



# The Recognition of the Right to a Healthy and Protected Environment in Europe and Romania

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**Abstract:** *The present paper wants to bring more knowledge regarding the environment, the legislation regarding environmental conservation, as well as notions regarding ecology and environmental protection. The authors consider the topic exciting due to its topicality, expansion and importance, requiring extensive research and documentation, to assemble the knowledge necessary for its development. Environmental protection is a major issue of the last decade debated worldwide, a fact that has given rise to numerous disputes between developed and developing countries. Our environmental policies ensure a clean environment for the health of the country's inhabitants, decrease poverty and environmental damage, ensure economic growth for the benefit of current and future generations, and harmonize specific environmental legislation with that of the European Union. But, without behavioral transformations from human beings' side and our education in this sense, sustainable development can't be ensured.*

## 1. INTRODUCTION

The present paper talks about what sustainable development entails. In other words, we will refer to the protection of the environment, but also to the conditions of environmental protection in order to ensure sustainable development, in terms of legislation and human behavior. Of course, it is not unimportant that, after joining the European Union (EU), we faced new requirements, as a legal regulation speaking. The existing requirements and exigencies at the level of the EU require a new approach to global environmental problems, from the point of view of the effects and pressure on the environment and all the consequences of socio-economic development. The Romanian state had to align itself with all this by changing not only the regulations in the field but also the behavioral changes of the citizens. We are aware of the fact that the right to a healthy environment is a legislative prerogative and an internationally recognized right. That's why modern society, which faces several development limits, requires finding effective mechanisms to implement the principles of sustainable development. In this sense, the formation of ecological responsibility is prefigured to be one of the essential factors in the process of building a sustainable society. The present paper aims to approach the subject in an interdisciplinary way, being practically open to the assimilation of ideas coming from various fields of activity, so that we can manage to offer new models of approach to the present debated subject. We will summarize both the conceptual, methodological and even legal aspects, which should become useful tools in the process of the sphere of behavioral transformation in order to preserve and support the sustainable development of the

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environment. Later, in this paper, the legal, conceptual and methodological issues are discussed in all complementary and fully integrated relationships, in order to capture as accurately as possible the interactions between these spheres, but also their relevance in terms of the development of appropriate strategies for ecological sustainability. We believe that it is the only way to ensure the viability of a phenomenon with certain socio-economic implications, a phenomenon likely to contribute both to the continuity of the characteristics of sustainable development as a whole, as well as to the intrinsic values of this field.

## **2. THE LEGAL, CONCEPTUAL AND METHODOLOGICAL ISSUES REGARDING THE LEGAL NATURE OF THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT**

The human right to a healthy and protected environment is a subjective right both universal (global, collective) and individual (Atapattu, 2018). It is considered to be a new right in the category of fundamental human rights, outlined above all and primarily at the international level.

Starting from the fact that human rights are effective only to the extent that they are declared by internal legislation as fundamental rights and are guaranteed in their exercise (so only if they are registered in the constitutional, legislative and judicial systems of each state), it is imposed in this sense, the correlation of internal and international regulations.

The analysis of the terminology, "the human right to a healthy and protected environment" is important due to the need to reflect as fully as possible in the name, both the content of this right and the extent of this content (Boyle, 2012, p. 613-642). In the specialized literature, there is no consensus regarding the name of this right, being frequently used names such as:

- *right to a healthy environment;*  
The motivation for this name is based on the argument that the fundamental right to a healthy environment is the premise for realizing the other fundamental rights, such as the right to life, health, physical and moral integrity, work, property, etc.; also, in this acceptance enters the existence of constitutional provisions regarding human rights stipulated in international treaties; the existence of fundamental obligations of the state to restore, protect and maintain the ecological balance (Vaarvastian, 2019).
- *right to a healthy and ecologically balanced environment;*  
For the motivation of this opinion, the starting point is the idea that the environment must be protected both to protect life and to ensure its quality, such a right leading to much wider protection than that which could result only from the right to health protection.
- *right to a quality environment;*
- *right to preserve the environment;*  
This wording is motivated in the sense that citizens' participation in environmental conservation has a double aspect, of right and of duty, as they are not only passive beneficiaries but also responsible for the preservation and protection of the environment.

The doctrine also uses other names such as: "right to a decent environment", "right to a safe environment", "right to a clean environment" (Farge, 2021; Vaarvastian, 2019), "right to a preserved environment", etc. (Boyle, 2012, p. 613-642).

