ENVIRONMENTAL INJUSTICE AND RACIAL MINORITIES:

FROM THE UNITED STATES TO HUNGARY VIA INTERNATIONAL HUMAN RIGHTS LAW

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INTRODUCTION

As the study of the Hungarian Medical Journal found in 2005 *"Illegal waste deposits and animal carcase disposal site are located within 1000 m of 15% and 11% of the [Roma] colonies, respectively."*[1]

"Access to public services at the segregated area of Roma minority is considerably worse" stated by the Hungarian Ombudsman for National and Ethnic Minority Rights in an on-the-spot analysis in the annual report of 2006.[2]

Half of the photos *"showed trash heaps and dumping sites in and near the neighbourhood"* citing the results of a case study conducted with Roma inhabitants of Sajószentpéter, Hungary in cooperation with Krista Harper, University of Massachusetts Amherst in 2007 in a framework of a participatory action research project. The photos revealed environmental injustices such as unequal access to sewerage and wastewater treatment, unequal access to household water and illegal dumping by outsiders as well as residents.[3]

On July 27, 2013, the municipality of Ózd, North-East Hungary decided to close and limit the water in the public wells *"in order to prevent illegal and wasteful taking of water"* in the Roma majority neighbourhoods of Ózd in the middle of a summer heat wave. In few of the houses potable water was not accessible.[4] Despite the public outcry followed the case of Ózd, 4 years later, on August 1, 2017, the service provider of Gulács, North-East Hungary decided about

[1] Ungváry, Gy. et al., Roma Colonies in Hungary – Medical Care of Children and Hygienic Conditions, *Orvosi Hetilap*, Vol.146 (15), (2005) pp. 691-699 Available at: http://akademiai.com/toc/650/146/14-17, Retrieved: 11/10/2017

[2] Annual Report of the Hungarian Ombudsman for National and Ethnic Minority Rights (2006), Available at: http://www.kisebbsegiombudsman.hu/data/files/145405078.pdf, Retrieved: 11/10/2017 The position of the Hungarian Ombudsman for National and Ethnic Minority Rights was merged into the institution of the general Ombudsman at the end of 2011

[3] Harper, K., et al., Environmental Justice and Roma Communities in Central and Eastern Europe, Environmental Policy and Governance Vol.19 (2009) pp. 251-268.

[4] "Elzárták a vizet az ózdi romatelepen" ["Water is closed at the Roma neighbourhoods of Ózd"- The author translated from Hungarian] Index online newspaper, Available at: http://index.hu/belfold/2013/08/04/elzartak_a_vizet_az_ozdi_romatelepen/, Retrieved: 11/10/2017

closing the closest public well of the "Roma row" of the settlement during the 2017 summer heat wave.[5]

These cases reveal neither an isolated nor a sporadic pattern of the lower environmental condition of segregated areas in Hungary. People living in segregated areas are the ones who are likely to experience unequal access to basic necessities such as sewerage drainage, wastewater treatment and to household water within the Central European region and are exposed to the environmental harms of illegal dumping and to some extent to intoxication of groundwater and soil contamination due to industrial activities.

For this reason, I will devote my thesis to how an international human rights lawsuit can be developed to the right to a healthy environment for vulnerable and marginalized communities and especially for Roma in Hungary based on the concept and practice of the right to healthy environment and the claim of the environmental justice movement. This paper will examine the international and European human rights protection mechanisms from the perspective how it may serve and how it ought to serve the social rights of Romani people. Claiming that the findings of the environmental justice movement are crucial for the poverty eradication of Roma and halting their further sliding down on the social class ladder, the paper focuses on the newly emerging human right, the right to a healthy environment. Critical to regional human rights protection, the paper will enlist the potential opportunities and challenges within the human right protection system with the aim of providing an avenue for litigate environmental human right violations as well as hastening proper conceptualization, conducting comprehensive research and recognition in agenda of the decision-makers.

In the case of Roma, I see that social rights in general were overlooked in the international advocacy and litigation and social rights in the realm of international human rights are in

[5] "Lázadás Gulácson - Elzárták a romák egyetlen közkútját" ["Rebellion on Gulacs – The Roma's only public well was disconnected"-The author translated from Hungarian], Népszava online newspaper, Available at: http://nepszava.hu/cikk/1136439-lazadas-gulacson---elzartak-a-romak-egyetlen-kozkutjat?print=1, Retrieved: 11/10/2017

themselves an unreasonably contested area. First, for the reason of the welfare system has a disempowering and vulnerability creating effect in the relation of Roma and state agencies. Second, as it got a secondary role beside civil and political rights in the human rights hierarchy, neither bolstered by strong individual enforcement systems and the reference to the lack of adequate resources continues to be an impediment of development of social rights[6] hence the case law is limited. Nevertheless, in the last decades, the development of the right to a healthy environment and the international recognition of certain social rights pierced this forgetting veil on social rights and opened new opportunities for Romani people.

In the case of Roma, it is essential to recognise the potential of this development. Roma, after the end of Cold War suffered great loss sociologically, economically and in terms of socio-political context after the changing of the political system from socialism to liberal democracy and the accompanying liberal economic transition. The loss of employment followed the privatization process contributed gradually to the process of sliding down on the social class ladder as several researches confirmed since then.[7] There were no demand for the Roma's obsoleted professions learned in the socialist planned economy. Impoverishing of Roma population was accelerated by the debt spiral to the public utilities and service operators. As a result, relocation Roma in slum areas far from the populated areas by the municipalities or forced evictions without replacement and the movement of Roma to shantytowns often accompanied with the losing the access to basic amenities, such as water, heating, sewage removal, paved roads and health care. Lacking income, inability to keep in line with increased utilities or - in the case of the participant of socialist housing project designed for Roma - eightfold increased loans and the evictions after the transition drastically hampered housing

[6] Reference to the lack of adequate resource is accepted justification for inactivity of the Member State to the International Covenant on Economic, Social and Cultural Rights because Article 2 provides: *"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources (...)"*

[7] Policy Solutions, "The Situation of Roma in Hungary, (2012), Available at: http://www.policysolutions.hu/userfiles/elemzes/180/situation_of_roma_in_hungary_policy_solutions_study.pdf, Retrieved: 11/10/2017, Retrieved: 11/10/2017

situation for Roma people. In addition, the legal system not just with inactivity but actively contributed to the segregation process. As an example, the 71/2002 Constitutional Court decision on the constitutionality of the provision on simplified evictions struck the balance between property rights of the municipalities over the social function of property.[8] The process of forced evictions and migration to settlements in poorer neighbourhoods resulted in ghettoization in many settlements or settlement parts, first by devaluation of dwellings by Roma migration which then further accelerated the inflow of poorer groups.[9] Therefore, ensuring social rights for Romani people by enhancing their living environment through the tools of environmental justice has a great significance not only on the housing conditions, but their living conditions in general.

The right to a healthy environment is a newly emerging human right. Therefore, the practice of the enforcement of right to healthy environment is limited. However, two years after the Paris Agreement to the United Nations Framework Convention on Climate Change, it can be argued that human rights are willing to offer a framework for addressing issues related to environmental injustice. Whereas, the recent trends show that political consideration may override, the Paris Agreement obviously placed a greater emphasis on environmental issues. The progress also can be shown that the refusal of the soft mechanism of voluntarily undertaken responsibilities by the United States was not followed by other countries. Hence, it is noteworthy that the preamble of the Paris Agreement promotes the right to environmental rights concerning its special scope which I consider as a reflection of the change in attitude of the states.[10] However,

[8] 71/2002. (XII. 17.) AB határozat ["Decision No. 71/2002. (17/12/2002) of the Hungarian Constitutional Court" - The author translated from Hungarian], Available at: http://public.mkab.hu/dev/dontesek.nsf/0/2AC03E02A19E5EE7C1257ADA0052679B?OpenDocument, Retrieved: 11/10/2017

[9] Forray, K. and Beck, Z., Society and Lifestyles – Hungarian Roma and Gypsy Communities, *University of Pécs, Faculty of Humanities, Institute of Education, Department of Romology and Sociology of Education, PÉCS*, (2008) p. 121.

[10] Paris Agreement to the United Nations Framework Convention on Climate Change (2015), Preamble: *"Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, (…) promote (…), the right to health, the rights of indigenous peoples, local communities, (…) people in vulnerable situations and the right to development, (…)"*

comprehensive individual enforcement mechanisms still does not exist. Nonetheless, several national constitutions and legislations in Europe protect the right to a healthy environment in the Central European region, including Hungary.

The reason to develop a claim with the special focus on vulnerable communities is twofold. Firstly, approximately 1500 underdeveloped settlement parts are located in deprived regions of Hungary[11] which are inhabited mainly by Roma families.[12] According to the UNDP report,[13] belonging to the Roma community in a settlement has a pivotal role in the determination of living conditions, accessibility of basic amenities such as regular waste collection or improved water source. Having said that deprived areas where Roma and poor live generally lack basic necessities, living conditions also affect the accessibility of remedies even if information is possessed on environmental harms.[14] This statement highlights the role of pro bono litigation in order to raise awareness to the despaired situation of vulnerable groups, especially Roma concerning environmental health.

Secondly, we lack accurate comprehensive data both to provide a claim that environmental injustice is not only poverty related but there is a strong correlation to ethnic origin and also to provide an evidence for the pattern that the lower state of environmental health of deprived areas is traceable to the unfavourable treatment of Roma communities in the decision-making and administrative processes which prioritize other interests.[15] Hence, the chance to develop a discrimination claim in front of the court is limited in the Hungarian context. However, at this point of the thesis, it is noteworthy to mention that as a result of the 1,5-year long activity of a

[11] UPR, National Report submitted by Hungary (2016), Available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/HUIndex.aspx, Retrieved: 10/16/2017
[12] Hungarian Ministry of Human Resources, Housing Strategy (2015)
[13] UNDP-WB-FRA Roma survey (2011) and analysed in Perić, T., The Housing Situation of Roma Communities: Regional Roma Survey, *Roma Inclusion Working Papers.* (2012, Bratislava, UNEP) Available at: https://www.scribd.com/lists/4298640/Roma, Retrieved: 10/16/2017
[14] "Az arzént is meg lehet szokni" ["We can also get used to arsenic"- The author translated from Hungarian], Available at: http://www.origo.hu/itthon/20130104-az-arzent-is-meg-lehet-szokni-riport-a-vizosztasrol.html, Retrieved: 10/16/2016
[15] Apart from the research of Filčák, R., Environmental Justice and the Roma Settlements of Eastern Slovakia: Entitlement, Land and Environmental Risks, Sociology casopis, Vol.48 (3), (2012), pp. 537-562.

Hungarian NGO, called Védegylet ended in 2010, besides discovered case studies with Hungarian Roma communities, the direction of the further data gathering was designated to prove that environmental injustice is not only poverty related issue but there is a strong correlation with ethnic origin. Their findings will be presented in the thesis.[16]

Despite the formulation of the human right and the initial phase of research, I claim that the context of vulnerability of Roma people might give benefits to a successful case concerning right to a healthy environment and a potentially conducted research using statistical data can give a solid evidence for existing inequalities. Furthermore, this claim not only a potential in the foreseeable future, but it is urged to develop a claim speedily since the environmental policies on the matter are formulated and Roma will be left behind without the necessary steps.

My thesis focuses on the instruments and institutions of international human rights which I consider as the only tool able to raise awareness and contribute to changes in the existing regulations and practices. As the example of the educational segregation litigation shows, the case law has a great role to make the voice of Roma to be heard and unless state policies do not interfere also to achieve policy changes on municipality level in Hungary. Regarding the limits of a lawsuit before international human rights institutions, a potential claim for right to healthy environment is more likely to be argued by the states that it falls within the scope of positive obligation of the states, and as such, the states have wider margin of appreciation within the jurisdiction of the European Court of Human Right (ECtHR). This means that no subsidiary remedy is available if States fail to provide environmentally sound and healthy conditions to individuals of a certain group. In the case margin of appreciation is wide, it is primarily a question of national implementation which entails that states have the competence to choose

[16] Hajdu, G. et al., Környezeti igazságosság Magyarországon ["Environmental injustice in Hungary"- The author translated from Hungarian] issued by Védegylet, the Hungarian Budapest-based NGO, (2010) Available at: http://kornyezetiigazsagossag.hu/ , Retrieved: 04/15/2017

between measures to grant the right to a healthy environment.[17] This interpretation is likely to undermine the chance to win a potential case at the international level concerning unequal access to basic necessities. Thus, an unduly considered case claiming exposure to intoxication where remediation thresholds were determined in a seemingly lawful manner can also be easily refused by the ECtHR. Hence, the ECtHR requires more criteria for the decision to oblige positive duty on the states. I argue that the solution is likely to be the potential of a vulnerability-based approach in recently made judgements which can be operationalised and meaningfully used in the legal reasoning.[18]

As a conclusion, in my perception, a potential lawsuit is not expedient to plead based on discrimination, but from the point of view of strategic litigation for the right to healthy environment can be best grasped in light of the vulnerable people situation. Despite the difficulties of anti-discrimination litigation, I consider the United States and European examples of environmental injustice and environmental health cases as a potential to develop a Hungarian case in order to establish the right to a healthy environment for the Hungarian Roma community.

For this reason, Chapter I presents the situation of the cradle of environmental justice claims, how the movement of environmental injustice evolved in the United States and on what grounds the claim was articulated to advocate change both in the governmental policies and against private actors. In Chapter II, I present what are the main differences between the U.S. and the Hungarian context which might have both positive and negative influence on a potential lawsuit. Chapter II will also present those international and regional instruments of human rights claims which have a relevance in the advocacy of the right to a healthy and sound environment in

[17] Schokkenbroek, J., "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights: General Report." *Human Rights Law Journal*, Vol.19 (1), (1998), p. 34.

[18] As an example the case of Horváth and Kiss v. Hungary, ECtHR, App.no. 11146/11, 01/29/2013 § 102 As the Court refers to the well-established case law: *"The Court has further established that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases"*

Hungary for Roma communities. In Chapter II, I also intend to explore, albeit in a more speculative manner, that how these human rights instruments may serve a potential lawsuit. In the analysis, I will also present the relevant counter arguments why litigation might not serve the aims of the environmental justice movement.

First and foremost, it shall be pointed out that this thesis will not exhaustively cover and discuss the existing literature on environmental injustice of the United States. Neither this thesis intends to apply environmental injustice claims that of the United States to the Hungarian context in a full manner, thus the focus is less on the toxic substances cases of the United States. The environmental injustice claims of the United States essentially serve as a tool to explore how a similarly marginalized group can use the findings of the movement.

As an additional clarification while it is not the aim of this thesis to explore all environmental and equality provisions are available to formulate a human rights claim, in order to situate a potential claim in the area of international and regional human rights instruments, I will present not only Roma related cases. Some discussions of the approaches to the subject of environmental rights are albeit beyond the observation of the thesis, such as the procedural environmental rights of the United Nations, since the primary focus is on the potential individual enforcement mechanisms and the instruments of the United Nations will explored from a different perspective. The exploration of the environmental rights claims will essentially focus on pointing out the threshold from where the ECtHR provides protection. Furthermore, the thesis does not intend to explore legislation concerning environmental pollution by serious toxic chemicals emitted by different private actors. In fact, the systematic harms to Roma reveal a different type of claim, when the positive obligations of the state are not fulfilled to protect the Roma.

In addition, I identify the European Union policy making as influential on the Hungarian policy making and legislation. Therefore, besides understanding the existing mechanisms in human

rights, as an ultimate goal I identify to halt the misconceptualisation in the European Union and some of the documents of the European Union will be presented strictly for the analysis to point out the nature of misconceptualisation. In addition, I do not use the notion of environmental racism on purpose as I perceive it as a harmful labelling, in particular, as presented in the thesis, when the labelling uses the colouring of 'green' and 'brown' environmentalism by which the new environmental justice movement alienate the original environmental justice claims from its uniform body.

