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Right to the Environment in the Context of EC Approximation and Codification of Estonian Environmental Law

The Estonian environmental law is presently under great reform. We are largely at a crossroad. Although several important gaps in the Estonian environmental law have been filled and contradictions in the legislation eliminated in the last years, our environmental law is still developing chaotically and is rather fragmented. There are several reasons for this. This area of law has so far developed in a situation where there are no common grounds (principles) for legislative drafting and legal acts have been passed unsystematically. The lack of organisation in legislative drafting is especially apparent in the harmonisation of our law with that of the European Community. The latter presumes the establishment of a large number of legal acts in a relatively short time. If processes have no sound basis and framework in these conditions, such a mass production of law may go out of control. It might be believed that keeping the right course is guaranteed with the EC environmental *acquis* system — agreements, regulations, directives, principles, policies, court practice and other elements of it. Anyone familiar with the EC environmental law, however, knows that this is not the case.¹ The EC environmental *acquis* suffers the same shortcomings as the Estonian environmental law. Furthermore — fragmentation and contradiction can be found in the environmental

law and legislation of most other countries.² To get out of this unfortunate situation, efforts to create an environmental code have been taken in several countries since the end of the 1980s. This trend has evoked conflicting opinions, but the fact is that the world's first environmental code (*Miljöbalk*) was established in Sweden on 1 January 1999 and Germany will soon follow (*Umweltgesetzbuch*). The trend to establish environmental codes proves that environmental law has come to rank equally with other areas of law. In Estonia, a team was formed in 1998 to prepare the general part of the environmental code draft act. The author of this article has the honour to be the head of the team. The objective of the general part of the environmental code act is to lay down the theoretical bases of environmental law in legal norms, so as to guarantee a systematic development of our environmental law and prevent contradictions in both legislative drafting and in implementation of the law. The following article is largely inspired by certain problems which the team has faced in discussing the draft act.

The chief motive of the environmental legislative drafting in Estonia today is the transposition of the EC environmental *acquis*. Considering the fact that the EC environmental law does not by far cover all the regulations

necessary for environmental protection, it is necessary and possible in the context of EC environmental law transposition to meet two objectives simultaneously:

(1) to arrange the content and structure of the Estonian environmental law so that internationally recognised basic principles of environmental policy and law be taken into account on the one hand, and the social and economic realities of our society and the peculiarity of our environmental conditions and problems be given due regard on the other hand;

(2) to transpose the entire EC environmental *acquis* in our legal order and guarantee its implementation.

So, the EC law does not as a rule replace the national law but acts through it. Therefore the national legislation has to be reviewed to adequately adopt the EC law — any discrepancies, repetitions and gaps have to be corrected. An important means for achieving this is the environmental code.

Yet the direct legal effect of EC law, including directives, should not be forgotten. In the sphere of environmental protection, this aspect has a very important meaning, especially from the viewpoint of less developed and poorer countries. Although the role of the direct legal effect of EC law cannot be overestimated and several scientific discussions have been dedicated to it³, these problems will not be discussed in depth in this article.

The above two simultaneous processes — transposition of EC law and preparation of the environmental code — have a number of common traits, but they also differ in many aspects. One of the common traits is the main objective — to guarantee the right to a clean, habitable, quality environment and preserved natural resources.

It is hardly news that the right to a clean environment is listed among the fundamental rights in the constitutions of several countries. The relation between environmental protection and human rights has attracted more and more attention. Although this human right is not expressly provided in the Convention for the Protection of Human Rights, the practice of the European Court on Human Rights has recognised the right to a clean environment as a fundamental human right, as the deterioration of environmental conditions can lead to violation of the human rights expressly set out in the Convention, such as the right to privacy and inviolability of property.⁴

It can be said that the main objective human rights protection is to guarantee the immanent bases for the existence of an individual, including personal life and dignity. Let us recall the First Principle of the 1972 Stockholm UN Environment Conference Declaration:

“Man has a fundamental right to freedom, equality and adequate living conditions in an environment the quality of which guarantees welfare; man also has the superior obligation to protect and improve environmental conditions for the benefit of present and future generations”.

