

## GRANTING THE RIGHT TO A QUALITY ENVIRONMENT - A PREMISE OF SUSTAINABLE DEVELOPMENT

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**Key words:** fundamental right, quality environment, ecological balance, sustainable development, environmental protection.

**Abstract.** In the dynamics of national and international regulations, an important threshold has been crossed – the recognition and granting of the fundamental right to environment. The applicable international documents formulate the idea of an individual right to a specific quality of the environment.

Certain documents consecrate yet another *minimalistic* perspective, according to which the right to environment is only infringed when the right to life itself is threatened, considering that only significant degradations of environmental quality may endanger the vital biological needs for the survival of mankind.

We must nevertheless stress that although there is no direct and unanimous recognition of a right to environment per se, an indirect acknowledgement of it can still be seen in the connection established between the fundamental human rights (the right to life, the right to health, the right to freedom, etc.) and the quality to the environmental factors, which underlines the fact that the compliance with the environmental dispositions is a prerequisite for insuring optimal life conditions.

We must also note that there has been a reversal of the environment – development relation. Thus, if in the beginning the environment could not be understood without development, it was later stipulated that sustainable development cannot exist without the existence of a quality environment.

### 1. The Notion and Characterisation of the Fundamental Right to a Quality Environment

According to constitutional provisions, the state acknowledges everyone's right to a healthy and ecologically balanced environment. The state insures the

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legal frame for exerting this right and, accordingly, natural and legal persons have the duty to protect and improve the environmental factors.

Like any fundamental right, the right to a quality environment is a subjective right that is included, together with the other rights and obligations sanctioned by law, in the juridical status of each person (Ioniță, 2010).

In specialised literature, the right to a healthy environment was defined as „the fundamental right that expresses the requirement of insuring a quality environment and of preserving the ecological balance as an indispensable prerequisite for defending people's health and for the continuity of the human species on Earth.”(Romițan, 2004).

As part of the environment where he was born, man cannot live, cannot develop and evaluate in any other way except in harmony with nature, which he must protect, thus insuring his own protection and existence (Teodoriu, 2009). However, man's connection with nature weakened in time, especially during the recent period of enhanced development of industries, characterised by a limitless exploitation of natural resources, which proved to be exhaustible. Social evolution unfortunately requires man to perform certain activities that have been endangering nature and environmental factors, which imposes establishing and enhancing decisive and urgent measures that would ensure the protection of the environment.

Of course, during his evolution on Earth, man as a species has a privileged place, but the planet's resources must not only insure his existence; they should be used in such a way as to benefit future generations as well, and at the same time their limited nature must engender efforts to discover new alternative sources.

From the category of third-generation fundamental rights (the right to *solidarity, to common responsibility*), the right to a healthy and ecologically balanced environment can only consecrated through the common effort of all states, irrespective of their degree of development, which have to cooperate in drawing environmental policies and strategies as well. This requirement is vital in the context of the present phenomena and events which are dangerous for mankind: ecological disasters (natural or caused by human activities), armed conflicts, poverty of the population, demographic explosion, climate changes, etc.

The objective of all man's actions, be they individual or collective, must be the protection of the environmental factors, which ultimately means protecting our own being, since man is part of the environment and at the same time victim of his own actions.

From a legal perspective, environmental protection implies the responsibility of the authorities of central public and local administration, as well as of all the natural and legal persons, expressed through norms whose purposes are, among others: ousting in priority all the pollutants that directly and severely endanger people's health; creating a national system for the integrated monitoring of the

environment; the sustainable usage of natural resources; the preservation and improvement of environmental quality and the reconstruction of the deteriorated areas; the public's involvement in making decisions concerning the environment; developing international collaboration in order to insure the quality of the environment.

The aim of the applicable legislation is to regulate environmental protection, an objective of major public interest based on the strategic principles and elements that favour the sustainable development of society. The strategic principles and elements that determine environmental legislation with the purpose of insuring sustainable development are: the principle of precaution in decision making; the principle of prevention, reduction, and integrated control of pollution by using the best available techniques for the activities that may cause significant pollution; the principle of preventing ecological risks and damages; the principle of conservation the biodiversity and of the ecosystems specific to the natural biogeographic area; the principle that the "polluter pays" – all these being real guarantees of the fundamental right to a quality environment.