We support the opinion that the present names only include content elements of this right, they do not have a general character, and their use may create inconsistency between form, name and content, due to the lack of generality. All the notions contained in the name of this right

are content elements of "protection" because without it, the environment disappears and consequently all the adjectives mentioned above disappear as names. For these reasons, we appreciate that the appropriate wording is "right to a healthy and protected environment".

Along with the general features of any fundamental right, the right to a healthy and protected environment also has many specific features that outline its personality, such as:

- it is a subjective right, closely related to each individual, collective, or population;
- has a positive character, the state being responsible for constitutional obligations, as well as the obligations included in the laws, which are made concrete by Law no. 137/1995, republished, regarding environmental protection;
- it is a fundamental right to a real and not ideal environment, which implies that this right must be protected to ensure ecological balance, quality and cleanliness, safety and decency of life;
- it is a fundamental right regulated for present and future generations, so it has a temporal character;
- has a predominantly preventive and not remedial nature (Halpern, 2021) of liability for ecological damage in the sense that the environment can be protected first of all, by means of preventive measures;
- the holder of the right to a protected environment is man, the individual;
- guaranteeing this right is mandatory, necessary both at the national and international level, due to the negative consequences that environmental degradation can have on life on Earth;
- it is a new fundamental right, which is part of the category of fundamental rights recognized relatively recently in national constitutions.

A first opinion in this sense is the one according to which, the fundamental right to a protected environment is a right of claim. This opinion is motivated by the fact that the constitutional texts do not only refer to the need to protect the environment but also establish the duties of the state in this area, which makes the right to a protected environment represent the citizens' debt to the state. This opinion is disputed, because it is considered that the obligation of the state to protect the environment corresponds to a right that cannot be a claim, and the resulting legal relationship is a relationship of constitutional law (public law) that cannot create obligations (civil private law), but only duties for the protection of the environment for both the state and the citizens.

In another opinion, it is considered that the right to a protected environment is a positive right and not a natural right because it creates the responsibility of the state and the citizens, equally, to preserve it.

The opinion that the right to a protected environment is a moral and not a legal right has also been defined; or it is known that a subjective right, if it is a moral right, is no longer a right.

We rally to the opinion that the right to a healthy and protected environment, like any fundamental right, is a subjective right that makes up, together with other subjective rights and correlative obligations, the legal status of the citizen.

We remind the readers in this regard:

- the anthropocentric theory (or of human finality) - believes that the only holder and beneficiary of this right is man, the individual;

- the cosmogonic theory - according to which the right to a healthy and protected environment belongs to nature, which includes man;
- the theory of the humanistic tendency - according to which the right to the environment exists only for man as a sole purpose, not for nature;
- the theory according to which the holders of this right are both the individual and the collective;
- the theory according to which the holders of the right to a healthy environment are the "peoples" and even the Earth.

Theories that do not consider man as the holder of the right to a healthy environment cannot be accepted in terms of law, because the holder of such a right, from a legal point of view, can only be man, because the subject of law can only be a natural or legal person. The protection of man requires the protection of the environment, the protection of which attracts by way of consequence the protection of the human being.

The Romanian Environmental Law, Law no. 137/1995 republished in 2000, provides in this sense in Art. 5 that: "the state recognizes the right of all persons to a healthy environment", therefore, both natural and legal persons are recognized as holders of the right to a healthy and protected environment ([Office of the United Nations High Commissioner for Human Rights, 2022](#)).

Both at the global level and at the regional and national level, the recognition of a new and fundamental human right, the right to a healthy and protected environment, is foreshadowed. In specialized literature, the recognition of such a right is almost unanimous, because even the current economic-social and legal realities highlight the major importance of such a right ([Center for International Environmental Law, 2018](#)).

In addition, the constitutional recognition of such a right is important for the economy ([Ionescu, 2003](#)), for environmental legislation, and in general for environmental protection policy ([Duțu, 2003, p. 217](#)).

In the foreign specialized literature, other consequences or implications of the consecration as a fundamental right, the right to a healthy and protected environment ([Office of the United Nations High Commissioner for Human Rights, 2021](#)), was invoked, such as: "achieving the right to property by establishing protection zones and by limiting the use of certain goods; the existence of the danger of giving priority to this right in relation to other fundamental human rights, even reaching an ecological dictatorship".

However, there are also realistic concepts according to which, the recognition of such a right would lead to the enrichment of fundamental human rights, as a natural consequence of economic - social, national and world development, the reality of this right actually representing an essential condition for the existence and fulfillment of the other rights fundamental as well as the emergence of other new rights.

Although both at the international and regional level, efforts were made to recognize such a right as a fundamental right, however, in foreign doctrine and international instruments, no consensus was reached on this issue.