The Stockholm Declaration also stresses that:

“Man is simultaneously a part and the former of the environment, and both components of the environment — the natural and the artificial — are important for the welfare of man and for exercising fundamental human rights, including the right to life”.

Human rights are inseparable and mutually dependent on each other — the full realisation of political rights is impossible if economic, social and cultural rights are not guaranteed. The requirement to guarantee the right to life and health cannot be separated from the requirement to achieve sustainable development.

The protection of human rights presumes that individuals, various collective legal subjects and the state bear certain obligations, or, otherwise said, that all sectors of the society participate. The bearer of human rights however is the individual, not the collective. Damage to the environment has usually large-scale consequences and cases where the damage (violation) only concerns a particular individual are rare. So, despite the fact that the relation between environmental condition and human rights is more and more recognised, the dispute — whether the right to a clean environment exists — has not by far come to an end. It has even been asked whether the right to a clean environment is good or bad for environmental protection — it is feared that the inclusion of environmental protection in the human rights context may further reinforce the anthropocentric conception of the world, which directly or indirectly has caused most of today’s environmental problems.⁵ Another problem that makes it more difficult to relate the environmental issues and human rights is the ambiguity of the terms. Defining the content of the terms “environment”, “environmental pollution”, “sustainable development” and other such main concepts of environmental law continues to cause problems in international law and in national legal orders. How to define clean environment — this would apparently require the establishment of appropriate quality norms and standards for all environment components not by country but globally, because as we know, neither environment nor human rights recognise state borders.

Related to environmental protection is the question of the rights of not only today’s people, but the future generations. The concept of sustainable development is first of all related to the requirement that our generation must not use its time aggressively, but behave prudently and consider the rights and interests of future generations. Such rights have been called “group rights” and “generational rights”.⁶ It is apparently impossible to associate these rights with human rights, as the latter are related to the individual, not the collective, as mentioned above. An interesting theory about the relations between generations has been formulated by Christopher Stone in his book “Earth and Other Ethics: The Case for Moral Pluralism”.⁷ The cornerstone

for C. Stone's theory is distinguishing between two categories — "persons" and "nonpersons". The first category includes "normal adult humans", the other includes "unconventional entities" — from unborn babies, dead persons and animals to such collective subjects as tribes and peoples. Nonpersons include "future persons", including future generations. According to C. Stone, the interests of the latter should be taken into account from both moral and legal grounds. At first glance, the latter arises many suspicions, but when we recall the precautionary principle of environmental law and its implementation mechanisms, such as the procedure for assessment of environmental impact, it is not entirely impossible.

Due to the above reasons, the right to a clean environment can be first of all associated with procedural rights⁸ - such as the right to environmental information, the right to participate in decisions concerning the environment. Last summer (23-25 June) the Fourth Ministerial Conference took place in Århus under the auspices of the UN Economic Commission for Europe, where the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed. The document is based on the principle that each person has the right to live in an environment adequate to his or her health and well-being, and each person is individually and collectively obliged to protect and improve the environmental conditions for the benefit of the present and future generations, and everyone has the right to receive information and participate in environmental decision-making to exercise this right and obligation.

It can be said that the law in force (in Estonia and elsewhere) grants a person two main possibilities to guarantee the right to a clean environment:

(1) exercising control over environmental management by participating in decision-making and through these decisions, subjecting to court control;

(2) enforcement of his individual rights in private law (for example, property).⁹

One of the mechanisms which in the Estonian conditions contributes to guaranteeing the right to a clean environment is the transposition of the EC environmental acquis and even more importantly, its actual implementation. The main objectives of the EC environmental law include the protection of human health and the environment on a high level. It may be asked what else besides environmental protection can serve as the objective of environmental law. Other objectives are known to exist. One of the important objectives of the EC environmental law is the harmonisation of standards to guarantee the free movement of goods. The following is a discussion of the so-called transposition principles. These principles arise from the practice of the Court of Justice of the European Community. It is important to follow these principles throughout the course of transposition of the EC law to the