Like any fundamental rights, the right to a healthy and protected environment has, besides its general features, a series of specific characteristics that define its identity, such as:

- It is closely linked to the person, group, or population, granting the proprietor prerogatives that can be exerted with the purpose of obtaining other fundamental rights, for instance: the right to health, the right to life, the right to making decisions with an impact on the environment, etc.;

- It is a (fundamental) right with high applicability, in the sense that the compliance with it and its attainment insure the conditions for ecological balance, a real protection of the environmental factors, and last but not least, people's health and life;

- It is the fundamental right that implies its implementation not only for the person who has it, but also for the other members of society and, moreover, for future generations, who must be insured good life conditions, a clean environment and resources for their existence;

- Attaining and complying with this right imposes obligations not only for the members of society (regarded individually or as a group), but also for the state authorities, for non-governmental institutions and organisms, for the economic agents, etc.;

- Its nature is mainly preventive, besides reparatory and sanctioning, in our liability for ecological damages, in the sense that the environmental factors must be protected in anticipation and their deterioration must be avoided, it is often difficult if not impossible to restore them to their optimal state, combined from a legal perspective with the difficulties related to establishing liability, especially in

relation to identifying the author, proving his guilt and the extent of the ecological damage (Lupan, 2009);

- The beneficiary of this fundamental right is man, as its proprietor, and at the same time nature, the individual's life environment, since man is a component of environment and his life cannot be outside of the man-nature relationship (Iancu, 1998).

## **2. Legal Consecration**

A series of international documents, among which the UNO chart or the Universal Declaration of Human Rights, equally proclaim the fundamental rights and freedoms, with no discrimination. In the UN Conference concerning the environment, which took place in Stockholm in 1972, certain fundamental rights were defined as statutory, among which the right to freedom, the right to equal treatment and to satisfactory life conditions in an environment whose quality would allow a dignified and prosperous life. Later, international consecration expressed more clearly and firmly was imposed in the African Chart on human and peoples' rights (adopted in 1981 within the Organisation of African Unity, applicable since 1986), which stipulates in its art. 24: "all peoples have the right to a satisfying general environment, favourable to their development." Although this is only a political consecration of man's right to a healthy and non-polluted environment, this is an important and mobilising moment for the national law-makers in the subsequent adoption of appropriate normative acts (Lupan, 1998).

Included among "third-generation" fundamental rights, among solidarity rights, the right to a healthy and ecologically balanced environment is characterised through peculiar dynamics in relation to its legal acknowledgement and indemnification. First consecrated internationally (the Stockholm Declaration of 1972), and then constitutionally and legally in individual states, this right is timidly acknowledged in jurisprudence by the system of the European Convention on Human Rights and Fundamental Freedoms and similarly by European Law. In a first time, in the absence of specific regulations, it is only acknowledged and indemnified in legal practice (Duțu, 2007).

It is only in 1992 that the Declaration on Environment and Development in Rio de Janeiro proclaims, as a principle, the right of human beings to a healthy and productive life, in harmony with nature.

The convention on access to information, the public's participation in decision making and access to justice in environmental issues, which took place in Aarhus on June 25, 1998, stipulates that appropriate environmental protection is essential for the well-being and exertion of fundamental human rights, thus insuring the indemnification and accomplishment of the right to life (Dușcă, 2009).

Surprisingly, the Resolution of the General Meeting of the UN no. 55/2 of 08.09.2000 in New York does not expressly consecrate this right, although point 6 refers to fundamental values, among which the "respect to nature", essential in international relations in the 21<sup>st</sup> century.

On the national level, in line with international law, the Constitution of Romania, art. 35, consecrates the right to a healthy environment, along with other fundamental rights with which it is closely related, such as: the right to health, right to information, right to life and physical and mental integrity and more. Also, the right to a quality environment is consecrated in the Environmental Protection Law no. 265/2006, under which the state recognizes to any person the right to a healthy and ecologically balanced environment, ensuring the access for this purpose to environmental information and the right to associate in organizations for environmental protection.

