

THE FUNDAMENTAL HUMAN RIGHT TO A HEALTHY ENVIRONMENT

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***Abstract:** The right to a healthy environment is a fundamental right, a right of every person in a state, which enshrines it in a legal manner in the current conditions. It is natural that any person should claim to live in a healthy, unpolluted environment. The fight for pollution prevention and the removal of its consequences must be the duty of all the inhabitants of a country, as well as the right to a healthy environment, expressed in its universal character. The right to a healthy environment can be viewed both as an individual and as a collective dimension.*

***Keywords:** fundamental meanings, natural dimension, individual dimension, harmful pollution, prevention, collective right, legal regulation.*

INTRODUCTION

Both the UN Charter and the Universal Declaration of Human Rights, as well as other European and international documents, proclaim human rights and fundamental freedoms for all people equally, without any discrimination. At the UN Conference on environment in Stockholm in 1972, the participants discussed about a fundamental right to freedom, equality and satisfactory living conditions in a healthy environment, whose quality allows people to live with dignity and prosperity.

But this is neither the definition nor the actual international consecration to a healthy environment of law. The idea is formulated more precisely in the African Charter on Human and Peoples' Rights, where Article 24 provides: "All peoples they have the right to a satisfactory environment favorable to their development."

The concept of healthy, unpolluted, balanced environment has fundamental meanings, referring to an environment conducive to human physical and intellectual development. The term also has a human dimension, seeking to defend its physical and moral integrity.

The word "balanced" indicates the natural dimension, which refers to a global ecological environment.

The individual dimension of the right to a healthy environment implies the right of every person to prevent pollution, to cease the activity that has the effect of harmful pollution and to restore the polluted environment, as well as to repair the damage suffered as a result of environmental pollution.

The collective dimensioning of the right to a healthy environment implies the obligation of states to guarantee the exercise of this right to cooperate in order to protect the environment at regional and international level.

CONTENTS

Fundamental human rights can be grouped into four broad categories: economic and social rights (the right to work, social security, health, etc.); cultural rights (right to education, cultural life, etc.); civil rights (the right to equal protection before the law, the right to citizenship, to freedom and inviolability, etc.); political rights (the right to freedom of thought and contribution, the right to choose and to be elected, etc.). Despite their hierarchy, the concept of human rights has a unitary character, determined by the realities of the national socio-economic and political life of the states and, of course, by the evolution of international relations. Underlying this general concept are the right to peace, life, development and the right to a healthy environment.

We note that the right to a healthy environment can be recognized in the constitution of a country, when we speak of a fundamental human right through an ordinary law, when we deal "only" with a subjective right. A particular right in relation to the traditional fundamental human rights consists in the reason that not all states enshrine this right, to the explicit expression in the constitution of the respective country.

Sometimes, only some obligations of the given state or some concrete attributions regarding certain executive bodies or categories of economic agents that have as implicit object aspects of the human right to a healthy environment are established in the national legislations. Other times, in a law, as a rule, on environmental protection, the state recognizes the right to a healthy environment without raising it to the rank of a fundamental right. This is the rule and so should all states proceed, the right to a healthy environment is enshrined in the constitution of the respective country as a fundamental right.

In the beginning, in this complex process and not at all easy to achieve, the confrontation of the two opposite directions in terms of Western European developments was inevitably reflected: on the one hand, the followers of the federalist orientation, which aims at supra national solutions and, on the other hand, the followers of integration, in the conditions of the states keeping the sovereign prerogatives. In the context of the analyzed problems, the human

right to a clean environment, as a comparative element of the improvement of living conditions, we consider that, regardless of the priorities given to one or the other of the two directions, the recognition and legislative consecration of the fundamental human right to a non-polluting environment cannot be avoided, maybe just temporarily postponed.

The establishment by law of the numerous obligations to protect the environment, both on the part of the state and of the economic agents, does not diminish the importance of the moral and legal duties of any citizen to personally protect the environment. This is all the more so as, in order to fully benefit from the right to a clean environment. The person (primarily the individual) must be obliged to contribute directly to the reallocation of the purpose of the right to environmental protection: to contribute to environmental protection, preservation and improvement, to remove the negative effects of actions against environmental factors and to create a natural balance of activity in the center of which man is placed with his needs and goods.

Those who have always opted for the great values of humanity, guarantors of our continuity and who have pleaded against the "planetary ecocide", paradoxically inaugurated by man and against human nature, have raised the issue, since 1968, at the Conference in Tehran, in the framework of the regulation of the relationship between man and nature, the formulation of a right to a healthy environment, even if the idea was thought more timidly and in a context more distant from environmental protection, which has not yet been formulated as such. The idea was then developed without being expressly formulated even at the first UN Conference on environment, held in Stockholm in 1972. The issue of a fundamental right to freedom, equality and living conditions in an environment whose quality allows man to live with dignity and prosperity was debated during this forum. Although this Conference did not even achieve the circumscription of the nation nor the actual international recognition of the right to a healthy environment, however, it was a very important step for the subsequent consecration of such a right.