Until the World Conference in Rio de Janeiro in 1992, no international instrument contained an express recognition of such a human right. It cannot be said, however, that there were no

attempts, recalling in this sense the Declaration on the Environment, adopted at the UN Conference from Stockholm in 1972, which proclaims the principle according to which, "man has a fundamental right to freedom, equality and satisfactory living conditions, in an environment whose quality allows him to live in dignity and well-being".

Also, the World Charter of Nature, a document approved by the Resolution of the UN General Assembly in 1982, specifies the obligation of states, authorities and citizens regarding the need to keep the environment in good condition, clean, able to ensure appropriate physical and mental development (UN News, 2022).

The African Charter of Human and Peoples' Rights (African Convention on Human Rights, 1975, p. 187), implicitly recognizes (in Art. 24) the right to "a satisfactory and global environment", as a right of all peoples. The additional protocol from 1988 of the European Convention on Human Rights stipulates in Art. 11 that: "everyone has the right to live in a healthy environment and to benefit from essential public services" (World Economic Forum, 2021).

The creation of the World Commission on the Environment, led by G.H. Brundtland, adopted the report "Our future of all" in which it was stated that "all human beings have the fundamental right to an environment sufficient to ensure their health and well-being", pollution being considered a crime against humanity.

For these reasons, the opinion was created of the need for the express recognition of the fundamental human right to a healthy and protected environment in the international instruments with binding legal force, because only in this way could a new dimension (philosophical and legal) be given, both to the protection of the environment as well as international relations. It is appreciated in the directive that such recognition could be achieved through a declaration proclaiming and formulating such a right, which will later serve for the adoption of an international document with binding force.

The first attempt to expressly recognize the right to a healthy and protected environment is, as we have shown, the Rio Declaration, adopted at the 1992 Ecological Summit in Rio de Janeiro. Although this document proclaims in 1<sup>st</sup> article the fact that people have the right to a healthy and productive life in harmony with nature, it does not have the binding force necessary to solve this particularly complex problem.

The Constitution of the European Union (2004) establishes in Art. 3 that one of the objectives of the Union is the achievement of a high level of protection and improvement of the quality of the environment.

There are legal systems of some states that have expressly recognized such a right in their constitutions, or only in their laws.

Next, we present some constitutions of the states of the world, in which the recognition of the fundamental right is expressly regulated, under different names.

The Constitution of Portugal from 1976, amended in 2005 establishes in article 66 that "all persons have the right to a humane, healthy and ecological, balanced environment", establishing at the same time the obligation to protect it. The Portuguese constitutional provisions create the possibility of legal action in order to protect against environmental degradation (Cooper, 2021).

**The Constitution of Spain from 1978 (1978/2011)** expressly provides in art. 45 that: "Everyone has the right to enjoy an environment suitable for the development of their personality and they have the duty to protect it".

Corresponding to this right, the obligation of the state and citizens to protect the environment and its natural resources is also regulated.

Such a right is expressly enshrined in the constitutions of some South American countries (**The Constitution of Peru, 1993**). Also, many states in Eastern Europe have recognized in the constitutions adopted since 1990 the fundamental right to a healthy environment, correlated with the obligation of citizens to protect it and with the state's responsibility in this regard.

**The Constitution of the Russian Federation from 1993, last amendment 2020 (1993/2020)** provides in art. 42 that: "Every person shall have the right to a favorable environment, reliable information about the environment and compensation for damage to health and property caused by ecological crimes".

Although in **the US Constitution (1993)** there are no express provisions regarding the recognition of this right, some federal states within them include such provisions. Even though **the Constitution of Canada (1982)** did not recognize such a fundamental right at the federal level, there is a proposal for a ferenda law imposed by the definite usefulness of the right to a quality environment.

Although most of the world's states have not expressly regulated such a fundamental right through their constitutions, it is recognized implicitly, either by establishing fundamental duties for the state and citizens, or in the case of federal states by distributing the powers provided in their constitutions in the field of environmental protection between federal states.

We believe that, along with fundamental rights, there are also non-fundamental subjective rights that have their origin in constitutions or laws and that cannot enjoy the practice of such rights. Thus, the constitutional regulation of the state's obligation to protect the environment cannot have the effect of recognizing a fundamental right to a healthy and protected environment, but only a subjective right of constitutional origin.

In relation to the second way of implicit recognition of the fundamental right to a healthy environment, namely that of the distribution by the constitutions of the federal states of their attributions between the federal state and the federations, it is considered that the problems related to this right are so the competence of the federal state as well as the federated states that will take the necessary measures in this regard.

