

THE RIGHT TO LIFE IN THE CONTEXT OF CLIMATE CHANGE

ABSTRACT

The Constitution of Georgia of 1921 did not directly guarantee environmental human rights (environmental issues gained particular importance only in the second part of the 20th century), however, it recognized the human being as the main value, and required the state to ensure the well-being of the people and their right to live with dignity. Nowadays, the main threat to the enjoyment of human rights are climate change-related environmental problems and risks. The rights to life, human dignity and environmental protection are now directly guaranteed by the Constitution of Georgia of 1995, which draws aspirations from the Constitution of Georgia of 1921. Thus, Georgia has the positive obligations to protect human health and life, guarantee environmental protection and ensure that people live with dignity in the context of climate change.

I. INTRODUCTION

Nowadays, there is almost a scientific consensus that modern climate change – global warming – is anthropogenic in nature.¹ This means that the rise in temperatures in Earth's atmosphere and oceans over the past 150 years has been primarily a result of human activities and the consequential greenhouse gas emissions in the atmosphere, which harm natural ecosystems and endanger human life and their dignified existence.²

Although the impact that climate change has on environment has not yet been studied in depth, it is already considered that the rise of sea levels, increase of drought and flood frequency, intense heatwaves, and other severe weather events are attributable to the global warming.³ These negative changes in the climatic systems and the consequential natural disasters endanger human existence: they cause food security problems, livelihood loss, infrastructure damage, and restrict access to essential services including making access to electricity, water, sanitation, and health care difficult or impossible.⁴

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¹ Oreskes N., *The Scientific Consensus on Climate Change*, Science 306 (5702), 2004, p. 1686.

² Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014 Synthesis Report Summary for Policymakers*, 2014, p. 2, available at: <https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf> (accessed 1.8.2021).

³ *Field C. B. and others, Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change*, 2012, pp. 167-203.

⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Safe Climate: A Report of the Special Rapporteur on Human Rights and the Environment*, UN Doc A/74/161, 2019, para. 7, available at: <<https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Report.pdf>> (accessed 1.8.2021).

Generally, environmental problems, if not addressed promptly and effectively, can lead to the violation of fundamental human rights, such as the rights to life, health, water, food, property, religion, culture.⁵ Therefore, climate change, which is considered as the ‘number one threat to mankind’⁶ is definitely one of the most serious obstacles to the protection and realization of these rights.⁷

If we directly focus on the right to life, nowadays, approximately 400 000 people die each year from extreme weather events related to global warming, malnutrition and diseases.⁸ According to the World Health Organization, 250 000 additional deaths per year are expected to be attributable to climate change in the 2030s and 2050s.⁹ These statistics show how important it is to mitigate and adapt to climate change in order to prevent its adverse effects on human health and life and protect people from premature death.

As for Georgia, the Climate change is already having a noticeable impact on Georgia.¹⁰ It increases the frequency of natural events such as: drought, floods, mudflow, avalanche, and thus, it poses a great threat to the lives and development of people.¹¹ The most vulnerable sectors to these threats are agriculture, forestry, tourism, health and cultural heritage that are all in direct connection to the economic and social well-being, life and health of the people.¹² Hence, in order to protect the population and ensure their dignified existence, it is very important for Georgia to manage properly these risks and take all the necessary measures to adapt to the negative impacts of climate change and protect people from its adverse effects.

In these terms, the main aim of the following article is to determine, whether or not it is the Constitutional obligation of Georgia to guarantee the right to life specifically in the

⁵ United Nations Environment Programme (UNEP), Factsheet on Human Rights and the Environment, 2015, available at: <<https://wedocs.unep.org/bitstream/handle/20.500.11822/9933/factsheet-human-right-s-environment.pdf?sequence=1&isAllowed=y>> (accessed 1.8.2021).

⁶ Parry E. J., The Greatest Threat to Global Security: Climate Change Is Not Merely An Environmental Problem, available at: <<https://www.un.org/en/chronicle/article/greatest-threat-global-security-climate-change-not-merely-environmental-problem>> (accessed 20.4.2021).

