

THE RIGHT TO A HEALTHY ENVIRONMENT - A FUNDAMENTAL, CONSTITUTIONALLY GUARANTEED, HUMAN RIGHT

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Abstract

At a time when the environment is deteriorating more and more, from a human rights point of view, the right to a healthy environment takes on a fundamental constitutional place. The consequences of climate disturbances have become urgent for the protection of the natural environment, combating them being a priority for human rights, given that all forecasts predict a galloping aggravation of these phenomena, which can have catastrophic and irreversible effects on current as well as future generations. The right to a healthy environment as a fundamental constitutional right has an individual dimension in the sense that it involves the right of each individual in society to activities that lead to the prevention of pollution or to actions that lead to the cessation of activities that cause pollution and implicitly the repair of any damage suffered through these forms of pollution. The current legal regulation of the right to a healthy environment is likely to highlight the establishment and consecration, both nationally and internationally, of a fundamental human right, to a healthy and balanced environment.

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1. Introductory elements

Man has always tried to shape nature, which had harsh laws that had to be obeyed in order to survive. In the last two centuries, however, man's attempt to dominate nature, to use all the natural riches for his own benefit, leading to the "ecological crisis" (De Falafosse, 1973:250), has made itself felt. The causes of this crisis are primarily due to the development of industrial civilisation in the mid-19th century, which has caused profound and accelerated changes to the environment. Increasingly, natural resources were strained, massive deforestation expanded to obtain timber and new land for agriculture, the use of grassland intensified, the exploitation of the subsoil developed greatly. At the same time, industrial civilization made rapid demographic growth possible and necessary, it meant great development of the urbanization process, it created large human agglomerations in smaller and smaller spaces.

Man has not long wondered how to proceed rationally under normal conditions of balance and development of life. It was late when he noticed that

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he is the creation and creator of his environment that ensures his existence as well as his intellectual existence. The irrational exploitation of renewable resources (forests, flora, fauna, etc.) and non-renewable resources (mineral riches of the subsoil) has accentuated the harmful effect of human actions on nature.

The environment is made up of the natural environment in which we live and the spaces built by humans but, in a broader sense, the environment refers to humans and the relationships between them. We are all entitled to a clean environment that implicitly influences the natural evolution of society. Life itself is closely related to environmental conditions.

Throughout their history, humans have caused considerable damage to the environment. Their actions caused damage to the lives of other inhabitants. Some examples of the activities of people with the most serious consequences on other people, and especially on children, are: the unlimited felling of forests leading to rainfall reduction and the desertification of large areas, ecological accidents caused by negligence.

Only the preservation of a clean and healthy environment (Ghezali, 1973:93) ensures the normal physical and moral development of all members of society, which is why it is important that all people and especially children are educated to preserve the environment, to establish a balance between economic development and the environment. Without protecting the environment, sustainable development cannot be ensured and this also includes the protection of the environment.

2. Legislative framework on environmental protection in Romania

The existing requirements and demands at the European Union level require a new approach to global environmental issues, in terms of environmental effects and pressures and of all the consequences of socio-economic development.

The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in June 1992, showed that the environment and economic and social development can no longer be thought of as isolated areas and that the only way for long-term economic progress is to connect it to environmental protection. After the 1992 Rio de Janeiro Conference, Romania began to assimilate the parameters of sustainable development, under the special conditions of transition to another economic and social system, which inevitably also imprints on the activities related to environmental protection. (Sudré, 1997: 209)

The environmental legislation is represented by all the normative acts such as laws, decisions and ordinances of the Government, orders issued by different authorities and EU regulations that define and regulate all the measures applied in the correct management of the waste generated by natural persons and legal entities, measures necessary for the protection of the environment and the health of the population, through actions of selective collection and efficient and ecological treatment of waste of all types. (Dutu, 2004:101)

The legal obligations apply to both natural persons and legal entities (Dutu, 2004:96), and include responsibilities for the selective collection of waste, its transportation, storage and treatment/recovery, through the methods provided by law depending on the type of waste. Managed waste can be classified, depending on its origin, into 3 large categories, namely: municipal and assimilable waste, sanitary waste and production waste.

