

# Considerations on the Right to a Healthy Living Environment

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## Abstract

*Among the fundamental rights of "third generation" rights of solidarity, the right to a healthy and ecologically balanced environment is characterized by a special dynamic of its recognition and its legal guarantee. Originally internationally proclaimed, constitutionally and legislatively recognized by states, this right is perceived with difficulty, judicially, by the system of the European Convention on Human Rights and Fundamental Freedoms and by European law. In the absence of specific legislation, it is recognized and guaranteed, especially through procedures and jurisprudence.*

*The Stockholm Conference of 1972 organized by the UN and its decisions have spurred socio-economic and legal-constitutional concerns of consecration of environmental protection. Virtually any constitution that was adopted or substantially modified after that time also included provisions on the environment.*

*In this regard, more frequent constitutional consecration is positive and paves the way for his inclusion among post-modern fundamentals right. It is considered that the right to environment is a subjective right to third parties whose compliance with can be requested by any natural or legal person, public or private.*

**Key words:** fundamental rights, environmental protection, the right to a healthy environment.

**J.E.L. classification:** K33.

## 1. Introduction

Although international regulations are important, the procedural safeguards to effectively achieve goals are that the fundamental right to a healthy environment is reduced to the procedural dimension at EU level, where in the past decade several documents were tools for the implementation of environmental policies, complementing the legislative environment. However, although the right to a healthy environment is not stated in the European Convention on Human Rights, the European Court of Human Rights did not hesitate to rule in cases involving violations of this right, because it represents an interference in the private lives of individuals. (Mazilu, 2006, p. 121)

Legislative developments require the establishment of insurance on environmental issues, to be signed necessarily by companies that have activities dangerous to the environment and optionally for other companies, so no matter who causes environmental damage, the existence of compensation for the affected and taking action to limit the damage to restore affected items would be certain

What can not be denied is that clear and strong legislation is needed to protect the environment. The environment has given us some warning signals and continues to do so and the duty of decision makers is to find the best policy solutions to ensure a healthy environment.

## 2. Guaranteeing the right to a healthy environment in Europe

The Community treaties do not expressly mention the right to a healthy environment. To protect such an essential right, the European Court of Justice was often inspired from the constitutional

traditions common to the Member States of the Union and from international treaties to which they are parties. The key treaty in this respect is the European Convention on Human Rights.

The phrase "environment" is not reflected in the wording of the European Convention of Human Rights, much less the concept of the right to a healthy environment, so you might say that the right to a healthy environment is not part of group rights and freedoms they generate.

Thus, the Convention does not state directly whether an individual has a right to a healthy environment. In fact, the first environmental causes, that were advanced to the Court were based on the idea that the Convention does not provide for the right to protect the environment or environmental quality standards. Most times, the Convention has been used as support for numerous applications, whose object was to provide an acceptable level of environmental quality

The main issue is whether individuals may require a subjective right to a healthy environment, with a corresponding obligation of States before an international judicial body. What later the Convention organs wanted is changing the right to a healthy environment in an individual right protected by the Convention. Council of Europe member countries did not accept an additional protocol to the Convention to consider this right as they do with other fundamental rights. (Duțu, 2007, p. 232)

Analyzing the European Court of Human Rights jurisprudence, we found that the violation of the right to a healthy environment in relation to other fundamental rights expressly enshrined was discussed, such as the right to life, right to privacy and family life, right to property, the right to a fair trial the right to freedom of expression.

The European Court of Human Rights has identified, both through its jurisprudence and the European Commission, that certain types of degradation of the environment with serious consequences for individuals, or even failure of public authorities to obtain information about the risks that may arise in connection with the environment and which individuals are exposed to, may constitute a violation of other rights protected by the Convention, such as the right to life enshrined in art. 2 of the Convention, the right to respect for private and family life enshrined in art. 8 paragraph. 1, or property rights, stipulated in art. 1 of Additional Protocol No. 1.

