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THE EUROPEAN RIGHT TO A HEALTHY ENVIRONMENT



I. THE RIGHT TO A HEALTHY ENVIRONMENT, FUNDAMENTAL HUMAN RIGHT, CONSTITUTIONALLY ENSHRINED*

1. INTRODUCTION

There is, of course, a direct relation between the right to a healthy environment and other human rights. Environmental degradation affects the right to life, health, work and education. For example, the pollution of lakes and waters in a large number of countries has a severe impact on the fishermen's possibility to make a decent living through their traditional work, or the pollution of the air and water resulted from the activity of certain plants generates health issues, while intoxications caused by lead-based paints, gas etc. affect the children's capacity to learn.

The World Health Organization (WHO) defines the environment in relation with health, as being all the physical, chemical, and biological factors external to a person and all the related behaviours¹. A healthy environment consists in the prevention or control of diseases, lesions and disabilities caused by the interactions between people and the environment.

The current legal regulation highlights the elaboration and enshrinement at national and international level of a fundamental

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¹ A. Prüss-Üstün, C. Corvalán, *Preventing disease through healthy environments*, Geneva, Switzerland: WHO, 2006, p.22 (http://www.who.int/quantifying_ehimpacts/publications/preventingdisease.pdf)

human right to a healthy and balanced environment. The environment is considered healthy when it provides the adequate conditions of living and development to all the beings living at a certain point on Earth. Without a doubt, in order to be healthy, the environment must be ecologically balanced and preserved by any means and protected.

From the perspective of human rights, in the context of a severe environmental degradation, the right to a healthy environment gains an essential position, besides other rights, including the right to development, the right an adequate social environment by countering terrorism, criminality and drugs, the right to peace and security, the right to humanitarian assistance and observance of common humanity patrimony, rights with the generic name of collective solidarity third generation rights. The chronological categorization of human rights remains one of the best known forms of categorization. Thus, there are first-generation human rights, represented by “classic” civil and political rights: the right to life, freedom, physical integrity, freedom of expression etc. The second-generation human rights are represented by the economic, social and cultural rights, which involve the positive intervention of the state, with the purpose of creating the material and social conditions for their exercise. The third-generation rights are represented by the collective, solidarity rights and, with the latest discoveries in medicine and biology the enshrinement of a fourth generation of human rights, which protect the human dignity from certain forms of abuse: genetic engineering, experiments on the human embryo, organ transplantation¹.

Starting from the premise that human rights are applicable only so long as they are stated in the internal legislations as fundamental rights and their exercise is guaranteed (i.e. only if they are enshrined in the constitutional, legislative and legal system of each state), it is necessary to correlate the internal and international regulations, to this end.

¹ M.-M. Pivniceru, F. D. Dăscălescu, *Limita inferioară a dreptului la viață: între protecția fetusului uman, dreptul la avort și progresul științelor biomedicale*, “Revista română de bioetică”, vol.I (October-December) no.4, 2003, p.114

2. INTERNATIONAL ENSHRINEMENT AND CONTENT OF THE FUNDAMENTAL HUMAN RIGHT TO A HEALTHY AND BALANCED ENVIRONMENT

The universal instruments proclaiming the human rights are the following: the Charter of the United Nations, signed on June 26th 1945 and the Universal Declaration of Human Rights, proclaimed at the General UN Assembly. They envisage four categories of fundamental human rights: economic and social rights (the right to work, the right to social security, health and others); cultural rights (the right to education, cultural life etc.); civil rights (the right to equal protection before the law, the right to citizenship, freedom and inviolability etc.); political rights (freedom of thought and conscience, the right to elect and be elected etc.) The international assemblies organized under the aegis of UNESCO have progressively led to the creation of the concept of “rights of the peoples”. After the Conference of the Organization of African Unity in 1981, which adopted the African Charter on Human and Peoples’ Rights, at regional level, the general UNESCO Conference in 1983 adopted a resolution on human and peoples’ rights, at international level. The human rights include civil and political rights, social rights, economic and cultural rights, and the right to peace, the right to development, the right to a healthy environment, the right to a common heritage and the right to communication. All these rights are associated with the notions of solidarity and joint responsibility.

The 1972 UN Conference on the Human Environment held in Stockholm laid down the fundamental human right to a healthy and balanced environment, as a first principle of the 26 principles included in the Declaration on Environment, the first document explicitly acknowledging the relation between environment protection and the human rights, imposing at the same time the obligation of the society to preserve, defend and improve the environment, for the present and future generations (“the human being has the fundamental right to freedom, equality and satisfactory life conditions, in an environment with the proper quality allowing

the human being to live with dignity and welfare. It is a duty of honour to protect and improve the environment for the present and future generations”). In order to define the “healthy and balanced environment” phrase, the Stockholm Declaration of 1972 mentions “an environment with the adequate quality to allow the human being to live with dignity and welfare”. Although the importance of this document cannot be contested, it must be noted that it does not acknowledge directly the right to an environment, as such. It is rather an indirect acknowledgement of this right, by determining the relation between the human rights such as the right to life and freedom and the quality of the environment, with emphasis on the fact that the observance of the environmental provisions is a requirement, in order to ensure satisfactory living conditions.

Subsequently, article 24 of the African Charter on Human and Peoples’ Rights (Nairobi, June 28th 1981) stipulates that “all peoples shall have the right to a general satisfactory environment favourable to their development”. Another regional document is the “Additional Protocol” of November 14th 1998 on the economic, social and cultural rights to the American Convention on Human Rights, which acknowledged the “right to a healthy environment”, stipulating that “everyone shall have the right to live in a healthy environment and to have access to basic public services” as well as the obligation of the states to “promote the protection, preservation, and improvement of the environment” (art. 11).