national law, as they reflect the views of the EC Court of Justice, an institution empowered to interpret the stipulations and determine the rights provided by EC law, and are helpful in determining which EC environmental provisions are to be transposed and which ones not. Transposition is thus first of all a process by which the rights and obligations established for individuals in directives or on the basis of directives are incorporated in the national law. National legislation also has to include measures to protect the rights of individuals, where a directive grants competent agencies the right to act, but on limited conditions (or according to certain conditions or restrictions) and where the exercise of such right on such conditions may lead to damaging the lawful rights and interests of persons. The above is justified by the need to guarantee the right of individuals to contest in their national courts the activities of public authorities, which is influenced by community law. The obligation to transpose the stipulations of a directive in national legislation does not imply merely the repetition of the text of the directive in the national legislation, but rather requires that the transposition should guarantee the achieving of the effect of the directive ("*effet utile*"). In this context, such "effect" may cover aspects of environmental protection, preservation and development.¹⁰ As evident from the above, the relation between the principles of EC law transposition and the right of persons to a clean environment is direct and immediate. One can be sure that the actual implementation of the above principles in the transposition and implementation of, for example, the directive regulating the quality of drinking water, contributes to guaranteeing the protection of the environment and human health in the Estonian conditions.

In the following we shall tackle some of the problems that arose in preparation of the general part of the environmental code draft act. All these problems are directly or indirectly related to the right to a clean environment. We shall analyse the concept of the general part act and the role of the right to a clean environment in it. We shall also speak about the mechanisms which guarantee the exercise of the right — the implementation aspects of the precautionary principle, the assessment of environmental effect and the multifaceted role of environmental liability in controlling environmental risks.

The shortcoming of the "framework laws" concerning environment applicable in Estonia is the fact that they contain political rather than legally defined texts (provisions). At the same time, it is perhaps natural that the general part of the environmental code act should, due to its character, contain norms and principles with a lower efficiency¹¹ when compared to other norms. Nonetheless, the provisions of the general part act have to be formulated with as much implementing power as possible and legally undefined terms such as "a single beautiful tree" have to be avoided. We cannot do without a certain degree of declar-

activity, but it must be taken to a minimum. It is often said that environmental protection laws must, besides environmental protection norms, contain the spirit of environmental protection. One of the objectives of the general part act is to provide legal definitions to the main concepts of environmental law. Here we should consider practical needs rather than pure theory. For example, it is rational to define "environment" from the aspect of the scope of application of the act, not from scientific definitions, of which there is a multitude and where a consensus on the "correct" definition is extremely difficult to achieve. It is more correct to list objects, circumstances, etc. which are viewed as the environment for the purposes of the environmental code, and with which the scope of application of the code is determined. The same principle applies to other main concepts. When preparing the general part draft act, it should be taken into account that the act will first be established without a special part. Thus the general part act will for some time be effected together with other legal acts presently in force. The passing of the general part act presumes that amendments be made in the legislation in force.

The function of the general part of the environmental code act, besides defining the scope of application, the objective of environmental protection and the main principles of environmental law, is to define the main rights and obligations of persons, the organisational bases of environmental protection and the legal means of environmental risks control. The act establishes the legal bases for environment use proceeding from sustainable development principles. The set of measures for environmental damage prevention is also provided. The general part act provides the implementation mechanisms for international and EC environmental law. The law thus sets out the legal framework for environmental law and policy, and is the basis for the systematisation and further codification of environmental law in future.

The organisational bases of environment protection and the measures of environmental management have to be determined based on the social partnership principle. Environmental protection cannot be taken out of the market economy context. One of the basic principles in finding an adequate combination of regulation methods is the principle that requires as small as possible disturbance of spontaneous market mechanisms and the implementation of direct regulation means first of all in those areas where market mechanisms "do not work". Special literature points out the dangers that environmental protection faces in the context of neo-liberal economic globalisation.¹² Therefore, environmental problems can only be solved when producers (on the polluter-pays principle), the state and the local government (based on their duty to guarantee the environment as a public utility) and the consumers (based on their awareness of circumstances and market choices) all participate on equal grounds.

