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I. S. VOIEVODIN

Doctor of Philosophy (PhD) in International Law,
Lecturer at the Department of International and European Law
E-mail: voievodin@karazin.ua ORCID: <https://orcid.org/0000-0002-3026-474X>
V. N. Karazin Kharkiv National University
Kharkiv, 61022, Svobody square, 4

**LEGAL FOUNDATIONS OF ENVIRONMENTAL RIGHTS PROTECTION
OF VULNERABLE PERSONS WITHIN THE INTER-AMERICAN HUMAN RIGHTS
SYSTEM**

ANNOTATION. *Introduction.* The article studies the peculiarities of the legal foundations of the protection of environmental rights of vulnerable persons within the Inter-American human rights system. Vulnerable persons are the most sensitive to environmental changes, which makes it necessary to provide appropriate protection for their rights in the environmental sphere. Although the Inter-American human rights protection system is the oldest of the existing regional systems, the issue of protection and promotion of environmental rights of vulnerable categories of persons within its borders has not been adequately highlighted yet.

Summary of the main results of the study. In order to identify the norms that provide special protection to the rights of vulnerable persons in the environmental sphere, particularly the right to a healthy, safe and clean environment, such regional international legal acts as the American Declaration of the Rights and Duties of Man of 1948, the Charter of Organization of American States of 1948, American Convention on Human Rights of 1969, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (Protocol of San Salvador) of 1988, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) of 2018 were analyzed.

Attention is paid to acts adopted within the framework of the Organization of American States, such as the Social Charter of the Americas 2012 and the Action Plan of the Social Charter of the Americas of 2015, the Inter-American Democratic Charter of 2001, resolutions of the Inter-American Commission on Human Rights 1/08 "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas" of 2008, 1/17 "Human Rights and the Fight Against Impunity and Corruption" of 2017, 1/18 "Corruption and human rights" of 2018, 04/19 "Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking" of 2019, 3/21 "Climate Emergency: Scope of Inter-American Human Rights Obligations" of 2021, etc.

The judicial practice of the Inter-American Court of Human Rights regarding the interpretation of the provisions of the American Convention on Human Rights of 1969 and the rendering of decisions in relevant cases on the protection of the right to a healthy environment, in particular, decisions in cases "Mayagna (Sumo) Awas Tingni Community v. Nicaragua" of 2001, "Yakye Axa Indigenous Community v. Paraguay" of 2005 and "Kichwa Indigenous People of Sarayaku v. Ecuador" of 2012, as well as Advisory Opinion OC 23/17 of 2017 were considered.

Conclusions. The environmental rights of vulnerable persons in the Americas, in particular the right to a healthy environment, have received fragmentary consolidation in a number of binding and recommendatory acts. This necessitates the adoption of a special international regional agreement dedicated to environmental human rights, with a special emphasis on vulnerable persons, and the establishment of an appropriate monitoring mechanism. A significant role in the protection of the environmental rights of vulnerable persons is played by the Inter-American Court of Human Rights, which interprets international human rights agreements through the lens of the environment, provides advisory opinions, and also issues relevant decisions, in particular in the context of the protection of the rights of indigenous peoples related to environment.

KEYWORDS: *environment, health, human rights, Inter-American Human Rights System, Organization of American States, vulnerability.*

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Statement of the problem. On July 28, 2022 the UN General Assembly adopted resolution A/RES/76/300 in which the right to a clean, healthy and sustainable environment was recognized as one of the human rights (para. 1) [1]. The resolution, based on a similar text adopted in October 2021 by the Human Rights Council (A/HRC/RES/48/13) [2], notes that this right is linked to other rights and existing international law (para. 2) and affirms that environmental damage has negative consequences, both direct and indirect, for the effective implementation of all human rights. It was also recognized in the preamble, that the consequences of climate change and environmental damage are felt most acutely by women and girls and other vulnerable persons, including indigenous peoples, children, older persons and persons with disabilities [1].