⁷ United Nations Environment Programme (UNEP), Climate Change and Human Rights, 2015, pp. 1-3, available at: <<https://www.unep.org/resources/report/climate-change-and-human-rights>> (accessed 20.4.2021).

⁸ United Nations General Assembly (UNGA), Analytical Study on the Relationship between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/32/23), 2016, paras. 4, 8, available at: <<https://digitallibrary.un.org/record/841798/?ln=en>> (accessed 20.4.2021).

⁹ World Health Organization (WHO), Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s, 2014, p. 1, available at: <https://apps.who.int/iris/bitstream/handle/10665/134014/9789241507691_eng.pdf?sequence=1&isAllowed=y> (accessed 31.3.2021).

¹⁰ EU4Climate, Georgia, available at: <<https://eu4climate.eu/georgia/>> (accessed 31.3.2021).

¹¹ Climate Forum East (CFE) and Georgia National Network on Climate Change, National Climate Vulnerability Assessment: Georgia, 2014, available at: <<https://climateforumeast.org/uploads/other/0/771.pdf>> (accessed 31.3.2021).

¹² EU4Climate, Georgia, available at: <<https://eu4climate.eu/georgia/>> (accessed 31.3.2021).

climate change context and determine which other legal mechanisms people can use in order to require appropriate actions from the state. As climate change law and litigation is a new field to the whole world including Georgia, it needs long-term development. The article will generally assess this new legal regime in the international context and use the examples of other countries in this regard.

For these purposes, the article firstly explains briefly what the right to life is under the Constitution of Georgia and other international instruments, and what kind of obligations states generally may have in order to let people fully exercise it. Secondly, the article explores the United Nations Framework Convention on Climate Change (UNFCCC)¹³ and the Paris Agreement,¹⁴ to which Georgia is a signatory party, and assesses whether or not they obligate their member states to protect the right to life from the climate change impacts. The article also discusses what other legal instruments people can use in order to require governments to respond adequately to the climate change-related life threats. Thirdly, the article examines the relevant case law and illustrates, how the courts interpret the extents of state obligations to protect the fundamental human right to life under climate change regimes and how these decisions may influence the current legal and political orders of states, including that of Georgia. The fourth and the last part of the article draws conclusions about how the right to life is respected and protected under the existing climate change regimes and under the Constitution of Georgia and what kind of measures the governments, including the government of Georgia, have to take in order to fulfil their obligations to guarantee the proper enjoyment of this very basic human right.

II. THE RIGHT TO LIFE

The right to life is recognized as a fundamental human right by a number of international documents, most importantly, Article 3 of the Universal Declaration of Human Rights (the UDHR), which is considered as ‘a milestone document’ for human rights,¹⁵ reads as follows: ‘Everyone has the right to life, liberty and the security of person’.¹⁶ After the establishment of the UDHR, the commitments made under it, were incorporated into different international or national legal documents, general principles, customs,

¹³ United Nations Framework Convention on Climate Change (UNFCCC), available at: <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> (accessed 1.4.2021).

¹⁴ Paris Agreement, available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> (accessed 31.3.2021).

¹⁵ Universal Declaration of Human Rights, available at: <<https://www.un.org/sites/un2.un.org/files/udhr.pdf>> (accessed 31.3.2021).

¹⁶ Universal Declaration of Human Rights, Article 3, available at: <<https://www.un.org/sites/un2.un.org/files/udhr.pdf>> (accessed 31.3.2021).

etc., and the human rights, including the right to life, have become inseparable parts of modern legal systems.¹⁷