The general part of the act focuses on the environment (protection)-related rights and obligations of persons. The right to environment-related information and participation in decision-making has to be considered one of the most important mechanisms of environmental risk control in a democratic society. Through this the right of persons to a clean environment is realised. Through the environment-related obligations of persons, the main principles of environmental law can be changed from mere environmental policy slogans to legally applicable norms.

In determining the environment-related rights of persons, the draft act is based on the principles of the Århus Convention and Directive 90/313/EEC (Access to Environmental Information) and the idea that the defining of such rights is beneficial only where it is done in sufficient detail, providing not only the abstract content of the rights but also the mechanisms that guarantee them. The failure to regulate the latter has so far been one of the main shortcomings of Estonian law. For example, the right to environmental information is provided in the current Estonian legislation, but due to the above shortcoming the application of the respective provisions is extremely problematic.

The draft act lays down everyone's right to:

(1) live in an unpolluted, intact and norm-compliant environment and to demand the suspension and termination of activities which impair environmental conditions and the reviewing of norms regarding these activities — the right to a clean environment;

(2) receive information on the environmental condition and natural resources, as well as on any factors which may have a significant effect on them — the right to receive environmental information;

(3) participate in making decisions which have a significant impact on environmental conditions, and through environmental organisations, to participate in the preparation of legislation of general application concerning the environment — the right to participation.

The following paragraphs of the draft act provide in detail the logistics of realising these basic rights. Let us give just one example here regarding the right to a norm-compliant environment. Corresponding to this right is the obligation to guarantee compliance with environmental quality norms — for example the compliance of drinking or bathing water with determined quality requirements. The obligation concerns not only polluters but also public authorities who have to guarantee the respective legal regulation and the existence of competence institutions, as well as monitoring and surveillance. Every person has the right to demand the reviewing of norms where there is reason to presume that the norms are not strict enough.

Everyone's right to a norm-compliant environment can be realised through the right of everyone to address an environmental surveillance agency for compliance sampling and compliance measurements. The environmental

surveillance agency will organise the necessary measurements and sampling if there is reason to presume that norms have been violated. Where substantially higher than allowed levels of pollution are found, the environmental surveillance agency is obliged to clarify the source of pollution to whatever extent possible. An environment inspector is obliged to do the same if the pollution level does not exceed norms, but is significantly higher than the usual pollution in the area. Thus, the right of everyone to a clean environment is expressed in the detailed obligations of specific persons or agencies.

One of the most important and apparently most effective means of guaranteeing the right to a clean environment is the precautionary principle of environmental law (in German, *Vorsorgeprinzip*). It is a principle that best describes the essence and peculiarity of today's environmental law. According to this principle, the most reasonable and effective environmental policy entails not merely the liquidation of pollution and its consequences, but rather the prevention of pollution at the potential pollution source and the assessment of related environmental risks from human activities and the systematic collection of appropriate information. It should be especially stressed that these measures have to be applied in conditions of scientific uncertainty. The precautionary principle denies the traditional assimilative capacity approach. The latter is based on the premise that science can adequately predict and determine environmental risks and work out technical solutions for their elimination. If the former has succeeded, there is always enough time to act. This purports to be economically the most effective environmental policy.¹³ Unfortunately, life has shown that scientific proof of the harmful effect of certain activities or substances to the environment usually comes too late, as it often takes scientists years to clarify and discuss the essence and emergence mechanisms of processes. The precautionary principle is a means of acting in conditions of uncertainty¹⁴, where intuition rather than the precise assessment of objective circumstances is the basis.

One of the main problems related to the codification of environmental law is the implementation aspects of the precautionary principle. Initially, possibilities for the implementation of the precautionary principle were only seen on the level of legislative drafting and policy. The administrative level was added later, which means that for example in issuing environmental permits, competent authorities have to take account of scientific uncertainty and the need to apply appropriate precautionary measures. The preparers of the general part of the Estonian environmental code act are convinced of the need to apply the precautionary principle on the personal level also - through defining the basic environmental obligations of persons. This way the precautionary principle is employed against environment polluters and not to their benefit as before.¹⁵