I) CHAPTER: THE ENVIRONMENTAL JUSTICE MOVEMENT IN THE UNITED STATES

1) History of the U.S. Movement

The concept of environmental justice grew out of the recognition of disproportionate burden of environmental pollution in certain communities. The U.S. notion of environmental injustice focuses on the discriminatory practices towards people of colour. However, there are certain arguments that besides race are a determining factor of environmental injustice, low levels of income and education is strongly correlated with environmental injustice, as well.[19]

The concept to enforce distributive justice in environment stems from the United States environmental justice movement which originated from a grassroots movement in 1978[20] which tailored a corresponding approach. Evolving from public participation strong statements of discrimination were articulated by the activists which were supported by research. Thus, the environmental justice movement originated from the United States relied less on legal means to advocate change during the initial period. To illustrate the tendency, according to the

[19] Cole, L.W. and Foster, S., *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, New York: New York University Press, (2001), pp.10-12.
[20] Szasz, A., *Ecopopulism: Toxic Waste and the Movement for Environmental Justice*. University of Minnesota Press, (1994) p. 21

compilation of the Environmental Justice Group of the University of Michigan, out of 38 domestic cases 22 solely relied on mobilization, media attention, and protesting or civil disobedience and just in 16 case they submitted a lawsuit besides the different forms of mobilization.[21] As Cole, the author regarded as the founding father of environmental justice movement, concludes after describing his struggle for environmental justice in the case of Kettleman City and Buttonwillow, *"the legal and political costs of resorting to certain litigation strategies outweigh"* the limited number of successful cases.[22]

However, the role of litigation for a healthy environment without discrimination became essential to raise awareness between a wider audience in the last three decades. The first of such lawsuits claiming discrimination paved the way towards the social justice movement related to environmental hazards. In 1998, without any data or research, a community of Latinos initiated a lawsuit after they found that the California Waste Management Board issued the Cerrell Report which suggested to the garbage incinerator companies to locate their sites close to communities which show the least resistance such as, rural, poor, low-educated, Catholic, small communities which was fit to Kettleman City where the Chemical Waste Management Inc. planned to expand its activity. The Sacramento Superior Court ruled that the impact assessment report of the County of Kings inadequately analysed the incinerator's activity on air quality and agriculture and halted the first expanse of the waste incinerator.[23]

The movement goals gained governmental recognition by President Clinton's Executive Order 12898 in 1994 by ordering all agencies of the U.S. to implement the considerations of environmental justice to their missions.[24] Currently, there are statistical data available that the

[21] Environmental Justice Case Studies by University of Michigan, Available at: http://umich.edu/~snre492/cases.html, Retrieved: 11/10/2017, The numbers related to the strategies is the author own conclusion.
[22] Cole, L.W. and Foster, S., *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, op. cit. pp. 121-122.
[23] El Pueblo para el Aire y Aqua Limpio v. County of Kings, Sacramento Superior Court No. 366045, Dec. 30, 1991 quoted by Cole, L.W. and Foster, S., *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, op. cit. pp. 3-8.
[24] Szasz, A., *Ecopopulism: Toxic Waste and the Movement for Environmental Justice*, op.cit., p. 21

United States' most polluted environments are commonly inhabited by people of colour and low-income families. According to the report of "Toxic Waste and Race at 20" about environmental justice from 2007, the proportion of people of colour in the 3 kilometres proximity of the 413 hazardous waste facilities nationwide is almost twice than that of the proportion of people of non-colour.[25]

As the concerns were also articulated, the EPA were more willing to put theory in practise during the Obama administration. Whereas, there are scholars who still claim that EPA does not enforce its obligations under the Civil Rights Act, from 2011 the agency adopted Environmental Justice Action Plans, an agenda for policy setting. As an outcome, disparate and disproportionate standards[26] were implemented in the decision-making both in the case of permitting and rulemaking and introduced the process of environmental justice screening.[27] According to the goal of the Action Plan was to provide a roadmap to the better implementation of environmental justice and civil rights live in the shadows of the worst pollution, facing disproportionate health impacts.[28]

Recognising however the low enforcement of the Executive Order, to date, the House of Representatives[29] plans to adopt a legislative act of the Environmental Justice Act of 2017 in order to make sure that the environmental justice claims are enforceable. While an Executive Order by President Clinton can have the same effect as a law adopted by the Congress under certain circumstances, a Congress passed law (without an exercised presidential veto) may

[25] Bullard, R. D. et. al., "Toxic Wastes and Race at Twenty: 1987-2007 - Grassroots Struggles to Dismantle Environmental Racism in the United States", United Church of Christ Justice and Witness Ministries, (2007), Available at: http://www.ejnet.org/ej/twart.pdf, Retrieved: 11/10/2017

[26] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law, in *Handbook of Environmental Justice*, Forthcoming; p. 117., Available at SSRN: https://ssrn.com/abstract=2790584, Retrieved: 11/10/2017

[27] United States Environmental Protection Agency, EJ 2020 Action Agenda, The U.S. EPA's Environmental Justice Strategic Plan for 2016-2020, (October 2016), p. 54., Available at: https://www.epa.gov/environmentaljustice/plan-ej-2014, Retrieved: 10/20/2017

[28] United States Environmental Protection Agency, Plan EJ 2014, (September 2011), Available at: https://www.epa.gov/environmentaljustice/plan-ej-2014, Retrieved: 11/10/2017

[29] 2017 Cong US HR 2696, 115th Congress, 1st Session

become a stronger guarantee for minorities to make their voice heard in the decision-making processes on environmental policies and permitting in the future.

2) Environmental Injustice Litigation and Racial Minorities and its Impact

The environmental injustice movement as a grassroots movement by gaining information on the existence of structural racial discrimination and after adoption of the Executive Order 12898 in the middle of the 1990s, environmental justice communities turned to the redress of the Title VI of the Civil Rights Act of 1964[30] due to the Interim Guidelines issued for the interpretation of the Executive Order 12898. The Guidelines articulated that Title VI complaints can rely on disparate impact theory,[31] as a means to address racial discrimination in the permitting and siting of facilities that release hazardous pollutants and cause environmental health risks.

Disparate impact theory emerged from the case law of the U.S. Supreme Court in its interpretation of Title VII of the Civil Rights Act in the milestone decision of the *Griggs et al. v. Duke Power Co.*[32] in 1971. Disparate impact herein is defined as a *"law, neutral on its face and serving ends otherwise within the power of government to pursue, (…) because it may affect a greater proportion of one race than of another."*[33] The justification of a discriminatory practices is limited, goes under strict scrutiny of the test. However, the protection against disparate impact remained short-lived. In the case of *Washington v. Davis*[34] the U.S. Supreme Court ruled out disparate impact theory under the Equal Protection Clause by holding that *"simply pointing to a pattern or history of harm towards a particular group, or complete*

[30] Huang, A., "Environmental justice and Title VI of the Civil Rights Act: A critical crossroads", *American Bar Association Journal*, Vol.43 (4)., (2012), Available at: http://www.americanbar.org/publications/trends/2011_12/march_april/environmental_justice_title_vi_civil_rights_act.html, Retrieved: 11/10/2017

[31] Moss, K. L., "Environmental Justice at the Crossroads", *William & Mary Environmental Law and Policy Review* Vol.24 (1) (2000), p. 41., Available at: http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1245&context=wmelpr, Retrieved: 11/10/2017

[32] Griggs v Duke Power Co, 401 US 424 (1971)

[33] Washington v. Davis [426 U.S. 229, 243] (1976)

[34] Washington v. Davis., 426 U.S. 229, (1976)

exclusion of a group does not suffice to infer that discrimination is at work, even if there is no credible alternative explanation for these disparities."[35] By this decision the U.S. Supreme Court began differentiating constitutional and statutory provisions (Equal Protection Clause and the Title VII of the Civil Rights Act), requires plaintiffs to prove discriminatory purpose in the case of a constitutional challenge to the discriminatory practices.[36] Reiterated in 2009 by the *Ricci v. DeStefano*[37] case, adverse impact of a practice on members of a protected class may only be a violation of the Civil Rights Act, hence disparate impact theory became limited to the statutory provisions of the Civil Rights Act, especially to the employment discrimination domain. Accordingly, disparate impact theory could have been a valuable tool for addressing environmentally harmful practices that adversely affect people of colour. Still, opposed to the promising argument, the disparate impact theory yielded limited success in the courts against both the zoning practices and practices of the U.S. Environmental Protection Agency (EPA), a government agent responsible for allocation of clean-up fund for contaminated lands. In these cases, the courts have set a high standard of providing evidence by the decision in which they ruled that applicants must prove discriminatory intent.

In looking at more recent case law such as *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*[38], Foster argues that disparate impact remains a valuable legal tool to invalidate disproportionate zoning, housing or land use practices, nevertheless, the case shows that proving disparate impact requires a specific causal link between a policy of the decision-maker and the statistical disparity that harms a minority group.[39] This approach serves as an excessive limit to the applicability of the disparate impact

[35] Rephrase of the Griggs v Duke Power Co case in Washington v. Davis, 426 U.S, 229, 242 (1976)
[36] Siegel, R., Race Conscious but Race Neutral: The Constitutionality of Disparate Impact in the Roberts Court, *Alabama Law Review*, (2015)
[37] Ricci v. DeStefano, 557 U.S. 557, 610-11 (2009)
[38] Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. 135 U.S. 2507 (2015)
[39] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law, op. cit. p. cites Rabin, Y., "Expulsive Zoning: The Inequitable Legacy of Euclid" in Haar, C.M. and Kayden, J.S. (eds.), Zoning and the American Dream: Promises Still to Keep, Chicago: APA Press, (1999), pp. 106-108.

protection against discrimination. As Foster concludes, the judicial assumption about discrimination no longer applicable to explain otherwise unexplainable racial disparities, more likely *"disparities are presumed natural or colour-blind functioning of the market."*[40] However, there are exceptions with regard to historical context. As opposed to the federal decision, Foster refers to the case of *Miller v. City of Dallas*[41] in which the court was willing to accept history of segregated zoning, flood protection, differentiated protection from industrial nuisance and landfill practice as an evidence for discriminatory intent, taken into consideration in particular the historical evidence of the designation of the area of 'Negro development' in the neighbourhood of the future industrial area.[42]

As regards to the EPA cases, according to Marianne Engelman Lado, a lawyer at Earthjustice, a mainstream environmental NGO which determined as a goal the fight for the right to a healthy environment, the EPA has a long history of disregarding civil rights complaints.[43] Likewise, the 2016 EPA-commissioned report on the EPA's ability to enforce its civil rights mandates found that the agency failed over many years to process civil rights complaints in a timely fashion. To date, out of the 300 complaints, there were no a single holding of discrimination and the EPA never denied or withdrawn financial assistance from a recipient.[44] According to Newton, in most cases, the EPA lacks the evidence for the direct causation between hazardous wastes or emissions and human health problems and the demonstration of the disproportionately effect on low-income or minority communities by the exposure to hazardous wastes, or disregards to

[40] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law, op. cit., p. 112.
[41] Miller v. City of Dallas, United States District Court, N.D. Texas, Dallas Division, 2002 WL 230834
[42] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit., p. 112.
[43] Baptiste, N., A Landfill Is Consuming This Historic Alabama Community. The EPA Ignored Complaints. Now the Case Is Closed (May 9, 2017), Available at: http://www.motherjones.com/environment/2017/05/alabama-landfill-environmental-racism/, Retrieved: 11/10/2017
[44] U.S. Commission on Civil Rights, Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898, p. 29 (September 2016), Available at: http://www.usccr.gov/pubs/Statutory_Enforcement_Report2016.pdf , Retrieved: 11/10/2017

"dealt with nonessential issues (such as not providing information in languages other than English)."[45]

3) Environmental Legislation and Practice in the U.S.

As a result of the above processes, the United States originated environmental justice movement does not consider the environmental regulation and institutions as a tool to reach environmental justice. Even though an overall improvement of environmental standards is acknowledged, environmental injustice activists often claim that environmental regulation not always promotes the interest of people of colour or poor people. As Newton pointed out, referring to Kate Probst's study, the EPA itself engages in discriminatory conduct by compiling a list of contaminated lands financed by the government as the list less likely targeted the rural poor communities. In addition, referring the study of Lavelle and Coyle from 1993, white communities are more often beneficiaries of toxicity removal instead of waste containment than people of colour and contamination in the proximity of white communities entails imposition of higher fines than that of minorities.[46]

The impact of the environmental regulatory framework on the situation of minorities in the United States has been analysed for decades by environmental justice scholars to identify the blindspots of environmental regulation, such as the hotspot creation effect of the cap and trade programs,[47] waste management regulation which excludes coal ash from hazardous waste list and let it to dump it next to inhabited settlements,[48] disproportionate sanctions against illegal

[45] Newton, D.E., *Environmental justice: a reference handbook*, Santa Barbara, Oxford, Denver, ABC-CLIO (2009) (2nd ed) p. 68.
[46] Newton, D. E., *Environmental justice: a reference handbook*, op. cit., p. 52.
[47] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law, op. cit. p. 117 and Doremus, H., Lin, A. and Rosenberg, R., *Environmental Policy Law: Problems, Cases, and Readings*, Foundation Press Thomson/West, (2012) p. 758.
[48] Doremus, H. et al., *Environmental Policy Law: Problems, Cases, and Readings*, op. cit., pp. 501-503. and pp.520-522.

dumping,[49] impact of land zoning regulation,[50] the question of environmental liability which excludes the oil refineries,[51] the disparate impact of federally funded contamination remediation procedures under Superfund regulation,[52] the higher thresholds of contaminants than that of the European Union[53] and the non-enforceable public participation rights.[54] These environmental regulations essentially contribute to the level of environmental protection, occurrences of the infamous leaks, spills and explosions of toxic substances of industrial activities of the United States. However, these environmental regulations do not explain *per se* the racial disparities that vulnerable communities are more exposed to these environmental risks created by the lacuna of environmental law.

Racial disparities by which minority groups suffer from higher environmental burden are primarily a result in part of historic zoning practices, the method of redlining[55] and building projects such as the low-income housing in industrial districts[56] in the early XXth century that separated immigrant and African American communities by building low income housing in industrial districts[57] and using the method of redlining.[58] Besides historic zoning practices, the mainstream environmental protection policies continue to exacerbate the problem. As an example, the California carbon-dioxide cap-and-trade program aims to get polluting companies to reduce emissions. However, the cap and trade program were designed through getting offsets

[49] Newton, D. E., *Environmental justice: a reference handbook*, op. cit., p. 52.
[50] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit., p. 112.
[51] Doremus, H., Lin, A. and Rosenberg, R., *Environmental Policy Law: Problems, Cases, and Readings*, op. cit., p. 555.
[52] Newton, D. E., *Environmental justice: a reference handbook*, op. cit., p. 52.
[53] Federal Environment Agency of Germany, "Environmental protection under TTIP" (2015) Available at: http://www.umweltbundesamt.de/sites/default/files/medien/376/publikationen/environmental_protection_under_ttip_0.pdf, Retrieved: 11/10/2017 and Project of DG Environment, Milieu Ltd., Danish Environmental Research Institute and Center for Clean Air Policy, "Comparison of the EU and US Air Quality Standards and Planning Requirements", (2004), p.11. and p.17. Available at: http://ec.europa.eu/environment/archives/cafe/activities/pdf/case_study2.pdf, Retrieved: 11/10/2017
[54] Doremus, H., Lin, A. and Rosenberg, R., *Environmental Policy Law: Problems, Cases, and Readings*, op. cit., pp. 241-289.
[55] Sadd, J., et al., Playing it Safe: Assessing cumulative impact and social vulnerability through an environmental injustice screening method in the south coast air basin, California. *International Journal on Environmental Research and Public Health, Vol.*8 (5) (2011) pp. 1441-1459.
[56] Foster, S., "Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law", op. cit.
[57] Foster, S., "Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law", op. cit.
[58] Sadd, J., et al., "Playing it Safe: Assessing cumulative impact and social vulnerability through an environmental injustice screening method in the south coast air basin, California*" op.cit.*

for planting forests or applying clean energy technology which essentially created a system in which the emitters are allowed to keep emitting at their existing facility. [59]

As Foster argues, today, the processes that result in environmental injustice in poor, minority communities are neutral on their face and there are complex causalities, for instance dynamics on the housing market which is less likely defined as discrimination in legal sense due to its historic discrimination in character.[60] However, Foster highlights that besides historic discrimination there are still ongoing processes in the United States which are more likely to be identified as discrimination, in particular disparate impact occurs in conjunction with disproportionate siting of polluting facilities in neighbourhoods that are predominantly populated by ethnic minorities.[61] Foster identifies the tensions that exist in application of equality norms to environmental law and the limitation of anti-discrimination law which still requires the intent of a certain decision-maker in order to hold violation of Equal Protection Clause under the Fourteenth Amendment of the United States Constitution. Concluding from the limitations of anti-discrimination and environmental law she suggests that vulnerability analysis is the fertile area to challenge the problem why harms from climate change, environmental hazards and events from hurricanes and floods affects certain subpopulation of the society of the United States.[62]

As Foster suggests, vulnerability analysis is the missing conceptual and practical link between equality norms and environmental regulation. She gives examples of the presence of vulnerability, such as the resilience of people with asthma or emphysema to set the thresholds of contamination in the case of environmental statutory law in the United States.[63] However,

[59] Guerin, E., Environmental Groups Say California's Climate Program Has Not Helped Them (February 24, 2017), Available at: http://www.npr.org/2017/02/24/515379885/environmental-groups-say-californias-climate-program-has-not-helped-them, Retrieved: 11/10/2017
[60] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit. p. 108.
[61] Ibid.
[62] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit. p. 109.
[63] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit. p. 120.

Foster goes further, suggests for consideration the theory of Martha Fineman who argues for equality norms to be replaced by the vulnerability analysis.[64] Fineman points out that vulnerability framework would be more beneficial for three reasons. First, it shifts the narrative from whether discrimination occurred to, instead, how one group is privileged and systematically favoured over another through institutions. Second, it avoids the fallacious analysis to focus only on one personal characteristic in the equality analysis. Finally, it gives opportunity to change the paradigm to a more responsive state instead of the classical liberal model of state.[65] Foster contradicts to Fineman in perceiving vulnerability analysis as replacing equality rules not only for the lack of practical basis in the judiciary of the United States, unlike in Europe, but for the risk of diluting such an important category of identity as race in the United States social context. However, as Foster concedes, vulnerability analysis can serve as an important tool for addressing the intertwining effects of race and class, what equality theorists address as intersectionality, in the case of environmental racism. This enables environmental justice paradigm to acknowledge the structural mechanisms in the society as opposed to the explanation solely based on bias and discrimination, nevertheless, Foster maintains her opinion that race needs to be regarded as a significant predictor of environmental injustice. Following the benefits arising from shifting the paradigm, Foster presents those research methods, such as social vulnerability index (SOVI), social vulnerability analysis (SVA), Environmental Justice Screening Method (EJSM) and Cumulative Environmental Vulnerability Assessment (CEVA) and finally the EPA's metric created in 2015 which are designed to capture the determinant factors whether a certain population is vulnerable. These metrics enable urban planning, environmental law and emergency personnel to adequately respond to environmental injustices

[64] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law op. cit. p. 121. cites Fineman, M.A., "The Vulnerable Subject: Anchoring Equality in the Human Condition", *Yale Journal of Law & Feminism*, Vol.20, (2008), pp. 1-23. and Fineman, M.A. "Beyond Identities: The Limits of an Antidiscrimination Approach to Equality," *Boston University Law Review*, Vol.92, (2012), pp. 1713-1769.

[65] Constitutional protection traditionally applies in the relationship between the state or state agent and the individual, this limitation to the negative obligation to the state is called state action doctrine.

in the framework of monitoring, permitting, law enforcement, public involvement and economic development with working the vulnerability assessment and indexes. Although, Foster does not consider vulnerability analysis as a panacea for the reluctance of the courts and environmental agencies to address environmental injustice according to the existing regulation on the matter.