### **3. Contents of the Fundamental Human Right to a Quality Environment**

In the beginning, the right to a quality environment was tightly connected to the right to health and the right to life, which subsequently became the right to better living and work conditions, including the right to rest. At the same time, environmental protection is inevitably also achieved by restraining certain fundamental freedoms, such as the right to property, or by limiting the exertion of easements or the right to free circulation in specific (protected) areas. At the same time, the achievement of the fundamental right to a healthy environment implies exerting other rights as well, equally fundamental, such as: the right to correct information and decision-making with an impact on the environment, the right to association, access to justice, etc.

As we know, subjective law includes rights and obligations for the state and for the public authorities as well as for individual, which requires for environmental protection to be achieved with the active participation of the citizens in public, democratic life, including in jurisdictional actions aimed to protect the environmental factors or to repair ecological damages (Bădescu, 2011).

In what concerns its contents, the right to a quality environment can be analysed from two viewpoints: individual, "human", which implies protecting man's life, health, and development through the insurance of a healthy and ecologically balanced environment, and collective, "natural", which imposes for man to behave with the purpose of protecting the natural environment and, as a consequence, indemnifying an environment that is favourable to living on this planet (Ioniță, 2010).

From an individual perspective, the fundamental right to a healthy environment grants a series of prerogatives that can be exerted by man, meant to insure a non-polluted environment, which would not endanger his health, life and

development, at the same time favouring actions that would repair the damages potentially caused by pollution.

From a collective (natural) perspective, we can stress the requirement to create an ecologically balanced environment, dominated by the imperative to grant a natural environment that would favour the quality of life in general (Iancu, 1998). From this point of view, the fundamental right to a quality environment also implies the obligation of the states to cooperate in order to prevent and fight pollution, to protect the environment at a national, regional, and international level.

Specialised literature (Iancu, 1998) shaped the opinion that there are three coordinates based on which it is possible to individualise a complete content of the fundamental right to a quality environment. The first coordinate is that this fundamental right, which has to be included in constitutional dispositions as a right that belongs to present and future generations, is tightly connected to the contents of the elements that define the notion of environment.

The second coordinate implies achieving a correspondence between the contents of the fundamental right to a healthy environment and the limits of the action of protecting the environmental factors, by linking the citizen's rights concerning environmental protection to the obligations of the state, of the authorities, and of the non-governmental bodies, in relation to the protection of natural factors.

The third coordinate implies the implementation in national legislations of the regulation that concerns the legal liability for committing crimes (actions or inactions) that affect the fundamental right to a quality environment, either for facts that cause ecological damage or for facts that do not cause prejudices to the environment but that created the conditions for such damages to occur.

The guarantees for attaining man's fundamental right to a healthy environment are also materialised through the provisions of the current framework law of environmental protection, according to which the state acknowledges the right of all persons to a healthy environment, guaranteeing to this aim: access to environment-related information, in compliance with the confidentiality conditions stipulated by the applicable legislation; the right to association in environmental protection organisations; the right to be consulted in the decision-making process concerning the development of the environmental policy and legislation, issuing regulatory acts in the field, drawing plans and programmes; the right to address, directly or through environmental protection organisations, the administrative and/or legal authorities, as the case may be, in environmental matters, irrespective of whether a prejudice was caused or not; the right to receive repairs for the damages suffered. The same normative act also institutes the obligation and liability of the public central and local authorities, as well as of all natural and legal persons for environmental protection, to insure a quality environment.

#### 4. Conclusions

The defining feature of the right to a healthy environment is determined, first of all, by the specificity of the values, of the fundamental elements of the environment, which must be protected. The exceptional importance and diversity of the ecological problems make for this right to be exerted in a dual manner.

The first one is the global dimension of environmental protection, stressed through the diversity and extent of the ecological problems that nowadays' world faces, such as: the greenhouse effect, the thinning of the ozone layer, the impoverished biodiversity, climate changes, the demographical explosion, cross-border pollution, etc. The consequences that such forecasts may have raise man's fundamental right to a quality and balanced environment at the level of the right for the survival of the entire human species and a chance to life for the planet.

The second dimension, the individual one, implies a series of prerogatives that may be exerted by man, meant to insure a non-polluted environment, which would not be of danger for his health, life, and development, as well as allowing administrative or jurisdictional actions for repairing any ecological damages or the prejudices that man causes to himself through his own polluting actions.

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