Certain dangers exist here, too. The precautionary principle taken to an extreme may become a paranoid principle. Therefore the precautionary principle has to be defined with due cautiousness on the environmental obligations level, or otherwise said — implemented reasonably. Before we come to the relation between the precautionary principle and reasonability, we have to look at the fundamental environmental obligations. The general part of the environmental code act should prescribe the following fundamental obligations for persons in the control of environmental risks and prevention of environmental damage:

(1) everyone who plans or carries out an activity which may have a significant effect on the environment or human health, has to take account of the interests of other persons and the need to protect the environment, and is obliged to notify the persons whose rights and interests such activity may influence, of such activity and its possible consequences in due time and in an as early a stage as possible;

(2) to take precautionary measures, a person has to have information on the possible impact of his planned activities on the environment and human health. Where there is no such information, the person is obliged to take all necessary measures to furnish such information and assess the possible effect on the environment;

(3) the taking of precautionary measures may not be postponed due to the fact that the adverse effect on the environment of the planned or performed activity has not been fully proven by (scientific) investigation;

(4) everyone who plans or performs an activity which may have a significant impact on the environment and human health, has to implement the best available technology and good environmental practice to prevent or reduce such effect, unless otherwise provided by law. The best available technology means the latest and most effective stage of development of a process, appliance or working method, which has proved effective in the practice of pollution prevention, or if this is not possible, in reducing the effect on the environment as a whole;

(5) the place for performing an activity which has a significant potential effect on the environment has to be chosen so that the possible adverse effect on the environment and human health is the minimum. In the choice of a suitable location or site, account shall be taken foremost of the sensitivity of the area to the activity planned, the distance of the area from residential areas, and its present and possible future use;

(6) everyone is obliged to avoid using genetically modified organisms and substances, preparations and products hazardous to the environment and human health, if they can be replaced with such substances, preparations, products or organisms from which a lower degree of hazardness can be presumed.

To provide even more implementing power to the

above obligations, it is wise to establish the requirement that if the established maximum pollution level or rate of use of a natural resource does not allow to fully satisfy all the applications for a pollution permit or a resource use permit, persons who have fulfilled the above obligations to the maximum possible degree shall have a preferential right to receive such permits.

Now back to the rule of reasonability. The above fundamental obligations are applicable to the extent that they cannot be considered unreasonable. When an appropriate analysis is made, the benefit of precautionary measures must be weighed against their cost.¹⁶ If a person with respect to whom the above obligations are applicable wants to be relieved of them in part or in full, he or she must prove that the costs of taking the prescribed measures are not justified from the aspect of protecting the environment or human health, and are economically irrational.¹⁷ At the same time, it must certainly be taken into account that the requirement to achieve the environmental quality objectives prescribed in the legislation should always be considered reasonable regardless of the related costs.

In conclusion, it can be said that the precautionary principle must be applied while taking account of risk and the best possible scientific knowledge, and the application of the principle must be the stricter the larger and more irrecoverable the potential environmental damage.

In addition to the above, an important measure for guaranteeing the right to a clean environment is the procedure for environmental impact assessment. This guarantees the implementation of the precautionary principle of environmental law and is based on the premise that it is not the hazardousness of the planned activity that has to be proved, but the performer of such activity must himself, before a project is launched, warrant through environmental expertise that his activities do not cause a significant impairment of the environmental condition.

In the European Union, the assessment of environmental effects is regulated with Directive 85/337/EEC. The Directive is probably one of the most important sources of EC environmental law. The preparation of the Directive was not easy, as the positions of members states were indeed very different and it took much effort to reach a consensus. The same applies to the enforcement of the Directive — members states have often been criticised by the EC Court of Justice.¹⁸ The Directive focuses on the harmonisation of procedural norms for the assessment of environmental impacts and requires that environmental aspects must be taken into consideration for all development projects. The objective of the Directive is not to prescribe for member states as to which projects are to be allowed or not, but harmonises the related procedures and principles. The objective of assessing environmental effects is not the prohibition of development projects, but the consideration of environmental protection aspects equally with other

aspects. Likewise, the objective of sustainable development is not to stop economic development, but to subject it to a certain framework. Regulation of the environmental impact assessment has to be based on the following principles:

