

## THE RIGHT TO A HEALTHY ENVIRONMENT AND SUSTAINABILITY

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### Abstract

*Climate change, especially global warming, which is at an alarming rate, makes us think about the future of the next generations and whether this future actually exists or not. The right we have to enjoy a healthy environment must be the legacy we leave behind and we have to learn to exercise it responsibly and prudently. In this context, we aimed through our research, using the method of free scientific research, to demonstrate the importance of applying the concept of sustainability in the context of exercising the right to a healthy environment. We also considered the use of the comparative method to be vital, thus observing the position other European states have on this subject, a good example being given by France, which sanctions the "ecocide". However, the process of integrating the concept of sustainability into the collective consciousness remains a goal that must be achieved in the coming years in order to ensure that future generations will have the chance to enjoy the same environment as we do.*

**Key words:** *healthy environment, fundamental right, sustainability, environmental law, future generations.*

**JEL Classification:** *Q01, Q5, K32.*

### I. INTRODUCTION

The right to a healthy environment is among the most important rights that citizens should enjoy and should exercise and is considered a universal right (Lupan, Dreptul la un mediu nepoluat, 1993) which, in the light of recent decades, has become increasingly discussed and controversial trying to find solutions to the environmental problems facing the entire planet.

Among the most important documents with which we as citizens interact are the UN Charter and the Universal Declaration of Human Rights, documents that enshrine equal rights and freedoms for all persons without discrimination. An important event in the field of environmental law is the UN Conference on the Environment held in Stockholm in 1972, which discussed "a fundamental right to freedom, equality and satisfactory living conditions in an environment whose quality enables it to live in dignity and prosperity" (Lupan, Tratat de dreptul protecției mediului, 2009).

The concept of "healthy environment" involves much more than that, involves non-pollution and especially balance, having "fundamental meanings" (Duțu, 1990). Through our research, we want to demonstrate the fundamental legal values of the right to a healthy environment, which fosters a good physical and mental development of people. But, when we talk about development we must think further than the immediate future, we should also consider future generations. In this context, where people's desire to conserve natural resources and use them so that they can be enjoyed by future generations is increasingly strong, the concept of sustainability emerges, a concept that folds across all branches of activity, from the environment, to business and even education, being a corollary of a conscious and responsible lifestyle. Thus, the second hypothesis that we want to bring to the attention of readers is precisely the close link between sustainability and the concept of a healthy environment.

### I. TERMINOLOGICAL CLARIFICATIONS

#### II.1. The concept of healthy environment

Over time, the terminology used has undergone changes depending on the policies and trends at the time, but a terminology constant is "healthy". Initially, only this term was used, the name used being "right to a healthy environment" (Cloșcă, 1991). The reasons for this designation are diverse, such as the fact that this right is a basis for the proper exercise of other fundamental rights such as the right to physical and mental integrity, the right to health protection and, most importantly, the right to life. Another expression used by Ion Diaconu is that of "right to a healthy natural and social environment" (Iancu, 1998), and Ion Grigore Sion chooses the expression "right to a healthy human environment" (Iancu, 1998). The latter motivates his choice to lean on this designation by basing himself on Article 24 of the African Charter on Human and Peoples' Rights, article

according to which “all people have the right to a generally satisfactory, development-friendly environment”. We note that since the adoption of the aforementioned Charter in 1981, the desire to highlight the importance of development is introduced, a term that is currently among the most used in terms of environmental law.

Other opinions revolve around the use of a combined terminology, joining the term “healthy” and the expression “ecologically balanced”, an expression we find in the Romanian Constitution in Article 35 which bears the marginal name of “the right to a healthy environment”. To justify the choice of this combined name, it is noted that “the need for environmental protection is only our need to protect human health, it also requires that man be guaranteed the life worthy of being lived and well-being, or the quality of life. All these notions are not precise, but they nevertheless give rise to an essential concern, that is to ensure that man not only lives at all costs, but that they may fully exercise their right to life. A right to a „healthy and balanced environment would bring broader protection than can result from a right of health protection alone” (Iancu, 1998)

A variety of terms are used in the doctrine, and in addition to the aforementioned we can mention the phrase “right to the conservation of the environment” that Alexandre Kiss uses, a term that we find interesting and important especially in the light of the author’s motivation: “Citizens must also be able to play a role that is not that of a simple executor, but that of one who decides. The task which should be facilitated by the participation of interested citizens or their groups in the elaboration of decisions can thus exert an influence on the environment”. This participation of citizens in the conservation of the environment is a major contribution of the new right to the protection of human rights. Through its dual aspect: At the same time being a right and a duty, the right to preserve the environment brings an innovation of great importance: It removes citizens from a passive status of beneficiaries and passes on to them some of the responsibilities of managing the interests of the whole community. Such a contribution is beneficial „not only for human rights, but also for democracy, if we could separate them” (Iancu, 1998).