Resolution 76/300 refers to the relevant duties and obligations of states under multilateral environmental treaties and agreements, including those on climate change, resolutions of Human Rights Council on human rights and the environment, reports of Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment and to international agreements on human rights, including those of a regional nature [1].

Regional human rights systems are sometimes ahead of the international universal mechanisms, forming best practices, which are later implemented at the international universal level. Currently, three regional systems are clearly defined – African, European and Inter-American. The latter is the oldest of them, but at the same time the question arises: how are issues related to the protection of environmental rights of vulnerable peoples regulated within the Inter-American human rights system?

In the domestic international legal doctrine of Ukraine the issue of protecting the environmental rights of vulnerable categories of persons within the Inter-American system of human rights has not been adequately addressed yet. Based on the above, this issue is of special scientific interest for us.

The state of theme research. In the science of public international public law the issue of protection of environmental rights of vulnerable categories of persons within the Inter-American system of human rights system has not been the subject of a separate comprehensive study. Certain issues of protection of the rights of vulnerable

persons in the environmental sphere were addressed in the works of M. Addaney, S. Atapattu, E. Grant, A. Oluborode Jegede, F. Ippolito, T. Kaime, A. Limantè, T. Koivurova, P. Siwior, L. Watters, D. Herring et al. It is also necessary to emphasize the contribution of J. Knox and D. Boyd – Special Rapporteurs of the UN Human Rights Council on the Human Right to a Clean, Healthy and Sustainable Environment – who over the past decade have done a significant amount of work related to the study of issues of human rights protection in the environmental sphere, their promotion and popularization.

The purpose of the research. The purpose of this article is to highlight the legal foundations of environmental rights protection of vulnerable persons within the Inter-American human rights system by analyzing binding human rights instruments of a regional nature, legal acts, adopted within the Organization of American States (hereinafter – OAS) and relevant precedent practice of the Inter-American Court of Human Rights (hereinafter – IACtHR).

The main results of the study. The analysis of the peculiarities of the protection of the environmental rights of vulnerable persons within the Inter-American human rights system is reasonable to begin with the mentioning of the American Declaration of the Rights and Duties of Man of 1948, known as the "Bogota Declaration", which is the first of the two main instruments of the OAS, which declare the rights and obligations of states in the field of human rights and which the entire regional system of human rights is based on. The absence of a mention of environmental human rights in it is compensated by enshrining the right to life, liberty and security (Art. 1) and preservation of health and well-being (Art. 11) [3]. In addition, the document contains a number of obligations that are placed on the person and the citizen and not on the state, which is a rather atypical approach in international human rights law. It should be noted that the Bogota Declaration is not a binding document and acts as a moral rather than a legal imperative by analogy with the more well-known Universal Declaration of Human Rights of 1948. When adopting the latter, the UN General Assembly defined it as a common standard of achievement for humanity, towards which all people and societies will constantly strive through progressive measures [4].

Together with the American Declaration of 1948 the OAS Charter was adopted, whose pre-

amble contains the following formulation: "... the historic mission of America is to offer to man a land of liberty and a favorable environment for the development of his personality and the realization of his just aspirations". The Charter conveys the inclusion and expansion of the marginal sectors of the population, in both rural and urban areas, in all spheres of life, which is one of the keys to achieving their full realization of their aspirations (Art. 45 (f)) [5].

The American Convention on Human Rights, also known the "Pact of San José", adopted in 1969 at the Inter-American Specialized Conference on Human Rights, aimed to resolve this issue and strengthen the entire human rights system in the region. As of October 2024, 24 of the 34 member states of the OAS participate in it [6]. The Convention itself does not directly enshrine the right to an enabling environment either in the general human context or in the context of vulnerability, but the protection of such a right may be ensured indirectly through other norms.

At the 18th session of the OAS General Assembly in 1988 the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador" was signed. Its importance in the context of this article lies in the fact that it expressly enshrined the right of every person to a healthy environment and the duty of states parties to contribute to the protection, preservation and improvement of the environment (Art. 11). This article does not mention the special vulnerability of certain categories of peoples, but they are mentioned in Art. 10 (f), which provides for States to take all necessary measures to satisfy the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable [7]. However, as G. Handl points out, it is necessary to understand that states implement it gradually and "to the extent allowed by their available resources, and taking into account their degree of development", according to Art. 1 of the San Salvador Protocol [8, p. 143].

