

## ENVIRONMENTAL PROTECTION AS A FUNDAMENTAL HUMAN RIGHT: CHALLENGES AND PERSPECTIVES

Ina Raluca Tomescu, *University "Constantin Brâncuși" of Târgu Jiu, ROMANIA*

**ABSTRACT:** The right to a healthy environment represents one of the most important dimensions of fundamental human rights, reflecting an increasing awareness of the interdependence between environmental protection and individual well-being. This right entails not only access to a clean, ecologically balanced, and unpolluted environment but also a collective responsibility to preserve natural resources for future generations. At the international level, documents such as the Stockholm Declaration (1972) and the Rio Declaration (1992) have enshrined the fundamental principles regarding environmental protection as an integral part of sustainable development. The implementation of this right requires close cooperation among public authorities, civil society organizations, and citizens. In essence, the right to a healthy environment is not merely a legal ideal but an essential condition for human existence and dignity.

**KEY WORDS:** Healthy living environment, human rights, environmental protection, sustainable development.

### 1. INTRODUCTION

The consecration of the right to a healthy environment represents one of the most significant developments in the field of human rights and contemporary international law. In an era marked by climate change, increasing pollution, and the continuous degradation of ecosystems, the recognition of this right is no longer merely a political or moral choice, but a legal and existential necessity. The environment is not only the physical framework of life, but also an essential condition for the exercise of all other fundamental rights, such as the right to life, health, or an adequate standard of living.

This right fosters sustainable development, ecological responsibility, and intergenerational solidarity, providing a normative framework designed to ensure a balance between economic progress and the preservation of natural resources. From a global perspective, it reflects the international

community's commitment not only to guaranteeing the survival of humanity, but also to ensuring the quality of life in harmony with nature.

### 2. LEGAL REGULATION

Over the past decades, environmental protection has become one of humanity's major concerns. The legal enshrinement of the human right to a healthy environment represents an important first step in preventing and mitigating the negative impact on the environment, including on human health, though not a decisive one.

Despite numerous earlier efforts to codify rules on environmental protection and the right to a healthy environment, it was only at the United Nations Conference on the Human Environment (Stockholm, 5–16 June 1972) that this right was explicitly recognized in an international document dedicated to environmental protection. The event marked a

landmark moment in international environmental law through the adoption of the Stockholm Declaration, which established the conceptual foundations for international cooperation in this field. The Declaration contains three recommendatory instruments: a resolution concerning the institutional and financial commitments of states, a declaration setting out 26 fundamental principles on environmental protection, and an action plan comprising 109 recommendations intended to guide national and international environmental policies. Thus, Principle 1 of the document states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. He bears a solemn responsibility to protect and improve the environment for present and future generations (...)” [12].

This act laid the foundations of international environmental law, enshrining the principle of common but differentiated responsibility of states in protecting the environment. Subsequently, the Rio Declaration on Environment and Development (1992) strengthened these principles by introducing the concepts of sustainable development, precaution, public participation, and access to information.

Contemporary society is deeply dependent on the natural environment, which constitutes the fundamental framework conditioning all human activities. In this context, environmental protection has become a global priority, driven by the need to maintain ecological balance and quality of life. The legal recognition of the right to a healthy environment occurred relatively late, with the adoption of the African Charter on Human and Peoples’ Rights in 1981, which, through Article 24, stipulates that “all peoples shall have the right to a general satisfactory environment favourable to their development” [9].

The Draft International Declaration on Human Rights and the Environment, adopted in Geneva in 1994, reaffirms the fundamental right of every person to live in a healthy environment and highlights the intrinsic connection between this right and other human rights. The document states that the

fundamental right to a healthy environment essentially includes: the right to live in an environment free from pollution and unaffected by activities likely to harm the environment, human health, individual well-being, or sustainable development; the right to the highest attainable standard of health, unimpacted by environmental degradation; adequate access to water and food resources; the right to safe and healthy working conditions; the right to housing, land use, and living conditions in a clean environment; the right not to be expropriated as a result of environmental protection activities, except in justified situations; the right to assistance in the event of natural disasters or disasters caused by human activities; as well as the right to benefit from the sustainable use of nature and its resources, including the conservation of representative natural elements [15].

The content of this right reveals both an individual dimension – which includes the person’s right to request the prevention of pollution, the cessation of polluting activities, and compensation for damages suffered – and a collective dimension, which entails the obligation of states to cooperate in preventing and combating pollution, as well as in protecting the natural environment at the regional and international levels.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998, represents a major contribution to strengthening the justiciability of the right to a healthy environment in the European sphere. Its importance derives from the express recognition, already in the preamble, that “every person has the right to live in an environment adequate to his or her health and well-being.” At the same time, the document emphasizes that, in order to guarantee the effective exercise of this right, citizens must have access to information, be entitled to participate in decision-making, and benefit from access to justice in environmental matters. Moreover, the Convention highlights that broader and more effective access to information contributes to increasing public awareness of environmental challenges, thereby strengthening democratic participation

and collective responsibility in environmental protection [7].

