

FUNDAMENTAL PRINCIPLES OF HARMONIZING ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT

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Abstract

Environmental law and development law need to improve their content, but above all, the institutional mechanisms for implementing administrative and judicial procedures, which are open to individuals, associations and the general public, need to be improved. Critical inventories of existing legal norms should be organized in order to provide the government and legislature with information and proposals combining specialized legal information and expert opinions. National programs for monitoring and evaluating compliance with or violation of legal norms, allowing for the regular evaluation of the effectiveness of legal instruments and institutions, will also need to be developed. Taking into account the development of international law, the obligation of the state to implement at national level the international agreements on environment and development, in order to respect the international commitments assumed, is strengthened. This is all the more so as the fundamental principles of environmental law spring from both international and national sources.

Keywords: *environmental law, development law, national programs, international law, national law*

INTRODUCTION

The notion of environment, chameleon notion, as characterized by Michel Prieur⁴, knows innumerable valences and is used with more or less different meanings in the many environments of human society.

Scientists, economists, lawyers, politicians, arts ministers, aware of the overwhelming importance of the imperative to protect the environment and natural resources, highlight certain aspects of the environment, which, in fact, is unique. The term environment, however, remains a general notion, difficult to summarize in a definition that satisfies everyone.

There are, however, usually two different meanings that the expression "environment" has. A first meaning, springing from the natural sciences and applied to human society, so an ecological approach (the set of elements and de facto balances that condition the life of a biological group); the other meaning, which is due to the language of architects and urban planners and which refers to the contact area between the built space and the natural environment (so between the artificial and the natural space).

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⁴ Michel Prieur, Droit de l'Environnement, Ed. Dalloz, Paris, 1991, pag.1

These two meanings of the notion of environment do not leave, of course, indifferent its qualification from a legal point of view. Therefore, so far we cannot say that the environment enjoys a legal qualification or a unanimously accepted legal status.

Creation of the doctrine, of the jurisprudence and of the conventional or legal legal regulations, the notion of environment knows a relative variety and registers, at the same time, an evolution.

Thus, for the European Communities, the environment represents the set of elements that, in the complexity of their relations, constitute the framework, the environment and the conditions of human life, as they exist or as they are perceived.

Emphasizing the dynamic nature of legislative provisions (positive law), we must emphasize both the role of doctrine in substantiating the notion and the creative role of jurisprudence, which have contributed to the definition of the environment.

In Italian law, the first definition of the environment, formally given by Law no. 349/1986, provoked a wide debate in legal doctrine. In order to interpret as accurately as possible the content of the notion of environment, the Constitutional Court (Decision no. 210 of 28 May 1987) stated that there is a tendency of the legislator to arrive at a unitary conception that includes all natural and cultural resources, stating: means the conservation, rational management and improvement of the conditions of the natural environment (air, water, soil and all other components), the existence and conservation of the terrestrial and aquatic genetic heritage, of all plant and animal species living in the wild and, finally, the being human beings with all its manifestations ".

But the decision of the Italian Constitutional Court, the best known in the matter (since December 30, 1987) and which gives a much more precise legal definition, which also contains the echoes of the doctrine, states: "The environment is considered a unitary intangible asset with its various components each of which may constitute, separately, an object of protection; but all, as a whole, constitute a unit ". The Court further explains that the environment is protected because it is a condition that defines the quality of life, it being the natural habitat in which man lives and works, being absolutely necessary for the community. Environmental protection is required, moreover, above all, by constitutional provisions (art. 32 of the Italian Constitution).

This idea is also supported by Belgian doctrine which seeks to define the environment as an elementary finding given that every living species - whether plant, animal or human - needs fundamental natural conditions to guarantee its existence and development. It is, therefore, the physical or biological environment - the environment - in which it can find these necessary conditions.

Similarly, Maurice Kamto⁵, analyzing environmental law in Africa, points out that there is no general definition unanimously accepted in positive law. Some national texts give partial or limited definitions to a precise objective, however, they do not reach a global definition.

As M. Kamto points out, at that time the Draft International Covenant on Environment and Development (IUCN Commission) proposed a general definition in Article 1 thereof, stating that "environment means matter as a whole, natural resources, including heritage cultural and human infrastructure indispensable for socio-economic activities ".

Another legal definition of the environment is provided by the Convention on Civil Liability for Damage Caused by Environmentally Dangerous Activities, drafted by the Council

⁵ Maurice Kamto, *Environmental Law in Africa*, Edicef AUPELF, Paris, 1996, p.16.

of Europe and opened for signature in Lugano on 21 June 1993⁶ and which, in the definitions contained in Article 2 in point 10, mentions:

"The environment includes:

- abiotic and biotic natural resources, such as air, water, soil, fauna and flora, as well as the interactions between these factors;
- the goods that make up the cultural heritage; and
- the characteristic aspects of the landscape".