We believe that the express recognition of the fundamental right to a healthy and protected environment is largely determined by the existence of appropriate economic and social conditions in a society this right once recognized, determines the necessity of its implementation and confers the right to formulate actions in justice for those in the right.

The legislative recognition of such a right is found in many legal systems and refers exclusively only to situations when this is done by law, so when the right to a healthy and protected environment is recognized only as a subjective right and not as a fundamental right. In the USA (**Office**

of the United Nations High Commissioner for Human Rights, Fact Sheet No. 38, 2021; Office of the United Nations High Commissioner for Human Rights, 2021), for example, the National Environmental Policy Law adopted at the federal level, provides as follows in art. 101: "Congress recognizes that every person must enjoy a healthy and protected environment", establishing obligations and responsibilities both for the state and for the population, in order to protect and develop the environment (Center for International Environmental Law, 2022). In Norway, the Environmental Protection Act of 1981 and in Denmark the Environmental Protection Act of 1973, aim to ensure a quality environment necessary for human health and well-being, correlated with the maintenance of biodiversity. Also, in countries such as the Philippines, Indonesia, Venezuela, and New Zealand, environmental laws state (Guzman, 2018) that the objective of environmental policy is to improve quality, establishing in this sense rights for individuals and correlative obligations for them and the state (Human Rights Watch, 2018).

In the doctrine, there is a judicial recognition of the right to a healthy and protected environment, which otherwise represents a new form of protection of this right. Internally, the protection of the environment can be invoked at the Tribunals and Constitutional Courts, and externally, before the Human Rights Commission and the Human Rights Court (Office of the United Nations High Commissioner for Human Rights, 2020, 2022).

In Italy, for example, the courts sanction the shortcomings regarding the obligation to preserve the environment. Irish jurisprudence considers that there is a limited subjective right not to be polluted, while Canadian jurisprudence attempts a favorable interpretation of the legal recognition of the right to the environment, showing some hesitation regarding the severity of the penalty (UN Formal Recognition, 2021).

We believe that, in the context of the evolution of the realities, the indirect recognition of this right has been reached, through judicial practice which, on the one hand, took into account the environmental dimension as an inseparable part of the protection of fundamental human rights, and on the other hand, by establishing some obligations for states and citizens, motivated by the need to protect the environment.

In the Constitution of Romania from 1991 updated, the fundamental human right to a healthy and protected environment was not expressly recognized, being established in the charge of the state, through the provisions of art. 134 al. 2 letter c. duties regarding "restoring and protecting the environment as well as maintaining the ecological balance", and by letter f. of the same article, "creating the necessary conditions for increasing the quality of life" (The Constitution of Romania, 1991 updated).

We believe that, through this regulation, a fundamental right to a healthy and protected environment has been established indirectly, by establishing an obligation for the state.

Environmental protection law no. 137/1995, republished, enshrines in art. 5, "the right of all people to a healthy environment, guaranteeing in this sense:

- a. access to information regarding the quality of the environment, in compliance with the confidentiality conditions provided by the legislation in force;
- b. the right to associate with environmental quality defense organizations;
- c. the right of consultation in order to make decisions regarding the development of environmental policies, legislation and norms, the issuance of environmental agreements and authorizations, including for territorial development and urban planning plans;

- d. the right to address, directly or through an association, the administrative or judicial authorities in order to prevent or in the event of direct or indirect damage;
- e. the right to compensation for the damage suffered."

The law also correlates the environmental protection obligations of natural and legal persons, of central and local administrative authorities, as well as responsibilities in this sense, for central authorities and territorial agencies for environmental protection.

For these reasons, it is necessary to first of all create the necessary conditions and then to constitutionally expressly recognize the fundamental human right to a healthy and protected environment.

The current constitution of Romania expressly recognizes the fundamental human right to a healthy environment through art. 35, as follows: "The state recognizes the right of any person to a healthy and ecologically balanced environment" ([The Constitution of Romania, 1991](#)). In this way, obligations are established for the state to ensure the legislative framework for the exercise of this right, as well as obligations for individuals to protect and improve their living environment.

Sustainable development includes environmental protection, and environmental protection conditions sustainable development ([Office of the United Nations High Commissioner for Human Rights, 2021](#)). The existing requirements and exigencies at the level of the European Union impose a new approach to global environmental problems, from the point of view of the effects and pressure on the environment and all the consequences of socio-economic development.

Modern society, facing its own development limits, requires finding effective mechanisms to implement the principles of Sustainable Development. The key issue of sustainable development is the reconciliation between two human aspirations: the need to continue economic and social development, but also the protection and improvement of the environment, as the only way for the well-being of both present and future generations.

To develop sustainably, all countries need access to and improvement in the use of clean technologies that waste fewer resources ([Farge, 2021](#)).