A particular attention should be paid to the fact that Art. 19 (6) of the Protocol provides for only two rights that can be satisfied through filing petitions to the Inter-American Commission on Human Rights (hereinafter - IACHR) or the IACtHR – trade union rights (Art. 8) and the right to education (Art. 13) [7]. Accordingly, there are no decisions of the above-mentioned bodies on individual complaints that would directly relate to Art. 10 or 11 of the San Salvador Protocol. It should also be noted, that this protocol is the first international legal act of a regional nature in the field of

human rights, which unequivocally established the provisions on the protection of human environmental rights and the norm on the protection of the environment directly. Thus, the article establishes a certain balance between anthropocentrism and ecocentrism. At the same time, M. Medvedeva points out that some scientists insist on the need to shift the emphasis of international law from anthropocentrism to ecocentrism. Such an approach aims to protect the environment not only as a necessary condition for maintaining human activity and satisfying its needs, but also to protect the environment from the destructive influence of human beings themselves, the state, etc. [9, p. 70]. In addition, such a change in priorities will give a new meaning to the environmental rights of people and vulnerable categories of the population in particular, emphasizing the uniqueness and value of each individual.

Special attention to procedural environmental rights of vulnerable persons is paid in the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). This agreement, as noted by R. Sena, is innovative because it focuses not only on promoting regional cooperation for the development of sustainable development policies, but also on innovative approaches aimed at protecting human rights, especially of vulnerable groups, and deals with issues of environmental management, rights to access to information and public participation, taking into account the peculiarities of the countries of Latin America and the Caribbean [10, p. 340]. This is the first legally binding document in the world that contains provisions for environmental human rights defenders, as well as the first environmental agreement for Latin America and the Caribbean [11].

According to the text of the agreement, each party shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures for the provision of assistance, from the formulation of requests through to the delivery of the information, taking into account their conditions and specificities, for the purpose of promoting access and participation under equal conditions (Art. 5 (3)). The agreement provides for the identification, support, active, timely and effective involvement of vulnerable persons in environmental decision-making (Art. 7 (14)), the creation of support mechanisms for the realization of the right to access to environmental justice, in particular by providing free technical and legal assistance (Art. 8 (5)) [12].

Vulnerable peoples are also among the priorities of the Social Charter of the Americas of

2012. Part 1 of Art. 22 emphasizes the special importance of reducing the vulnerability of countries to natural and anthropogenic disasters, with a special emphasis on the most vulnerable and poorest regions and communities in achieving progress and the pursuit of a better quality of life [13]. The provisions of the Charter got further development in Plan of Action of the Social Charter of the Americas of 2015 which addresses the issue of protection of vulnerable categories of persons in the context of promoting comprehensive social protection in various dimensions (clause 2.3); natural disaster risk management, with a priority on agriculture and food security (clause 4.5); expanding the coverage and quality of safe drinking water, sanitation, wastewater management, solid waste and energy services (clause 6.1); social integration with the help of appropriate land management schemes in cities and villages (clause 6.2) [14]. The Social Charter and its Plan of Action became a logical addition to the Inter-American Democratic Charter of 2001, in which a safe environment was recognized as an important element contributing to democracy, political stability and integral human development [15].

It should be noted that IACHR has adopted a number of resolutions that contain references to the environmental component of the human rights of vulnerable persons. Thus, Resolution 1/08 "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas" of 2008 guarantees the right of prisoners to adequate drinking water suitable for consumption (Principle 11), as well as hygiene and clothing in accordance with the climatic conditions of the place of their imprisonment (Principle 12) [16].