The right to life is guaranteed by the Article 10 of the Constitution of Georgia of 1995. According to the comments to this Article, the right to life is the most basic human right that should be guaranteed by the state and it is considered as a prerequisite for the enjoyment of other human rights.¹⁸ This right is closely connected to human dignity, which is guaranteed by the Article 9 of the Constitution of Georgia of 1995, and was also guaranteed by the Constitution of Georgia of 1921.¹⁹ This connection means that the state does not only have the obligation to guarantee the right to life, but it is also obliged to guarantee the right of a person to live with dignity. What this might mean in climate change regime, is well explained by the General Comment on the right to life under the International Covenant on Civil and Political Rights (the ICCPR),²⁰ to which Georgia is a signatory party as well.²¹ Specifically, the obligation to protect the right to life under Covenant is not narrowly interpreted, i.e. only as the obligation of the state to protect a person's right not to be killed unlawfully by third parties.²² Instead, it should be interpreted widely as the right of a person to live with dignity.²³ Pursuant to such an interpretation, the social and economic aspects of life are included within the scope of this article and states are required to take action in order to satisfy basic the human needs, that are crucial for a dignified life, such as food or shelter.²⁴ According to the explanation of the Committee, as the environmental problems caused by global

¹⁷ United Nations (UN), The Foundation of International Human Rights Law, available at: <<https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>> (accessed 1.7.2021).

¹⁸ *Gotsiridze E.*, The Right to life, in: *Burduli I., Gotsiridze E., Erkvania T., Zoidze T., Izoria L., Kobakhidze I., Loria A., Macharadze Z., Turava M., Phirts Khalashvili A., Putkaradze I., Kantaria B., Tsereteli D., Jorbenadze S.*, Commentary on the Constitution of Georgia, Chapter II, Citizenship of Georgia, Fundamental Human Rights and Freedoms, 2013, p. 72.

¹⁹ 1921 Constitution of Georgia, Article 113, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²⁰ International Covenant on Civil and Political Rights, Article 6(1), available at: <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en> (accessed 1.7.2021).

²¹ United Nations Human Rights Committee (UNHRC), General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (CCPR/C/GC/36), 2018, para. 2, available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf> (accessed 1.4.2021).

²² United Nations Human Rights Committee (UNHRC), General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (CCPR/C/GC/36), 2018, para. 3, available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf> (accessed 1.4.2021).

²³ United Nations Human Rights Committee (UNHRC), General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (CCPR/C/GC/36), 2018, para. 3, available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf> (accessed 1.4.2021).

²⁴ *Wicks E.*, The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties, Human Rights Law Review 12(199), 2012, p. 5.

warming directly impact social and economic the well-being of the people, affect their health and may deprive them of life, the right to life might be violated if climate change-related problems are not properly managed by states.²⁵

In the Georgian context, the right to life and dignity should be interpreted in the very same way and in line with the Article 29 of the Constitution of Georgia, which specifically states that people are entitled to the rights to a healthy environment and the environmental protection. This does not only correspond to values of 1995 Georgia's Constitution but of 1921 Constitution as well. Although the latter did not include environmental human rights, it guaranteed many social rights, recognized the inviolability of human dignity and required the state to create the circumstances, in which the most basic human needs were satisfied.

To properly understand what is specifically required from the states, including Georgia, in order to guarantee the right to live with dignity in the context of climate change, it is important to explain firstly what kind of obligations states generally have for ensuring the enjoyment of human rights. These obligations can be grouped under different categories, namely the obligations to respect, protect, promote and fulfil human rights. The obligation to respect human rights entails the negative obligation of the state not to interfere with the enjoyment of these rights by those who are entitled to them.²⁶ In the context of the right to life, this means that the state bodies, authorities or servants shall not deliberately violate this right.

On the other hand, the states are also obligated to protect the enjoyment of human rights from the infringement by third persons, meaning that they have the positive obligation to do all that is possible in order to prevent such violations and react to them.²⁷ For the right to life, this means that the states shall enact such laws that guarantee the proper protection of the human life from the interference from others²⁸ and put effective mechanisms for the implementation of these laws in place.²⁹ For the purposes of this article, it should be mentioned that this positive duty also

²⁵ United Nations Human Rights Committee (UNHRC), General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (CCPR/C/GC/36), 2018, para. 30, available at: <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf> (accessed 1.4.2021).

²⁶ Moeckli D., Shah S., Sivakumaran S. (eds.), *International Human Rights Law*, 3rd edition, 2018, p. 97.

²⁷ Tomuschat C., *Human Rights: Tensions Between Negative and Positive Duties of States*, *Austrian Review of International and European Law* 19 (14), 2013, pp. 19, 24.