(1) it is preferable to investigate and assess the environmental effects of planned projects before such projects are initiated, so as to reduce any harmful effects and prepare appropriate contingency plans for emergency;

(2) the public is entitled to receive information of all environmental effects of human activity. The principle “the right to know” is often taken further and not only the accessibility of information is required, but it is required that the public (on the local, regional or national level) be provided an opportunity to present comments and notes to any decisions related to such effects. In practice, this could mean that information is required from developers on the possible environmental effects of the planned project and the local, “effected” community is granted a possibility to provide comments on the project before the project is approved. In a wider meaning, it could also mean the notification of the general public of an environmental draft act of nation-wide application and the public discussion of the draft act before it is passed.

There is probably no European or North American country left where the environmental impact assessment is not one of the main legal instruments of environmental protection. So, it is quite a new, but a very powerfully developing procedure, which well reflects several developments of today’s environmental policy and law. The latter is one of the cornerstones of the integrated pollution prevention and control ideology.¹⁹ Secondly, the assessment of environmental effects suits well the measures of self-control so widely promoted in the 1990s.²⁰ Unfortunately, the latter has not always been understood. In Estonia, undertakings and developers regard the assessment of environmental effects as a procedure clearly hostile and imposed on them. In fact this is not so. The Estonian environmental impact assessment and environmental audit draft act regards the developer as a client who orders the assessment of environmental effects, which is beneficial for the developer from at least two aspects:

(1) the results of environmental effect assessment are essential to adequately meet the obligations arising from the precautionary principle. Let us not forget that everyone is obliged to have information on the potential environmental effect of his or her activities;

(2) considering the strict liability principles applicable to environmental pollution, the timely and adequate assessment of environmental effect is crucial to eliminate environmental liability risks.

As a logical continuation of the latter empirical truth, let us now consider the last topic of this article — environmental liability. The role of environmental liability, first of all civil liability, in the prevention of damage and in the guaran-

teeing of a clean environment, cannot be overestimated.

Environmental civil liability has several functions. One of its purposes is certainly the fast and adequate compensation for damage. But besides this, civil liability (or rather, the related risk) serves the purpose of stimulating environment-friendly production and implementing the "polluter pays" principle. The liability schemes applicable today are so strict and damages to be compensated for are so great that even the most successful undertaking cannot afford a pollution that causes liability. An especially complex scheme of environmental liability is known to exist in the USA. The latter has often been accused of being unjustly strict and totalitarian.²¹ An answer to such accusations is - the main objective of the environmental liability scheme is not to indemnify damage, but to prevent the application of the scheme - the liability has first of all an important preventive effect. The risk of liability is a stimulus to take all available measures to prevent damage.

Although civil liability is an effective means of pollution control, it should not be regarded as a cure-all. Civil liability is not applicable to many types of pollution, for example the pollution of ambient air by exhaust gases of motor vehicles. It should also be understood that despite the efforts to achieve effective schemes of environmental liability, court procedures regarding these issues are very slow and from the environmental protection aspect, the judgements may not always be productive²², especially where the causer of damage is identified and indemnification is exacted from him, but the defendant turns out to be unable to pay.

Besides the above fundamental truths, the peculiarity of our environmental problems must be taken into account in the regulation of environmental civil liability in Estonia. Account should be taken of the fact that most of our enterprises are privatised together with land, while a large part of environmental pollution originates from the Soviet period. The situation is complicated by the fact that many enterprises who have severely polluted the environment directly served the annexing powers and were subordinated to the central power in Moscow. Our environmental pollution is therefore largely an issue of international environmental law. It is apparent that due to many such special problems, Estonia and similar countries need a number of additional instruments besides civil liability — for example, special funds to finance the elimination of past pollution.²³

The first half of this article poses the question whether the right to a clean environment exists, whether it is an actual right or only a slogan from political fashion trends. It is probably not just a slogan, but only if the actual exercise of this right is guaranteed with legal norms. As we saw, it is possible — fundamental environmental obligations of persons based on the precautionary principle, the procedure of environmental impact assessment, environmental civil liability and many other legal means give the necessary

implementing dimension to the right to a clean environment.