II) CHAPTER: APPLYING ENVIRONMENTAL JUSTICE TO RACIAL MINORITIES IN HUNGARY

1) Definition and the Nature of Environmental Injustice of Roma

The concept of environmental justice was defined in various ways since it has gained recognition around the world. According to the workshop on Improving Environmental Justice in Central and Eastern Europe definition, environmental justice is a condition when all jurisdictional level equally distributes environmental risks, investments and benefits and the participation in decision-making processes concerning environmental decisions is enjoyed by all taking into account ecological limits. [66]

It can be claimed that the lower socio-economic status of Roma living in segregated areas is not the only reason for being exposed to bad environmental conditions. By surveying the Roma situation in Slovakia, Filčák and Steger claim that the marginalization of Roma is reinforced by *"open and discrete social processes in the general socio-economy framework"* besides the fact

[66] Steger, T., and Filčák, R., "Ghettos in Slovakia. Confronting Roma Social and Environmental Exclusion" *Analyse & Kritik*, Vol.36 (2), (2014)

that these areas are often historically exposed to problematic circumstances such as regular flooding, abandoned industrial zones and differentiated access to potable water or waste management.[67] Filčák, in other sources,[68] names ethnic discrimination as the main cause for differentiated results for Roma people concerning environmental harms and benefits. Referring to the theory of entitlement formed by Amaryta Sen, Filčák also draws attention to the factor that there is a high importance who decides about who has the access to the scarce resources. The study also states that the results of the utilization of the EU Structural and Cohesion Funds are often mixed in the Member States of the European Union. Take into account that these funds play an inevitable role in the promotion of complex infrastructural projects in Central Europe, the regulatory and policy framework of distribution methods has a high relevance in the understanding of the lower environmental condition of Roma. In other words, if these funds will not be beneficial for Roma people, the socio-economic gap between the segregated Roma neighbourhoods and the dominant non-Roma communities will increase.

The European Union Minorities and Discrimination Survey in 2016 showed that few results have been achieved since the Central European region accessed to the European Union in terms of the socio-economic status of the Roma. Barriers to employment, education, housing and health services are persisting.[69] As Merker argues exclusion of Roma is not a phenomenon resulting only from prejudices, but it is a consequence of the struggle for limited resources. Thus, it is not enough to redress racism on the surface but causes rooted deep in the social structure shall be eliminated in order to avoid the reproduction of extreme poverty.[70]

[67] Steger, T., and Filčák, R., "Ghettos in Slovakia. Confronting Roma Social and Environmental Exclusion", op. cit., pp. 229. and 235.
[68] Filčák, R., "Environmental justice in the Slovak Republic: the case of Roma ethnic minority", Unpublished doctoral dissertation, Central European University, Department of Environmental Sciences and Policy, Budapest, (2007), p.7,p.77. and pp.194-199.
[69] „EU-MIDIS II shows that 80 % of Roma continue to live below the at-risk-of-poverty threshold of their country. This suggests that the 2013 Council Recommendation's goal on effective Roma integration measures concerning poverty reduction through social investment is far from being reached." (European Union Agency for Fundamental Rights, 2016); "Despite some progress, the Decade has not reached the critical point that would guarantee success." (A Lost Decade? Reflections on Roma Inclusion 2005-2015) Available at: https://www.opensocietyfoundations.org/voices/what-roma-decade-really-achieved
[70] Policy Solutions, "The Situation of Roma in Hungary, (2012), op.cit.

a) Case study in Hungary

It can be argued that similar social processes can be detected in Hungary as well. To illustrate the structural problem, I refer to the research of the Hungarian NGO, Védegylet whose aim was broaden the traditional (and I may add technocratic) environmental paradigm to a broader social paradigm using the findings of environmental injustice. Védegylet did not primarily focus on the correlation of environmental injustice and ethnic origin, but grasped environmental injustice as a social or class issue, partially due to the lack of accurate data. It is still striking, that most of their case studies involved fieldwork with Roma communities in the Hungarian countryside which presumes the existence of a strong correlation with ethnic origin. [71]

Védegylet has used the data of the Central Statistic Authority of Hungary, but noted that the data available was neither sufficiently detailed nor continuous to examine the burden on a separate part of a settlement, unlike in the U.S. where burdens are examined on individual, block or street level. In the case of Hungary, information is available on the fact that people who get social benefits, unemployed or Roma more exposed to the risk of flooding. However, the correlation does not prove that disadvantaged people live in higher proportion in settlements with higher exposition to flooding. Therefore, the statements of the report are valid only on settlement or subregional level. The analysis shows only a sort of initial, larger territorial scale of the degree of interconnection of environmental and social disadvantages in Hungary. Settlement data can capture differences as far as a settlement is socially homogenous. However, in Hungary, fortunately this kind of segregation is limited. People with different social background often live together in one town or settlement but separately. However, as the literature on environmental justice shows, it is conceivable that within a settlement disadvantaged people live in a lower environmental quality area.[72]

[71] Hajdu, G. et al., Környezeti igazságosság Magyarországon ['Environmental injustice in Hungary'], op. cit. pp. 10-13.
[72] Hajdu, G. et al., Környezeti igazságosság Magyarországon ['Environmental injustice in Hungary'] op. cit. p. 10.

Nevertheless, in a pilot project involving Roma people living in deep poverty, Védegylet observed several environmental injustices related to Roma in Bódvalenke, Sajószentpéteri and Sajókaza, all located North-Eastern Hungary. Védegylet distinguished between direct and indirect environmental injustices. I claim that by this distinction, Védegylet created a classification which also shows that there is two differently traceable versions of environmental injustice, hence two path to develop a claim and identify both the defendants for a lawsuit. Environmental injustice can be described by the absence of a basic service having various reasons, poverty, lower level advocacy or white-flight driven segregation. One of first category have been identified was the waste transportation. Despite the fact that waste transportation is the obligation of the municipality, the municipality often does not fulfil its obligation since the people living in the settlement do not pay the waste disposal fee. Consequently, the local waste dumps are close to the houses, so beetles and rats are common. According to a social worker at Sajókaza, new-born babies may be bitten by rats. In most cases, running water is not drainaged into the houses of the settlements. In some areas, locals complained about drinking water quality and diarrhoea. Védegylet also identified the problem of energy poverty. Residents almost always heat with wood in these settlements. The monthly price of wood equals to the monthly income per capita therefore it is difficult to manage the required amount from month to month. Hence, people often use illegal solutions and risk imprisonment or they only heat one room of the entire apartment or they heat with materials which are severely harmful to health. The problem is further aggravated by the houses' energy efficiency which is very low, the walls are wet, mouldy, doors and windows are very poorly insulated (if there is a window at all). In many cases, residents complained that the smoke from the mines and rubbish dumps in their immediate vicinity reaches them in windy weather and it makes them sick. According to the

residents, in one of the settlements, the tombs of Roma disappeared from the cemetery near the mine due to the expansion thereof.[73]

Besides the aforementioned cases of direct environmental injustices related to Roma, environmental injustices may also appear indirectly, when a tender system is in place that *de facto* excludes the disadvantaged. As Védegylet concludes, in this case there is no discriminatory intent on the basis of ethnicity, Roma NGOs are not excluded from the opportunity to file an application *de jure*, but other conditions *de facto* leads to the exclusion of Roma NGOs. According to a study in the County of Borsod-Abaúj-Zemplén and the County of Szabolcs-Szatmár-Bereg, the New Hungary Development Program in the case of projects targeting the most disadvantaged micro-regions, the proportion of application of projects targeting Roma were low (12% in Borsod county and 24% in Szabolcs county), or targeting equal opportunities.[74] The proportion of winning tenders for Roma was even lower, at around 3-6%. Based on these, the Romani population of the most disadvantaged micro-regions is often disadvantaged in access to developmental resources. In addition, tender funds are not focused on equal opportunities but rather on infrastructural development.

According to the Védegylet, the cause of indirect environmental injustices is that the poorer municipalities are less able to restructure their resources due to lacking resources for providing the necessary self-financing part of the tender. That is the reason why, the poorer municipalities are not able to create the conditions that would allow their residents to benefit from the potential subsidies. It is also often the case that some Roma-populated settlements are not among the applicants because the municipalities lack the necessary information for applying for a tender. There is often no computer in the municipality, which is obviously one of the most basic tools for a tender. As Védegylet continues, the lack of information can also be a significant factor in

[73] Hajdu, G. et al., Környezeti igazságosság Magyarországon ['Environmental injustice in Hungary'] op. cit. p. 10.
[74] There is a tendency that Roma are competing with other disadvantaged groups for the same funds.

the case of environmental burdens. According to their experience, residents do not know what impact on their energy usage a badly insulated window has or the relation between having diarrhoea and the quality of drinking water. In addition, Roma community often lack the knowledge on their fundamental rights, for instance, that they have the right to waste disposal and the opportunity to be represented at meetings of the municipal council.[75]

Ultimately, Védegylet adds that State redistribution itself also creates inequalities. The energy price support system by aiding the gas and district heaters in 2008 was a good example. These forms of support were often unavailable for people living in extreme poverty while subsidies for purchasing wood that affect disadvantaged people were much lower or totally absent (as was considered avoidable by environmental policies) The most disadvantaged people, therefore, received very little of the heating subsidies.[76]

Comparison with Filčák and Steger's research with a focus on Slovakia, the research of Védegylet shows one main difference. Whereas, Filčák and Steger frame the situation of Roma as an environmental injustice, therefore identifying an ethnic related issue, Védegylet was not inclined to determine environmental injustice as an ethnic origin driven problem. This decision may have various reasons: first, Védegylet claims that the settlement data is not adequate to identify the inequalities between Roma and non-Roma residents within a city. Thus, Védegylet reiterates the classification accepted by the Hungarian policy-makers for marginalized people living in poverty without any reference to their ethnic origin. Therefore, their pilot project aspires to offer a solution which encompasses identifying the problem of power relations but does not challenge the approach of the local decision-makers ignorance. Secondly as a more compelling reason, Védegylet includes in the scope of the research a pilot project related to the right to water violation in the South Great Plain region of Hungary regardless of ethnic origin

[75] Hajdu, G. et al., Környezeti igazságosság Magyarországon ['Environmental injustice in Hungary'], op. cit. p. 11.
[76] Hajdu, G. et al., Környezeti igazságosság Magyarországon ['Environmental injustice in Hungary'], op. cit. p. 12.

of the people. While it is true that without adequate data being available, it can be easily argued that statements concerning ethnic origin driven environmental injustice can be unjustified in the Hungarian context, I consider it problematic to devote three pilot projects without pointing out the historic causes of the living conditions of Roma and referring to the State or municipality obligations in the sort of enlistment of the environmental justice problems. Rather, addressing the analysis to the unequal power relations between Roma and non-Roma stresses the need for change in the policy making mechanisms. To conclude, Védegylet has a pivotal role in the proliferation of the claim of environmental injustice in Hungary; nonetheless, I argue that higher emphasis needs to be placed on the responsibility of the stakeholders' decisions or lack of decisions regarding the existence of environmental injustices and there is a strong need to go beyond the realm of poverty argument.

b) Conceptualization of Environmental Injustice without Romani People

Whereas, I found it problematic not to address historical discrimination as a driving force for environmental injustice, the study of Védegylet corresponds with the conclusion of the European Commission's Directorate-General of Employment, Social Affairs and Equal Opportunities commissioned study.[77] This trend suggests that both in Hungary and the European Union, environmental injustice will be conceptualized, if at all, primarily as a lower income and only additionally as an ethnic origin related issue, especially if there are no available data or litigation which shreds light on the problem.

A human right claim for the healthy environment which argues for providing better environment for marginalized communities of the European Union may be subjected to criticism from

[77] Pye, S., et. al., "Addressing the social dimensions of environmental policy — a study on the linkages between environmental and social sustainability in Europe", EC, (2008), Available at: http://ec.europa.eu/social/BlobServlet?docId=1672&langId=en, Retrieved: 11/20/2017

unexpected places. Some authors distinguish "green" and "brown" urban development agenda or environmentalism,[78] according to which the former focuses on future generations and sustainability, the latter on environmental health impacts and claiming better access for natural resources, unlike the former which promotes more sustainable and inherently less natural resources. The differentiation is blatantly problematic for racializing and generalising the characteristics and claims of the movements, indeed, McGranahan, and Satterthwaite address their article to this stereotype and how the two agendas can be reconciled. The differentiation, however, adequately illustrates how environmental policy making overlooks some of the considerations of traditional environmental injustice in the European space and creates a new and broader concept of environmental justice in which the traditional environmental injustice claims is highly probable to be immersed.

The European Union narrative in terms of environmental protection developed some sort of myths of exceptionalism. Indeed, the essence of environmental law, the precautionary principle[79] originates from Germany before it was recognised all over the world through the 1992 United Nations Conference on Environment and Development which gave the principle a broad international recognition.[80] Besides environmental policy making highly contributed to developing a cleaner and healthier environment in Europe, especially in comparison to other continents, it also hampered the transatlantic transition of environmental justice movement to Western Europe. Presumably, environmental law not only mitigated the emmissioned environmental harms, but it is more likely made the pollutants hidden and the complexity of

[78] McGranahan, G. and Satterthwaite, D., "Environmental Health or Ecological Sustainability: Reconciling the brown and green agendas in urban development." in: Pugh, C. (ed.), *Sustainable Cities in Developing Countries*, Earthscan, London. (2000) or Anguelovski, I., New Directions in Urban Environmental Justice, *Journal of Planning Education and Research*, Vol.33, (2013) pp. 160-175.

[79] *"Precautionary principle to risk management states that if an action or policy has a suspected risk of causing harm to the public, or to the environment, in the absence of scientific consensus (that the action or policy is not harmful), the burden of proof that it is not harmful falls on those taking that action."* Read, R. and O'Riordan, T.,"The Precautionary Principle Under Fire", Available at: EnvironmentMagazine.org, Retrieved: 09/25/2017.

[80] Christiansen, S. B., "The Precautionary Principle in Germany: Enabling Government" in O'Riordan, T. and Cameron, J. (eds), *Interpreting the Precautionary Principle*, Earthscan Publications Ltd, (1994)

environmental regulation hinders the participation on the grassroot level. As Köckler et al. describe, the environmental justice claims are more likely slotted into other disciplines in Western Europe in the form of explanation of health inequalities, consideration of urban planning in Germany, examined in political science perspective in France and sociological perspective in Switzerland. Besides, also gain political recognition in the United Kingdom, Germany, France and Sweden and the civil sector and grassroot organisations also engaged with environmental injustice. However, in Western Europe there has never been a strong citizen based movement,[81] the degree of academic and political transition is considerably higher than that of in Eastern Europe. Hence, fighting for substantive equality in environmental terms is particularly complicated in Hungary where environmental injustice movement, apart from few isolated academic articles, is almost unknown.[82]

In fact, the DG for Employment, Social Affairs and Equal Opportunities commissioned report concludes: *"The evidence base provides a clear indication that this is an issue of concern, although in many countries the evidence is limited"*[83] regarding the proximity to good quality environment of people. The conclusion of the report, despite it both cites Filčák dissertation and the 2005 study of the Medical Journal of Hungary,[84] which focus group were Roma, regards only lower income people or deprived communities. In the lack of comprehensive data, some may argue that environmental protection is significantly better in Hungary as a Member State of the European Union than in other countries and therefore it is unnecessary to develop a claim for non-discrimination in terms of environmental health or any socio-economic rights in general. Since the policy documents of the European Union have an impact of the policy making

[81] Köckler, H. et. al., "Environmental Justice in Western Europe", in Holified, R. et al. (eds.), *Handbook of Environmental Justice*, Routledge, London and New York, (2017), p. 628-633.
[82] Filčák, R., Environmental justice in the Slovak Republic: the case of Roma ethnic minority, op.cit., p. 20.
[83] Pye, S., et. al., "Addressing the social dimensions of environmental policy — a study on the linkages between environmental and social sustainability in Europe", op. cit. p. 18.
[84] Ungváry, Gy. et al., Roma Colonies in Hungary – Medical Care of Children and Hygienic Conditions, op. cit. (1)

of Hungary, I find it essential to use all available tools to raise awareness of the misconceptualisation, in particular with the human rights tools available.

c) Lacuna of Environmental Legislation

Meanwhile, policy-makers are aware of their oblivion of lower environmental conditions and the lack of proper response on the European Union level. The European Environmental Agency (EEA), the agency of the European Union commissioned a report in 2010. In the analysis about the level of environmental protection and the condition of environmental health, the EEA claims that despite significant improvements in condition of environmental health in the last 50 years in Europe, there are still major differences in environmental quality and human health within European countries.[85] As the document recognises while there were several harmonised and coordinated EU policies targeted the improvement of health of the overall population, there are several shortages of the policies which may affect the low-income or vulnerable communities. As an example, most health-related pollution policies are targeted to the outdoor environment and indoor environment remains a neglected area to some extent, thus no policies exist. As the document recognised the issue why is it problematic having no data on indoor environment: *"exposure to particulate matter and chemicals, combustion products, and to dampness, moulds and other biological agents has been linked to asthma and allergic symptoms, lung cancer, and other respiratory and cardiovascular diseases"*. The assertion corresponds to the case study of Védegylet.[86] Another illustration to the shortage is the Urban Wastewater Treatment Directive only *"addresses agglomerations with a population of 2000 or more; thus potential public health*

[85] European Environmental Agency, "The European environment – state and outlook 2010: Synthesis", (2010), p.95., Available at: https://www.eea.europa.eu/soer/synthesis/synthesis/chapter5.xhtml, Retrieved: 11/10/2017
[86] See above II.1.a. point

risks linked to sanitation exist in some rural areas of Europe."[87] The findings, partially, are repeated in the 2015 report on the matter.

As to the nature of environmental justice and the surrounding environmental legislation and policy-making, there are significant differences to the United States. In Hungary, the environmental standards are higher both on the procedural level and the imposed thresholds[88] hence more embracing the idea of environmental protection in the balancing exercise of development and environment protection. However, the legislation regards the environmental impact assessment reports[89] are lacking the impact on human element as a factor to be considered before decision-making.

As an example, under the Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment with EEA relevance, wide range of infrastructure management developments are subjected to the obligation to prepare an environmental impact assessment (EIA) in the planning phase. However, Hungary has failed to apply this requirement until 2015 in public procurement projects because implementation took place only in environmental legislation but legislation concerning public procurements.[90]

In addition, EU legislation only requires the significant adverse impact on the environmental elements to mention. While 2011/92/EU Directive provides: *"description (1) of the likely significant effects of the proposed project on the environment resulting from:(a) the existence of the project;(b) the use of natural resources;(c) the emission of pollutants, the creation of nuisances and the elimination of waste. (1) This description should cover the direct effects and*

[87] European Environmental Agency, 'The European environment – state and outlook 2010: Synthesis' op. cit. p.95.
[88] Federal Environment Agency of Germany, "Environmental protection under TTIP" op. cit. and roject of DG Environment, Milieu Ltd., Danish Environmental Research Institute and Center for Clean Air Policy, "Comparison of the EU and US Air Quality Standards and Planning Requirements", op. cit. p.11. and p.17.
[89] Documentation necessary before most of the developments in the European Union
[90] Government Decree No. 306/2011. (XII. 23.) on detailed rules of public procurement, unlike its successor, the Government Decree No. 322/2015. (X. 30.), did not list expressly the environmental documentation as a requirement which itself might be a violation of the 2011/92/EU Directive

any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project." However, Article 5 (1) of the EU Directive only refers to the *"environmental features likely to be affected"*, not social or other human impacts.