We have also found other interesting terms such as “right to a decent environment” or “right to protection of Terra” or “right to protection of the Earth”. It is very interesting to note that in these definitions the emphasis is placed on the protection of the planet in general, which encompasses a wider sphere than the term "environment".

## **II.2. The concept of sustainability**

In a recent resolution of 8 October 2021, the UN Human Rights Council recognized, with 43 votes in favor and only 4 abstentions, that “access to a healthy and sustainable environment is a universal right” (Zamfir, 2021). Thus, we come to the following definition that is of particular interest to us, that of the term sustainability: “Characteristic of an activity that can be carried out over a long period of time, use and development of natural resources without leading to their depletion or degradation of the environment” (DEX'16, 2016). Thus, we come to the point that is most of interest on the international agenda of protecting the environment. The purpose of all supranational bodies at the moment is to find a way to use natural resources without depleting them, even being in question a “right to a healthy and sustainable environment for future generations” (Comisia Europeană, 2013), which we will also discuss in the next sections.

## **II.THE RIGHT TO A HEALTHY ENVIRONMENT IN ROMANIA**

In order to be able to discuss this right in more detail, a particularly important first step is to determine the content it has. Thus, the content can be viewed from a dualistic perspective, having both an individual (Diaconescu, 2017) and a collective, natural dimension (Ioniță & Ioniță-Burda, 2017). The first dimension involves issues related to the individual such as “prevention of pollution, cessation of activity that has the effect of harmful pollution, reparation of damage produced” (Ioniță & Ioniță-Burda, 2017), and the collective dimension includes “the obligation of States/people to cooperate in preventing and combating pollution, protecting the environment and at regional and international level and the obligation to take action at national level” (Sion, 1990).

Over time, various clarifications have been made regarding the content and guarantee of the right, one of these being mentioned in the 1994 draft for the Universal Declaration of Human Rights, while emphasizing the link with the other fundamental rights. To briefly capture the content of this right, we will state some of its components: “The right to live in an environment that is unpolluted, undegraded; the right to the highest level of health, unaffected by environmental degradation; access to water and food resources; The right to housing, land use and living conditions in a healthy environment; the right not to be expropriated as a result of environmental activities, except in justified cases; the right to assistance in the event of natural and man-made disasters; the right to benefit from the sustainable use of nature and its resources; the right to preserve the representative elements of nature” (Marinescu, 2010). Of course, this is an exemplary enumeration, it is not a limiting one, the right to a healthy environment being extremely vast and especially in a continuous development, as is society and our whole existence in general.

In the Romanian Constitution, Article 35 is dedicated to the protection of this right, its importance being evident because it is enshrined in the fundamental law. The text mentions: „(1) the State recognizes the right of everyone to a healthy and balanced environment, (2) the State provides the legislative framework for the exercise of this right, (3) natural and legal persons have the duty to protect and improve the environment”. Having regard to the provisions of the second paragraph of the constitutional text, the competent authorities are required to establish an appropriate and clear legislative framework for the exercise of this right. Thus, in order to develop the norms stipulated in the Constitution, O.U.G. no. 195/2005 “on the protection of the environment” brings a series of guarantees of the fundamental right. Among these guarantees provided by law, we mention the following: “access to environmental information, the right of association in environmental organizations, the right to be consulted on environmental policies, the right to address authorities in relation to environmental issues, the right to compensation for damage suffered” (Teodoroiu, 2009).

### **III.1. Access to information**

Access to information in general is a particularly important right, especially in the democratic system, in which it cannot be restricted. An important document that is closely related to the right invoked is the “Convention on access to information, public participation in decision-making and access to justice in environmental matters” which Romania ratified by means of Law no. 86/2000. Given the provisions of this Convention, Romania regulates a fairly comprehensive definition of “environmental information”, which includes information in writing, audio, visual or even electronic nature about the following aspects: “the state of environmental elements, factors affecting or likely to affect environmental elements, measures or activities affecting or likely to affect environmental elements, reports on the implementation of relevant legislation, cost-benefit analyzes, human health and safety status”(Teodoroiu, 2009).

### **III.2. The right to be consulted**

The right to be consulted is also very important, being regulated in a general way by provisions that deal with transparency of decision-making, environmental issues being particularities of the general rule. We must return to the provisions of the Aarhus Convention because we find in its text the obligations of states in relation to facilitating the procedure for the participation of persons in decisions relating to the environment. Among the obligations that the Convention implements are “the obligation to inform the public about the environmental decision to be taken and the procedure to be carried out, including the ways in which citizens intervene in this process and the obligation to take account of the outcome of citizens' participation in decision-making”. We must mention that, although the text refers to “public participation”, the public is represented by the natural or legal person, this being a right of the persons who actually form the public.