Notes:

¹ Q.v. A. Nilsson. Environmental Protection within the Internal Market. — Third International Conference on European Union Environmental Law, Helsinki, May 7-8th 1998, pp. 53-62.

² Q.v. M. Kloepfer. On the Codification of German Environmental Law. — The Codification of Environmental Law. Ed. by H. Bocken, D. Ryckbost. Kluwer Law International, 1996, pp. 87-100.

³ Q.v. H. Somsen. Francovich and its Application to EC Environmental Law. — Protecting the European Environment: Enforcing EC Environmental Law. London: Blackstone Press Ltd., 1996, pp. 135-139.

⁴ A. Kiss, D. Shelton. Manual of European Environmental Law. Cambridge University Press, 1997, pp. 73-79.

⁵ Q.v. D. Shelton. The Right to Environment. — The Future of Human Rights Protection in a Changing World. Oslo: Norwegian University Press, 1991, pp. 197-202.

⁶ Q.v. G.P. Supanich. The Legal Basis of Intergenerational Responsibility: An Alternative View — the Sense of Intergenerational Identity. — Yearbook of International Environmental Law, Vol. 3, 1992, pp. 95-96.

⁷ C. Stone. Earth and Other Ethics: The Case for Moral Pluralism, 1987.

⁸ R.V. Persival, A.S. Miller, C.H. Schroeder, J.P. Leape. Environmental regulation. Law, Science and Policy. Little, Brown and Co., 1996, p. 69.

⁹ Q.v. E. Rehinder. Private Recourse for Environmental Harm — Federal Republic of Germany. — Environmental Pollution and Individual Rights: An International Symposium. Kluwer, 1978, p. 38.

¹⁰ L. Krämer. E.C. Treaty and Environmental Law. London: Sweet and Maxwell, 1998, pp. 163-167.

¹¹ K. Merusk, R. Narits. Eesti konstitutsiooniõigusest (On the Estonian Constitutional Law). Tallinn: Juura, 1998, p. 168.

¹² Q.v. for example: R. Falk. Environmental Protection in an Era of Globalization. — Yearbook of International Environmental Law, Vol. 6, 1995, pp. 3-25.

¹³ Q.v. P.J. Taylor. The Precautionary Principle — Implications for the Paris Commission. London: Greenpeace, 1988.

¹⁴ O. McIntyre, T. Mosedale. The Precautionary Principle as a Norm of Customary International Law. — Journal of Environmental Law, Vol. 9, No. 2, 1997, pp. 221-222.

¹⁵ H. Hohmann. Precautionary Legal Duties and Principles of Modern International Environmental Law. The Precautionary Principle: International Environmental Law Between Exploitation and Protection. Graham & Trotman/Martinus Nijhof, 1994, p. 334.

¹⁶ I. Hodge. Environmental Economics. Individual Incentives and Public Choices. London: Macmillan Press Ltd., 1995, pp. 44-49.

¹⁷ K. Kuusiniemi. Environmental Standards and Pollution Control Law. — North European Environmental Law. Ed. by E.J. Hollo, K. Marttinen. Helsinki: Hakapaino, 1995, pp. 241-244.

¹⁸ Q.v. The Enforcement of the Environmental Assessment Directive in the National Courts: A Breach in the "Dyke". — Journal of Environmental Law, Vol. 9, No. 1, 1997. Oxford university Press, pp. 119-138.

¹⁹ L. Krämer. E.C. Treaty and Environmental Law. London: Sweet and Maxwell, 1998, pp. 6-8.

²⁰ Q.v. S.P. Johnson, G. Corcelle. — The Environmental Policy of the European Communities. Kluwer Law International, 1995, pp. 20-22.

²¹ Q.v. E. T. James. An American Werewolf in London: Applying the Lessons of Superfund to Great Britain. — The Yale Journal of International Law, Vol. 19, No. 2, Summer 1994, pp. 383-393.

²² R.H. Burnett-Hall. Non-Fault Liability in Germany. — Environmental Liability. Graham&Trotman, 1990, pp. 172-173.

²³ Liability for Environmental Damage. Washington: Environmental Law Institute, 1995, pp. 8-9.