It shall be added that wide range of financial sources of the EU are subjected to the procedure under the EU Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty which prescribes the preparation of the 'feasibility study' means the *"evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats (SWOT), as well as identifying the resources required to carry it through and ultimately its prospects for success*." (Article 2 (87)) As an example, the Hungarian KEOP projects require the preparation of a study by the applicant which consists an element requires the description the social impact of the project. The feasibility studies however, do not apply to every project and it is limited only to EU funds. In addition, I assure that, for the reason environmental injustice is unknown in Central and Eastern Europe, the description of social impacts of a project is limited to whether a new facility provide employment opportunities.

As a further example, every settlement in Hungary shall adopt municipal bylaws or pass resolutions to attain objectives related to environmental protection based on Article 46 of the Act LIII of 1995 on the general rules of environmental protection. Therefore, Ózd, the city which first disconnected the Roma households in Hungary, has its own municipal bylaws,[91] which states that *"Drinking water supply is not a factor to be examined in environmental sense."* which statement corresponds to the general aims of the Act LIII of 1995, but as the

[91] Ózd Város Környezetvédelmi Programja [Environmental Plan of City of Ózd, Translated by the author from Hungarian] (2013), Available at: http://www.ozd.hu/content/cont_579b0797c0cb30.66882929/Ozd_varos_kornyezetvedelmi_programja_veglegesitett.pdf, Retrieved: 10/23/2017

Article 48/A (1) and (3) provides: *"Having regard to the protection of human health, and to the safeguarding and sustainable use of natural resources, in accordance with the provisions of this Act or specific other legislation, an environmental plan shall be prepared relating to the environment and the protection of the environment, and to the effects which may be harmful to the environment (...)"* and *"The author of the environmental plan shall submit the plan to public debate before it is completed."* The environmental plan discusses the data on accessibility of water supply (88,6 % of the households in 2010) and sewerage (62,6 of the households in 2010). The notice and comment procedure was conducted by means of interviews, however, it is probable that Romani people were not considered as participants in the procedure since the evaluation of the responds consists a statement that the respondents have answered that the second biggest problem in the settlement is the *"coexistence with the Roma minority"* and the environmental plan does not mention the problems specifically suffered by Romani people. As the example shows, while there are European Union instruments which aimed to shed light on social impacts of a development and in addition, there are procedural requirements to Roma people be involved in environmental decision-making, in reality, either by insufficient implementation or by inadequate application of the European Union legislation on national level, it is unable to protect the environmental human right of Romani people.

d) Findings in comparison to the United States

As presented above, despite there are studies which regards the lower environmental conditions of Romani people, the conceptualisation of the environmental injustice in the European Union has started, but only with a focus on lower income people. At the same time, the European Union already has recognised the lacuna in environmental policy making in 2010 but environmental injustice remained without policy responses both on EU and national level. Therefore, raising awareness to the fact how environmental injustice and ethnic origin is

interrelated is inevitable both to halt the erroneous conceptualisation of the environmental injustice in the European Union and provide solution for the existence of environmental legislation which inherently contribute to the formation of greater inequalities. Furthermore, the conceptualization can have beneficial effect on the Romani people in Hungary.

Similarly to the United States, segregation of Roma was formed by former governmental policies. Having said that racial disparities in terms of housing, employment and other material goods is primarily a result in part of historic zoning practices in the early XXth century in the United States, likewise, Roma living in segregated areas of Hungary with lack of access to basic necessities and lower environmental conditions than the majority due to the consequences of historic discrimination is a result of a housing development plan was fostered shortly followed by the 1961 resolution of the MSZMP on the abolishment of settlements.[92] As Forray and Beck point out one element of the policy which I consider to be the main factor of the recent lower environmental situation of Roma: *"Even though the resolution of 1964 required former camp residents to be settled dispersed among the population, this was largely ignored in practice. The 'CS' (referring to „csökkentett színvonalú", meaning „of inferior quality") constructions were completed on the edges of the settlements, officially justified by saving in some ancillary costs."* The 'CS' constructions created spatially separated area for Roma with often not meeting basic needs and set up on wetlands[93] with exposed to regular flooding of water. Forray and Beck highlight the consequences of the settlement abolishment policy of the Communist Party of Hungary *"the moving of Gypsies from their camps into abandoned rural dwellings had fatal consequences for the everyday life and the local society of affected settlements, as it did not only increase the tension between the two ethnic groups but it also set into motion an erosion*

[92] Kállai, E., A cigányság története 1945-től napjainkig ["The history of the Roma from 1945 until recent days", Translated by the author from Hungarian] in Kemény, I. (ed.), A magyarországi romák ["The Hungarian Roma", Translated by the author from Hungarian] Budapest, Útmutató Kiadó, (2000), pp. 16–24.
[93] Interview with my father, Árpád Kovács who took part in zoning of new settlements during his mandatory military service in the late '70s

of the housing markets of villages large enough in extent to turn the pre-existing selective migration trends of disadvantaged settlements into a wave of people running away from these villages. To make things worse, these measures even failed in abolishing the phenomenon of Gypsy camps and in prohibiting their reproduction." [94] This shows how the policy not only failed to create integrated settlements for their idea of unified socialist worker, but reproduced and conserved the problems for long before the extreme liberal political and economic system, which inherently favours the economically powerful groups, was set up in Hungary.

Having said that, Roma are historically living in segregated areas and the role of EU funds is essential in the development of the rural areas of Hungary. Today one could argue that Roma are in a similar situation as racial minorities in the United States of the 70's, namely that the marginalized Roma groups lack advocacy skills with regard to pollution and the consequences that developmental projects have on their living environment. These dynamics present in the segregated neighbourhoods together with racial discrimination in education and employment continues constrains the mobility of segregated people leaving them trapped in the neighbourhoods lacking basic necessities in both country. However, in terms of human rights litigation, the two legal-geographic realities present essential differences. While in the first case, the Afro-American and Latino community may challenge the placing decision of the polluting facility, an interference with human right by the state, which constitute a negative obligation of the state not to interfere with rights of the individuals. As opposed to the negative obligation, the case of Roma entails a different approach. Not only challenging the interference by state officials, but the lack of positive steps from the state in a case of a vulnerable community. The latter essentially need a different approach and litigation strategy in the human rights context.

For this reason, the thesis has limitations, it cannot compare the litigation strategies and the cases of the United States and the European cases, but the United States cases may serve as an

[94] Forray, K. and Beck, Z., Society and Lifestyles – Hungarian Roma and Gypsy Communities, op. cit. 119.

inspiration how the claim can formulated within a different human rights system where positive steps can be demanded from the states if certain condition are met.

2) UN Soft Law concerning Environmental Justice

a) Environmental Health Rights

A substantive right to the right to a healthy environment is not guaranteed under the United Nations soft law mechanisms. However, there are other rights guaranteed by the human rights instruments of the United Nations which can be used for environmental justice claims. Considering the economic and social rights of Romani people, the Hungarian legislation is in violation in several points of the international human rights elaborated within the United Nations. However, the soft law mechanisms of the United Nations do not ensure to challenge in an enforceable manner for individuals the existing legislation of Hungary. Nevertheless, international standards of human rights intertwined with regional human right systems and the impact can be shown between them.[95] This fact has a great significance in the case of the jurisdiction under the European Convention on Human Rights. Indeed, if a State is both a member of the United Nation and the Council of Europe and signed the below explored documents, it is more likely to be held responsible under the European Convention on Human Rights individual human rights enforcement mechanisms if the applicants can invoke the documents of the United Nations and the right which is not guaranteed fully by the Member State.

[95] Higgins, R., The Relationship Between International and Regional Human Rights Norms and Domestic Law, in Themes and Theories. Oxford University Press. (2009) Available at: http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198262350.001.0001/acprof-9780198262350-chapter-35, Retrieved 11/10/2017

The right to adequate housing which is derived from the right to an adequate standard of living is protected both under the Article 25 of the Universal Declaration of Human Rights[96] and the Article 11 of the International Covenant on Civil and Political Rights.[97] According to the authoritative but not legally binding interpretation of the General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights,[98] the right to adequate housing is a right can be claimed by individuals. The right to adequate housing does not only embrace the recognition of secure tenure, avoiding forced evictions but Member States shall take all necessary legislative, administrative and other measures to ensure access to affordable, habitable, accessible and safe housing without discrimination with adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities. Habitability includes *"protecting individuals from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors - all at a reasonable costs."*[99] The right to housing needs to be read as includes the availability of basic infrastructure, such as *"sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services"*[100] and *"housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities"*[101] Moreover, *"housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants."*[102] As to the numbers according to a 2011 survey by the United Nations Development Programme*, "35*

[96] Universal Declaration of Human Rights, Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (Resolution 217 A)
[97] International Covenant on Civil and Political Rights, Adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, Hungary ratified on 17 January 1974
[98] General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23)
[99] General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, Section 8 (d)
[100] General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, Section 8 (b)
[101] General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, Section 8 (f)
[102] Ibid.

percent [of the Roma households living in predominantly Roma settlements in Hungary] *live in ruined houses or slums, and five per cent do not have access to electricity."*[103] Hungary's violation not only lies in the fact that it does not ensure adequate housing for great number of Romani people, but since the political transition, the pattern of forced eviction practices of the municipalities are ignored by the state legislation and judiciary to identify as a discriminatory.

Furthermore, there is a strong interplay between right to water and right to adequate standard of living. The right to water and sanitation included in right to adequate standard of living according to the General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights. Based on the General Comment: *"The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. According to the World Health Organization (WHO), between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise."*[104]

As Langford has written about the right to water of Roma there is one common point shared by Roma living in Europe slum areas and people living in South Africa, Palestine, Argentina and Brazil: their right to water is often denied by the authorities.[105] Roma as their counterparts in other continents subjected to disconnections from water supply either directly by restriction of public wells, the sole source of water at Ózd in Hungary[106] and in Torino, Italy[107] or more often

[103] Report on the ODIHR Field Assessment Visit to Hungary, 29 June – 1 July 2015
[104] United Nations, The human right to water and sanitation, Available at: http://www.un.org/waterforlifedecade/human_right_to_water.shtml , Retrieved: 11/10/2017
[105] Langford, M., "The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?", *International Journal of Water Resources Development*, Vol.21 (2), (2005), pp. 275-278.
[106] Gökçen, S., "Hungary: Local Authority Disconnects Public Water Supplies in High Temperatures, Blames Roma for 'Misuse'", (2013) Available at: http://www.errc.org/article/hungary-local-authority-disconnects-public-water-supplies-in-high-temperatures-blames-roma-for-misuse/4178, Retrieved: 11/10/2017
[107] Gökçen, S., "Italy: Torino Municipality Shuts off Water Supply near Roma Camp", (2013), Available at: http://www.errc.org/article/italy-torino-municipality-shuts-off-water-supply-near-roma-camp/4183, Retrieved: 11/10/2017

by evictions without further replacement by which Roma are forced to move to shantytowns without fresh water supply.

As to the numbers according to a 2011 survey by the United Nations Development Programme, *"thirty per cent of Roma households living in predominantly Roma settlements in Hungary do not have access to an improved water source or sanitation."*[108] In fact, Hungary ensures 20 litre per day only to limited groups of people. Pursuant to Article 58 of the Act CCIX of 2011 on Public Water Utilities (Public Water Utilities Act) the service provider shall limit or cut off the users insofar as the supply of drinking water meets the needs of subsistence and public health. The public health requirements of drinking water supply are ensured if the drinking water supply is at least reach the amount of 20 litre/person/day and the utility is within a distance of 150 meters or less from the place of residence. In order to supply drinking water that meets the needs of subsistence and public health, the water utilities provider shall establish a public water tap at the expense of the local government. The costs of operating the public water tap are paid by the local government to the water utility service provider. The Public Water Utilities Act however only provides to those the amount of 20 litre/person/day who are cut by the service. For those who have never been part of the service area - as is the case with Roma segregated neighbourhoods - this provision does not apply. The question arises whether this legislation *per se* causes disparate impact.

As Langford argues *"water must be available in sufficient quantity for personal and domestic needs, (...) in close proximity of people's' homes" and "people has to have equal access to water."*[109] This provision recognises the importance of non-discrimination, but does not provide further reference on the proper implementation of the right to equal access to water, such as who are the comparators or whether it can be perceived an individual or a collective right. I

[108] Report on the ODIHR Field Assessment Visit to Hungary, 29 June – 1 July 2015
[109] Langford, M., "The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?" op. cit. p. 276.

argue that these provisions apply to vulnerable groups and those states which fails to consider that vulnerable groups have in their policy making, violates the right to water under the United Nations mechanisms.

b) Discrimination and Vulnerability under the UN Instruments

Likewise the environmental rights, the soft law mechanisms of the United Nations does not prohibit discrimination in general, however there are provisions related to the environmental rights discussed above which guarantees that human rights under the United Nations documents shall be provided without discrimination which can be used for environmental justice claims. John Knox, the Special Rapporteur of United Nations on the issue of Human Rights and the Environment, states that the United Nations Conference on Sustainable Development in 2012 correctly emphasized the concerns of equality and non-discrimination in the framework of conceptualisation of environmental rights. Knox draws attention to the fact that it would be useful to directly refer to the groups that are most vulnerable to such discrimination to promote non-discriminatory laws.[110] Most of the documents mention in general that segments of population are more vulnerable owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability, but do not name the target communities. Were the discussions leading to the preparation of a list of affected minorities, Romas shall considered to be included as they disproportionally suffer from environmental injustice based on the examples above.

In my view, to ensure environmental rights to vulnerable communities can make a difference to the prevailing human rights *status quo*. Today, most petitions which are brought to international courts are based on the right to life claim. This enforcement mechanisms is not

[110] Knox, J. H., Human Rights, Environmental Protection, and the Sustainable Development Goals, *Washington International Law Journal,* Vol.24 (3), (2015) p. 521.

capable of preventing those deaths of Roma children, simply because the preventive stage is missing. In addition, cause and effect relationship imposes a heavy burden on representatives of Romas to prove the linkage of hazardous waste effects and rate of respiratory diseases, cancer, asthma, birth defects, etc.. Only the international recognition of the right to a secure, healthy and ecologically sound environment is able to be effectively enforce the claims of Romani people.

The trajectory to shift from discrimination claims to vulnerability I identified in the case of United States[111] corresponds to the international trajectory how vulnerability analysis became part of the environmental protection framework. As an example, Kälin identifies a normative gap for the situation of environmental disaster and climate change induced migration and the unwillingness of the international human rights institutions to recognise them as refugees, which essentially would be able to entail a human rights protection.[112] As opposed to the human rights framework, the framework addressing climate change problems, in fact an environmental protection framework is more willing to address human health and human life protection, to date, in a non-enforceable manner. Whereas the two frameworks do not exclude each other, in fact should co-exist to treat both the causes and the consequences of environmental injustice existing on international level, it is apparent that the Nairobi work programme[113] and the Paris Agreement has a vulnerability element. This proves that international environmental regulation is becoming more open to deal with the human element.[114] As Foster analyses, scholars recognise the difference between vulnerability and the traditional environmental risk assessment since the former focuses more on the *"interaction of physical risks with social and economic systems."*[115] I argue that this change in the approach of the international

[111] See above Chapter I, Section 3.
[112] Kälin, W., "Conceptualising Climate-Induced Displacement", in McAdam, J., *Climate Change and Displacement: Multidisciplinary Perspectives*, (2010) p. 89.
[113] United Nations, FCCC, "Assessing climate change impacts and vulnerability, Making informed adaptation decisions" (2011)
[114] Scott, D. N. and Smith, A.A., The abstract subject of the climate migrant: displaced by the rising tides of the green energy economy, *Journal of Human Rights and the Environment*,Vol.30 (8), (2017), p. 37.
[115] Foster, S., Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law, op. cit., p. 121.

environmental law should be reflected in domestic environmental regulations for the benefit of the communities which are considered vulnerable either from climate change or other impacts on the environment regulated by environmental law or other interconnected legislation, the urban development or procurement law.

3) The approach of the Council of Europe

Expanding the scope of recent protection of human rights by the Council of Europe instruments to provide environmental justice necessarily opens up two battlefields in the recent enforcement of human right protection. The first concerns the expansion of the substantive right to provide protection to the right to a healthy environment. The second deals with the human right to a healthy environment without differential treatment or impact on certain groups.

Therefore, first under the aegis of the Council of Europe Parliamentary Assembly I will examine the attempts to recognise of the right to a healthy environment in the Recommendations of the Parliamentary Assembly.[116] Furthermore, in terms of case law how the more severe environmental human rights violations were examined under the rights to life or private life before the European Court of Human Rights (ECtHR) with a higher emphasis on the right to a healthy environment and its evolution but also how the protection of vulnerable communities were embraced by the ECtHR.

Most scholars date the recognition of the right to a healthy environment worldwide to the adoption of the Stockholm Declaration in 1972 under the aegis of the UN Conference on the Human Environment. As the European Convention on Fundamental Rights and Human Right (Convention) was adopted prior to the Stockholm Declaration it does not contain any provision on the right to a healthy environment, still by the dynamic interpretation of the Convention, the

[116] No. 1434 (1999), No.1614 (2003), and No. 1885 (2009)

ECtHR created a potential for the adjudication for a healthy environment under Article 8, the right to a private life.

As opposed to the right to healthy environment, the guarantee for the enjoyment of the Conventional rights without discrimination incorporated in Article 14 of the Convention seems to redress human rights violation in a more straightforward way, only recent developments further even greater substantive equality comparing to the originally enacted language of the Convention.

