

THE CHILD'S RIGHT TO AN ECOLOGICALLY BALANCED ENVIRONMENT-THE BASIC OBJECTIVE OF CONTEMPORARY SOCIETY

*Igor TROFIMOV**
*Eugenia GUGULAN***

Abstract

At European level it is not explicitly enshrined the right to an ecologically balanced environment of the child.

The fundamental right to a healthy and ecologically balanced in terms of man enshrined in the Charter of Fundamental Rights of the European Union stipulating in the 37th article entitled "Environmental Protection" is stipulated only: "A high level of environmental protection and quality improvement must be integrated into EU policies and ensured in accordance with the principle of sustainable development".

At the same time, the Convention on the Rights of the Child enshrines not expressly entitled to an ecologically balanced environment, which is superficially mentioned in 24th article as is follows: "To ensure that all segments of society, in particular parents and children, are informed, that they have access to education and are supported in the use of basic knowledge of child health and nutrition, to the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents".

That is why we want to clarify the legal status to the child's right to an ecologically balanced environment as a basic prerogative of sustainable development of contemporary European community.

Key Words: *child's rights protection, ecologically balanced environment, Charter of Fundamental Rights of the European Union, Convention on the Rights of the Child, the child's right to an ecologically balanced environment.*

JEL Classification: [K32]

1. Introduction

The right to a healthy environment is a universal right, a right of every citizen in a state that is established law. Under the current circumstances, it is natural that any individual can claim to live in a healthy environment unpolluted. Fight for pollution prevention and removal of its consequences must be a duty of all inhabitants of a country, a region, such as the right to a healthy environment, ecologically balanced expressed by its universal character.

Realization of fundamental human rights to life, physical and moral health is unthinkable without the existence of an ecologically clean environment. While

* Associate professor, PhD., Department "Private Law", Academy "Ștefan cel Mare" of Ministry of Internal Affairs, Republic of Moldavia.

** Lecture, PhD, Department "Private Law", Academy "Ștefan cel Mare" of Ministry of Internal Affairs, Republic of Moldavia.

maintaining favorable ecological conditions is an important factor for sustainable development, which is based on both economic goals and social and environmental.

Ensuring the right to a clean natural environment, healthy and sustainable remains an important objective for the Moldovan authorities, because in 2016 our country faced serious problems in this field.

A number of issues requiring urgent action are those related to: ensuring the effective management of water resources, storage and waste collection and management of the forestry sector, protection and conservation of forests. The issues in question are dotted and environmental Strategy¹ of the Republic of Moldova for 2014-2023 “inadequate management of solid waste causes pollution of soil, air and water; poor management of forests and agricultural practices irrational causes soil degradation and biodiversity loss; small rivers, wells are heavily polluted due to agricultural activities, infrastructure sewage outdated, illegal storage of waste and manure”.

The Constitution² enshrines the express right of citizens to a healthy environment, namely: “Everyone has the right to an environment harmless from ecological to life and health as well as food and household items safe. The State guarantees everybody the right to free access to truthful information regarding the state of the natural environment, living and working conditions, quality of food and household items. Law forbids concealment or falsification of information regarding factors detrimental to health. All persons are liable for damage caused to health and property of a person as a result of environmental infringements “.

Romania's supreme law³ properly provides that: “The State recognizes the right of everyone to a healthy and ecologically balanced environment. The state provides the legal framework for exercising this right. Individuals and legal entities has obligations to protect and improve the environment”.

We can see that in principle is enshrined citizens' right to a natural, healthy and ecologically balanced environment. Expressly we not find a regulation that would specify the particular child's right to a healthy and ecologically balanced, concluding that the legislator included in general formulation and this group of subjects.