In June 1992, 20 years after Stockholm, the UN Conference on Environment and Development (UNCED) was held in Rio de Janeiro. The purpose of the Conference was the elaboration of strategies and measures to stop and reduce the environmental degradation effects and to consolidate the national and international efforts to promote durable and ecological development in all the countries. UNCED adopted three non-compulsory instruments, including the Declaration from Rio, which identifies 27 principles. Principle 1 states that the human beings are at the centre of the preoccupations for a durable development and have the right to a healthy and productive life, in harmony with nature.

At the level of the European Council, the European Convention on Human Rights does not include any reference to the right to live

in an unpolluted environment, on account of the lack of preoccupations concerning the environment, at the moment when this Convention was elaborated and adopted (November 4th 1950). Therefore, it is not surprising that only by the late 70s, considering the new life conditions in Europe, the Commission had the opportunity to take a closer look at the environmental issues, at both the material and the procedural aspects¹. Then, in the late 80s, the right to an environment was enshrined jurisprudentially. The judges of the European Court for Human Rights knew how to overcome the obstacle resulting from the absence of a clear enshrinement in the Convention, by extensively interpreting a series of “classic” principles, already stipulated in the respective Convention. In practice, art.2 (the right to life), art.3 (prohibition of inhuman, degrading treatment or torture), art.8 (right to respect for private and family life) and art. 1 of the Additional Protocol no. 1 (protection of property), correlated to the articles also enshrining procedural rights: art.6 (right to a fair trial) and art.13 (right to an effective remedy) were most often invoked to this end².

Concerning the *community law*, the Treaty of Maastricht (1999) stipulating that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”, acknowledged and incorporated by indirect reference the fundamental right to an environment, amongst the human rights acknowledged and guaranteed at the level of the community jurisdictional structure.

It is important to mention that the environmental protection is also included in the Charter of Fundamental Rights of the European Union³, in the chapter “Solidarity”, art. 37 “Environmental Protection”

¹ M. de Salvia, *Mediul înconjurător și Convenția europeană a drepturilor omului*, „Pandectele Române”, no.6, 2003, p.164

² Details in M.-M. Pivniceru, F. D. Dăscălescu, *Deplasarea protecției dreptului la mediu din sfera drepturilor colective în cea a drepturilor individuale ale omului*, „Curierul Judiciar”, no.2, 2005, no.2, p.94-108

³ The Charter of Fundamental Rights of the European Union was officially proclaimed by the European Parliament, the Council and the Commission, on December 7th 2000, at the Intergovernmental Conference on the Treaty of Nice. Afterwards, it became part of the Treaty project, representing a Constitution for Europe; after it

(“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”). After the January 1st 2009 enforcement of the Treaty of Lisbon¹, subject to article 6, paragraph (1), first paragraph of the Treaty, the Charter of Fundamental Rights and the treaties have the same legal value, which is also of great significance for the environmental protection.

Guaranteeing the exercise of the fundamental human right to a healthy environment entails the following: the right to information about the environment; the right to participate in taking and enforcing environmental decisions; the right associate in order to protect the environment; the right to repair the environmental damages. The right to an environment, as a fundamental human right, is the object of theoretical disputes, although a series of states (Romania included) either overcame these disputes and created regulation systems for environmental protection, or agreed over the fact that this right has a state-wide legal recognition.

The foreign literature on the environmental protection issues poses the question of the rightful holder of the right to a healthy environment, in other words, “if we can consider it an individual right” or a “nature’s right”. The advocates of the “human finality” thesis claimed that the right to a healthy environment can only be held by the individual, as the human being is the sole beneficiary of this right. Other authors claimed that nature (which includes the human being as well) has the right to be protected. From the legal perspective, it is indisputable that only the human being can be the holder of the right to a healthy environment. The acknowledgement of this quality as human does not have a negative effect on nature:

failed, it regained its standalone status, being signed at Strasbourg on December 7th 2007, by the President of the European Parliament, Hans-Gert Pöttering, by the President of the European Commission, José Manuel Barroso and the President in force of the Union Council, José Sócrates

¹ The Treaty of Lisbon to modify the Treaty on the European Union and the Treaty on the Foundation of the European Union, signed in Lisbon on December 13th 2007 was ratified by Romania in 2008, through Law no. 13/2008, published in the Official Gazette of Romania, Part I, no. 107 of February 12th 2008

since the human being is part of nature, protecting the nature, the human being protects herself/himself. In theory, it is considered without reservations that there is an “environment right”, but it is not considered an individual subjective right; instead it is considered a “solidarity right”, such as the “right to development”, a collective right¹. Other authors consider it either an individual right, or a collective right, on condition that it can be exercised by a single individual. Therefore, it is very difficult to correctly phrase this new fundamental right.

In our opinion, in relation to the human rights, this is a question of anthropocentric perspective, but the right to a healthy environment does not only concern the human being, but also all the other life forms, the biosphere itself. It can be however agreed, in a wider sense, that the right to a healthy environment concerns the human being and all the natural elements surrounding the human being, to the extent in which they form an unbreakable ecological whole. Of course, the matter at hand is a healthy environment, of good quality, proper for the development of the human being, ecologically balanced and adequate for life evolution. More than a human right in strict sense, this is a right which protects both the human being and the environment in which the human being lives.

3. CONSTITUTIONAL ACKNOWLEDGEMENT OF THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT, IN THE EUROPEAN UNION STATES

At state level, throughout the world, almost 50 countries enshrined the right to a healthy environment in the Constitutions, more or less explicitly, a phenomenon which tends to generalize with the constitutional reviews or elaborations. The concept of environment has a variable importance, depending on the country, fluctuant

¹ C. L.. Popescu, *Protecția internațională a drepturilor omului*, București, All Beck, 2000, p.6-7