ECHR case law establishes that when a government engages in conduct of hazardous activities, such as nuclear testing, which could have "adverse consequences hidden" on the health of people attending, compliance with art. 8 involves the installation of an "effective and accessible procedure" to allow those concerned to seek adequate information. (Popescu, 2006, p.120)

The Convention, art. 10, obliges states to provide environmental information to the public, which, by their nature, are not directly accessible and which would not otherwise be made known to the public than through public policy action. Thus, it acknowledged the existence of the right to environmental information.

The right to a healthy environment requires committing to obligations to protect the environment. As fundamental rights form the content of the relations between individuals and the state, it means that these rights generate corresponding obligations to the state which recognizes and guarantees. So goes out the obligation of states to take appropriate legal, administrative and other measures necessary for the implementation of the right to a healthy environment (Petrescu-Mag, 2011, p. 231)

The content of this right is the evident obligation of each individual to prevent pollution, cessation of any activity that produces pollution and repairing the damage suffered by this pollution, but also a collective dimension, which implies an obligation of States to cooperate in preventing and combating pollution, protect natural environment, regionally and internationally.

In terms of human rights, the right to a healthy environment and quality is a fundamental new feature whose nature does not change with time or due to changes in circumstances.

### **3. International Environmental Concerns**

The interest in environmental issues appeared in 1972 at the first United Nations World Conference held in Stockholm. This was the first global environmental conference, attended by delegates from 114 countries. The most important document adopted at the Conference was "The environmental statement" which comprises of 26 principles on the rights and obligations of States

in this field and means of developing international cooperation.

The importance of it is that the document clearly states, for the first time, the link between environmental protection and human rights.

Thus, Principle 1 of the document states that "Man has the fundamental right to freedom, equality and living conditions satisfactory in an environment whose quality allows him to live in dignity and prosperity. He has a sacred duty to protect and improve environment for present and future generations (...)" The document establishes a link between human rights and environmental protection, the latter quality being an essential factor for ensuring a satisfactory life, but, nevertheless, not directly recognizes a right to environment. Stockholm Conference had the merit of having addressed the issue of environmental protection (Marinescu, 2008, p. 90).

From an institutional point of view, the bodies established by the UN or UNEP and the Environment Fund, helped financially actions in favor of the environment and played a coordinating role for international organizations, both for the United Nations system and regional ones.

Among the main organization established by the UN are the Environment UN Programme and the UN Commission for Sustainable Development. The United Nations Environment was established immediately after the United Nations Conference on the Human Environment held in Stockholm in 1972, and covers the following areas: assessing the state of the environment, conservation and protection of biodiversity, chemicals management, water protection, coastal protection, protection soil, protection of the ozone layer, climate change, sustainable energy, urban pollution, industrial pollution control, sustainable consumption . (Duțu, 2007, p. 230)

Under the auspices of the UN, a number of international documents that have governed international cooperation in different sectors of environmental protection were developed and adopted.

UN Conference on the Law of the Sea, by adopting the Montego Bay Convention of 10 December 1982, established the legal framework of the protection of the marine environment from pollution. Other general rules were contained in other international instruments developed and adopted under the auspices of the UN. Thus, the Geneva Convention of 18 May 1977 banned the use of environmental modification techniques for military purposes or any other hostile purpose. It also concerned covering any technical modification due to a deliberate manipulation of natural processes, the dynamics, composition or structure of the Earth, including its biotopes

The Convention signed in Aarhus on 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters presents a special contribution in the justness of the right to a healthy environment at European level, of particular importance because it recognizes " that everyone has the right to live in an environment adequate to its health and welfare (...)", and " considers it to be able to maintain this right (...) citizens must have access to information, be entitled to participate in decision making and to have access to justice in environmental matters (...) ". By Decision 2005/370 / EC., the Aarhus Convention was approved on behalf of the Community, signed by the European Community and its Member States in 1998. The Convention, in force since 30 October 2001 based on the idea that more raise awareness and citizen involvement in environmental issues will lead to better environmental protection . (Duțu, 2007, p. 230)

Thus, the Convention establishes rights and obligations regarding access to information, especially regarding deadlines for submission and the grounds on which public authorities may refuse public access to certain types of information. Refusal may be admitted if the public authority does not hold the requested information; if the request is unreasonable or formulated in too general; if the request relates to documents that are not yet developed.