Therefore, we conclude that at European level is enshrined, explicitly, the right to an ecologically balanced environment of the child. The fundamental right to a healthy and ecologically balanced human right enshrined in the Charter⁴ of Fundamental Rights of the European Union stipulating 37th article entitled

¹ Government Decision no. 301 of 04.24.2014 regarding the approval of the Environment Strategy for the years 2014-2023 and the Action Plan for its implementation. Published: 05.06.2014 in the Official Gazette of the Republic of Moldova, no. 104-109, art. 328.

² The Constitution of Moldova from 29.07.1994. Published: 12.08.1994 in the Official Gazette no. 1. Effective Date: 27.08.1994. 37th art.

³ Constitution, Official Gazette no. 767 of October 31, 2003, article 35.

⁴ Charter of Fundamental Rights of the European Union (2010 / C 83/02), Official Journal of the European Union, 30.03.2010.

“Environmental Protection” stating only that: “A high level of environmental protection and quality improvement must be integrated into EU policies and ensured in accordance with the principle of sustainable development”. Moreover, the Convention⁵ on the Rights of the Child devotes the express right to an environment ecologically balanced, which is mentioned superficially in 24th article e), namely: “To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents”. That is why we clarify the legal status of the child's right to an ecologically balanced environment as a basic prerogative of sustainable development of contemporary European community.

2. Theoretical

The right to a healthy environment can be presented as an individual right, subjective or collective one. The subjective right to a healthy environment right includes the right of everyone to pollution prevention, cessation of activities that result reclamation and compensation for damage suffered from environmental pollution. Accordingly, in terms of collective right to a healthy environment involves the duty of states to ensure the realization of this right and to work to prevent pollution and environmental protection at regional and international level.

Analysis terminology “human right to a healthy and protected environment” is important because of the need to reflect as complete name, both of that right and the scope of this content.

In the literature there is no consensus on the name of this law is frequently used names such as:

- the right to a healthy environment⁶,

The reasoning behind this name is based on: argument that the fundamental right to a healthy environment is a prerequisite for achieving other fundamental rights (such as right to life, health, physical and moral integrity, work, property, etc.); the existence of constitutional provisions on human rights stipulated in international treaties; the existence of basic obligations of the state to restore, protect and maintain the ecological balance.

- right to a healthy and ecologically balanced environment⁷,

To motivate this opinion is based on the idea that the environment must be protected so as to protect life and ensure its quality, such as leading to a much

⁵ Convention on the Rights of the Child, Ed “Save the Children”, Bucharest, 2010.

⁶ Cloșcă, I. (1991), *Human rights and humanitarian law in the contemporary world*. The magazine “Human Rights” no. 1-4 / 1991 p. 37; Marinescu, D. (1993). *Environmental law*, 2nd ed. Chance. Bucharest. p. 42.

⁷ Dușu, M., (1993), *Environmental Law*, Bucharest. pp. 50-51. The magazine “Human Rights” No.1/1992. Fundamental human right to a healthy and ecologically balanced, p. 17.

wider protection than that which would result only from the right of health protection. The word “balanced” indicates natural size, which refers to a global ecological environment.⁸

- right to a quality environment,⁹
- as the preservation of the environment.¹⁰

This formulation is grounded in the sense that public participation in environmental conservation has a dual aspect, right and duty, and they are not just passive recipients but also responsible conservation and environmental protection.

The doctrine uses other terms such as “right to a decent environment”, “right to a safe environment” and “right to a clean environment”, “right to a preserved environment”.

We share the view¹¹ then present name only includes content elements of the law, they are general, their use being able create mismatch between form and content name due to a lack of generality. Therefore, in addition to items like: healthy, environmentally friendly, clean, balanced, quality is appropriate to use the notion of “protection” who can ensure optimal generality of this right. In fact, all concepts contained in the name of this law are contained elements of “protection” because without it, the disappears and consequently disappear all the above adjectives as names.

For these reasons, we consider that appropriate wording would be “right to a healthy environment, protected and ecologically balanced.”

It's worth noting that although both the international and regional efforts were made in order to recognize such a right as a fundamental, yet foreign doctrine and international instruments did not reach a consensus on this issue.