Resolution 1/17 "Human rights and the fight against impunity and corruption" of 2017 and Resolution 1/18 "Corruption and human rights" of 2018 identified that corruption, particularly in the management of public natural resources, threatens the ability of governments to fulfill its obligations regarding health care, education, water, transport or sanitation, which are important for the realization of economic, social, cultural and environmental rights, in particular of the most vulnerable segments of the population and groups, and the guarantee of their provision is the implementation of effective state policy and mechanisms for the eradication of corruption, which should include a comprehensive and cross-cutting approach based on human rights at every stage [17; 18].

The obligation of states to create conditions for an adequate standard of living, ensuring, among other things, the right to environmental

sanitation, health, drinking water, etc. in order to respect the human dignity of migrants, was established in Resolution 04/19 "Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking" of 2019 (Principle 2). In addition, it provided for migrants' right to adequate housing, including permanent access to natural and common resources, drinking water, energy for cooking, heating and lighting, waste disposal, drainage and protection from cold, humidity, heat, rain, wind or other threats to health (Principle 38) [19].

As part of World Wildlife Day and World Energy Efficiency Day, in March 2022 the ICRC and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights adopted joint resolution 3/21 "Climate Emergency: Scope of Inter-American Human Rights Obligations", which became the first document of the Inter-American human rights system, which was entirely devoted to the issue of climate change. Chapter III of the Resolution "Rights of individuals and groups in situations of vulnerability or historical discrimination in environmental and climate matters" recognizes the differential impact of climate change, affirms the enhanced obligation of states to guarantee and protect the rights of these individuals or groups as a whole, as they have historically and systematically bear the greatest burden of structural inequality, and also highlights a number of obligations of states for each of the specified groups separately. The document emphasizes the importance of ensuring "active transparency" regarding the right to access environmental information, the openness and inclusiveness of the process of public participation in environmental decision-making, and the availability of environmental justice, with particular emphasis on the role of individuals, peoples, communities, movements and groups that protect human environmental rights, participate in the development of ambitious climate policies and targets, and protect strategic ecosystems in the fight against climate change, such as oceans, jungles and forests [20].

The practice of the IACtHR, which is the main judicial body of the Inter-American human rights system, deserves particular attention in the context of this article. According to the decision in the case "The Kichwa Indigenous People of Sarayaku v. Ecuador" of 2012, human rights treaties are "living instruments", the interpretation of which must evolve over time and reflect current living conditions. (para. 161) [21]. This fully corresponds to the provisions of Art. 29 of the American Convention of 1969, which enshrines the principle of "extended interpretation", which pro-

vides, according to L. Lixinski, that it will be interpreted in accordance with other relevant international treaties on human rights and freedoms. Thus, any document can be used as a means to expand the jurisdiction of the Inter-American system, since human rights are interdependent, even if not all of them are contained in the key document interpreted by the Court [22, p. 587]. In the context of vulnerable peoples this could mean the existence of the possibility to refer to the provisions on the protection of their environmental rights, which are guaranteed by other international legal acts, in particular of a universal nature, especially those, a binding consent to which was given by the competent authorities of the state that such individuals or groups of individuals file a lawsuit against.

On November 15, 2017 the IACtHR issued an advisory opinion OC 23/17 in response to Colombia's request on the material and procedural obligations of states to protect the environment, which derive from the obligation to respect and ensure the rights to life and humane treatment, recognized in Art. 4 (1) and 5 (1) of the American Convention on Human Rights of 1969. The Court recognized that the right to a healthy environment is an autonomous, fundamental human right (both individual and collective) which is subject to protection (para. 59, 62) and also emphasized that numerous other rights, which are particularly vulnerable due to the deterioration of the environment, may suffer due to non-compliance with environmental obligations, in particular economic, social, cultural and environmental rights protected by Art. 26 of the American Convention of 1969, the San Salvador Protocol of 1988 and other agreements and documents (para. 55), thereby emphasizing the interdependence and indivisibility of human rights, the environment and sustainable development. The IACtHR has also established that the consequences for these rights may be felt with greater intensity by certain groups in vulnerable situations, and states are legally obliged to address this vulnerability based on the principle of equality and non-discrimination (para. 67) [23].