#### **4. Conclusions**

The fundamental right to a healthy and ecologically balanced emerged from the ECHR case law interpreting the way of art. 8.1. and art. 6 of the European Convention and is considered an individual right, in the category of "civil rights". Since it is not considered an intangible right, it may be exempted in exceptional circumstances, and States Parties may limit it by statute.

Looking at case law of the European Convention on Human Rights we can see that they

discussed the violation of the right to a healthy environment in relation to other fundamental rights enshrined expressly.

In conclusion, there is no provision in the Convention and its additional protocols to explicitly the right point to a healthy and ecologically balanced environment.

By decision *López-Ostra v. Spain* 1994 European Court of Human Rights opened its doors in terms of human rights protection against environmental pollution. This judgment is the first indirect recognition by the violation of Art. 8 in context of pollution, of the existence of a human right to a safe and healthy environment. (Popescu, 2006, p.120)

The text of the International Declaration of Human Rights and the environment, adopted in Geneva in 1994 ranged important determinations of the content fundamental to a healthy environment. According to the doctrine, the document is based on the principles of the most important international documents on human rights and the Stockholm Declaration of 1972, the Rio Declaration and Agenda 21 in 1992.

In terms of human rights, the right to a healthy environment and quality is a relatively new fundamental right, whose nature does not change with time or due to changes in circumstances. Moreover, the universal respect of human rights and fundamental freedoms was expressly proclaimed as part of the common interest of the entire community. Moreover, it should be acknowledged and recognized that the right to a healthy and ecologically balanced environment is a natural right, with the same fundamental importance as the right to property and in close connection with it

Given the importance of this right and the need to cover shortages caused by the fact that he does not enjoy an express consecration within the Convention, the 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 which are not covered by it.

The European Convention on Human Rights, which recognizes civil and political rights and freedoms, guarantees the right to a healthy environment as a right of third generation rights falling within the category of solidarity. Through broad interpretation of the goal of rights expressly regulated by the European Court of Human Rights, the right to a healthy environment was linked to the right to privacy and considered a component of this right, thus leading to indirect protection of environmental right. (Petrescu-Mag, 2011, p. 231).

After two decades since the first world conference on environmental protection, despite the results achieved in terms of international cooperation, the planet's environment has continued to deteriorate in a general way, and a new measure, namely, the second conference of United Nations on environment and development was held in Rio de Janeiro in 1992. The Declaration is largely similar to the one in Stockholm, enshrining rights and responsibilities of states in relation to environmental protection. The most important invocation of the document consists of conjugation of two words; henceforth environmental protection and development are closely related .

The Rio Declaration of 1992 has not achieved any progress in recognizing material right to a healthy environment, the document is relevant because its provisions enshrine a series of rights that are considered procedural rights derived from the substantive right to the environment: the right to access environmental information, public participation in decision making and access to justice in environmental matters. (Duțu, 2007, p. 230)

The first international legal instrument which explicitly enshrines the right to the environment was adopted by the Conference of African Unity in determining the "African Charter on Human and Peoples". The document is important because it comes from a cooperative structures belonging to third world countries where due to economic and social difficulties environmental concerns are not a priority(Brașoveanu, 2014, p. 190)

The existence of an adequate institutional support is useful for both development and adoption of legal rules governing international cooperation on environmental protection and ensuring their subsequent completion and compliance.

Institutional cooperation on the environment is expressed especially through the "network" of international intergovernmental organizations. Regarding the involvement of NGOs, intergovernmental nature of the vast majority of international organizations is a limit.

The oldest and most comprehensive European organization was created as a subsidiary body of the UN Economic and Social Council in 1947 in anticipation of the reconstruction of Europe,

raising economic activity continental and international changes.

The state of the environment directly affects our lives and health. It takes responsibility to breathe clean air, clean water to drink and to use the conditions of life that nature offers us. Therefore, in order to live in a healthy and prosperous environment, it is our duty to maintain the natural balance of the environment and help to purify and protect areas affected by pollution.

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