Until World Conference in Rio de Janeiro in 1992, no international instrument did not contain an express admission of such human right. It cannot say, however, that attempts were made to combat this. As a result, the Declaration on Environment adopted at the UN Conference in Stockholm in 1972 proclaimed the principle that “man has a fundamental right to freedom, equality and living conditions satisfactory in an environment quality to them allowed to live in dignity and prosperity “.

Also, the World Charter for Nature, document approved by UN General Assembly Resolution 1982 specified that the government authorities and citizens about the need to preserve the environment in good condition, clean, able to ensure proper physical and mental development.

⁸ Lupan, E., (2009), *Environmental Protection Law Treaty*, C.H. Beck, Publishing House, Bucharest. p. 29.

⁹ Duplé, N., (1988), *Le droit à la qualité de l'environnement: un droit en devenir, un droit à définir*. Montreal, p. 35; Bercis, P., (1985), *Pour les nouveaux droits de l'homme*, J.C. Lottes, Paris, p. 228.

¹⁰ Kiss, A., *Droit international de l'environnement*, Ed. A. Pedone, Paris, p. 26.

¹¹ Iancu, G., p. 168-170.

African Charter on Human and Peoples, adopted in 1981, explicitly recognizes (Art. 24) The right to “a satisfactory and global environment” as a right of all peoples. 1988 Additional Protocol to the European Convention on Human Rights stipulates in 11th article that “everyone has the right to live in a healthy environment and to benefit from essential public services”.

Establishment of the World Commission on the environment adopted the report “Our common future” which stated that “all human beings have the fundamental right to an environment sufficient to ensure their health and well-being” pollution is considered a crime against humanity.

For these reasons, many have views need not expressly acknowledge the fundamental human right to a healthy environment and protected in international instruments legally binding, because only thus could give a fresh assessment of both environmental protection and international relations. It welcomes the directive that such recognition could make a declaration of proclaiming and formulation of such a law, which will serve later to adopt a legally binding international document.

The legal content which included the right to a healthy and ecologically balanced environment is established between the natural or legal person, as owners of rights, and the country in which it resides or residence. This legal relationship and, consequently, the fundamental right to which we refer acquisition occurs when the legal capacity of the owner, the birth of the person or the establishment of a legal entity. Moreover, in the context of legislation on child protection conceived but yet unborn positioned that it is entitled to the right to a healthy and ecologically balanced environment, from conception.

In connection with the holder of a healthy and protected environment in the literature they have made several opinions that lies therefore the relationship man - nature. Undoubtedly, the next generation is the future of a nation and the entire world and we believe that children fall into default in this category of persons entitled to a healthy and ecologically balanced environment. Moreover, as already stated there is unanimity in this context and found the lack of express provision to the child's right to a healthy environment, ecologically balanced and unpolluted.

3. Scientific research

Throughout the European Convention on Human Rights not found the words “environment” nor that of “right to a healthy environment”. Thus, it could be argued that this right is part of the rights and freedoms which it guarantees. Moreover, not including this as among those covered by the Convention is not surprising, given that industrial development at the time of its adoption unproblematic environment. Even if the right environment has been the subject of many international regulations, the importance of the Convention and ECHR jurisprudence in this matter is crucial in determining the extent to which the right to the environment is transformed into a subjective right protected by the

Convention and the extent to which individuals can invoke subjective right to healthy environment with corresponding obligation of States, before the Convention institutions.

Given the importance of this right and the need to cover shortages caused by the fact that he enjoys a consecration express Convention European Court of Human Rights has used the technique of “protection by default” that allowed the extension of the protection of rights guaranteed by the Convention on rights not expressly provided for therein. Thus, the “attraction” by and under cover art meanings. 8, paragraph 1, which recognizes the right of everyone to respect for his private and family life, his home and correspondence and art. 6 § 1, which guarantees the right to a fair trial, ECHR reached ensuring environmental protection as an individual right in three key areas:

- belonging to the content of the right guaranteed by Art. 8 paragraph. 1 of the Convention;
- existence of a right to information on the quality and environmental hazards;
- existence of a right to a fair trial in this matter.