As discussed below, there are several uncertainties regarding the application of the two rights, hence even more in the crossroads of the two provisions. In the jurisdiction of the ECtHR, there are no precedents until today when the two provisions were applied and interpreted in conjunction; nonetheless, the aim of my inquiry is to discover how the crossroads of the two provisions can further the protection of social rights of the Roma community. Based on the findings of the U.S. environmental justice scholars, I argue that the ECtHR also offers a pathway to litigate for environmental justice and alleviate poverty of the Roma as a result of environmental justice. Nevertheless, social rights protection as not the primary focus of the Convention, the ECtHR may be reluctant to rule in a more progressive manner not to breaking apart the achievements of the existing human rights protection.

a) The Stance of the Committee of Ministers on the right to a Healthy Environment

The European Convention on Human Rights, unlike other regional human rights instruments (regional African Charter[117] and the San Salvador Protocol to the American Convention[118]), does not enshrine *expessis verbis* the right to a healthy and sound environment. Under the aegis

[117] African Charter on Human Rights and Peoples' Rights, Article 24: *„All people shall have a right to a general satisfactory environment favourable to their development."*
[118] 'San Salvador' Additional Protocol to the American Convention on Human Rights, Article 11: *"Everyone shall have the right to live in a healthy environment and to have access to basic public services."*

of the Council of Europe Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe made several attempts[119] to give recognition to the right to a healthy environment in the Convention system to reflect to the tendency that environmental degradation become a matter of growing public concern. However, the Committee of Ministers dismissed all the attempts. As the '03 Recommendation reasoned, the Council of Europe *"should play a pioneering role in the development of right to a healthy environment"*[120] by finding the legal ways in which the Council can contribute to the protection of the environment. The following '09 Recommendation did not propose such ambitious target, but reiterated its commitment to the healthy environment and repeated its proposal to adopt an additional protocol about the right to a healthy environment. To the contrary of the stance of the Parliamentary Assembly, the Committee of Ministers has refused the recommendation and referred to the fact that the Convention system already protects indirectly right to a healthy environment.[121]

Beside the fact that this thesis primarily aims to understand how the existing case law furthers protection of the right to a healthy environment, yet it is noteworthy to examine how the recommendations of Parliamentary Assembly created themselves a hindrance to emerge Boyle's anthropocentric approach[122] regarding environmental human rights, namely limiting the protection to the avoidance of adverse human impacts, such as violation of human health or physical integrity. The anthropocentric approach does not protect environment for its inherent value, but for the reason that it has a role in the essential realisation of other human rights. As opposed to the anthropocentric approach, the '03 recommendations proposed an additional

[119] Council of Europe, Parliamentary Assembly, Recommendations No. 1431 (1999), No.1614 (2003), and No. 1885 (2009) and indirectly the Recommendation No. 1863 related to environmental health hazards (2009) and the Recommendations 1883 (2009) related to climate change

[120] Sec. 4. of the Recommendations No. 1885 (2009)

[121] "*The Convention system **already indirectly** contributes to the protection of the environment through existing convention rights and their interpretation in the evolving case law of the European Court of Human Rights."* Section 9 of the Reply to Recommendation No. 12298, Council of Europe, Committee of Ministers,

[122] Boyle, A., "Human Rights or Environmental Rights? A Reassessment", *Fordham Environmental Law Review*, Vol.XVIII (3), (2007), p. 471-511.

protocol which provides individual protection against environmental degradation without embracing the limitation thereof having an adverse human impact.[123] Only the '09 Recommendation embraced the anthropocentric understanding of protection of environmental human rights, but given the new challenge of climate change, the Parliamentary Assembly invited the Committee of Minister not just adopting an additional protocol on right to a healthy environment, but addressing the challenges of climate change.[124] I argue that furthering not just the narrow and traditional human rights approach, namely require a palpable injury of an individual but embracing the rights of future generations and collective rights whereas morally justifiable, created a caveat for the Committee of Minister that the insertion of a protocol into traditional environmental human rights would overload the Convention system.[125]

The Committee of Ministers[126] and scholars[127] consider the very difference between recognition of the right and non-recognition (which implies a certain reliance solely on the judicial activism of the ECtHR in formulation of the right) that the former opens the door for individual right to healthy environment irrespective to the fact that environmental degradation has a human impact or not. Nevertheless, it can be argued that besides duly expedient drafting of the provision this is an overstatement from the Committee of Ministers. The main reason is more likely the threat of *"substantial increase of caseload"*[128] of the ECtHR imposed by a potential recognition which might raise awareness about the protection. Therefore, it can be claimed that a provision can be in compliance with the human rights tailored and individualistic approach of the Convention system.

[123] Council of Europe, Parliamentary Assembly, Recommendation No.1614 (2003) Point 10.2.
[124] Council of Europe, Committee of Ministers, The Reply to Recommendation in Doc. 12298 both dealt with the Recommendation 1883 (2009) and Recommendation 1885 (2009)
[125] Council of Europe, Parliamentary Assembly, Recommendation No. 1883 (2009) Point 9.
[126] See the accepted opinion of the Council of Europe, Steering Committee for Human Rights saying that it is not be advisable to draft an additional protocol, Committee Opinion, Doc. 12043
[127] Boyle, A.: "Human Rights or Environmental Rights? A Reassessment", op.cit. p. 501., and p. 482
[128] Council of Europe, Committee of Ministers, Doc. 12043, Sec. 15.

However, besides reiterating the necessity of the recognition the right to a healthy environment by the Member States, it shall be also noted that there is no similar trend in the realm of social and economic human rights that the dynamic interpretation of the ECtHR - without an expressly stated right – is incorporated into a human rights protection corpus of the Conventional system without any expressed critique and hence by the indirect endorsement of the Committee of Ministers.

As a conclusion, when the ECtHR interprets the Conventional provision, the judge may bear in mind that the Committee of Ministers firmly expressed their opinion about the furtherance of the right to a healthy environment which may amplify the reluctance to follow dynamic approach when political environment is unfavourable for holding a violation, in particular against powerful Member States.

b) ECtHR Standards, Scope, Limits

While today the existence of the dynamic approach towards the right to a healthy environment by the ECtHR is clear-cut, the opinion varies about the question whether the indirect contribution to the protection of the right to a healthy environment provides the necessary protection against human right violations.

(i) Environmental Health Case Law under Article 8 of the Convention

Some scholars, such as DeMerieux argue that it is unnecessary to formulate an additional protocol to the Convention system since the case law already firmly established its protection.[129]

[129] DeMerieux, M., "Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms" *Oxford Journal of Legal Studies* Vol.21 (3), (2001), p..521.

Other scholars however, such as Bratspies[130] or Sulyok[131] devote their paper to the question whether the jurisdiction regarding the application of the right to a healthy environment is clear which suggest that there are serious concerns which cases amounts to be violation under the Convention and how can the scope of the protection circumscribed without expressed provisions on the matter.

According to the Council of Europe's Manual the key concept to be invoked in order to prove that there is a violation of the right to a healthy environment is whether severe environmental pollution or adverse effect on the applicants' well-being has occurred. Hence, a right to a healthy environment case to be considered a violation under Article 8 of the Convention[132], the pollution has to exceed a minimum level of severity which is either caused by the state directly or indirectly by the failure to adequately control, manage or regulate a third party. In addition, the pollution has to have a direct adverse effect on the individuals' well-being or health.[133] Therefore, Member States can be held accountable for both negative intrusion into the applicants' right to a healthy environment by direct involvement, failure to adequately control or manage an entity which is controlled by the state or local municipality[134]or for the failure to fulfil its positive obligation to adopt measures in relation to third parties causing environmental harm or well-being of the applicants.[135]

Since the formulation of the above cases and the Council of Europe's Manual, however, I argue that the ECtHR seems to be more principled to broadening the meaning of severe environmental protection. While the gradual expansion of the protection is a welcomed trajectory from

[130] Bratspies, R., "Do We Need A Human Right to a Healthy Environment?", *Santa Clara Journal of International Law*, Vol.31 (13), (2015)
[131] Sulyok, K., "Managing Uncertain Causation in Toxic Exposure Cases: Lessons for the European Court of Human Rights from U.S. Toxic Tort Litigation" (2017). Available at: https://ssrn.com/abstract=2989876, Retrieved: 11/10/2017
[132] I will confine myself to the Article 8 and not the protection of healthy environment under the Article 2 of the Convention, because the analysis is devoted to the question what circumstances needed to be proved in order to step the minimum level of severity. Article 2 is designed to even more severe cases when the pollution caused death, not only when applicants endure pollution.
[133] Council of Europe, Manual on Human rights and the Environment (2d ed. 2012) p. 18.
[134] Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005, § 282
[135] Ibid.

litigation point of view, the not well developed case law does not give further guidelines when the right can be invoked successfully. As the following examples show, there are several concerns regarding what pleadings can be successful before the ECtHR. The first question whether positive or negative obligation of the state applies in horizontal relationships of the applicants and a polluter. In other words, whether applicants shall argue that there is an omission on part of the state because not regulating adequately the polluters or not enforcing the existing legislation. Hence, the interference to the right of the applicants constitutes a violation of the negative obligation of the states. Alternatively, applicants can rely on the concept of positive obligation of the states and bearing the consequences of a deferential judgement which applies the concept of wide margin of application of the states in policy decision regardless of the outcome of the policy decision on the rights of the applicants. Secondly, based on the case law it is not predictable how the ECtHR assesses the minimum level of severity. Ultimately, the question arises what constitutes a sufficient evidence to present a prima facie case to shift the burden of proof to the states.

The milestone decision which serves as a solid foundation to the protection of the right to a healthy environment was the *López Ostra v. Spain* case in which the ECtHR held that Article 8 of the Convention includes a right to protection from severe environmental pollution and a corresponding obligation of the State because environmental pollution "*might affect individuals' (...) private and family life adversely."* [136] The Court reaffirmed this approach in *Guerra and Others v. Italy*[137] case, the second case in which the Article 8 has been successfully invoked.[138] Both cases concerned emissions from plants: a wastewater treatment and a chemical producer respectively, which presented serious risks to the applicants who lived in the proximity of the plants. Although in the *López* case the health of the applicant's daughter was affected,

[136] López Ostra v. Spain, ECtHR, App. No. 16798/90, 12/09/1994, § 51
[137] Guerra and Others v. Italy, ECtHR, App. No. 14967/89, 02/19/1998, § 57
[138] DeMerieux, M., "Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms" op. cit, p.538.

the ECtHR did not limit the judgement to her health deterioration, but all the applicants' well-being were taken into account in the decision. Hence, the ECtHR does not require providing evidence by the applicants to show the deterioration on their health, the applicants enough to present circumstances which sufficiently prove the serious consequences on their well-being in general.

Based on the decisions of *López* and *Guerra* the right to protect from adverse effects of environmental contamination is guaranteed under Article 8 of the Convention even if the respondent state did not interfere directly with the individuals' private life. Hence, the protection is not limited to the negative obligation of the state to not to interfere with the individuals' private life either with active act or omission, but the respondent states are required to ensure that third parties do not interfere with the individuals' life in horizontal relations.

Whereas constituting the positive obligation of the states in horizontal relations can be regarded as a development from a litigation point of view for the right to healthy environment, the negative consequences of the approach shall also be pointed out. Pursuant to Article 8 it is an accepted justification by the respondent state to claim that interference was made *"in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."* Thus, respondent states do not violate the Convention, if they prove that a compelling economic or other individuals' interest were taken into account when interfered with the right to a healthy environment of the applicants. The ECtHR is arguably reluctant to hold negative obligation of the state even if the state directly interfered with the individuals' right. As Schokkenbroek claims it has a particular weight whether positive or negative obligation is at stake in the decision on the scope of the margin of appreciation.[139] Therefore,

[139] Schokkenbroek, J., "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights: General Report." op. cit. p.32.

the ECtHR's assessment may weaken the adjudication since if the failure of a state falls within the scope of positive obligation, it falls within a wider margin of appreciation under the jurisdiction of the ECtHR to strike the fair balance between compelling interests within the framework of a policy decision.

The limits posed by the balancing exercise were articulated in the *Hatton and Others v. the United Kingdom*[140] case. However, the ECtHR raised the question that the issue may concern both negative or positive obligation of the respondent state regarding the noise pollution scheme, it was apparent from the holding that the ECtHR applied the positive duty test and examined whether fair balance has been struck between the economic well-being of the state and the right of an individual. The decision involved the night activities of the Heathrow airport, an industrial activity which usually operates under environmental regulation. In general, regulation on limitation may belong to policy decisions by which the ECtHR can give greater leeway to the states to strike the fair balance between the competing interests. Nevertheless, if an existing regulatory framework is diminished to a degree in which the effective protection of a right is not efficient anymore, the amendment of the regulation shall constitute an interference rather than a mere policy decision left to the discretion of the states. Arguably, the negative obligation would be more beneficial for the right at stake. If a restrictions or interference impair the 'very essence' of the right, it is less likely that the ECtHR will be highly deferential, but requires *"a reasonable proportionality between the means employed"* and the aims pursued.[141] As a result, the ECtHR, protects the right to a healthy environment in line with the text of the Convention which uses the formula of "everyone has the right to respect". Presumably, the ECtHR would not necessary arrive to the same conclusion in healthy environment cases if the right would be recognised and the wording would use the formula of "everyone has the right be

[140] Hatton and Others v. the United Kingdom, ECtHR, App. No. 36022/97, 07/08/2003, §§123-128, § 98 (positive obligation)
[141] Schokkenbroek, J., "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights: General Report." op. cit. p.32.

protected by law" as the Parliamentary Assembly of the Council of Europe in the Point 8 of the Recommendation No.1614 (2003) suggested the need for a positive obligation rather than the Article 8 formula of "everyone has the right to respect." It can be argued that in the existence of a clear-cut positive obligation, the ECtHR would probably be less deferential by invoking the wide margin of appreciation of the Member States in the policy decisions. It can be argued that environmental protection regulation and even Constitutional recognition exist in most of the Member States, therefore the proposed wording would not impose additional legislative burden, but the quality of enforcement and implementation would be subjected to revision by the human rights instrument.

The *Fadeyeva v. Russia* and following cases raise further concerns regarding the attributability of the respondent states. The case concerned severe and potential harmful nuisances by dust, carbon disulphide and formaldehyde emissions of a steel plant. National authorities instead of giving due weight to the interests of the community living in close proximity to the plant, ordered that certain area around the plant should be free of any dwelling. The ECtHR hold that whereas in the López and the Guerra cases *"violation was predicated on a failure by the national authorities to comply with some aspect of the domestic legal regime"*[142] in the instant case, Russia could reasonably be expected to take adequate measures therefore the failure attributable to the state.[143] It is arguably problematic that the horizontal or vertical aspect of the State responsibility shall be contingent upon the former involvement of the respondent state. This approach was not followed in the *Grimkovskaya v. Ukraine*[144] case in which the State decided to make a normal road into a motorway in the proximity of the applicant's residential area unsuitable for heavy traffic. It can be argued that holding negative interference and apply the corresponding test would be more expedient when the direct interference by the State is

[142] Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005, § 97
[143] Id., § 92
[144] Grimkovskaya v. Ukraine, ECtHR, App. No. 38182/03, 07/21/2011, §§ 71-72.

undoubtedly present. As an example, it is arguably a negative obligation of the respondent states to restrain from interference with the applicants' right when the state recognises the problem and modify the policy context to not to be deemed anymore interference according to the law without substantially examining the burden on the individuals.

As to the policy context is concerned, a further difficulty is posed by the jurisdiction of the ECtHR. Despite the British authorities diminished the level of protection of individuals in the *Hatton* case, not the outcome but the procedural due diligence was assessed. In this instance, the ECtHR gave only a relative weight to the nature of the intrusion into the private life. Therefore, the applicants who do not have necessarily information how the decision was made, whether the fair balance was struck shall decide about the adjudication and bear the consequences for the lack of certainty. Contrary to *Hatton*, the *Fadeyeva*[145] case proves that in extreme circumstances the improper due diligence in the balancing exercise may invoke the responsibility of the state and sufficient to shift the burden of proof to the respondent state, but the *Fadeyeva* judgement still does not give guidance to less severe cases. As the ECtHR rigorously held "*the onus is on the State to justify a situation in which certain individuals bear a heavy burden on behalf of the rest of the community."*[146] Arguably, there is no difference with the *Hatton* case, certain individuals, the residents living in the proximity of the Heathrow airport bear the burden of elevated noise level instead of the rest of the community, the only factual difference that the Russian authorities failed to provide the necessary information about the balancing assessment to the ECtHR.[147] As Christoffersen[148] claims the ECtHR reluctant to express the opinion on the effectiveness of the adopted measures, nevertheless decision on the basis of procedural due diligence has done little to the protection of human rights.

[145] Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005
[146] Id., § 128
[147] Id. §§ 129-134
[148] Christoffersen, J., "Fair Balance: A Study of Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights", *BRILL, Political Science*, (2009), pp.183-185.

The number of cases holding the violation of the right to a healthy environment is considerable few than that of other rights, some conclusion may be challenged, affirmed or reversed by the future jurisdiction of the ECtHR, however, the present approach established by the decision of Fadeyeva suggests that the ECtHR is not willing to limit itself to certain criteria in the assessment of the cases: *"Thus, in cases where an applicant complains about the State's failure to protect his or her Conventional rights, domestic legality should be approached not as a separate and conclusive test, but rather as one of many aspects which should be taken into account in assessing whether the State has struck a "fair balance" in accordance with Article 8 § 2."*[149] Still, it can concluded that the mere existence of environmental regulation is not enough to exempt from the obligation of the respondent state to be in compliance with the standards established to the right to a healthy environment. The ECtHR requires respondent states to present individual impact assessment of the harm on the applicants if policy decision made by striking the fair balance of the compelling interests and in the absence of direct involvement of the respondent state, effective measures to tackle the claims of the applicants if the intrusion into their well-being in a horizontal relationship reach the threshold of minimum level of severity. In the case of Hungary, the elaborated case law on environmental standards means that Hungary as a respondent state may not only rely on the defense that the proscribed environmental rules were met, but the case law characterised by a more holistic approach.