²⁸ Petersen N., *Life, Right to*, *International Protection*, *Max Planck Encyclopedias of International Law*, para. 2, available at: <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e841#>> (accessed 31.3.2021).

²⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Civil and Political Rights: The Human Rights Committee*, Fact Sheet No.15 (Rev.1), 2005, p. 5, available at: <<https://www.ohchr.org/documents/publications/factsheet15rev.1en.pdf>> (accessed 1.4.2021).

implies the obligation of preventing environmental disasters that can affect the proper enjoyment of human rights.³⁰

As for the obligations to promote and fulfil, they are also of positive character and require certain action from states. In order to meet the requirements of these obligations, the states shall create such circumstances, in which the realization of human rights is possible and realistic, for example, by providing effective enforcement mechanisms, by creating essential infrastructure, by rising public awareness about human rights issues, etc.³¹

To focus more on the topic of this article, the following parts of the article will specifically discuss the positive dimension of states' obligations with regards to ensuring the proper protection and enjoyment of the right to life in the context of climate change.

III. THE CLIMATE CHANGE REGIME AND THE RIGHT TO LIFE

The First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in 1990 called for immediate global action from the states in order to combat dangerous, man-made climate change and served as the trigger for the United Nations to establish the United Nations Framework Convention on Climate Change, to which Georgia is a signatory party as well.³² This international agreement is the foundation of the global cooperation with regards to the mitigation and adaptation to climate change.³³ It established the general regime under which the 'ultimate objective' of the participating states is to keep 'greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.'³⁴

Despite the fact that there is no direct reference to human rights in this Convention, it recognizes that climate change might have an adverse effect 'on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare' that are all directly connected to the enjoyment of the universally recognized human rights.³⁵ The fact itself, that the states decided to take action in order to tackle climate change and avoid its negative impacts on natural environment and people, might be considered as the first attempt from the states to fulfil their positive obligations to protect human health and life from

³⁰ Moeckli D., Shah S., Sivakumaran S. (eds.), *International Human Rights Law*, 3rd edition, 2018, p. 97.

³¹ Coomans F., *The Ogoni Case Before The African Commission on Human and Peoples' Rights*, *International and Comparative Law Quarterly* 52(3), 2003, pp. 749, 753.

³² Peake S., Smith J., *Climate Change: From Science to sustainability*, 2nd edition, 2009, p. 102.

³³ United Nations Framework Convention on Climate Change (UNFCCC), available at: <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> (accessed 1.4.2021).

³⁴ United Nations Framework Convention on Climate Change (UNFCCC), Article 3, available at: <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> (accessed 1.4.2021).

³⁵ United Nations Framework Convention on Climate Change (UNFCCC), Article 1(1), available at: <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> (accessed 1.4.2021).

climate change-related environmental threats under different human rights instruments. It is true that the right to a healthy environment is not explicitly recognized as the universal human right, but it is not doubtful anymore that the environmental protection is one of the most important aspects of the proper enjoyment of a number of basic human rights, for example, the rights to health and life.³⁶

Thus, it can be concluded that the adverse effects of climate change, which is recognized as the most dangerous environmental problem that the humankind has ever faced,³⁷ have to be prevented in order to guarantee the proper enjoyment of these fundamental human rights and that the states have the positive obligation to protect the natural environment and people from global warming-associated harms and to create the circumstances that are essential for the realization of the basic human rights.³⁸ This obligation is more clear in the Georgian context, as the Constitution of Georgia of 1995 explicitly recognizes the rights to a healthy environment and environmental protection.

In the international context, the first explicit reference to human rights under the climate change regime was made in the Cancun Agreements, a decision adopted at the 16th Session of the Conference of the Parties to the UNFCCC (COP 16).³⁹ Specifically, one of the preambular recitals of this decision refers to the Resolution 10/4 of the United Nations Human Rights Council on human rights and climate change and by this reference it recognizes that climate change adversely affects the effective enjoyment of human rights, especially by vulnerable people.⁴⁰ However, in the paragraph 8 the decision only notes that the human rights should be respected in climate change-related action, and it says absolutely nothing about the positive obligations of the states to protect, promote and fulfil these rights.⁴¹ Despite this fact, this decision is still very important, as it was the first attempt from the states to link human rights and climate change concerns together.⁴²

³⁶ *Carlarne C. P., Gray K. R., Tarasofsky R. G.*, *The Oxford Handbook of International Climate Change Law*, 2016, pp. 216-217.