On this line, since the 1970s, the Commission started to admit gradually becoming more explicit that pollution affect the right to privacy of individuals and that “noise can affect unmistakable physical well-being of a person and therefore prejudice privacy “and that it” may also deprive anyone the opportunity to enjoy the tranquility of his home”.

Making reference to judicial practice can bring an example when Moldova was condemned in 2016 by the European Court of Human Rights for infringement of Article 8 of the European Convention on Human Rights for not giving sufficient compensation by the courts for damages health. The person concerned in this case was hospitalized after consuming infected water tap and the national courts have not applied for compensation for damage to health.¹²

The case originated in an application (no. 22743/07) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Svetlana Otgon (“the applicant”), on 20 April 2007. The Moldovan Government (“the Government”) were represented by their Agent, Mr. V. Grosu. The applicant alleged, in particular, that she had received insufficient compensation for an established violation of her rights under Article 8 of the Convention.

On 26 October 2005 the applicant and her daughter drank water from taps in their apartment and shortly thereafter they felt unwell. On 29 October 2005 the applicant’s daughter, who was twelve at the time, was admitted to hospital with a diagnosis of “serious acute dysentery”. The applicant was admitted to hospital

¹² Case of Otgon v. the Republic of Moldova (Application no. 22743/07, Judgment Strasbourg 25 October 2016).

with the same diagnosis on 31 October 2005. She was released from hospital on 13 November 2005, a day later than her daughter.

The applicant lodged a court action against the local utilities provider (“the provider”), a State -owned company, claiming 100,000 Moldovan lei (“MDL”, approximately 6,700 euros (EUR) at the time) in compensation for the harm caused to her health and for the related inconveniences, including subsequent investigations and disinfection. The applicant complained that her health had been endangered as a result of having drunk contaminated water. She considered that there had been a violation of Article 8 of the Convention.

The Court's assessment was outlined in the following formula: “As the Court has had previous occasion to remark, the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers, *inter alia*, the physical and psychological integrity of a person (see, for instance, *X and Y v the Netherlands*, 26 March 1985, §22, Series A no.91, *Pretty v. the United Kingdom* no. 2346/02, § 61, ECHR 2002-III and *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, § 29, 18 December 2012). It has also found that “there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8” (see, for instance, *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 40, Series A no. 172, *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C, *Guerra and Others v. Italy*, 19 February 1998, § 57, Reports of Judgments and Decisions 1998-I and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

Moreover, “Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly. Whether the case is analyzed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants ‘rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar” (*Hatton and Others*, cited above, § 98). In the light of the foregoing, the Court considers that the applicant can still claim to be a victim of a violation of Article 8 of the Convention.

Furthermore, in the light of the conclusions of the domestic courts, it finds that there has been a violation of Article 8.

Consecration by EU case law, the right to environmental information as a procedural safeguard the fundamental right to a healthy environment is fully consistent with the regulation of this issue by the 1998 Aarhus Convention.

It guarantees the right to access information without the applicant to declare an interest and the public's right to be informed by public authorities on environmental issues.

According to art. 5 paragraph 1 of the Aarhus Convention “in case of imminent danger to health or the environment, attributable to human activities or

due to natural causes, all the information necessary to enable the public to take measures to prevent or limit any damage and are possession of a public authority shall be disseminated immediately to persons who may be affected”.

Analyzing situations presented, we conclude that there is an urgent need to move from implicit to the explicit recognition of human rights and child to a healthy, ecologically balanced environment is being reinforced this right both at regional and international level.