As regard to the further barriers of the justiciability of the right, the inconsistent application of the severity test and the burden of proof may raise concerns. According to the well-established case law *"Article 8 may arise only where the hazard at issue attains a level of severity resulting in significant impairment of the applicant's ability to enjoy"*[150] human rights. The assessment of that minimum level is relative and decided on case-by-case basis based on the duration, the

[149] Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005, § 98.
[150] Grimkovskaya v. Ukraine, ECtHR, App. No. 38182/03, 07/21/2011, § 58.

intensity of the disturbance and its detrimental physical or mental effects to human beings. In the example of the *López* case[151] a severe environmental pollution triggered the protection of the Convention system and the first Heathrow noise nuisance case of *Powell and Rayner v. the United Kingdom*[152] shows that only direct environmental deteriorations shall be taken into account. Pertinently, activities inherent to life in every modern city, such as bear the smell of a dentistry or the electromagnetic emissions of telephone networks will be not protected.[153] However, egregious circumstances of a toxic substance are not necessary to invoke for the protection under the Convention. Other factors, as an adverse but less blatant effect on the applicants' well-being, such as noise disturbance or risk of imposed by the failure of the waste management accompanied by the repetitive or a prolonged occurrence of a situation also weights whether the situation amounts to severe adverse effect on the applicants. As a conclusion, Romani people living in segregated settlements can refer to the lack of waste management, lack of drinking water or wastewater treatment if those circumstances severely affect their everyday life, especially if the failure of a Hungarian decision-maker can be demonstrated.

As to the exact number of occurrence or the duration of adverse effect, both *López* and the neighbouring noise cases[154] show that at least 2,5-3 year of disturbance is needed from bars or other social places in order to endorse the protection of right. However, in the case of *Di Sarno and Others v. Italy,* a five months long acute phase of waste crisis was enough to find violation in respect the danger of the situation.[155] However, recently in the case of *Otgon v. the Republic of Moldova* this requirement has been loosened. As the dissenting opinion of Judge Lemmens

[151] *"severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health"*, López § 51 and Guerra § 60

[152] Powell and Rayner v. the United Kingdom, ECtHR, App. No. 9310/81, 02/21/1990, § 41

[153] Galev and Others v. Bulgaria, ECtHR, App. no. 18324/04 09/29/2009 and Luginbühl v. Switzerland, ECtHR, App. No. 42756/02, 01/17/2006

[154] Moreno Gómez v. Spain, ECtHR, App. No. 4143/02, Mileva and Others v. Bulgaria, ECtHR, App. No. 43449/02, Zammit Maempel and Others v. Malta, ECtHR, App. No. 24202/10, Chiş v. Romania, ECtHR, App. No. 55396/07

[155] Di Sarno and Others v. Italy, ECtHR, App. No. 30765/08, 01/10/2012

pointed out that the case which concerns drinking of tap water intermingled with sewage water through the pipes and afterwards the hospitalization of the applicants for the reason of does not invoke the protection enshrined by the Article 8 due to the fact that the single incident has occurred which neither severe nor permanent enough to endorse the protection.[156] According to the majority holding, the single hospitalization of the applicant was enough to invoke the protection of the Convention.

As to the evidences for the causal link, the ECtHR found inadmissible the case of *Fägerskiöld v. Sweden*[157] in which the applicant neither provided the ECtHR nor the national courts medical documents to prove that the noise emitted by the turbines of the wind mills caused harm in his health. Whereas, to alleviate the burden on the applicant to establish the causal link, in the case of *Fadeyeva*, the ECtHR stated: *"In certain instances, only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations; consequently, a rigorous application of the principle affirmanti, non neganti, incumbit probatio is impossible."*[158] However, as Sulyok asserts, this approach did not become well-established in the practice subsequent to the *Fadeyeva* case, as the ECtHR remained dismissive towards uncertain evidence and requires applicants to prove beyond reasonable doubt the causal link between the pollution and the health risks, medical conditions or well-being of the applicants. In the case of *Tatar v. Romania*[159] the ECtHR refused to accept the available evidences as inadequate proof of causation. The case concerned applicants who referred to hospital reports stating increased number of children in the hospital with respiratory diseases after the cyanide leaching from the local plant using gold mining technology. The applicants also furnished the ECtHR a report issued by the United Nations Environmental Programme and Romanian authorities proving cyanide pollution near the applicant's home. Still, in the ECtHR view, the

[156] Otgon v. the Republic of Moldova, ECtHR, App. No. 22743/07, 10/25/2016
[157] Fägerskiöld v. Sweden, ECtHR, App. No. 37664/04, 02/26/ 2008
[158] Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005, §79
[159] Tâtar v. Romania, ECtHR, App. No. 67021/01, 01/27/2009 §§ 47-48

claim should have been acceptable only in case if the applicants provide *"sufficient and convincing statistics."* While, both *Fadeyeva* and the the *Tatar* cases concern toxic exposure cases, in which the causal link is more likely necessary to be established, the two cases well illustrate that the ECtHR approach regarding the level of certainty which remains to be unclear.[160]

Comparing the existing case law, it may be expedient to precisely define when a harmful pollution, unduly implemented legislation causing deterioration on of individuals well-being may invoke State responsibility under the Article 8 of the Convention, unless it seems that wide margin of appreciation is laid on the States which hinders impact litigation for environmental justice. Regarding the limits of a lawsuit before international human rights institutions, a potential claim for right to healthy environment is more likely to be argued by the states that it falls within the scope of positive obligation of the states, and as such, the states have wider margin of appreciation within the jurisdiction of the European Court of Human Right (ECtHR). This means that no subsidiary remedy is available if States fail to provide environmentally sound and healthy conditions to individuals of a certain group. In the case margin of appreciation is wide, it is primarily a question of national implementation which entails that states have the competence to choose between measures to grant the right to a healthy environment.[161] This interpretation is likely to undermine the chance to win a potential case at the international level concerning unequal access to basic necessities. In addition, as it was expressed in the *Hatton and Others v. U.K.*[162] case, wide margin of appreciation applies to national environmental policies if a compelling interest is at stake. Thus, an unduly considered case claiming exposure to intoxication where remediation thresholds were determined in a seemingly lawful manner can also be easily refused by the ECtHR. Hence, the ECtHR requires

[160] Sulyok, K., "Managing Uncertain Causation in Toxic Exposure Cases: Lessons for the European Court of Human Rights from U.S. Toxic Tort Litigation" op. cit.
[161] Schokkenbroek, J., "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights: General Report." *Human Rights Law Journal*, Vol.19 (1), (1998), p. 34.
[162] Hatton and Others v. the United Kingdom, ECtHR, App. No. 36022/97, 07/08/2003, §§ 123-128, § 98

more criteria for the decision to oblige positive duty on the states. I argue that the solution is likely to be the potential of a vulnerability-based approach in recently made judgements which can be operationalised and meaningfully used in the legal reasoning.[163]

As a conclusion, in my perception, a potential lawsuit is not expedient to plead based on discrimination, but from the point of view of strategic litigation for the right to healthy environment can be best grasped in light of the vulnerable people situation. Therefore, there are two benefits of a potential lawsuit: vulnerable communities on the one hand and the environmental health as a value for the society on the other hand. Despite the difficulties of anti-discrimination litigation, I consider the U.S. and European examples of environmental injustice and environmental health cases as a potential to develop a Hungarian case in order to establish the right to a healthy environment for the Hungarian Roma community.

(ii) Discrimination in the Case Law of the ECtHR

Likewise to the lack of environmental rights protection in the text of the Convention, expanding the protection of human right for providing more substantive equality can be traced only in the caselaw of the ECtHR. In addition, while there are several cases in which the ECtHR hold that there is a violation of non-discrimination, there is not a single case in which discrimination was subject of litigation in conjunction with the right to a healthy environment. However, I argue that it is not only necessary to develop a claim for the reason of serious setbacks of environmental health in the case of vulnerable communities due to ignorance in the decision-making processes on national and European Union level, but also that recent developments on

[163] As an example the case of Horváth and Kiss v. Hungary, ECtHR, App.no. 11146/11, 01/29/2013 § 102 As the Court refers to the well-established case law: *"The Court has further established that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases"*

the interpretation of the Article 14 right can[164] and these improvements significantly contribute to the enjoyment of first generation rights.

The examples above[165] suggest that environmental protection is not a promise equally for different parts of the European societies for environmental health even on policy making level. Vulnerable communities seeking for substantial equality in environmental health policy terms can challenge the existing *status quo* under the prohibition of discrimination provisions of the European Convention on Human Rights. The Protocol No. 12 of the Convention which provides a non-dependent prohibition of discrimination ratified just by Croatia, Bosnia and Herzegovina, Montenegro, Romania, Serbia, Slovenia, Macedonia and Ukraine in the Central Eastern European region[166] thus only by three EU member states where Roma population live in higher proportion.[167] Therefore, in the case of Hungary, the applicants need to solely rely on Article 14 jurisdiction to seek for remedy on their environmental health problem caused by policy making.

Thus, I turn to the examination of the non-discrimination jurisdiction of the ECtHR. Article 14 is a dependent right, therefore seemingly a promise for a guarantee for Roma communities for better environment only if an existing right under the Convention is violated. Therefore, if as the above chapter suggests there is no way to challenge state policies or individual acts of the decision makers without severe environmental health intrusion. Nevertheless, Fredman suggests the opposite, the recent development loosened the rigorous interpretation of the ECtHR and the judge made law became more promising for holding discrimination because Protocol 12 is less relevant than first imagined and Article 14 of the Convention can be invoked not only

[164] Fredman, S., "Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights", *Human Rights Law Review*, Vol.16, (2016) pp. 273–301
[165] See above Chapter II. Point 2.
[166] Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Available at: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177/signatures?p_auth=Gd4IrQ2t, Retrieved: 11/10/2017
[167] Comparative data on the proportion of Roma population at Dimitrina, P., "The Roma between a Myth and the Future", *Social Research*, Vol.70 (1), (2003), Available at: http://www.errc.org/cikk.php?cikk=1844, Retrieved: 11/10/2017

in the case if right set forth in the Convention has breached.[168] As Article 14 provides the *"enjoyment of the rights and freedoms (...) shall be secured"* by the states without discrimination. For the first glance, this can be interpreted as the Article 14 can be invoked only in cases when one of the substantial provisions of the Convention has been violated. As opposed to this traditional understanding, Fredman suggests that the protection has gradually extended beyond by the interpretation of the ECtHR. First, in the case of the Belgian Linguistics in 1968 and reaffirmed after the turn of the century. Hence, it is enough that the right at issue is not guaranteed under the Convention, but falls within the ambit of the of the Convention. The first case in which a broader approach to discrimination was well articulated was the *E.B. v. France*[169] case concerning the right to adopt a child. As the ECtHR puts there is no *expressis verbis* right to adopt a child, but states are obliged to provide a voluntarily guaranteed right under national legislation without discriminatory manner as long as it falls in the ambit of the enjoyment of the Convention. As Fredman provides this result has far reaching perspective since this approach can have an effect to extending welfare and social measures for the benefit of marginalized groups.

The other case of the Court discussed by Fredman provides an even stronger basis to hold states accountable for providing welfare benefits in a discriminative manner. The *Stec v. the United Kingdom*[170] case concerns a social security scheme tailored in a discriminatory manner. The Court reiterates that states have *"the freedom to decide whether or not to have in place any form of social security scheme or to choose the type or amount of benefits to provide under any such scheme, however a state decide to create a benefit or a pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention."* [171] However, the ECtHR has

[168] Fredman, S., "Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights", op. cit., pp. 275–276
[169] E.B. v. France, ECtHR, App. No. 43546/02, 01/22/2008
[170] Stec and Others v. the United Kingdom, ECtHR, App. Nos. 65731/01 and 65900/01, 04/12/2006
[171] Stec and Others v. the United Kingdom, ECtHR, App. Nos. 65731/01 and 65900/01, 04/12/2006, § 53.

referred to the wide margin of appreciation of the United Kingdom with respect to that states are better placed in principle than the courts to decide in general measures of economic or social strategy. The right to welfare benefits without discrimination subsequently became a well-established case-law of the ECtHR.[172]

Fredman's understanding of the *Stec* case in relation to its potential application in the case of socio-environmental rights has a particular relevance from an environmental health perspective for Romani people living in Hungary. The Hungarian constitution recognises the right to healthy environment under Article XXI. Whereas the Constitutional Court narrowed down the potential application of the right to the institutional obligation of the state, suggesting that as an individual right the right to a healthy environment cannot be invoked in law enforcement, it is not clear whether the case law of the Constitutional Court is still applicable law considering that the decision was made in 1994 before the adoption of the 2010 Constitution. Moreover, the Constitution provides that "*Hungary shall promote the effective application of the right [to physical and mental health] by ensuring access to healthy food and drinking water as well as by ensuring the protection of the environment."* Therefore, in principle, the Hungarian constitution provides the rights equally without distinction for a healthy environment and water. Nevertheless, it shall be noted that the well-established ECtHR case law mainly concerns welfare benefits in the light of the protection to right to property. To this day, the ECtHR only established the ambit principle to socio-economic rights can be interpreted under the right to property. Right to a healthy environment, unlike state provided welfare benefits in the decision of the *Stec* case less likely articulated under property rights, hence the applicability of decision is a question of the future case law.

[172] Andrejeva v. Latvia, ECtHR, App. No. 55707/00, 02/18/2009, § 74; and Carson and Others v. the United Kingdom, ECtHR, App. No. 42184/05, 03/16/2010, § 63

Concluding from the coherent jurisdiction, the ECtHR uses the formula according to which *"discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situation."*[173] The important step by which this formula was extended was the case of *Thlimmenos v. Greece*[174] in which the treatment of persons in analogous situations without providing an objective and reasonable justification is also amount to discrimination. The fully fledged indirect discrimination formula was brought by the *D. H. v. Czech Republic* [175] case in which case the Roma children had 27 times more chance to be placed in special schools for mentally disabled than non-Roma counterparts. As the Court elaborated *"a difference in treatment may take the form of disproportionately prejudicial effect of the general policy or measure which, though couched in neutral term, discriminate against a group."*[176] In environmental health cases, when the difference in treatment arises from European Union or governmental policies, there is a high probability that the states explain the discriminatory measures by the objective and reasonable justification. Albeit, it need to be pointed out that the ECtHR narrowed down the leeway of the states in the case of *Sejdic and Finci v. Bosnia and Hercegovina*[177] case in which the ECtHR held that *"where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible.*[178]*"* This narrow interpretation may give rise to a holding of breach of Article 14 in cases when different environmental standards overlapping with the areas where Roma settlements can be found.[179] When state policies make Roma more exposed to environmental risks or the states does not provide the same protection for Roma as for non-Roma, it shall be challenged under these provisions.

[173] Thlimmenos v. Greece, ECtHR, App. No. 34369/97, 04/06/2000, § 38
[174] Thlimmenos v. Greece, ECtHR, App. No. 34369/97, 04/06/2000
[175] D. H. v. Czech Republic, ECtHR, App. No. 57325/00, 11/13/2007
[176] D. H. v. Czech Republic, ECtHR, App. No. 57325/00, 11/13/2007, § 184
[177] Sejdic and Finci v. Bosnia and Hercegovina, ECtHR, App. Nos. 27996/06 and 34836/06, 12/22/2009,
[178] Id. § 44
[179] Fredman, S., "Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights", op. cit., pp. 279–280

Unlike in the case of the Cerrell Report,[180] it is highly unlikely that of the decision making can be challenged based on direct discrimination and adopted measures would fail without provide evidence on the discriminatory intent. After the 1971 United States Supreme Court decision, it became clear that without discriminatory intent, no successful case can be developed for environmental injustice in the United States. However, the ECtHR human right protection followed a different trajectory. In comparison, a considerably different approach evolved in the European setting which more embracing towards substantive equality as opposed to the initial timid approach of the ECtHR requiring proof of reasonable doubt to hold direct discrimination.[181]

I argue that invidious discrimination, similarly to the United States is not the only factor of racial disparities in Hungary in terms of environmental benefits. Members of the Roma community may be systematically excluded from basic necessities and social benefits not only by the wilful acts of particular decision-makers, but because of the prevailing system of opportunities and constraints favours the privileged group. However, as I presented, the ECtHR human rights mechanisms provides protection to not only invidious discrimination, but an evolution can be shown in the jurisdiction of the ECtHR comparing to its initial timid approach. The ECtHR goes beyond the formal equality perception of *"equal treatment for equal"*[182] and understands the need of *"removing the existing chains on the runners"* constituted by prejudices and corresponding structural discrimination. As a further step, the *Thlimmenos* case shows openness to oblige States to adopt affirmative actions in a limited scope *"as the form of levelling the playground"*. Indeed, the case of *Thlimmenos* has been hailed as a mean to provide more substantive equality by ameliorating the existing inequalities,[183] because adherents of human

[180] See above Chapter I, Section 1.
[181] Möschel, M., "I the European Court on Human Rights' Case Law on anti-Roma Violence beyond Reasonable Doubt.", *Human Rights Law Review*, Vol.12, (2012), pp. 479-508.
[182] Aristotle: Justice as Equality, p. 17
[183] Fredman, S., "Substantive Equality Revisited" *Oxford Legal Research Paper*, Vol.70, (2014)

right in the European sphere consider desirable to redress covert and structural discrimination and unconscious bias.[184] Therefore, further research is to be made to what extent ethnic origin contributes to the persistent environmental inequality of Romani people and how discrimination does play a role in the allocation of resources and opportunities.[185] However, in the case of Conventional jurisdiction, even if indirect discrimination is found, further problems arise when the interpretation of these provisions may be hampered. A practice which is discriminatory in operation has an objectively justified economic ground which is proportionate to that end may outweigh the interest to prohibit systematic discrimination before the ECtHR without more evidence on the overarching substantive inequality of Romani people in regard to environmental health rights.

Still, the ECtHR seems more principled in putting theory in practice. Even in the absence of such strong procedural instrument than the shift of burden of proof enshrined in the Recital 21 and Article 8 of the Council Directive 2000/43/EC on Race Equality Directive[186] (RED), the Convention is more inclined to hold a violation. The case of *Nachova*[187] shows how the ECtHR construed its case law to hold violation when the substantive aspect of the right cannot be concluded given the challenge of lacking evidence of discriminatory intent. In this case the ECtHR made a decision on the basis of the procedural aspect of the right as it is more susceptible to proof.[188] As a second example, the ECtHR held that the burden of proof has to be shifted if

[184] Gerapetritis, G., 'The Legal Question: Method and Intensity of Judicial Review" in *Affirmative Action Policies and Judicial Review Worldwide*, Ius Gentium: Comparative Perspectives on Law and Justice, (2016), pp. 199-248.
[185] Pager, D. and Shepherd, H., "The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets", *Annual Review of Sociology*, Vol.34 (2008) pp. 181–209. Available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2915460/, Retrieved: 11/10/2017
[186] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
[187] Nachova and Others v. Bulgaria, ECtHR, App. Nos. 43577/98 and 43579/98, 07/06/2005
[188] Goldston, J. A., "The Struggle for Roma Rights: Arguments that Have Worked", *Human Rights Quarterly*, Vol.32 (2), (2010), pp. 319-320.

the applicants furnished a *prima facie* case in the case of *D.H. v. the Czech Republic*[189] by referring inter alia to the RED's provision.