Still, analyzing the development-conservation-sustainability-environment relationship, we can affirm the existence of some current crises: the first, that of environmental conservation, the second, of the evolution of techniques to help people's work and livelihood, therefore implicitly the right of people to a healthy environment. This includes conservation strategies and realization of the human right to a healthy environment. Of course, the summary meaning of ethics is very close to that of morality, which, as we know very well, is nothing but a conduct imposed by man in order to achieve a better and cleaner development.

### 3. CONCLUSION

Based on the above-presented data the following conclusions can be drawn:

- The concept of sustainable development designates all the forms and methods of socio-economic development, the foundation of which is ensuring a balance between these socio-economic systems and the elements of natural capital. The most well-known definition



of sustainable development (Duțu, 2003) is the one given by the World Commission for Environment and Development in the report "The Common Future", also known as the Brundtland Report. Thus: "sustainable development is the development that seeks to satisfy the needs of the present, without compromising the possibility of future generations to satisfy their own needs". Such a definition can be understood that through sustainable development we seek and try to find a stable theoretical framework for decision-making in any situation where there is a human/environment relationship, whether this relationship refers to the environment or the economic or social one.

- Although man has built a state of anthroposphere throughout his existence that does not overlap perfectly with the biosphere, many times even acting against them, nowadays man has an intrinsic right to a healthy environment. This right is recognized in all constitutions of the world, including the Declaration of Human Rights. As such, a century after the beginning of the legislative activity to protect nature, we have a broad vision of the necessity for man to be an integrated part of the surrounding nature, because only in this way will nature be able to sustain and benefit future generations. Man has the right to be part of the natural heritage available to the Earth. It is part of the definition and concept of sustainable development because it is recognized as a principle of evolution of modern society.
- The goals and interests of nature conservation worldwide are multiple. Thus, on the one hand, there are elements with an obvious documentary, landscape and touristic purpose, on the other hand, those for which scientific or economic interest predominates. It is well known, for example, that a volcano, a waterfall, or other such phenomenon is much more interesting for tourism than a forest or a meadow. Therefore, the interpretation of each of the above purposes must be analyzed individually. But this is not the purpose of this work. But, rather, of the inclusion of man in the group of objectives that must be protected. Because man himself has this right, to be part of biodiversity. In other words, human cultural diversity, as well as the biodiversity component, human cultural factors - such as transhumance, traditional agriculture, etc., represent a system of living in a given environment. The wealth of cultural systems based on language, agricultural practices, religion, and common and/or complementary artistic forms confers cultural diversity in an area. This is the reason why human integration in natural data is best reflected in such a system. It is, in other words, and by analogy, the human right to exist in a healthy environment. The Human Right to a Healthy Environment is reduced to this.
- The lack of an institutional and legislative system based on sustainable development led and continues to lead to the destruction of habitats and the decrease of biodiversity. In many countries, the concept of sustainable development was not well understood as a higher level of intersectoral integration of economic development, within the limits of the support capacity of the territory considered, a fact that led to wrong exploitations. In this regard, we can give some examples even from our own country: the destruction of the Danube Meadow in order to obtain sustainable agricultural production, a wrong thing because this did not happen, but it led to the destruction of the existing biodiversity in that place, so implicitly it was also affected the human right to a healthy and sustainable environment. Another example is the cutting of the forest curtains that were supposed to increase the agricultural areas, but which in the end only "helped" soil erosion, the loss of crops and much greater investments in technologies to conduct the water necessary for the survival of crops. And the examples could go on. What should be emphasized here is the fact that, as a result of the lack of legislation in this field, as well as the misunderstanding of the concept of nature conservation, of its sustainability, we are in a situation where human micro-communities have been affected, being forced to their dissipation and

dislocation in the areas affected by this kind of works that have proven to be in contradiction with the area and the life in that area.

- Making an analogy with the debated topic, we will say that environmental sustainability, the right to a healthy environment must be at the center of economic and political decisions at the global and national level alike. For this, it is required that the interested public participates in the decision-making process in the matter at all levels and, therefore, access to information. It is no coincidence that, for this reason, the Single European Act has as its main community objectives: environmental protection, human health and the prudent and rational use of natural resources. This means that the environment is integrated into the definition and implementation of all economic and social policies of the EU, including energy, trade, industry, agriculture, transport and tourism. Of course, the diversity of situations in the different regions of each country is taken into account. In this context, the harmonization measures that correspond and respond to the requirements in the field of environmental protection assume a safeguard measure that authorizes the member states to take, for reasons of environmental protection, provisional measures of no economic nature.

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