The waste hierarchy is established according to the order of priorities in the environmental legislation as follows: prevention; preparation for reuse; recycling; other recovery operations, for example energy recovery; disposal.

This hierarchy makes waste generation and management more efficient, thus reducing the harmful effects on the environment and public health. Only authorised economic operators may carry out waste management activities.

The legal obligations include: the appointment of a waste management officer, trained in this regard; the classification of the waste produced, regardless of their quantity, according to the legal categories in the waste classification; the recovery of waste and the separate collection of paper, metal, plastic and glass waste; the monthly record of waste and the submission of an annual centralizing report to the territorial Environmental Protection Agency; the prohibition of abandoned waste; the elimination of battery waste mixed with domestic waste. If these obligations are not complied with, considerable fines shall be applied and in special cases they shall include the criminal punishment of the guilty parties.

The essential provisions regarding the protection of the environment are: the positioning of industrial objectives, treatment stations and household waste deposits at the outskirts of the localities or in areas outside them; the maintenance, upkeep and development of green areas, parks, trees and shrubs for street protection; the maintenance and embellishment of buildings, their courtyards and surroundings, of the green areas in the courtyards and between the buildings; the clean maintenance of the water areas (lakes, public pools) in parks, recreational and tourist areas; the protection of the landscape and the maintenance of street cleanliness.

3. The right to a healthy environment from a human rights perspective

From a human rights perspective, the right to a healthy environment (Marinescu, 2007: 19), in the face of worsening environmental deterioration, takes on a primary position alongside other rights, including the right to development, the right to an adequate social environment through the fight against terrorism, crime and drugs, the right to peace and security, the right to humanitarian assistance and respect for the common heritage of humankind, which are generically referred to as collective, solidarity, third-generation rights.

The chronological classification of human rights remains one of the best known.

Thus, there are first generation human rights, represented by "classical" civil and political rights: the right to life, freedom, physical integrity, freedom of expression, etc.

The second generation is made up of economic, social and cultural rights, which involve the positive intervention of the state, in the sense of creating the material and social conditions for their achievement.

The third generation is made up of collective, solidarity rights, and lately with the new discoveries in medicine and biology the issue of the emergence of a fourth generation of human rights that protect human dignity from some abuses: genetic manipulations, experiments on the human embryo, organ transplantation, has been raised.

The right to a healthy environment (Bîrsan, 2005:201) has not only a collective dimension – which implies the obligation of states to cooperate in preventing and combating pollution, protecting the natural environment, at a regional and international level, but also an individual dimension – which implies the right of every individual to prevent pollution, to cease the activity that causes pollution and to repair the damage suffered by this pollution.

It should be borne in mind that environmental law is an area of interdisciplinary analysis and is the first case of an integrated legal approach at the national and international level.

What characterizes environmental law regulations is the fact that in their overwhelming majority, these are technical regulations, sanctioned by legal means, establishing strict terms and ways of achieving precisely defined objectives, prescribing well-defined conducts and attitudes, able to allow a rational, adequate exploitation of nature.

The right to a healthy environment is not found in the text of the European Convention on Human Rights and is the work of the Council of Europe, whose main purpose is to guarantee the supremacy of the law, and in this respect it can be said that the Convention "requires" guaranteeing this right as being in fact in the spirit of the Convention, beyond its letter.

Recognition of the right to a healthy environment is the result of a development of case law which, without entailing the actual creation of new rights, has called for the extension of the scope of already existing rights. (Naim-Gesbert, 2011:141)

Environmental damage, while they cannot be caused directly by the violation of the right to a healthy environment, which is not guaranteed by the ECHR, can however be the cause of the violation of other rights protected by the Convention, such as: the right to life; the right to respect for private and family life; the right to property; the right to free expression; the right to a fair trial.

Through the new content conferred by the European Court of Human Rights to these rights, people are also recognized the right to a healthy environment.

The approach of the ECHR is indeed an original one, in that it uses by hypothesis individual rights, such as the right to life, to privacy, to respect for one's domicile or to property, in order to punish damages to a collective property such as the environment.

Several provisions of the Convention therefore provide a basis for complaints about violations of the right to a healthy environment.