The ECtHR's approach has been changed in terms of willingness best illustrated by five holdings[190] in educational segregation. Nevertheless, as Möschel points out, the increased willingness to hold violation concerning prohibition of discrimination did not entail the clarification of the notion of direct and indirect discrimination. On the contrary, the more cases have been decided, the more ambiguity has been created. Even the theoretically direct discrimination is perceived as indirect discrimination since the first case of school segregation of *D.H. v. the Czech Republic* were perceived as such.[191] Therefore, my inquiry is to discover what further tools can be used under the human rights mechanisms of the Council of Europe besides the unclear but promising indirect discrimination case law.

(iii) Relevance of Vulnerability and Narrowing Down the Margin of Appreciation

Given the limitations of both the protection of environmental health and the anti-discrimination provision under the Convention, inspired by the article of Foster[192] on the legal tool of vulnerability analysis and the application of the vulnerability concept in the case law of the ECtHR, I examine vulnerability[193] as an inevitable tool for the litigation of environmental injustice in the case of the Roma segregated neighbourhoods.

Given the situation that neither comprehensive data available related to the environmental situation of Roma in comparison of the majority population to hold indirect discrimination nor

[189] D.H. v. the Czech Republic, op. cit. § 83, § 137, § 178
[190] D.H. and Others v the Czech Republic op.cit., Sampanis and Others v Greece, ECtHR, App. No. 32526/05, 06/05/2008; Orsus and Others v Croatia, ECtHR, App. No. 15766/03, Horváth and Kiss v Hungary, ECtHR, App. No. 11146/11, 01/29/2013 and Lavida and Others v Greece, ECtHR, App. No. 7973/10, 05/30/2013
[191] Möschel, M., "The Strasbourg Court and Indirect Race Discrimination: Going Beyond the Education Domain.", *Modern Law Review*, Vol.80 (1), (2017), pp. 124-125.
[192] Foster, S., "Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law", op. cit.
[193] In the jurisdiction of the ECtHR, vulnerability approach to date was applied, besides Roma, to people living with mental disabilities (Alajos Kiss v Hungary, ECtHR, App. No. 38832/06, 05/20/2015), asylum seekers (M.S.S. v Belgium and Greece, ECtHR, App. No. 30696/09, 01/21/2011), women victims of violence (Kontrová v. Slovakia, App. No. 7510/04, 05/31/2007) and people living with HIV (Kiyutin v Russia, ECtHR, App. No. 2700/10, 03/10/2011) or recently the intersection of people belonging to the LGBTI community and aylum seekers in the case of the O.M. v Hungary, ECtHR, App. No. 9912/15, 07/05/2016, § 53

evidentiary basis that the situation is a result of unjustified decisions of development programmers nor clear conclusion to be made whether the pattern of lower environmental situation can be challenged in the existing jurisdiction of the ECtHR which requires exceeding the threshold of minimum level of severity of environmental pollution, the concept of vulnerability can be an effective tool for litigation for enhancing the socio-economic protection of Romani people, as well. Having said that vulnerability analysis is considered the missing conceptual and practical link between equality norms and environmental regulation in the United States, I examine how vulnerability analysis is present in the European sphere.

Considering the shift of the paradigm in the United States dated to 2010 to some extent I agree with the aspiration to shift the paradigm when the paradigm itself faces with perplexing restraints, nevertheless vulnerability analysis while may change future decisions, less likely remedy existing inequalities and may overshadow the responsibility of the decision-makers for disproportionate decisions. Bearing in mind that the vulnerability analysis is the result of a long negotiation process of a reluctant state to address a well evidenced pattern of environmental injustice, the question arises whether vulnerability is the concept to address environmental injustice in the European sphere. In Europe, where evidence is limited whether ethnic origin is a significant predictor of lower environmental right conditions of a particular part of the population, nevertheless with more open approach from part of the ECtHR towards disparate impact theory or indirect discrimination. Or power dynamics suggest the opposite, the vulnerability analysis only overshadows a pattern before the claim to be formulated fully-fledged.

First and foremost, it shall be noted that there is an essential difference between the vulnerability analysis of the United States which became the part of the environmental policy making, in the European sphere it is a tool to provide human rights protection of the marginalized groups. In the case of the former, the vulnerability analysis became part of the environmental law regime

by recognising that environmental law does not address and often exacerbates social disparities. With other words, the human element is now considered to be one of the elements of the built environment which needs protection as much as the ecological elements of the nature. The concept of vulnerability in the European human rights law is essentially different, first, it does not need to develop new metrics for human rights protection, because it is essentially designed to that end, second, it may only indirectly influence the policy decisions of the states, since as an individual rights enforcement mechanism is always reactionary. The concept of vulnerability aspires to protect particular member of the society when the national human right protection fails to guarantee human right protection of particular members of the society. Nevertheless, I assert that the two concepts of vulnerability do not differ in nature, the end goal is essentially the same but the tools are different. In fact, the one prevails which part of the legal regime guarantees higher protection, however, the two essentially need to co-exist, both treat the causes and the consequences. Hence, as an end goal, the European human rights discourse shall develop consciousness of the overseas solution and develop the human rights protection to hasten similar policy decisions than that of the United States.

The European human rights law has a more concrete pattern to give relief to the human rights violations suffered by Roma using the concept of vulnerability, however until now to a limited extent. In fact, the ECtHR used the concept when Roma's, women victims' of violence, people' with mental disabilities, people' living with HIV and asylum seekers' right was at stake. As Peroni and Timmer argue the ECtHR reasoning with vulnerable groups is a potential for a more substantive equality.[194] The ECtHR uses this concept from 2001 in the *Chapman v. the United Kingdom*[195] case albeit, the concept only plays a role in the jurisdiction from the 2008 Roma'

[194] Peroni, L. and Timmer, A., "Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law", *International Journal of Constitutional Law*, Vol.11 (4), (2013), pp. 1056–1085, Available at: http://doi.org/10.1093/icon/mot042, Retrieved: 11/09/2017

[195] Chapman v. the United Kingdom, ECtHR, App. No. 27238/95, 01/18/2001,

segregated school case of *D.H. v. the Czech Republic*[196] by following the ECRI's Recommendation.[197] However, it shall be noted that the ECtHR applied vulnerability to a limited extent in terms of rights, hence to date, not in the case of environmental human rights. In addition, this approach is heavily criticized for its stigmatizing[198] and essentializing[199] character and disempowering portrayal[200] from human rights advocates.

Having said that vulnerability was not used by the ECtHR, it is needed to be defined how environmental vulnerability can be understood. Foster used the term of resilience[201] which is adequate and more tangible since every human being is susceptible to environmental harms in general, referring to Fineman, vulnerability is contingent upon the resources of a human being possesses and commands. In other words, it is related to the possession the basic necessities and the participation in the decision-making. As Peroni and Timmer highlight it is essentially a group-based approach in the ECtHR jurisdiction since essentialize certain groups with their economic, political and social inclusion.[202] Vulnerability essentially relates to the historical prejudice and stigmatization and points out the misrecognition and maldistribution described by Fraser at al. Maldistribution of resources, as defined, is when the sharing of the resources does not happen along the rule that decision-makers interact with certain groups as peers, but considered inferior, excluded and invisible.[203] Environmental justice cases can both invoke the

[196] D.H. v. the Czech Republic, ECtHR, App. No. 57325/00, 11/13/2007, § 59
[197] ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies (adopted by ECRI on 6 March 1998)
[198] Vulnerability creates for many negative associations, see Lenhard, R. A., "Understanding the Mark: Race, Stigma, and Equality in Context", *NYU Law Review*, Vol.78, (2004)
[199] Identifying individual experience as group experience, see Munro, V. E., "Resemblances of Identity: Ludwig Wittgenstein and Contemporary Feminist Legal Theory", *Res Publica*, Vol.12 (2), (2006), pp. 137–162, Available at: http://link.springer.com/article/10.1007/s11158-006-9000-0, Retrieved: 11/28/2017 and as a consequence excluding individuals from the group even though their experience is the same, see Fineman, M. A., "The Vulnerable Subject and the Responsive State", *Emory Law Journal*, Vol.60, Emory Public Law Research Paper No. 10-130. (2010), pp. 253-254. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694740, Retrieved: 11/28/2017
[200] Disempowering is also an effect of paternalization, see in Peroni, L. and Timmer, A., "Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law", op.cit. p. 1072.
[201] Foster, S., "Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law", op. cit., p. 120.
[202] Peroni, L. and Timmer, A., "Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law", op.cit. pp. 1061-1062.
[203] Fraser, N. et al., "Interview: Recognition, Redistribution, and Representation in Capitalist Global Society, an Interview with Nancy Fraser," *Acta Sociologica* Vol. 47 (4), (2004), pp. 374-382, Available at: https://www.jstor.org/stable/4195051?seq=1#page_ Retrieved: 11/28/2017

stigmatization effect, since segregated areas without proper wastewater treatment or surrounded by waste dumps create an unpleasant environment beside the potential health effects and also represents misrecognition and maldistribution, if decision-makers do not recognise the issue or even so recognised do not act similarly as in the case of the dominant group.

As a consequence of defining certain groups as vulnerable, the ECtHR provides higher protection, however not certainly under the Article 14 of the Convention, rather under the substantive provisions of the Convention. As Peroni and Timmer point out neither in the Roma woman's forced sterilization case of *V.C. v. Slovakia*[204] nor in the Romani people' planned forced eviction case of *Yordanova v. Bulgaria*[205], the ECtHR did not hold violation of the prohibition of discrimination provision under Article 14. In the case of *Yordanova* the ECtHR referred to the fact that it would be a speculation to assume to a hypothetical future enforcement of the removal order as discriminatory.[206] However, in the case of *V.C. v. Slovakia*, the ECtHR relied on the above analysed[207] evidentiary based reluctance to hold violation, namely: *"the information available is not sufficient to demonstrate in a convincing manner that the doctors acted in bad faith, with the intention of ill-treating the applicant."* and *"objective evidence is* [neither] *sufficiently strong in itself to convince the Court that it was part of an organised policy or that the hospital staff's conduct was intentionally racially motivate"*[208] However deeming vulnerability as an escape route from holding discrimination is problematic for moral reasons that the European society will not reconcile with it historic discrimination and will not seek solution for its effect in cooperation with the people who are affected. I think that the ECtHR should undertake the risk to being subject to harsher criticism for holding violation based on discrimination but vulnerability in order to move forward a human rights system with a

[204] V.C. v. Slovakia, ECtHR, App. No. 18968/07, 11/08/2011
[205] Yordanova and Others v. Bulgaria, ECtHR, App. No. 25446/06, 04/24/2012,
[206] Yordanova and Others v. Bulgaria, op. cit., § 147
[207] See Chapter II, Section 3, Point iii.
[208] V.C. v. Slovakia, op. cit., § 176

guarantee of more substantive equality. Nevertheless, the vulnerability concept provides a recognition for the Roma minority as it relies on the asymmetrical power relations between the dominant and the minority group, unfortunately without a narrative of shaming the responsible party for discrimination and blaming instead the victim for its inherently defective feature of vulnerability. Even though I found it necessary to send a clear message that even with overt discrimination, the group is entitled to redress for being subjected to discrimination, vulnerability in essence, with sufficient highlight the fact that the asymmetric power relation make certain members of the minority group vulnerable is capable to redress environmental injustice on a greater level than discrimination according to the recent practical approach of the ECtHR.

CONCLUSION

This paper examined the international and European human rights protection mechanisms from the perspective how it may serve and how it ought to serve the social rights of Romani people. This paper identified primarily the European human rights protection mechanisms as a potential opportunity to provide an avenue for litigate environmental human right violations as well as hastening proper conceptualization, conducting comprehensive research and recognition in agenda of the environmental decision-makers. I argue that the right to a healthy environment and the right to housing, basic necessities such as water and the right to adequate standard of living may serve crucial role in the future adjudication for human rights.

The newly emerging human right on the right to a healthy environment in conjunction with the less timid approach of the ECtHR on discrimination and the tool of vulnerability is critical to circumvent the pitfalls of weak social rights protection and its consequences for Romani people. However, there are several uncertainties regarding the application of the two rights of healthy environmental and non-discrimination, hence even more in the crossroads of the two provisions.

In the jurisdiction of the ECtHR, there are no precedents until today when the two provisions were applied and interpreted in conjunction; nonetheless, the aim of my inquiry was to discover how the crossroads of the two provisions can further the protection of social rights of the Roma community. Based on the findings of the U.S. environmental justice scholars, I argued that the ECtHR also offers a pathway to litigate for environmental justice and alleviate poverty of the Roma as a result of environmental justice.

At this point, further research is to be made to what extent ethnic origin contributes to the persistent environmental inequality of Romani people and how discrimination does play a role in the allocation of resources and opportunities. In addition, limited by the existing jurisdiction of the ECtHR which requires certain criteria to hold discrimination and the criterion exceeding the threshold of minimum level of severity of environmental harm, the concept of vulnerability is the critical tool for litigation to enhancing the socio-economic protection of Romani people.

Even in the light of the promising development of the jurisdiction of the ECtHR, it is tentative to say by means of elaboration of the environmental rights concept and the commitment of the states to mitigate climate change, Roma communities living in the neighbourhood of landfills or lacking basic necessities will get an effective remedy to their desperate situation. It is undeniable that putting into legal regimes a commitment towards environmental rights or any rights will not bring immediate changes. Nonetheless, in my view, a case is a first step in the future codification of the right to secure, healthy and ecologically sound environment, consequently in the accomplishment of the moral aims of environmental justice.

However, I argue that it is not only necessary to develop a claim for the reason of serious setbacks of environmental health in the case of vulnerable communities due to ignorance in the decision-making processes on European Union level, but also that recent developments on the interpretation of the Article 14 right can and these improvements significantly contribute to the enjoyment of first generation rights.

The essence of human right is primarily to alleviate human suffering. Human right discourse on international level is that of which may outrule new approaches if it does not rely on grassroots' sufferings. Thus, human rights discourse needs to be reoriented in the international arena to place more emphasize on the underheard voices, such as the Romani people' in Hungary.

BIBLIOGRAPHY

SECONDARY SOURCES

a. Books

Adamson, J., Mei, M., E. and Stein, R., *The environmental justice reader: politics, poetics, and pedagogy*, Tucson: The University of Arizona Press, (2002)

Cole, L.W. and Foster, S., *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*. New York: New York University Press, (2001)

Doremus, H., Lin, A. and Rosenberg, R., *Environmental Policy Law: Problems, Cases, and Readings*, Foundation Press Thomson/West, (2012)

Forray, K. and Beck, Z., *Society and Lifestyles – Hungarian Roma and Gypsy Communities*, University of Pécs, Faculty of Humanities, Institute of Education, Department of Romology and Sociology of Education, PÉCS, (2008)

Newton, D. E., *Environmental justice: a reference handbook*, Santa Barbara, Oxford, Denver: ABC-CLIO (2009, 2nd ed.)

Szasz, A., *Ecopopulism: Toxic Waste and the Movement for Environmental Justice*, University of Minnesota Press, (1994)

b. Publications and Journal Articles

Anguelovski, I., New Directions in Urban Environmental Justice, *Journal of Planning Education and Research*, Vol.33, (2013), pp. 160-175.

Boyle, A., "Human Rights or Environmental Rights? A Reassessment", *Fordham Environmental Law Review*, Vol.XVIII (3), (2007), pp. 471-511

Bratspies, R., "Do We Need a Human Right to a Healthy Environment?", *Santa Clara Journal of International Law*, Vol.31 (13), (2015)

Bullard, R. D., Mohai, P., Saha, R., Wright, B., "Toxic Wastes and Race at Twenty: 1987-2007 - Grassroots Struggles to Dismantle Environmental Racism in the United States", United Church of Christ Justice and Witness Ministries, (2007) Available at: http://www.ejnet.org/ej/twart.pdf

Christiansen, S. B., "The Precautionary Principle in Germany: Enabling Government" in O'Riordan, T. and Cameron, J. (eds.), *Interpreting the Precautionary Principle*, Earthscan Publications Ltd, (1994)

Christoffersen, J., "Fair Balance: A Study of Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights", *BRILL - Political Science*, (2009), pp.183-185.

Cox, R., "A Climate Change Litigation Precedent: Urgenda Foundation v The State of the Netherlands", *Journal of Energy & Natural Resources Law*, Vol.34 (2), (2016), pp.143-163.

DeMerieux, M., "Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms" *Oxford Journal of Legal Studies* Vol.21 (3), (2001)

Dimitrina, P., "The Roma between a Myth and the Future", *Social Research*, Vol.70 (1), (2003), Available at: http://www.errc.org/cikk.php?cikk=1844

Gerapetritis, G., "The Legal Question: Method and Intensity of Judicial Review" in *Affirmative Action Policies and Judicial Review Worldwide,* Ius Gentium: Comparative Perspectives on Law and Justice, (2016), pp. 199-248.

Gökçen, S., "Hungary: Local Authority Disconnects Public Water Supplies in High Temperatures, Blames Roma for 'Misuse'", (2013) Available at: http://www.errc.org/article/hungary-local-authority-disconnects-public-water-supplies-in-high-temperatures-blames-roma-for-misuse/4178

Gökçen, S., "Italy: Torino Municipality Shuts off Water Supply near Roma Camp", (2013) http://www.errc.org/article/italy-torino-municipality-shuts-off-water-supply-near-roma-camp/4183

Goldston, J. A., "The Struggle for Roma Rights: Arguments that Have Worked", *Human Rights Quarterly* Vol.32 (2), (2010), pp. 311-325.