### **III.3. The right to petition**

Another constitutionally enshrined right is the “right of petitioning”, which is directly related to the “right to address administrative or judicial authorities” in relation to environmental issues. The right to petition constitutionally consistent in Article 51 shall be drafted and of a generic nature. Of course, petitions must be addressed to public authorities which include all three powers of the state. The right to address public administration authorities, either local or central. When faced with certain petitions, the authorities are required to settle the application within a certain time limit, which is generally 30 days, triggering an administrative procedure that has the following steps: an official’s request is allocated, he must take verification and control actions, which will result in the drafting of the final document (which may be a note, information or report), then submit the file to the management of the authority, communicate the reply to the petitioner, then take the measures established by the report. Of course, if it is a contentious procedure, it is carried out before the courts. Free access to justice is a fundamental right of the people regulated by the Constitution, and no law can restrict the exercise of this right. Interestingly, in environmental matters, the legislation provides that the right of persons to address the courts is not related to the existence of damages.

### **III.4. The right to compensation**

Finally, one last guarantee of this right is the consecration of the “right to compensation for the damage suffered”. The definition of damage is found in the law, being “the quantifiable cost effect of damage to human health, property or the environment caused by pollution, harmful activities or disasters”. Thus, this guarantee is basically a consecration of the “polluter pays” principle (Ioniță & Ioniță-Burda, 2017). The provisions are also in close connection with the provisions of Article 998 of the Civil Code which enshrines liability based on guilt, subjective, being held responsible the person who caused the damage, objective liability being only an exception. However, as regards the environment, the O.U.G. provides that “liability for environmental damage is objective, independent of fault and only exceptional can be subjective for damage caused to protected species and natural habitats, according to specific regulations”, provisions by which the rule “polluter pays” stated above is practically strengthened.

The holder of this fundamental right and, implicitly, the holder of the guarantees presented is obviously the man (individualized or organized as an entity), who enjoys the fact that all the measures imposed by the law are in fact aimed at protecting the interests of life on Earth and are aiming at developing conditions favorable both for the present, as well as for future generations.

### III. THE RIGHT O A HEALTHY ENVIRONMENT IN OTHER EUROPEAN STATES

In recent years, more specifically in recent decades, the regulation of the right to a healthy environment has taken on a particular importance. Although the consecration of this right has been made in various international documents, taking important positions alongside other rights such as the right to life, many states have decided to grant constitutional status to law.

The states of the European Union regard differently the consecration of this right in national laws, and we can observe three main directions on which it is guided: constitutional consecration is the most commonly used method of integrating the concept of a healthy environment into national legislation, legislative consecration is another method approached, and the last method is judicial consecration.

From the first category we will illustrate the constitutional provisions of a number of European states to form an overview of how to address the problem. The Constitution of Portugal, revised in 2005, states that “all have the right to a healthy and ecologically balanced human life environment and at the same time have the duty to defend it” (Parlamento da República Portuguesa, 2023). Another example is given by the Spanish Constitution revised in 1992: “All have the right to enjoy an environment appropriate for the development of their personality and have the duty to protect it” (Constitución Española, 2023). Turkey states in its constitution that “everyone has the right to live in a healthy and balanced environment. It is the duty of the state and citizens to improve the natural environment and prevent environmental pollution” (Turkey Constitution, 2023). There are many examples in this category such as Bulgaria, Russia, Hungary, Republic of Moldova, Sweden, but the constitutional text, which in our view is among the most comprehensive, is the one in the Greek Constitution which states that “the protection of the natural and cultural environment constitutes a state obligation and a right of every person. The State is obliged to take special, preventive or repressive measures in order to preserve it in the context of the principle of sustainability” (Hellenic Parliament, 2023).

From the second category, that of legislative enactment, we bring as an example Denmark, a state in which the “Environmental Protection Act of 1997” operates, a law whose purpose is “to contribute to the protection of nature and the environment, to the protection of the environment and to the protection of the environment, thus enabling sustainable social development in the conditions of human life and the conservation of flora and fauna” (Environmental Protection Act, 1997). Judicial recognition also operates in a number of states such as Belgium, a state in which high protection of citizens' interests in environmental law is granted through courts, or Italy, where there are many penalties for violations of compliance obligations, protection and preservation of the environment (Ioniță & Ioniță-Burda, 2017).