The protection of privacy and residence is the most frequently cited basis before the Court to date for implicitly guaranteeing a healthy environment as well. According to Article 8 of the Convention: "Everyone has the right to respect for his private and family life, his home and his correspondence".

An example of this is the connection between the violations of the right to respect for the domicile and the violations of the quality of life in the case of *Lopez Ostra v. Spain*, on 9 December 1994. (*ECHR Decision, Lopez-Ostra c. Spain, 9 december 1994*)

This is the first time that the Court has convicted a state, Spain in this case, of infringing Article 8, on this ground.

In this case, Mrs. Lopez-Ostra lived with her husband and their two girls in the city of Lorca (Murcia region of Spain) at a very close distance (only 12 m) from a treatment plant, built later on, a station that harvested the waters from several tanneries and which had several dysfunctions (causing gas emanations, unbearable smells and several illnesses).

The ECHR showed that "it is self-evident that serious harm to the environment can affect the well-being of a person and prevent him from enjoying his domicile, affecting his private and family life, even without seriously endangering the health of the persons concerned", the fundamental "formula", which will only be enriched and nuanced by the subsequent judgements of the Court.

The nature of the violations of the right to respect for the domicile was also stated in the judgement in *Moreno Gomez v. Spain* of 16 November 2004.

In this case, the plaintiff's complaint concerned the opening of a new nightclub in the building where she lived, located in a residential area of Valencia, declared an acoustically saturated area.

Since 1974 the Valencia Municipal Council had continued to grant authorizations for the opening of bars, pubs and discos in the vicinity of the neighbourhood where the plaintiff lived, making it impossible for the inhabitants of the neighbourhood to rest.

The ECHR noted that the municipal services had found that the maximum noise level in the area had been surpassed several times, so that it was not necessary to require an inhabitant of the area to prove what was already officially known by the City Hall.

Taking into account the intensity of the noise pollution, beyond the level authorized during the night, as well as the fact that this situation continued for

several years, the Court decided that art. 8 was violated, mentioning that "the violations to the right to respect for the domicile concern not only material or physical violations, such as unauthorized entry into someone's home, but also immaterial or intangible violations, such as noise, emissions, odours or other interference".

A significant example is the case of *Tatar v. Romania* of 27 January 2009 (*Tatar case against Romania, Application no. 67021/01, ECHR Decision of January 27, 2009*), where the Court specified that "the positive obligation to take all reasonable and appropriate measures to protect the rights that the plaintiffs may invoke under para. (1) of art. 8 implies, first of all, for the states, the primary duty to establish a legislative and administrative framework aimed at the effective prevention of damage to the environment and human health".

In this case, on January 30 2000, as a result of the collapse of the dams of the sedimentation tanks of the exploitation of a gold and silver mine in Romania, more than 100,000 m³ of water containing sodium cyanide and heavy metals were discharged into the rivers, reaching the Black Sea through the Danube Delta.

Mr. Tatar and his son lived, at the time of the events, in the city of Baia Mare, in a residential neighbourhood located near the extraction plant and the sedimentation tanks.

Mr. Tatar, the father, argued before the ECHR that the technical procedure used by the company Aurul Baia Mare SA represented a danger to his life and that of his son, who developed chronic asthma. He also complained about the authorities' passivity in the face of that situation and his countless complaints. Rejecting the grounds for infringement of the right to life, the Court examined the application in light of Article 8 concerning the right to respect for private life and residence. It ruled that Romania had violated the two plaintiffs' right to a healthy and protected environment. The decision is the first in which Romania was convicted by the ECHR in a case related to environmental protection.

Conclusions

In conclusion, environmental protection is achieved, according to the law, by imposing certain obligations, establishing special conditions and stipulating prohibitions on the rational use of natural resources, preventing and combating environmental pollution and the harmful effects of natural phenomena.

Environmental protection aims to maintain the ecological balance, by avoiding pollution, in order to maintain and improve the quality of the natural factors, of the natural values of the states, namely to ensure optimal living conditions for the current and future generations. In this context, the "technicality" of environmental law favours the unification and uniformity of environmental legislation by harmonising national legislations and adopting global international documents.

The universal nature of ecological issues and the common interest of present and future humankind in preserving the environment make legal regulation the main means of promoting the objectives of a viable socio-ecological model.

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