At the Community level, prior to the adoption of the Single European Act (1986), the founding treaties did not contain explicit and coherent provisions concerning environmental protection. The activity of the European Community was focused mainly on creating and consolidating the internal market, while environmental measures had a subsidiary character. The directives adopted during this period found their legal basis in the Preamble of the Treaty of Rome (1957) and in Article 2 of the Treaty establishing the European Economic Community (EEC), which referred to promoting a harmonious and balanced development of economic activities [4].

Subsequently, environmental protection acquired its own regulatory framework within European law, being enshrined through distinct provisions, such as those found in Title XVI (initially XIX) of the Treaty of Rome, entitled “Environmental Protection.” This title established the fundamental principles of the Union’s environmental policy, based on pollution prevention, combating negative effects on ecosystems, and the sustainable use of natural resources.

Given the diversity of geographical and economic conditions among the Member States, the environmental policy of the European Union places emphasis on achieving a high level of protection and promoting sustainable development. Its essential objective lies in adopting effective and appropriate measures to prevent and reduce pollution, thereby ensuring a balance between economic growth and environmental conservation [10].

In Community law, the Maastricht Treaty (1993) represented a significant step forward by recognizing—albeit indirectly—the fundamental right to a healthy environment as an integral part of human rights guaranteed within the legal order of the European Union.

Subsequently, the Amsterdam Treaty (1997) and the Lisbon Treaty (2007) reaffirmed the Union’s commitment to environmental protection, enshrining the obligation to integrate environmental requirements into all its sectoral policies.

The Charter of Fundamental Rights of the European Union (2001) also provides, in Article 37, that “a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development” [14]. This provision enshrines, at the European constitutional level, the fundamental dimension of the right to a healthy environment.

Concerned about climate change, the European Union has advocated for environmental conservation, drafting a programme for the period 2001–2010 entitled *“Our Future, Our Choice.”* This programme includes issues such as climate change, environmental protection, the relationship between the environment and human health, and ensuring the sustainable management of natural resources and waste. Ultimately, this document enshrines the “human right to harmonious and sustainable urban development” [11].

Furthermore, in accordance with Article 192(3) of the Treaty on the Functioning of the European Union (TFEU), the EU adopts environmental action programmes that provide strategic guidelines and ensure predictable and coordinated action for European policy in the fields of environment and climate.

According to the 2022 decision of the European Parliament and the Council of the European Union [3], an environmental action programme (the eighth) was established for the period up to 2030, whose long-term priority objective is that, by no later than 2050, Europeans should live well, within the limits of the planet, in a healthy economy in which nothing is wasted, growth is regenerative, climate neutrality is a reality, and inequalities are significantly reduced.

At the global level, on 10 May 2018, through UN General Assembly Resolution A/72/L entitled *Towards a Global Pact for the Environment*, a special working group was established to finalize the initiative promoted by France aimed at launching a project for the adoption of a Global Pact for the Environment, which would enshrine the human right to a healthy environment [5]. Although the initiative ultimately failed (2019), it

nevertheless reflects the will of a majority of states in favour of universal recognition of the right to a healthy environment, including its climate dimension, and supported the idea that efforts toward its realization must continue [6].

After 2021, we have witnessed an increase in signals supporting the universal recognition of environmental rights, such as the adoption of Human Rights Council Resolution 48/13 of 8 October 2021, which for the first time recognized “the right to a clean, healthy and sustainable environment,” the UN General Assembly Resolution of 28 July 2022 recognizing the right to a clean, healthy and sustainable environment [8], as well as two climate-related advisory opinions explicitly referring to human rights: the opinion of the Inter-American Court of Human Rights and, respectively, the request before the International Court of Justice of 28 March 2023, or the Advisory Opinion of the International Tribunal for the Law of the Sea of 21 May 2024, which found that climate change “raises concerns in the field of human rights.”

Several subsequent universal and regional international documents, having varying legal force, have strengthened the idea of the existence of such rights and expanded the spectrum of rights concerning the connection between humans and their living environment. Along the same lines, the *Pact for the Future*, adopted by the UN General Assembly on 24 September 2024, invoked the importance of a “healthy planet” as a guarantee “for all human beings” (recital 4) and emphasized the commitment of states “to international cooperation based on respect for international law” (recital 5) [6].

Thus, at the global, European, and national levels, the need to recognize a new and fundamental human right—the right to a healthy and ecologically balanced environment—has gradually emerged.

Nevertheless, the term “environment” does not appear in the text of the European Convention on Human Rights, much less the notion of a “right to a healthy environment,” such that one could argue that the right to a healthy environment is not among the rights and freedoms created by the Convention [1].