At the same time, the principle formulated in Stockholm also reaches the idea that man has a sacred duty to protect and improve the environment for present and future generations. For this purpose, many concrete measures have been recommended for the signatory states and not only, such as: to develop long-term programs for the improvement and global promotion of the environment, to draw the attention of governments to the need for bilateral or regional consultations whenever a country's environmental conditions or development plans may have an impact on one or more neighboring countries; governments should agree on research programs on various aspects of the environment; to organize visits by researchers and to intensify exchanges of

specialized information; governments should train the necessary personnel for environmental protection and provide each individual through education, through the accessibility of means and information, equal opportunities to influence one's own environment, to take steps to establish an international educational program on environmental protection, to instill in every citizen an environmental awareness and many other such measures that have grounded, together with the rights of individuals, the idea of man in a clean, healthy environment.

The 1995 Maachricht Treaty stipulates that the EU "recognizes the fundamental human rights, as guaranteed by the European Convention in Rome [1950] and as a result of the constitutional traditions of the Member States and the general principles of Community law, which means that the fundamental right to a healthy environment is indirectly recognized.

International bodies take into account, when they suggest the recognition and guarantee of a healthy environment, that this notion has fundamental meanings in the life of a people and any individual referring to an environment conducive to human physical and intellectual development.

Indeed, under the political, economic and social conditions created in the second half of the XXth century and the beginning of the XXIst century in Europe, and not only, one of the legal problems of great significance became the legislative recognition and guaranteeing the right of every person to a healthy, unpolluted, ecologically balanced environment.

The need for this approach was supported in our country before 1989, but especially after the events of that year.

Besides the consecration of the right to a healthy environment in numerous international documents, where it appears alongside the right to life, peace and disarmament or the right to development, etc., this right is enshrined in the constitutions of many countries.

The fundamental right to a healthy environment is a right that involves the following aspects (rights):

- to live in an unpolluted, undegraded environment;
- the right to a high level of health;
- the right to have access to adequate, unpolluted water and food resources;
- the right to a healthy work environment;
- the right to dwelling conditions, land use and living conditions in a healthy environment;
- the right not to be expropriated as a result of carrying out environmental activities, except for justified causes and the right of those expropriated, in accordance with the law, to obtain appropriate repairs;
- the right to assistance in case of natural and man-made disasters;

- the right to benefit from the sustainable use of nature and its resources;
- the right to the conservation of the representative elements of nature, etc.

At the same time, as it results from the relevant legal texts, the right to a healthy environment presupposes the obligation provided, sometimes, expressly by law or implicitly included in the legal texts formulated to protect and improve the environmental conditions.

This is the general obligation of states to take legal, administrative and organizational measures and any other measures in order to prevent environmental degradation, to remedy the polluted environment, to ensure the sustainable use of environmental factors. The right to a healthy environment also presupposes the obligation of each person to contribute to the protection of the environment, by preventing pollution, restoring the polluted environment and contributing to the improvement of environmental conditions.

In our specialized doctrine it has been argued that in art.134 paragraph 2 letter e of the Romanian Constitution of 1991 unchanged, the fundamental right of citizens to a healthy and balanced environment from the ecological point of view was indirectly enshrined. The reasoning for this conclusion was the following: if the text of the article cited from the Constitution establishes the obligation of the state to ensure "restoration and protection of the environment, as well as maintaining ecological balance", then, logically, there is a correlative right, which can only belong to the citizen.

However, this dilemma was removed by art. 5 of the Environmental Protection Law no. 137/1995. The practice of the right to a healthy environment was also known in an ordinary law, but our country did not choose this path either, until 1995, when our legislator gave life to the recommendations formulated several times in international documents. Even if not at the level of the constitution, it enshrined the right to a healthy, unpolluted environment under the law of environmental protection.

Law no. 137/1995 - today abolished - was a normative act of great importance for the development of the right to environmental protection in the Romanian legal system also because it enshrined, for the first time in our country, the right to a healthy environment, in the following wording: "the state recognizes the right of all people to a healthy environment"

The legislative consecration of the idea that every person has the right to live in an environment suitable for their health must be appreciated in the context of other legal regulations, which also establish the task both individually and in association with others, to protect and improve the environment for the benefit of present and future generations and to respect this duty.

By revising the Romanian Constitution, carried out by Law 429/2003, it was mentioned that "the state recognizes the right of every person to a healthy

and ecologically balanced environment", a regulation by which this right, initially provided in an ordinary law, became, in our legal system as well, a fundamental right, being part of the third generation of rights, called solidarity rights, as they can be achieved not only through internal efforts of the state, but also through cooperation between two or more states.

CONCLUSIONS

Although changes in the environment are a consequence of industrial civilization, it is not industrial civilization itself that is the cause of environmental degradation.

The degradation of the environment consists of the mismatch between the environmental conditions and the objective requirements (biological, psychological, economic, social, etc.) of man, being caused not by the changes of the environment as such, but by the appearance of imbalances in the relations between man and nature. Man-controlled industrial civilization can ensure the conditions of a quality environment.

The deterioration of the environment by man does not only mean the destruction of the ecological balance, but also the appearance of a reverse reaction from the environment thus modified by man: the new environmental conditions are less favorable for human life, for the development of economic and social activities.

Almost without realizing it, people have set in motion vast ecological experiments involving the entire planet without having the means to follow the results, in a systematic way. Everywhere around the world, actions in support of the environment are required, as this is one of the contemporary priority concerns.

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