As P. Siwior rightly points out, this advisory opinion derives from the principle of not causing environmental damage and expands the list of formal grounds for filing complaints about violations of rights enshrined in the American Convention on Human Rights of 1969 to the IACtHR [24, pp. 177-178].

E. Grant draws our attention to the fact that the right to a healthy environment was not singled out before the 2017 advisory opinion of the IACtHR and Inter-American institutions currently

recognize a very limited number of socio-economic rights [25, p. 64].

In 2023, the Foreign Ministers of Chile and Colombia applied to the IACtHR for an advisory opinion on the scope of state obligations to respond to a climate emergency under international human rights law and, in particular, under the American Convention on Human Rights of 1969. The application contains a request for clarification of the scope of obligations in relation to vulnerable groups and also explicitly mentions the need to consider the diversity of current generations, differential geographic impacts and the rights of future generations arising from international human rights law in the context of climate change [26].

It is also necessary to emphasize, that a significant part of the existing precedent practice of the IACtHR regarding to the protection of environmental rights of vulnerable persons is related to the protection of communal land and resources of indigenous peoples in accordance with Art. 21 of the American Convention on Human Rights of 1969 (the right to private property), indicating the importance of protecting the environment and natural resources of indigenous communities as an integral part of their millennia-old traditions. For example, in the 2001 IACHR decision in the case "Mayagna (Sumo) Awas Tingni Community v. Nicaragua" there is a thesis that " the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival" (para. 149) [27]. A similar thesis is contained in the decision in the case "Yakye Axa Indigenous Community vs. Paraguay" of 2005: "To guarantee the right of indigenous peoples to communal property, it is necessary to take into account that the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values" (para. 154) [27].

Conclusion. Summarizing the above mentioned, it should be noted, that in the Americas the human right to a healthy environment was enshrined in the text of the San Salvador Protocol of 1988, although the latter does not provide for the possibility of filing complaints about the violation of this right. Environmental rights of vulnerable persons have found their fragmentary consolidation in a number of acts of a binding and recommendatory nature, such as the OAS Charter of 1948, Escazú Agreement of 2018, the Social Charter of the Americas 2012, the Inter-American Democratic Charter of 2001 and a number of reso-

lutions of the IACHR. In our opinion, in this context it would be appropriate to draft and adopt a regional agreement on environmental human rights, dedicating a separate section to the rights of vulnerable persons in the environmental sphere and strengthening it with an appropriate monitoring mechanism authorized to consider complaints about violations of the rights enshrined in this agreement. In addition, it should be stated, that the legal practice of the ICRC regarding the protec-

tion of environmental rights of vulnerable categories of persons in the American region is the most developed in relation to indigenous peoples, in particular due to the protection of their cultural rights, which is confirmed by decisions in cases "Mayagna (Sumo) Awas Tingni Community v. Nicaragua" of 2001, "Yakye Axa Indigenous Community v. Paraguay" of 2005 and "Kichwa Indigenous People of Sarayaku v. Ecuador" of 2012..