³⁷ United Nations Environment Programme (UNEP), *Responding to Climate Change*, available at: <<https://www.unenvironment.org/regions/europe/regional-initiatives/responding-climate-change>> (accessed 26.4.2021).

³⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Understanding Human Rights and Climate Change*, 2015, p. 7, available at: <<https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>> (accessed 31.3.2021).

³⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Integrating Human Rights at the UNFCCC*, available at: <<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx>> (accessed 31.3.2021).

⁴⁰ *The Cancun Agreements: Outcome of the work of the ad hoc Working Group on Long-term Cooperative Action under the Convention*, 2011, Recital 7, available at: <<https://undocs.org/FCCC/CP/2010/7/Add.1>> (accessed 31.3.2021).

⁴¹ *The Cancun Agreements: Outcome of the work of the ad hoc Working Group on Long-term Cooperative Action under the Convention*, 2011, para. 8, available at: <<https://undocs.org/FCCC/CP/2010/7/Add.1>> (accessed 31.3.2021).

⁴² Centre for International Environmental Law (CIEL), *Analysis of Human Rights Language in the Cancun*

In light of the rising awareness and frequent discussions around climate change and human rights issues, the Paris Agreement, to which Georgia is a signatory party as well, directly underlined the importance of taking human rights obligations by the states into consideration, while elaborating and implementing the climate change action policies.⁴³ It used the terms ‘respect, promote and consider’ and, again, said nothing about the protection and fulfilment of them.⁴⁴ According to the text of the respective recital, the Paris Agreement has merely referred to the already existing human rights obligations of the states under different human rights instruments and explained that their response measures to climate change should not interfere with the enjoyment of these rights.⁴⁵ This means that this Agreement does not impose the positive obligation on the states to protect human rights from climate change threats themselves. However, it still can serve as an incentive for the states for further cooperation in this regard, which may result in the inclusion of human rights-based approach in international treaties and agendas for combating climate change in the future.⁴⁶

In this regard, the United Nations High Commissioner for Human Rights has already called for the member states to the Paris Agreement to adopt the Nationally Determined Contributions (NDCs) and set the ambitious climate change mitigation and adaptation goals in line with the fundamental human rights obligations to respect, protect and fulfil them and, in this way, save people’s lives, protect their health and guarantee their welfare.⁴⁷

As it can be seen, the existing international climate change regime does not directly impose positive obligations on the states to protect the right to life from climate change threats. Both the UNFCCC and the Paris Agreement use a bottom-up approach and allow the member states to define the exact scope of their obligations through their NDCs in order to balance their economic, social and environmental interests and decide themselves what they are going to do in order to mitigate and adapt to climate change; However, the abovementioned does not automatically mean that the states do not have positive obligations at all to protect the right to life in the climate change context. The obligation of the states to respect and protect this right can be found in the human

Agreements, (UNFCCC 16th Session of the Conference of the Parties), 2011, p. 2, available at: <https://www.ciel.org/wp-content/uploads/2014/11/HR_Language_COP16_Mar11.pdf> (accessed 31.3.2021).

⁴³ Paris Agreement, Recital 11, available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> (accessed 31.3.2021).

⁴⁴ Paris Agreement, Recital 11, available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> (accessed 31.3.2021).

⁴⁵ *Bodansky D., Brunnee J., Rajamani L.*, International Climate Change Law, 2017, p. 228.

⁴⁶ *Bodansky D., Brunnee J., Rajamani L.*, International Climate Change Law, 2017, p. 228.

