

Enrique J. MARTÍNEZ PÉREZ, *La tutela ambiental en los sistemas regionales de protección de los derechos humanos* (Tirant lo Blanch, Valencia 2017), 157 pp. (includes e-book)

The relationship between fundamental rights and the protection of the environment is not a new issue, but a fundamental one that is reaching greater interest nowadays. Indeed, a healthy environment is essential for not jeopardizing the life and health of people, as well as it ensures the enjoyment and exercise of other less vital human rights. There is no point in protecting peoples' life or ensuring their political, civil or labour rights, if they cannot survive because they live in a degraded environment. In this sense, human and environmental interests are inseparable: there is no protection of the human being without the protection of the environment. Moreover, the preservation of the environment through the protection of human rights presents a reasonable path to provide sufficient legal protection of the natural world, since environmental regulations often lack of precise and binding nature and of an international court with mandatory jurisdiction to control its compliance. In this sense, there are at least two possibilities for protecting the environment through the safeguarding of human rights. The first is formally recognizing a human right that contains environmental imperatives. The second is to seek indirect protection, introducing environmental interests in other existing fundamental rights. The latter case is precisely what happens at the regional systems of protection of fundamental rights, and what is under consideration in this book.

The monograph by Professor Enrique Martínez Pérez encloses six chapters, which addresses thoroughly all the matters that one can think of about environmental protection in the most important regional systems of fundamental rights: the European, the Inter-American and African regime. The author focusses his thoughtful study on the first two since under the African one has not enough case law. The approach chosen is not to explain each regime separately, but to combine them in each chapter, offering a direct and immediate comparison among them. Precisely, this comparative element makes the book of greatest interest for academics and practitioners. A good and serious comparative study is not an easy task, but the author has accomplished this goal, especially brilliantly in the conclusions to the book. Most of the times one can ascertain which regime is referred to in spite of the multiple and interspersed considerations. Although, if a second edition of the book will take place, a possible confusion can be easily avoided by introducing a brief mention of the Court that dictates the jurisprudential pronouncements when quoting the case law in the footnotes.

The first chapter ("*La aplicación rationae personae y ratione loci de los diferentes instrumentos jurídicos regionales de derechos humanos*") is devoted to the conditions to stand before the international human rights tribunals such as determining who can have the condition of

'victim', if popular actions are allowed or transboundary damage may be covered, among others issues. These competence requisites are of great importance to bring a case before the different human rights tribunals as the conditions may vary among each regime.

In the second chapter (*"De la ecologización de los Derechos humanos al reconocimiento de un Derecho autónomo al medio ambiente"*) the author reviews the evolution in taking into consideration environmental issues in the human rights regimes (the "greening" of human rights) and the eventual recognition of an autonomous right to the environment in each regime. He focuses on the European system although the European Convention of Human Rights does not enclose a right to a suitable environment, as there has been no agreement to include it in the Convention or in its successive Protocols. This has not hindered the European Court of human rights (ECHR) to consider the violation of a fundamental right for environmental reasons. In fact, the ECHR has constructed a solid jurisprudence on this matter, considering the Convention as a living instrument that has to be interpreted in the light of the actual conditions.

The Inter-American system, on the other hand, does recognize an independent right to the environment in an additional Protocol to the Pact of San José (art. 11 of the Protocol of San Salvador of 1988). However, as pointed out by the author, its application is limited to the extent that it is only controlled through the periodic reports submitted by States party. Now, the truth is that the Inter-American Court of human rights (IACHR) has been very ambitious in considering environmental concerns in its case law. As highlighted by the author, the IACHR has undertaken several achievements, such as the possibility of indigenous peoples to access to the system in defence of their individual and collective rights. Moreover, in the Advisory Opinion on the environment and human rights OC-23/17 of 15<sup>th</sup> November 2017, the IACHR has emphasized the close relationship between the protection of fundamental rights and the environment and the need to preserve the environment in order safeguard the livelihood of the enjoyment of others fundamental rights such as life or physical integrity. The IACHR Advisory opinion was issued after the appearance of the book; yet, it would be interesting to examine whether the protection of the environment through human rights will be easier now in the American regime.

The African Charter on Human and Peoples' Rights is also considered as it explicitly recognises in article 24 a "right to a general satisfactory environment favourable to their development". However, this recognition has been brought in just a single case before the African Commission on Human and Peoples' Rights: the issue of Social and Economic Rights Action Center (Nigeria) /Center for Economic and Social and Economic and Social Rights (USA) v. Nigeria from 2001 (Ogoniland case).

From a substantive point of view, the third chapter (*“La dimensión ambiental de los derechos sustantivos: entre el derecho a la vida y el derecho a la vida privada y familiar”*) is of great interest since it explores the environmental dimension of the right to life and the right to private and family life. It is also the most extensive chapter (26 pages) and where the author meticulously analyses the interpretation and application of the provisions enclosing the aforementioned fundamental rights. The study focuses, again, in the European system for a reason: its case law is more numerous. At European level, the vast majority of “environmental cases” deal with the “right to respect for his private and family life, his home and his correspondence”, contained in article 8 of the European Convention. The ECHR has broadly interpreted this provision affirming that the respect for the home is not conceived only as a right to a physical space, but also as the right to enjoy this space in tranquillity. In this regard, attacks of the right to respect one’s home are not only those of material character -as the entrance of an unauthorized person-, but also intangible or incorporeal attacks, such as noises, emissions or bad odours. If such environmental damage or risk is a serious one, it may affect the well-being of people and deprive them of the enjoyment of their home and impairment of his private or family life. In the American system, by contrast, are other fundamental rights considered, such as the right to life, the right to ownership of land and, in particular, the rights of indigenous peoples.

In the fourth chapter (*“Restricciones al derecho de propiedad privada por motivos mediambientales”*), the author studies another interesting manifestation of the relationship between human rights and the protection of the environment. On this occasion, however, with conflicting interests. Indeed, the protection of the environment may also constitute a limit to the enjoyment of other fundamental rights enshrined in these regional conventions, as in the case of the right to private property. However, the interference with the use and enjoyment of a property—often real estate and land property subject to conservation policies—is due to the fact of not having received just compensation by the State and not to the fact of protecting nature, which is considered a legitimate interest to limit this fundamental right. In this chapter, one can find an exhaustive review of the guarantees of the interference of the right to property, both in relation to the European system and the American system. In the latter case, also considering the rights of indigenous peoples when it comes to creation of natural reserves in their ancestral territories in order to preserve the environment.

The last two chapters (*“Las garantías procedimentales derivadas de los derechos sustantivos en situaciones de deterioro ambiental”* and *“El desarrollo de derechos procedimentales autónomos en materia ambiental”*) are dedicated to the instrumental and procedural aspects of protecting the environment within the fundamental rights’ regimes. Procedural duties and rights are reaching a greater importance in the case of environment preservation, even more than through substantive rights. They facilitate the prevention of environmental damage, as is the case with

the obligation to carry out environmental impact assessments, the right to obtain information or to allow the participation of private individuals in the decision-making process. Moreover, they are also essential to obtain compensation for possible environmental damages, such as the right of access to justice or the obligations to investigate, punish and repair environmental damage.

In conclusion, the monograph by Professor Enrique J. Martínez Pérez is a very serious and rigorous study of all aspects accompanying the protection of the environment in the regional systems of human rights protection. The author presents a complete and remarkable jurisprudential and doctrinal research on the matter that makes its reading an imperative for anyone who wants to deepen the knowledge on the relationship between the environment and human rights.

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