REFERENCES

1. Resolution adopted by the General Assembly 76/300. The human right to a clean, healthy and sustainable environment. URL: https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf?ln=en (accessed: 25.09.2024).
2. Resolution adopted by the Human Rights Council 48/13. The human right to a clean, healthy and sustainable environment. URL: https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf?ln=en (accessed: 25.09.2024).
3. The American Declaration of the Rights and Duties of Man. URL: https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf (accessed: 25.09.2024).
4. Universal Declaration of Human Rights. URL: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/tsh.pdf (accessed: 24.09.2024).
5. Charter of the Organization of American States. URL: <https://www.cidh.oas.org/basicos/english/basic22.charter%20oas.htm> (accessed: 26.09.2024).
6. American Convention on Human Rights "Pact Of San Jose, Costa Rica" (B-32). URL: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (accessed: 28.09.2024).
7. Additional Protocol to the American Convention on Human Rights. URL: <http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf> (accessed: 30.10.2024).
8. Handl G. The Human Right to a Clean Environment and Rights of Nature: Between Advocacy and Reality. The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric (1st Edition) / A. von Arnould, K. von der Decken, M. Susi (Eds.). Cambridge University Press, 2020. P. 137-153.
9. Медведева М. О. Принципи екологічної етики в міжнародній договірній та судовій практиці. Актуальні проблеми міжнародних відносин. 2015. Вип. 124 (1). С. 65-76.
10. Sena R. The Intersection of Human Rights and Climate Change in the Inter-American Human Rights System: What to Hope For? Wisconsin International Law Journal. 2021. Vol. 38. Issue 2. P. 331-368.
11. Note by the Secretary-General: Summary of the work of the Economic Commission for Latin America and the Caribbean, 2020-2021 E/2021/19. URL: <https://digitallibrary.un.org/record/3928601?ln=ru&v=pdf> (accessed: 27.09.2024).
12. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. URL: <https://repositorio.cepal.org/server/api/core/bitstreams/7e888972-80c1-48ba-9d92-7712d6e6f1ab/content> (accessed: 01.10.2024).
13. Social Charter of the Americas. URL: https://www.oas.org/docs/publications/social_charter_of_the_americas.doc (accessed: 02.10.2024).
14. Plan of Action of Social Charter of the Americas. URL: https://www.oas.org/en/sedi/dsi/docs/Soc-Charter_AG06884E04.doc (accessed: 03.10.2024).
15. Inter-American Democratic Charter. URL: https://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf (accessed: 04.10.2024).
16. Inter-American Commission on Human Rights Resolution 1/08: Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. URL: <https://www.refworld.org/legal/resolution/iachr/2008/en/59705> (accessed: 04.10.2024).
17. Inter-American Commission on Human Rights Resolution 1/17: Human Rights And The Fight Against Impunity And Corruption. URL: <https://www.oas.org/en/iachr/decisions/pdf/resolution-1-17-en.pdf> (accessed: 05.10.2024).
18. Inter-American Commission on Human Rights Resolution 1/18: Corruption and Human Rights. URL: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-18-en.pdf> (accessed: 05.10.2024).
19. Inter-American Commission on Human Rights Resolution : Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking. URL: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf> (accessed: 06.10.2024).
20. Inter-American Commission on Human Rights Resolution 3/2021: Climate Emergency Scope of Inter-American Human Rights Obligations. URL: https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf (accessed: 06.10.2024).

21. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador: Judgment of the Inter-American Court of Human Rights, 27 June 2012. URL: https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf (accessed: 08.10.2024).
22. Lixinski L. Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law. *European Journal of International Law*. 2010. Vol. 21. Issue 3. Pp. 585-604.
23. Inter-American Court of Human Rights Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (accessed: 10.10.2024).
24. Siwior P. The Inter-American Court of Human Rights Advisory Opinion OC-23/17 on the Relationship between Human Rights and the Environment August. *Review of European and Comparative Law*. 2021. Vol. XLVI. Issue 3. Pp. 177-188. URL: <https://doi.org/10.31743/recl.11915> (accessed: 11.10.2024).
25. Grant E. *The American Convention on Human Rights and Environmental Rights Standards*. Environmental Rights: The Development of Standards / S. Turner, D. Shelton, J. Razzaque, O. McIntyre, J. May (Eds.). Cambridge : Cambridge University Press, 2019. Pp. 60-92.
26. Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile. URL: https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf (accessed: 11.10.2024).
27. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua: Judgment of the Inter-American Court of Human Rights, 31 August 2001. URL: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf (accessed: 22.10.2024).
28. Case of the Yakye Axa Indigenous Community v. Paraguay: Judgment of the Inter-American Court of Human Rights, 17 June 2005. URL: https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf (accessed: 22.10.2024).