Huang, A., "Environmental justice and Title VI of the Civil Rights Act: A critical crossroads", *American Bar Association Journal*, Vol.43 (4)., (2012), Available at: http://www.americanbar.org/publications/trends/2011_12/march_april/environmental_justice_title_vi_civil_rights_act.html

Filčák, R., Environmental Justice and the Roma Settlements of Eastern Slovakia: Entitlement, Land and Environmental Risks, *Sociology casopis,* Vol.48 (3), (2012), pp. 537-562.

Filčák, R., Environmental justice in the Slovak Republic: the case of Roma ethnic minority, Unpublished doctoral dissertation, Central European University, Department of Environmental Sciences and Policy, Budapest, (2007)

Fineman, M.A., "The Vulnerable Subject: Anchoring Equality in the Human Condition", *Yale Journal of Law & Feminism,* Vol.20 (1), (2008), pp. 1-23.

Fineman, M.A. "Beyond Identities: The Limits of an Antidiscrimination Approach to Equality", *Boston University Law Review*, Vol. 92, (2012), pp. 1713-1769.

Fineman, M. A., "The Vulnerable Subject and the Responsive State", *Emory Law Journal*, Vol.60, Emory Public Law Research Paper No. 10-130. (2010), pp. 253-254. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694740, Retrieved: 11/28/2017

Foster, S., "Vulnerability, Equality, and Environmental Justice: The Potential and Limits of Law", in Holified, R. et al. (eds.), *Handbook of Environmental Justice,* Routledge, London and New York, (2017), pp. 136-148. Also available at SSRN: https://ssrn.com/abstract=2790584, Retrieved: 11/10/2017

Fraser, N., Dahl, H. M., Stoltz, P. and Willig, R., "Interview: Recognition, Redistribution, and Representation in Capitalist Global Society, an Interview with Nancy Fraser," *Acta Sociologica*

Vol. 47 (4), (2004), pp. 374-382, Available at: https://www.jstor.org/stable/4195051?seq=1#page_

Fredman, S., "Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights", *Human Rights Law Review*, Vol.16, (2016), pp. 273–301

Fredman, S., "Substantive Equality Revisited", *Oxford Legal Research Paper*, Vol.70, (2014)

Harper, K., Steger, T., Filčák, R., "Environmental Justice and Roma Communities in Central and Eastern Europe", *Environmental Policy and Governance*, Vol.19 (2009) pp. 251-268.

Higgins, R., "The Relationship Between International and Regional Human Rights Norms and Domestic Law", in *Themes and Theories*, Oxford University Press. (2009) Available at: http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198262350.001.0001/acprof-9780198262350-chapter-35

Kälin, W., "Conceptualising Climate-Induced Displacement", in McAdam, J. (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, (2010), pp. 81-104

Kállai, E., "A cigányság története 1945-től napjainkig" ["The history of the Roma from 1945 until recent days", Translated by the author from Hungarian] in Kemény, I. (ed.), *A magyarországi romák* ["*The Hungarian Roma*", Translated by the author from Hungarian] Budapest, Útmutató Kiadó, (2000), pp. 16–24.

Knox, J. H., Human Rights, Environmental Protection, and the Sustainable Development Goals, *Washington International Law Journal*, Vol.24 (3), (2015)

Köckler, H., Deguen, S., Ranzi, A., Melin, A. and Walker, A., "Environmental Justice in Western Europe", in Holified, R. et al. (eds.), *Handbook of Environmental Justice*, Routledge, London and New York, (2017), pp. 627-640.

Langford, M., "The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?", *International Journal of Water Resources Development*, Vol.21 (2), (2005)

Lenhard, R. A., "Understanding the Mark: Race, Stigma, and Equality in Context", *NYU Law Review*, Vol.78, (2004)

McGranahan, G. and Satterthwaite, D., "Environmental Health or Ecological Sustainability: Reconciling the brown and green agendas in urban development." in Pugh, C. (ed.), *Sustainable Cities in Developing Countries*, Earthscan, London, (2000)

Möschel, M., "I the European Court on Human Rights' Case Law on anti-Roma Violence beyond Reasonable Doubt.", *Human Rights Law Review*, Vol.12, (2012), pp. 479-508.

Möschel, M., "The Strasbourg Court and Indirect Race Discrimination: Going Beyond the Education Domain.", *Modern Law Review*, Vol.80 (1), (2017), pp. 124-125.

Moss, K. L., "Environmental Justice at the Crossroads", William & Mary Environmental Law and Policy Review Vol.24 (1), (2000), Available at: http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1245&context=wmelpr

Munro, V. E., "Resemblances of Identity: Ludwig Wittgenstein and Contemporary Feminist Legal Theory", *Res Publica*, Vol.12 (2), (2006), pp. 137–162, Available at: http://link.springer.com/article/10.1007/s11158-006-9000-0, Retrieved: 11/28/2017

Pager, D. and Shepherd, H., "The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets", *Annual Review of Sociology*, Vol.34 (2008), pp. 181–209., Available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2915460/

Peroni, L. and Timmer, A., "Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law", *International Journal of Constitutional Law*, Vol. 11 (4), (2013), pp. 1056–1085.

Rabin, Y., "Expulsive Zoning: The Inequitable Legacy of Euclid" in Haar, C.M. and Kayden, J.S. (eds.), *Zoning and the American Dream: Promises Still to Keep*, Chicago: APA Press, (1999)

Siegel, R., Race Conscious but Race Neutral: The Constitutionality of Disparate Impact in the Roberts Court, *Yale Law School, Faculty Scholarship Series. 5003.*, (2015) Available at: http://digitalcommons.law.yale.edu/fss_papers/5003

Sadd, J., Pastor, M., Morello-Frosch, R., Scoggins, J., Jesdale, B., "Playing it Safe: Assessing cumulative impact and social vulnerability through an environmental injustice screening method in the south coast air basin, California", *International Journal on Environmental Research and Public Health* Vol.8 (5) (2011) pp. 1441-1459.

Schokkenbroek, J. "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights: General Report", *Human Rights Law Journal*, Vol.19 (1) (1998), pp.30-36.

Scott, D. N. and Smith, A.A., The abstract subject of the climate migrant: displaced by the rising tides of the green energy economy, *Journal of Human Rights and the Environment*, Vol.30 (8), (2017)

Sulyok, K., "Managing Uncertain Causation in Toxic Exposure Cases: Lessons for the European Court of Human Rights from U.S. Toxic Tort Litigation" (2017), Available at: https://ssrn.com/abstract=2989876

Steger, T., and Filčák, R., "Ghettos in Slovakia. Confronting Roma Social and Environmental Exclusion" Analyse & Kritik, Vol.36 (2), (2014)

Steinway, D. M., "Fundamentals of Environmental Law" in Bell et. al. (eds.), *Environmental Law Handbook* (2014, 22nd ed.), pp. 1-26.

Szabó, M. and Greksza, V. "Right to water and the protection of fundamental rights in Hungary" Studia Europaea, Jurisprudentia et Practica, Vol.4, (2013), Available at: https://www.ajbh.hu/documents/14315/121663/Right+to+water+Book.pdf/b0a67476-20a7-4f40-91f3-f2024df9ad49

Ungváry, Gy. et al., Roma Colonies in Hungary – Medical Care of Children and Hygienic Conditions, *Orvosi Hetilap*, Vol. 146 (15) (2005), pp. 691-699.

c. Reports and Surveys

Annual Report of the Hungarian Ombudsman for National and Ethnic Minority Rights (2006), Available at: http://www.kisebbsegiombudsman.hu/data/files/145405078.pdf

Albuquerque, C., "The Future is Now. Eliminating inequalities in sanitation, water and hygiene. Paper for the Thematic Consultation on Addressing Inequalities the heart of the post 2015 agenda and the future we want for all", Geneva, OHCHR, (2012)

Environmental Justice Case Studies by University of Michigan, Available at: http://umich.edu/~snre492/cases.html

European Environmental Agency, "The European environment – state and outlook 2010: Synthesis", (2010), p.95., Available at: https://www.eea.europa.eu/soer/synthesis/synthesis/chapter5.xhtml

European Union Minorities and Discrimination Survey, European Union Agency for Fundamental Rights, (2016)

Federal Environment Agency of Germany, "Environmental protection under TTIP" (2015) Available at: http://www.umweltbundesamt.de/sites/default/files/medien/376/publikationen/environmental_protection_under_ttip_0.pdf

Hajdu, G. et al., Környezeti igazságosság Magyarországon ["Environmental injustice in Hungary"- The author translated from Hungarian] issued by Védegylet, the Hungarian Budapest-based NGO, (2010)

ODIHR Report, Field Assessment Visit to Hungary, (2015)

Ózd Város Környezetvédelmi Programja [Environmental Plan of City of Ózd, Translated by the author from Hungarian] (2013), Available at: http://www.ozd.hu/content/cont_579b0797c0cb30.66882929/Ozd_varos_kornyezetvedelmi_programja_veglegesitett.pdf

Housing Strategy 2015, Hungarian Ministry of Human Resources

Perić, T., The Housing Situation of Roma Communities: Regional Roma Survey, *Roma Inclusion Working Papers,* (2012, Bratislava, UNEP)

Policy Solutions, "The Situation of Roma in Hungary, (2012), Available at: http://www.policysolutions.hu/userfiles/elemzes/180/situation_of_roma_in_hungary_policy_solutions_study.pdf

Project of DG Environment, Milieu Ltd., Danish Environmental Research Institute and Center for Clean Air Policy, "Comparison of the EU and US Air Quality Standards and Planning Requirements", (2004), Available at: http://ec.europa.eu/environment/archives/cafe/activities/pdf/case_study2.pdf

Pye, S., Skinner, I., Meyer-Ohlendorf, N., Leipprand, A., Lucas, K., Salmons, R., "Addressing the social dimensions of environmental policy — a study on the linkages between

environmental and social sustainability in Europe", EC, (2008), Available at: http://ec.europa.eu/social/BlobServlet?docId=1672&langId=en

UNDP-WB-FRA Roma survey 2011

United Nations, FCCC, "Assessing climate change impacts and vulnerability, Making informed adaptation decisions" (2011)

United Nations, The human right to water and sanitation, Available at: http://www.un.org/waterforlifedecade/human_right_to_water.shtml

United States Commission on Civil Rights, "Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898", (September 2016), Available at: http://www.usccr.gov/pubs/Statutory_Enforcement_Report2016.pdf

United States Environmental Protection Agency, EJ 2020 Action Agenda, The U.S. EPA's Environmental Justice Strategic Plan for 2016-2020, (2016), Available at: https://www.epa.gov/environmentaljustice/plan-ej-2014

United States Environmental Protection Agency, Plan EJ 2014, (September 2011), Available at: https://www.epa.gov/environmentaljustice/plan-ej-2014

d. Online news

"Az arzént is meg lehet szokni" ["We can also get used to arsenic"- The author translated from Hungarian], Available at: http://www.origo.hu/itthon/20130104-az-arzent-is-meg-lehet-szokni-riport-a-vizosztasrol.html

Baptiste, N., A Landfill Is Consuming This Historic Alabama Community. The EPA Ignored Complaints. Now the Case Is Closed (May 9, 2017), Available at: http://www.motherjones.com/environment/2017/05/alabama-landfill-environmental-racism/

"Elzárták a vizet az ózdi romatelepen" ["Water is closed at the Roma neighbourhoods of Ózd"- The author translated from Hungarian] Index online newspaper, Available at: http://index.hu/belfold/2013/08/04/elzartak_a_vizet_az_ozdi_romatelepen

Guerin, E., Environmental Groups Say California's Climate Program Has Not Helped Them (February 24, 2017), Available at: http://www.npr.org/2017/02/24/515379885/environmental-groups-say-californias-climate-program-has-not-helped-them

"Lázadás Gulácson - Elzárták a romák egyetlen közkútját" ["Rebellion on Gulacs – The Roma's only public well was disconnected"-The author translated from Hungarian], Népszava online newspaper, Available at: http://nepszava.hu/cikk/1136439-lazadas-gulacson---elzartak-a-romak-egyetlen-kozkutjat?print=1

Read, R. and O'Riordan, T., "The Precautionary Principle Under Fire", Available at: EnvironmentMagazine.org

LEGAL DOCUMENTS AND CASES

a. United Nations

- Universal Declaration of Human Rights, Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (Resolution 217 A),
- International Covenant on Civil and Political Rights, Adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, Hungary ratified on 17 January 1974,
- General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights, Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23),
- Recommendation of the Parliamentary Assembly No. 1434 (1999),
- Recommendation of the Parliamentary Assembly No.1614 (2003),
- Recommendation of the Parliamentary Assembly No. 1885 (2009),
- Recommendation No. 1863 related to environmental health hazards (2009),
- Recommendations No. 1883 related to climate change (2009),
- Committee of Ministers, Reply to Recommendation No. 12298,
- Steering Committee for Human Rights Committee Opinion, Doc. 12043 (2009),
- Paris Agreement to the United Nations Framework Convention on Climate Change (2015),
- Universal Periodic Review, National Report submitted by Hungary (2016), Available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/HUIndex.aspx

b. Council of Europe

i. Legal documents

- ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies (adopted by ECRI on 6 March 1998)
- Council of Europe, Manual on Human Rights and the Environment (2d ed. 2012)
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Available at: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177/signatures?p_auth=Gd4IrQ2t,

ii. Cases

- Powell and Rayner v. the United Kingdom, ECtHR, App. No. 9310/81, 02/21/1990,
- López Ostra v. Spain, ECtHR, App. No. 16798/90, 12/09/1994,
- Guerra and Others v. Italy, ECtHR, App. No. 14967/89, 02/19/1998,
- Chapman v. the United Kingdom, ECtHR, App. No. 27238/95, 01/18/2001,
- Hatton and Others v. the United Kingdom, ECtHR, App. No. 36022/97, 07/08/2003,
- Orsus and Others v Croatia, ECtHR, App. No. 15766/03
- Moreno Gómez v. Spain, ECtHR, App. No. 4143/02, 11/16/2004,
- Nachova and Others v. Bulgaria, ECtHR, App. Nos. 43577/98 and 43579/98, 07/06/2005,
- Fadeyeva v. Russia, ECtHR, App. No. 55723/00, 09/06/2005,
- Luginbühl v. Switzerland, ECtHR, App. No. 42756/02, 01/17/2006,

- Stec and Others v. the United Kingdom, ECtHR, App. Nos. 65731/01 and 65900/01, 04/12/2006,
- Kontrová v. Slovakia, App. No. 7510/04, 05/31/2007,
- D. H. v. Czech Republic, ECtHR, App. No. 57325/00, 11/13/2007
- E.B. v. France, ECtHR, App. No. 43546/02, 01/22/2008,
- Fägerskiöld v. Sweden, ECtHR, App. No. 37664/04, 02/26/2008,
- Sampanis and Others v Greece, ECtHR, App. No. 32526/05, 06/05/2008,
- Tâtar v. Romania, ECtHR, App. No. 67021/01, 01/27/2009,
- Andrejeva v. Latvia, ECtHR, App. No. 55707/00, 02/18/2009,
- Galev and Others v. Bulgaria, ECtHR, App. no. 18324/04 09/29/2009,
- Sejdic and Finci v. Bosnia and Hercegovina, ECtHR, App. Nos. 27996/06 and 34836/06, 12/22/2009,
- Carson and Others v. the United Kingdom, ECtHR, App. No. 42184/05, 03/16/2010,
- Thlimmenos v. Greece, ECtHR, App. No. 34369/97, 04/06/2000
- Chiş v. Romania, ECtHR, App. No. 55396/07, 09/14/2010,
- Mileva and Others v. Bulgaria, ECtHR, App. No. 43449/02, 11/25/2010,
- M.S.S. v Belgium and Greece, ECtHR, App. No. 30696/09, 01/21/2011,
- Kiyutin v Russia, ECtHR, App. No. 2700/10, 03/10/2011,
- Grimkovskaya v. Ukraine, ECtHR, App. No. 38182/03, 07/21/2011,
- V.C. v. Slovakia, ECtHR, App. No. 18968/07, 11/08/2011,
- Zammit Maempel and Others v. Malta, ECtHR, App. No. 24202/10, 11/22/2011,
- Di Sarno and Others v. Italy, ECtHR, App. No. 30765/08, 01/10/2012,
- Yordanova and Others v. Bulgaria, ECtHR, App. No. 25446/06, 04/24/2012
- Horváth and Kiss v. Hungary, ECtHR, App.no. 11146/11, 01/29/2013,
- Lavida and Others v Greece, ECtHR, App. No. 7973/10, 05/30/2013,
- Alajos Kiss v Hungary, ECtHR, App. No. 38832/06, 05/20/2015,
- O.M. v Hungary, ECtHR, App. No. 9912/15, 07/05/2016,
- Otgon v. the Republic of Moldova, ECtHR, App. No. 22743/07, 10/25/2016.

c. Other regional human right documents

- African Charter on Human Rights and Peoples' Rights,
- 'San Salvador' Additional Protocol to the American Convention on Human Rights

d. United States of America

i. Legislation

- 2017 Cong US HR 2696, 115th Congress, 1st Session

ii. Cases

- Griggs v Duke Power Co, 401 US 424 (1971)
- Washington v. Davis [426 U.S. 229, 243] (1976)
- El Pueblo para el Aire y Aqua Limpio v. County of Kings, Sacramento Superior Court No. 366045, Dec. 30, 1991
- Miller v. City of Dallas, United States District Court, N.D. Texas, Dallas Division, 2002 WL 230834

- Ricci v. DeStefano, 557 U.S. 557, 610-11 (2009)
- Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. 135 U.S. 2507 (2015)

e. Hungary (and EU law as part of the Hungarian legal system)

- Article 46 of the Act LIII of 1995 on the general rules of environmental protection
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,
- 71/2002. (XII. 17.) AB határozat ["Decision No. 71/2002. (17/12/2002) of the Hungarian Constitutional Court" - The author translated from Hungarian], Available at: http://public.mkab.hu/dev/dontesek.nsf/0/2AC03E02A19E5EE7C1257ADA0052679B?OpenDocument,
- Government Decree No. 306/2011. (XII. 23.) on detailed rules of public procurement, unlike its successor, the Government Decree No. 322/2015. (X. 30.),
- Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment with EEA relevance,
- EU Commission Regulation (EU) No 651/2014,
- Government Decree No. 322/2015. (X. 30.),