⁴⁷ *Bachelet M.*, Letter from the United Nations High Commissioner for Human Rights on Integrating Human Rights in Climate Action, 2018, available at: <<https://www.ohchr.org/EN/Issues/Health/Pages/OpenLetters.aspx>> (accessed 31.3.2021).

rights instruments, and since the right to life also entails the right to be protected from environmental threats, the governments can be found in the breach of this fundamental human right, if they do not take appropriate measures to mitigate climate change or adapt to it.⁴⁸ There are many obstacles in practice that need to be overcome in order to use the human rights law in the climate change context. For example, it is often difficult to substantiate the cause and effect that would prove that the environmental harms and the loss of human lives are caused by the climate change and the resulting natural disasters and threats. However, the use of different human rights documents can still be beneficial at the initial state, as it can enable people to protect their rights and facilitate the courts to develop corresponding case-law, which can later serve as the legal basis for the states in the process of establishing and developing specific climate change laws and help them create effective legal instruments for the protection of fundamental human rights in the context of climate change.⁴⁹

In this regard, the following part of the article will further demonstrate how the human rights law and the constitutional obligations of the countries can be used for requiring the states to take action in order to fulfil their positive obligations and protect the right to life from global warming-related risks. For these purposes some important decisions made by foreign courts in connection with climate change will be explored and discussed in the article.

It should be mentioned that the following examples can be effectively used in the Georgian context, where the Constitution of Georgia directly requires the state to guarantee the right to a healthy environment, to protect the people's lives and to ensure that people live with dignity.

IV. CLIMATE CHANGE LITIGATION AND HUMAN RIGHTS LAW

Generally, the courts have an important role in combating climate change as they have the power to find and interpret laws that are applicable to a particular case; they can find the state in the breach of different obligations in the climate change context, make them responsible for the respective consequences and order them to take appropriate measures to mitigate and adapt to it; they set legal precedents and help to develop climate change legislation.⁵⁰

⁴⁸ *Sinder A.*, An Emerging Human Right to Security from Climate Change: The Case Against Gas Flaring in Nigeria, in: *Burns W. G. G., Osofsky H. M.* (eds.), *Adjudicating Climate Change: State, National, and International Approaches*, 2009, p. 185.

⁴⁹ *Carlarne C. P., Gray K. R., Tarasofsky R. G.*, *The Oxford Handbook of International Climate Change Law*, 2016, p. 224.

⁵⁰ *Preston B. J.*, The Contribution of the Courts in Tackling Climate Change, *Journal of Environmental Law* 28(11), 2016, pp. 11-17.

The most recent example of an effective participation of the courts in tackling climate change problems, is the decision made by the Supreme Court of the Netherlands in the case *Urgenda Foundation v. The State of the Netherlands*.⁵¹ It is considered as a landmark decision, because the Court ruled that the state, specifically the Netherlands, has positive obligations to ensure the protection of human rights under its Constitution and the international human rights instruments in the context of climate change.⁵² Namely, the Court recognized that climate change ‘can have a severe impact on the lives and welfare of the residents of the Netherlands’ and found that the state has positive obligations to prevent ‘dangerous climate change’, and to ensure the proper enjoyment of the right to life and the right to private and family life by its citizens under the Articles 2 and 8 of the European Convention on Human Rights, respectively.⁵³ It stated that the Netherlands’ efforts to mitigate climate change were not sufficient and in accordance with its human rights obligations, and obliged the state to achieve at least 25% reduction target in its greenhouse gas emissions by 2020, compared to the 1990’s levels.⁵⁴

Despite the fact that the Court based its decision on the human rights law, it also used the UNFCCC and the Paris Agreement, as well as the existing scientific evidence in regard to the possible impacts of climate change on the natural environment and the people, for the interpretation of the right to life in climate change context and the definition of the exact scope of the state’s positive obligations, concerning the reduction of its carbon footage and the protection of people’s lives by the state.

The human rights law was also effectively used in the decision made by the Supreme Court of Justice of Columbia in the case *Future Generations v. Ministry of the Environment*.⁵⁵ Particularly, the Court stated that the climate change gradually depletes the life and interferes with the right to live with dignity, as it deprives the present and future generations the access to fresh air, water and clean environment. The Court found

⁵¹ Judgment of the Supreme Court of the Netherlands of 20 December 2019 - *The State of the Netherlands v. Urgenda Foundation* (19/00135, ECLI:NL:HR:2019:2006), available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>> (accessed 31.3.2021).