As we can see from the examples provided, in addition to the constitutional or legislative consecration of the right, which presupposes the ability of people to live in an environment that is unpolluted, with a high level of health and well-being that is not adversely affected by the environment, it also highlights the fact that these texts also impose obligations to protect and improve the environment and environmental conditions. We believe that the obligations to “protect and contribute to the prevention of pollution and to the restoration of the polluted environment” (DEX'16, 2023) are normal and underline the special importance of the individual action of each person in the process of protecting this fundamental right.

### IV. THE IMPORTANCE OF SUSTAINABILITY

According to the Explicative Dictionary, sustainability is the “characteristic of an activity that can be carried out over a long period of time, or the use and development of natural resources without leading to their depletion or degradation of the environment” (Cambridge Dictionary, 2023). However, often this term “sustainability” that comes from the English language is translated into Romanian as “sustenabil” or “sustenabilitate”, a word synonymous with “durable, durability, viable”.

Sustainability or durability operates under three main principles: Environmental protection, social development and economic development (United Nations, 2023). It is important to stress that these three principles work together as one whole, since all aspects of life are interdependent, influencing each other. However, of course, the most debated and pressing issue is that of environmental protection, being at a time of climate degradation, of the extinction of many plant and animal species, at a time when action must be taken on all levels to protect the environment, including the legislative.

A turning point in the matter is considered to be October 8, 2021, at which time a series of promising changes took place. For the first time, the close link between the right to a healthy environment and the sustainability has been recognized at international level through a resolution of the Human Rights Council at the

UN, which states that “the exercise of the right to benefit from a safe, clean environment, the right to a healthy and sustainable environment is an important element of the beneficiary of the recognition and exercise of human rights”, while calling on states to act toward the development of this truly historic document because through human rights, the UN Special Rapporteur, Professor David Boyd, believes that “ecoclimatic problems can be solved” (Duțu-Buzura, 2021). On October 8th, the United Nations created a position of “Rapporteur on the protection of human rights against climate change”. The term of office of this rapporteur is three years, and in the course of his work he should study how climate change affects human rights, study the particular problems faced by states and make recommendations in this regard.

However, we believe that the closest link between the concepts of sustainability and the right to a healthy environment is the „future generations,” and especially the right that future generations have to benefit from a healthy environment. A team of specialists from the University of Brussels published in the journal *Science* in September 2021 a study entitled “Intergenerational inequalities in exposure to climate extremes”. This study presents a number of problems of particular gravity. According to the study, “people born in 2020 will experience about 30 heat waves in their lifetime, which is seven times more than their grandparents, born in 1960, who live on an average of just over four years more” (Duțu-Buzura, 2021).

We believe that an effective measure that would contribute to global accountability in environmental matters would be the criminalization of the ecocide which is quite difficult to achieve because there are a multitude of problems, both in terms of terminology, of defining the crime and of limits of the scope of responsibility, delineation from other crimes aimed at environmental degradation and more (Dutu, 2020). France is an example of the criminalization of the ecocide by a law of August 2021 for “the suppression of the crime of ecocide” (Duțu-Buzura, 2021).

We believe that a more efficient use of sustainable development indicators is needed, focusing on the quality of actions, given the environmental impact they have, especially in the long term. The fact is that citizens have also started to become aware of the gravity of the situation at the moment, as demonstrated by the referendum on November 2, 2021 that took place in New York, a referendum in which more than 60% of the participants opted for the inclusion in the Constitution of the phrase “everyone has the right to clean air and water, as well as to a healthy environment” (Duțu-Buzura, 2021).

## **V. CONCLUSIONS**

The reason why we chose to approach this theme is the actuality it shows, wanting to show the way in which Romania and other European states approach the theme of sustainability and especially the extent to which sustainable options for exercising the right to a healthy environment have been introduced.

The right to a healthy environment is important for us, both as citizens and from the perspective of law practitioners, being a right that has recently positioned itself as a priority on international work agendas. International environmental policies aim for an effective way to balance the development and use of natural resources with both moral and legal obligations to provide a heritage and a conducive environment for development for future generations. A position that supports the primary importance of this right is also adopted by the European Parliament, which, in its resolution of June 2021 on the Strategy for Biodiversity for 2030 underlines that “the right to a healthy environment should also be recognized by the Charter of Fundamental Rights of the European Union” (European Parliament, 2023).

The concept of sustainability is relatively new in the Romanian collective consciousness, still raising problems of understanding and approach, but the international recognition of the importance of this concept will also contribute to a better understanding and adaptation of it in the national legislation. However, the inclination toward an integration of sustainability and sustainability strategies is noted, including by introducing in the Romanian Employment Classification a new occupation, that of “expert in sustainable development” (Guvernul României, 2023). We conclude that Romania is trying to adapt to the international requirements and regulations in terms of sustainability and sustainable development.

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