Conclusions and Implications

The right to a healthy and ecologically balanced environment may be considered as a fundamental right that belongs to all legal subjects (individuals, businesses and state). Respect and guarantee its performance to be provided if necessary and the coercive force of the state. Constitutional recognition of such a level as important for the economy, environmental law and environmental policy, aiming the rights and obligations under and awakening every citizen environmental awareness. Analyzing those mentioned come up with some recommendations in this regard:

- Improving sectoral policies to monitor, manage and protect water resources; water quality monitoring at national level in a systematic and coordinated.
- Step up efforts to expand the sewage system and wastewater treatment system in the country and especially in rural areas, with construction of new culverts.
- Capacity building of local authorities to develop project documentation to obtain funding from the relevant national authorities competent in the field of water supply and sewerage rural areas.
- Intensifying efforts to achieve control and evaluate the ecological situation in Moldova in terms of waste management and public information about it.
- Undertaking urgent measures to develop optimal solutions to the problem of waste disposal in the municipality. Chisinau.
- Monitoring compliance with strict prohibitions imposed rent premises forest and concession of the right to lease the premises forest to other people, and undertaking legal action to restore forests managed exclusive state for the benefit of all citizens, taking actions necessary to expand forest areas.
- Promoting environmental education of the young generation at all levels, as part of a modern educational system.

Bibliography

1. The Constitution of Moldova from 29.07.1994. Published: 12.08.1994 in the Official Gazette no. 1 Effective Date: 27.08.1994.
2. The 1515 Law on Environmental Protection of 16.06.1993. Official Gazette of the Republic of Moldova No. 10 of 01.10.1993.
3. Government Decision no. 434 of 10.06.2014 on approval of the strategy for child protection for the years 2014-2020. Published: 20.06.2014 in the Official Gazette of the Republic of Moldova no. 160-166. art. 481.
4. Government Decision no. 301 of 04.24.2014 regarding the approval of the Environment Strategy for the years 2014-2023 and the Action Plan for its implementation. Published: 05.06.2014 in the Official Gazette of the Republic of Moldova. no. 104-109. art. 328.
5. Case otgon v. moldova (application no. 22743/07) judgment strasbourg october 25, 2016.
6. Charter of Fundamental Rights of the European Union (2010 / C 83/02). Official Journal of the European Union. 30.03.2010.
7. Convention on the Rights of the Child. Ed Save the Children. Bucharest. 2010.
8. Report on rights and freedoms in Moldova 2016 Chisinau. 2017.
9. Report Moldovan children to the UN Committee on the Rights of the Child Chisinau, 2016. Center for Information and Documentation on Child Rights (CRIC) and supported by the Swedish organization "Save the Children" Foundation Pestalozzi.
10. Diaconu, M., (2006), *The right to a healthy environment in the constitutions of EU countries*. Journal of Legal Sciences, Section Public Law.
11. Dogaru, L., (2011), *Protection of the right to a healthy environment ECHR*, Journal "Legal Current".
12. Duțu, M., (2008), *Environmental law*, C.H. Beck Publishing House, Bucharest.
13. Duțu, M., Duțu, A., (2014), *Environmental law*, 4-th edition, C.H. Beck Publishing House, Bucharest.
14. Ene, C., (2011), *Environmental law*, C.H. Beck Publishing House, Bucharest.
15. Lupan, E., (2009), *Treaty of environmental protection law*, C.H. Beck Publishing House, Bucharest.
16. Marinescu, D., (2008), *Treaty of environmental law*, 3-rd ed. Universul, Bucharest.
17. Trofimov, I., (2002), *Environmental law*, Chișinău.
18. Trofimov, I., Ardeleanu, Gr., Crețu, A., (2015), *Environmental law*, Bons Offices, Chișinău.
19. Țarcă, Șt., (2010), *Treaty of environmental law*, Lumina Lex Publishing House, Bucharest.
20. Trușcă, P., Trușcă, A., (2009), *Fundamental human right to a healthy environment in the ECHR*, Transylvanian Review of Administrative Sciences 1 (23), pp. 97 -120.
21. <http://www.sferapoliticii.ro/sfera/149/art09-nedelcu-surdescu.html>.