Moreover, the Convention does not directly establish whether an individual has a right to a healthy environment. In fact, the first environmental cases brought before the Court were based on the idea that the Convention does not provide for the right to environmental protection or to environmental quality standards. Most often, the Convention has been used as a basis for numerous applications seeking to ensure an acceptable level of environmental quality. The right to the environment has been recognized in European jurisprudence “by ricochet,” that is, through an extensive interpretation of the scope of certain rights expressly provided for by the Convention [13]. It follows that the violation of the right to a healthy environment cannot be invoked as such before the European Court, since it is not guaranteed *in terminis* by the Convention.

Therefore, although the European Convention on Human Rights does not explicitly enshrine the right to a healthy and ecologically balanced environment, the European Court of Human Rights has developed its environmental jurisprudence based on the fact that the exercise of certain Convention rights is closely linked to the right to a healthy environment.

Regional human rights jurisdictions, to varying degrees, have drawn connections between human rights and the environment in a fairly developed jurisprudence, particularly at the European level.

In this respect, the judgment of the European Court of Human Rights (ECtHR) of 9 April 2024, delivered in the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (no. 53600/20), made a remarkable jurisprudential contribution to the field, recognizing, on the basis of Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, “a right of individuals to effective protection by state authorities against the serious harmful effects of climate change on their lives, health, well-being and quality of life” (§ 519). This confirms that climate change must be analysed differently and that it is simultaneously linked to human rights. In this regard, states are subject to a series of positive obligations [6].

### 3. CONCLUSIONS

The right to a healthy environment has been shaped through jurisprudence by interpreting Article 8 of the European Convention on Human Rights, without being explicitly enshrined in the Convention. Thus, it has been protected indirectly, as a derivative element of the right to private and family life. The particular way in which the European Court has integrated environmental protection into the scope of other expressly guaranteed fundamental rights has highlighted, from the outset, the proximity of this right to other human rights, as well as the dynamic enrichment and reciprocal interdependence of their normative content [2].

Consequently, the right to a healthy environment, the right to health, the right to life, and the right to an adequate standard of living are interrelated and mutually influential. Severe environmental degradation can directly affect a person's well-being and may interfere with their private life, which justifies including the right to live in a healthy and ecologically balanced environment within the protection offered by Article 8 of the ECHR, as well as within that of the right to property.

### REFERENCES

- [1] Bîrsan, C., Convenția europeană a drepturilor omului. Comentariu pe articole, Ed. C.H. Beck, București, 2005.
- [2] Cobîșenco, I., Viața privată și dreptul la un mediu sănătos, *Studia Universitatis Moldaviae*, seria Științe sociale, nr. 8/2019.
- [3] Decizia (UE) 2022/591 a Parlamentului European și a Consiliului din 6 aprilie 2022 privind un Program general al Uniunii de acțiune pentru mediu până în 2030, JO L 114, 12.4.2022.
- [4] Dogaru, L. Protecția dreptului la un mediu sănătos în jurisprudență CEDO, în revista *Curentul juridic*, nr. 4/2011.

- [5] Duțu, A., Spre un pact mondial (global) privind mediul, în „*Studii și Cercetări Juridice*” nr. 4/2018.
- [6] Duțu, M., Pentru un al treilea pact interstatal al drepturilor omului, *Pactul internațional privind drepturile de mediu*, [www.juridice.ro/essentials/8342/pentru-un-al-treilea-pact-interstatal-al-drepturilor-omului-pactul-international-privind-drepturile-de-mediu#\\_ftn7](http://www.juridice.ro/essentials/8342/pentru-un-al-treilea-pact-interstatal-al-drepturilor-omului-pactul-international-privind-drepturile-de-mediu#_ftn7)
- [7] Duțu, M., *Tratat de dreptul mediului*, ediția a III-a, Editura C.H. Beck, București, 2008.
- [8] Jeanne, V., L'intérêt d'une nouvelle déclaration des droits environnementaux: le projet de Pacte international des droit environnementaux, în „*Droit de L'Environnement*” no. 334/2024.
- [9] Matefi, R., Cupu, D.S., Dreptul la un mediu sănătos din perspectiva consacrării sale legislative la nivel european. Aspekte de drept comparat, *Revista Universul Juridic*, nr. 6/2020.
- [10] Mazilu, D., *Dreptul comunitar al mediului*, ediția a 3-a, Ed. Lumina Lex, București, 2008.
- [11] Moroianu Zlătescu, I., Popescu, O. *Mediu și sănătatea*, Institutul Român pentru Drepturile Omului, București, 2008.
- [12] Popescu, D., Popescu, M., *Dreptul mediului. Documente și tratate internaționale*, vol. I, Editura Artprint, București, 2002.
- [13] Sudre, F., *La protection du droit à l'environnement par la Convention européenne des droits de l'homme*, Vol. Communauté européenne et environnement, colloque, Angers, octombrie 1994, Documentation française, 1997.
- [14] Sukin, M., Ong, D.M., Wight, R., *Sourcebook on Environmental Law*, Ed. Routledge, Cavendish, 2001.
- [15] Trușcă, P., Trușcă Trandafir, A., Dreptul fundamental al omului la un mediu sănătos în jurisprudență CEDO, *Revista Transilvană de Științe Administrative*, nr. 1/2009.