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I. С. ВОЄВОДИН

доктор філософії з міжнародного права,

викладач кафедри міжнародного і європейського права

E-mail: voievodin@karazin.ua

ORCID: <https://orcid.org/0000-0002-3026-474X>

Харківський національний університет імені В. Н. Каразіна

м. Харків, 61022, майдан Свободи, 4

ПРАВОВІ ЗАСАДИ ЗАХИСТУ ЕКОЛОГІЧНИХ ПРАВ ВРАЗЛИВИХ КАТЕГОРІЙ ОСІБ У МЕЖАХ МІЖАМЕРИКАНСЬКОЇ СИСТЕМИ ЗАХИСТУ ПРАВ ЛЮДИНИ

АНОТАЦІЯ. *Вступ.* У статті досліджено правові засади захисту екологічних прав вразливих категорій осіб у межах міжамериканської системи захисту прав людини. Вразливі категорії осіб є найбільш чутливими до змін навколишнього середовища, що зумовлює необхідність надання відповідного захисту їхнім правам в екологічній сфері. Хоча міжамериканська система захисту прав людини є найстаршою з існуючих регіональних систем, питання щодо захисту та заохочення екологічних прав вразливих категорій осіб в її межах не отримало належного висвітлення.

Короткий зміст основних результатів дослідження. З метою визначення норм, які надають спеціальний захист правам вразливих категорій осіб в екологічній сфері, зокрема праву на здорове, безпечне і чисте навколишнє середовище, було проаналізовано регіональні міжнародно-правові акти, як-от: Американська декларація прав та обов'язків людини 1948 р., Статут Організації американських держав 1948 р., Американська конвенція з прав людини 1969 р., Додатковий протокол до Американської конвенції з прав людини 1969 р. у галузі економічних, соціальних і культурних прав (Сан-Сальвадорський протокол) 1988 р., Регіональна угода про доступ до інформації, участь громадськості та правосуддя з питань довкілля в Латинській Америці та Карибському басейні (Угода Есказу) 2018 р. тощо. Приділено увагу актам, прийнятим в межах Організації американських держав, як-от: Соціальна хартія Америки 2012 р. та План дій Соціальної хартії Америки 2015 р., Міжамериканська демократична хартія 2001 р., резолюції Міжамериканської комісії з прав людини 1/08 «Принципи та найкращі практики щодо захисту осіб, позбавлених волі, на американському континенті» 2008 р., 1/17 «Права людини та боротьба з безкарністю та корупцією» 2017 р., 1/18 «Корупція та права людини» 2018 р. 04/19 «Міжамериканські принципи щодо прав людини всіх мігрантів, біженців, осіб без громадянства та жертв торгівлі людьми» 2019 р., 3/21 «Надзвичайна кліматична ситуація: обсяг міжамериканських зобов'язань щодо прав людини» 2021 р. тощо. Розглянуто судову практику Міжамериканського суду з прав людини щодо тлумачення положень Американської конвенції з прав людини 1969 р. та винесення рішень у релевантних справах про захист права на здорове довкілля, зокрема рішення у справах «Спільнота майягна (сумо) авас тінгні проти

Нікарагуа» 2001 р, «Корінна громада якіє акса проти Парагваю» 2005 р. та «Корінний народ кечуа з Сараяку проти Еквадору» 2012 р., а також консультативний висновок ОС 23/17 2017 р.

Висновки. Екологічні права вразливих категорій осіб в американському регіоні, зокрема право на здорове довкілля, отримали фрагментарне закріплення у низці актів договірної і рекомендаційної характеру. Це зумовлює необхідність прийняття спеціальної міжнародної регіональної угоди, присвяченої екологічним правам людини, з окремим акцентом на вразливих категоріях осіб, та заснування відповідного моніторингового механізму. Значну роль у захисті екологічних прав вразливих категорій осіб відіграє Міжамериканський суд з прав людини, який здійснює тлумачення міжнародних угод з прав людини через призму довкілля, надає консультативні висновки, а також виносить відповідні рішення, зокрема в контексті захисту прав корінних народів, пов'язаних із навколишнім середовищем.

КЛЮЧОВІ СЛОВА: *навколишнє середовище, здоров'я, права людини, міжамериканська система захисту прав людини, Організація американських держав, вразливість.*

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