise, generally serve the fulfilment of the rights and exertion of supervision and imposition of obligations on the governments for the observance of some of the standards in the process of the exploitation of the bioenvironmental resources (J. Crawford, para.324, p.16).

The case of *Dees V. Hungary* (9th of November, 2010) (failure in air pollution reduction as a result of traffic as an example of the sixth article's violation):

This case was related to air pollution and dispersion of unpleasant odors due to the congestion of vehicles in crowded roads. In some of the streets of Hungary that were crossed by the plaintiff, the traffic had been increased for such a reason as the drivers' dodging of the new tolls for the use of the alternative routes. The plaintiff seminally presented a complaint about the damage to his houses' walls in 1997 and stated that his house is not livable due to the noises and air pollution stemming from the traffic. In 1998, in line with improving this situation, the government took measures in line with the creation of several side routes and reducing the street bumpers, installation of traffic lights and tableaux for showing the trucks' movement limitations and corroboration of the police's presence in the highly congested streets. However, the plaintiff again realized the performed actions as not being enough. In the next stage, the tools on the alternative routes were acceptably reduced and the Hungarian government spent a sum of money over 4000000 euros for this issue but two evaluations of the noise in the plaintiff's house indicated that the acoustic pollution is by 12 to 15 percent higher than the allowed limits. The plaintiff demanded loss compensation under various titles but the court could not find a relationship between the increase in the noises and air pollutions and damage to the walls of the plaintiff's house. This way, he claimed the violation of the sixth and eighth articles (ICJ, reports, 1949, p.18).

The court reached a consensus and ordered the violation of the sixth article indicating the right of fair trial. It asserted that the sixth article requires the fair trial on a timely basis but only two stages of the trial related to the aforesaid lawsuit had lasted about six years and nine months and, though such a term can be reasonable under some conditions, the Hungarian government could not offer any reason for justifying this duration (Philippe, 2012, p.200).

9. General Commitments of the Governments in Aarhus Convention:

After the codification of the human right convention and following the establishment of the European court of human rights, the European continent took one of the longest leaps on the path towards the sublimation of human rights in various domains. In the beginning of this court's activities, the governments' commitments in the area of the bioenvironmental issues were not so much specific and they

could not be categorized under special titles (G. Handle, 1975, pp.50-77). However, the filing of various lawsuits set the ground for the creation of a procedure rich of sentences that had been issued for the extraction of some of the general commitments for the governments in this area. This was so until the states gathered around in the second largest city of Denmark on 25th of June, 1998, and held a convention under the title of Aarhus regarding the access to information, public participation and judicial justice about the bioenvironmental issues and it was started being enforced on 30th of October, 2001. Up to March, 2014, the members of this convention were increased to 47, i.e. 46 countries along with EU. All of the approving states are positioned in Europe and central Asia. The European continent started the insertion of these commitments in its legal order but Lichtenstein and Monaco have not endorsed and approved it (Report of 31st of March, 2000, pan.28).

Conclusion

The primary conclusion that can be made based on the presented materials is that the human rights and environment are mutually interdependent in regard of the air pollution and this interdependency and mutual importance have been constantly confirmed and underlined during the past decades by the international communities like Stockholm conference and Rio De Janeiro and UN's convention on human rights but its best and most comprehensive form can be found in Aarhus convention.

Secondly, the international environment laws and the human right system share goals in regard of the air pollution and both of them eventually take steps towards the creation of better conditions for life on earth. Both of them are faced with challenges that should be overcome simultaneously in both individual and universal levels. These two areas' relationships should be necessarily considered in the different, supplementary and biased approaches that each of them may adopt. The environmental laws seek protecting the environment in itself as well as the human interests in regional and global levels but they are largely restricted to the regulation of the relationships between the governments and, subsequently, the relationships between some of the economic actors. This is while the human right system relies on fundamental ideals of the mankind and very developed mechanisms that allow the individuals and groups demand the fulfillment of their rights. The necessity for the blending of the environmental laws with the human rights is substantially due to the daily increasing effects exerted by the environment on the actualization of the human rights. The governments' obligations in regard of the bioenvironmental and air pollutions have been very important for years in the legal system of the western countries and their significance has been increased in the course of time with the technological progresses but this issue has not been unfortunately seriously put forth in our country and the sporadic efforts, if any, have solely been limited to the codification of the indispensable regulations and that not within the framework of the obligations stipulated for the states but within the format of the procedural obligations and the necessity of getting the citizens generally participated in this process and/or informing them about their rights in this regard. So, 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 meaning that the codification of the regulations along with timely notification of the right owners can enable them file lawsuits for the violation of their rights and this per se enables them to file lawsuits in the country's judicial system and leads to the creation of a rich judicial procedure which would be finally very effective in the development and sublimation of this branch of our country's law.

References

- [1] Azarang, Abd Al-Hussein, (2017), “environmental technology and crisis”, Tehran, Amir Kabir
- [2] Butkin, Daniel, (2003), “environment’s recognition”, tr. Abd Al-Hussein Wahhabzadeh, v.1, Mashhad, Academic Jihad Press
- [3] Beygzadeh, Sadif, (2003), “valuation of the bioenvironmental resources”, journal of green message, 3(25), Iran’s association of green space engineers
- [4] Parker, Sibel and Kevit, Robert, (2003), “the encyclopedia of the environmental sciences and engineering”, trs. Saeed Eskandari et al, Environment Organization, Tehran, Chavel
- [5] Perkins, Henry, (2001), “air pollution”, tr. Mansour Ghiath Al-Din, 4th ed., fall, Tehran University Press
- [6] Showen, Paul, (1990), “air pollution”, tr. Karim Kousha, v.1, the organization for the Islamic Revolution Instruction and Publication
- [7] Abdollahi, Mohsen, “the notes taken in the air conservation laws’ classroom”, MA course on environment, Shahid Beheshti University, second semester, 2005-2006
- [8] Musavi, Sayed Fazlullah, (2006), “the trends of the evolutions in the international environmental laws’ resources”, 1st ed., Tehran, Mizan.