⁵² Office of the United Nations High Commissioner for Human Rights (OHCHR), Bachelet Welcomes Top Court’s Landmark Decision to Protect Human Rights from Climate Change, 2019, available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25450&LangID=E>> (accessed 31.3.2021).

⁵³ Judgment of the Supreme Court of the Netherlands of 20 December 2019 - *The State of the Netherlands v. Urgenda Foundation* (19/00135, ECLI:NL:HR:2019:2006), para. 6, available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>> (accessed 31.3.2021).

⁵⁴ Judgment of the Supreme Court of the Netherlands of 20 December 2019 - *The State of the Netherlands v. Urgenda Foundation* (19/00135, ECLI:NL:HR:2019:2006), para. 7.5.1., available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>> (accessed 31.3.2021).

⁵⁵ Decision of the Supreme Court of Justice of Columbia of 5 April 2018 - *Future Generations v. The Ministry of the Environment* (STC4360-2018), available at: <<https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/>> (accessed 31.3.2021).

that the efforts of the state to mitigate climate change were not sufficient, as it allowed to continue the deforestation in the Amazon region that is in direct connection with the increasing concentrations of the carbon dioxide in the atmosphere. It found that the state has positive obligations to elaborate and implement appropriate policies and take sufficient efforts to protect the Amazon rainforest in order to guarantee the full enjoyment of people's rights.

As it can be seen, there some important developments have already been made through the climate change litigation and states have directly been imposed with the obligation to prevent climate change threats and protect human life. Despite the fact that it is still very difficult to find the causal and effect relationship between particular harms to people and the climate change phenomenon, the abovementioned decisions are actual examples of how the courts can draw conclusions based at least on: existing scientific knowledge about the possible impacts of global warming on natural environment, general commitments made by the states under different climate change instruments, their human rights obligations under international treaties or national laws, or different legal principles, including (but not limited to) the precautionary or the preventive principles.

The obligation of the states to protect the right to life might be more apparent and easier to establish in the context of the adaptation to climate change rather than the mitigation process.⁵⁶ As already mentioned, the world, including Georgia, is already facing the results of the rising temperatures in the Earth's atmosphere and many people are already affected by the rising sea-levels or extreme weather events. Thus, the role of the state gets more and more important in the process of helping people rearrange their lifestyles and adapt to these changes, for example, by developing flood defence systems or by providing drought-resistant crops.⁵⁷

Article 7 of the Paris Agreement obliges the states to elaborate and implement adaptation action plans⁵⁸ and recognizes that the adaptation to climate change is a global challenge and appropriate measures are to be taken in order to contribute to the protection of people, especially, of those who are the most vulnerable to the adverse effects of global warming.⁵⁹ It is true that the Paris Agreement leaves space for the states to decide

⁵⁶ *Hall M. J., Weiss D. C., Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law*, *The Yale Journal of International Law* 37(309), 2012, pp. 345-346.

⁵⁷ United Nations Framework Convention on Climate Change (UNFCCC), *What Do Adaptation to Climate Change and Climate Resilience Mean?*, available at: <<https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/what-do-adaptation-to-climate-change-and-climate-resilience-mean>> (accessed 31.3.2021).

⁵⁸ Paris Agreement, Article 7(9), available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> (accessed 31.3.2021).

⁵⁹ Paris Agreement, Article 7(2), available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> (accessed 31.3.2021).

themselves what to do in this regard specifically,⁶⁰ however, the inaction or inappropriate action from the states might result in the violations of the basic human rights, including, that of the right to life,⁶¹ and, thus, it is the human rights law that might be effectively used to oblige states to take appropriate measures.⁶²

For example, in the case *Ashgar Leghari v. Federation of Pakistan* the Lahore High Court ruled that Pakistan had the positive obligation to elaborate and implement a climate change adaptation plan under the Articles 9 and 14 of its Constitution in order to guarantee the full enjoyment of the right to life (that also entails the right to a clean environment) and the right to human dignity.⁶³ It found that the increasing floods and droughts that create risks to food and water security are attributable to climate change⁶⁴ and ordered the state to start implementing its National Climate Change Policy and the Framework for the Implementation of the Climate Change Policy immediately.⁶⁵ The requirements set by the Constitution of Georgia can also be used in the very same way to require the state to take appropriate measures and guarantee the right to life and the right to live with dignity.

As can be observed, the courts and the climate change litigation play an important role in the development of the climate change law and contribute to the incorporation of human rights-based approach within it. More and more cases are now taken before different courts and tribunals, which set valuable precedents and find the states in the breach of fundamental human rights, including the right to life, because of the insufficient efforts of the states to mitigate and adapt to climate change.

The aforementioned mechanisms can also be effectively used in Georgia, since the Constitution of Georgia explicitly obliges the state undertake appropriate measures in order to guarantee the right to life and to ensure the environmental protection of the people.

⁶⁰ Bodansky D., Brunnee J., Rajamani L., *International Climate Change Law*, 2017, pp. 237-238.

⁶¹ *McInerney-Lankford S.*, *Climate Change and Human Rights: An Introduction to Legal Issues*, *Harvard Environmental Law Review* 33(2), 2016, pp. 431, 436.

⁶² *Carlarne C. P., Gray K. R., Tarasofsky R. G.*, *The Oxford Handbook of International Climate Change Law*, 2016, pp. 227-229.

⁶³ Decision of the Lahore High Court of 14 September 2015 - *Ashgar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), paras. 12-13, available at: <<http://climatecasechart.com/climate-change-litigation/non-us-case/ashgar-leghari-v-federation-of-pakistan/>> (accessed 31.3.2021).

⁶⁴ Decision of the Lahore High Court of 14 September 2015 - *Ashgar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), para. 11, available at: <<http://climatecasechart.com/climate-change-litigation/non-us-case/ashgar-leghari-v-federation-of-pakistan/>> (accessed 31.3.2021).

⁶⁵ Decision of the Lahore High Court of 14 September 2015 - *Ashgar Leghari v. Federation of Pakistan*, (W.P. No. 25501/2015), para. 13, available at: <<http://climatecasechart.com/climate-change-litigation/non-us-case/ashgar-leghari-v-federation-of-pakistan/>> (accessed 31.3.2021).

V. CONCLUSION

‘Climate change is the defining issue of our time – and we are at a defining moment’, said the UN Secretary General and there is no solid ground today to doubt these words.⁶⁶ Modern societies, especially the most vulnerable people, already face the adverse effects of the global warming. International climate change agreements have almost universal participation of states and all of the states agree that it is time for effective global cooperation in order to mitigate and adapt to climate change. On the one hand, it is true that the states exercise discretionary powers under the existing climate change regime and can decide themselves how they are going to contribute to the ‘ultimate objective’ of combating the global warming problem, but on the other hand, the human rights law enables people to require effective action from them in order to protect their basic human rights.

According to the different decisions, made by the courts in climate change-related cases, states have the positive obligation to protect the right to life from climate change threats under different human rights instruments. The courts have stated that the environmental degradation caused by the global warming phenomenon directly affects the fundamental human right to life and they recognize that it is the obligation of the state to elaborate and implement appropriate climate change action plans, to prevent the adverse effects of global warming on the natural environment and humans, and help those people who already experience its negative consequences. However, the existing climate change regime still needs to be developed and needs to explicitly include a human rights-based approach in order to directly oblige the states to protect the right to life from global warming threats and make climate change laws more effective and easier to enforce.

As for Georgia, its present Constitution, which draws aspirations from the 1921 Constitution, directly guarantees the rights to life, human dignity and environmental protection. Thus, it can be effectively used in the context of climate change and it may play an important role in requiring the Georgian Government to take appropriate measures to adapt to the negative impacts of climate change in order to ensure and protect the life, health and well-being of the people.

⁶⁶ United Nations General Assembly (UNGA), Secretary-General’s Remarks on Climate Change, 2018, available at: <<https://www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-climate-change-delivered>> (accessed 31.3.2021).