This definition, which is legally binding on the signatory parties to the Convention, is, in our view, the result of debates between philosophers, economists, environmentalists and lawyers, being one of the most elaborate and comprehensive. As far as we know, other legal texts have not taken such an approach⁷.

The framework law for environmental protection⁸, in Annex 1, which was, as specified in Article 2, an integral part of that law, appears to have "clarified the meaning of certain terms within the meaning of the law". We will go over the contradiction between the wording of art. 2 which specified that some definitions contained in annex 1 are formulated and the title of the annex which mentioned that it was about "the meaning of the terms in the sense of the law". We believe that it was only an editorial inadvertence.

However, the notion of "environment" in the annex to the law is considered to include "the set of conditions and natural elements of the Earth: air, water, soil and subsoil, all atmospheric layers, all organic and inorganic matter, and living things, natural systems in interaction comprising the elements listed above, including material and spiritual values". This definition or "clarification" of the term environment, which seems to have been terrorized by the idea of not omitting something that is, however, part of the environment, was not the result of too much effort of synthesis and systematization.

We believe, however, that by amending Law no. 137/1995 by the Government Emergency Ordinance no. 91/2002, approved by Law no. 294/2003 it now explicitly defines "the environment as the set of conditions and natural elements of the Earth, air, water, soil, subsoil, characteristic aspects of the landscape, all atmospheric layers, all organic and inorganic matter, as well as beings living, interacting natural systems comprising the elements listed above, including material and spiritual values, quality of life and conditions that may influence human well-being and health".

Compared to the text of the definition, we believe that we could notice that it is not directly expressed that man and his goods belong to the environment. We consider, however, that this undoubtedly results from several elements of the definition, such as: "all (, ..) living beings" and "material and spiritual values, quality of life and conditions that can influence human well-being and health".

It also seems to us worth noting that the "characteristic aspects of the landscape" have been included in the notion of the environment, of course, as a consequence of the harmonization of our legislation with the legislation of the European Union⁹.

⁶ Convention to which Romania has a vocation to become a contracting party.

⁷ See M. Uliescu, Civil Liability for Dangerous Activities in the Council of Europe, International Journal of Comparative Law, 1994, Paris, p.49.

⁸ Law for environmental protection, no. 137/1995, until its amendment by GEO no. 91/2002, approved by Law no. 294/2003

⁹ See in this regard the Law no. 451/2000 for the ratification of the European Landscape Convention adopted in Florence on October 20, 2000, M.Of. P.I no. 536 / 23.07.2002.

Moreover, other legal texts, such as, for example, in Community law, the Impact Assessment Directive¹⁰ provide, in a detailed manner, that the environment includes "man, fauna and flora, soil, water, air, climate and the landscape, the interaction between these different factors as well as the material goods and the cultural heritage".

The action program (Action 21)¹¹, in turn, gives a definition of the environment that seems more synthetic and precise, without being excessively "bioenergetic", noting that the environment is made up of all the resources that condition the living environment: water, air, space (soil and landscape), climate, raw materials, built environment, natural and cultural heritage. "

LASTING DEVELOPMENT

Following the report of the Brundtland Commission (1987), a true universal assessment of environmental policies, there was a clear need to combine development with environmental protection, the premise of the concept of sustainable development and the new principle of "sustainable development". This principle was also proclaimed in the "Rio Declaration" (point 3), a declaration signed by most countries in the world, including Romania, at the UN Conference on Environmental Protection and Development in June 1992. According to principle 3 of the Declaration on the environment and development, "the right to development must be realized in such a way as to meet the development and environmental needs of present and future generations in an equitable manner".

Analyzing the relationship (equation) development - environment, André Beauchamp states the existence of a double crisis: the environment and development, as well as the difficulties of reconciling these two realities. Several observers suggest the need, in this situation, for recourse to ethics. The term ethics, in this case, seems to cover a complex range of meanings, from professional deontology to the Kantian imperative, including strategic considerations. If we give the term "ethics" a meaning close enough to the current sense of morality - as a rule of conduct imposed by man himself in order to achieve a higher goal - in this sense, ethics could correspond to the specific human way of and assume biological existence. The specifically human way of defining behaviors goes through ethical discourse. The strength of ethics lies in its malleability and adaptability to a plurality of situations.

By raising the issue of returning to ethics in its relationship with development and the environment, we come to the recognition of a double crisis of the environment and development; In order to find a way out of the crisis, a new ethic is needed.

The Brundtland Commission proposes, through the term sustainable development, a form of reconciliation, sustainable development involving the satisfaction of needs (economic principle), respect for ecological balances (ecological principle) and consideration of inter and intra-generational equity (solidarity principle).

In short, we could talk about: the ethics of nature, an ethic of knowledge, the ethics of equity and the ethics of democracy.

¹⁰ European Union Directive 85/337, as amended by European Union Directive 97/11

¹¹ The Program of Action for the 21st Century, adopted by the UN World Conference on Environment and Development, Rio de Janeiro, 1992.

THE RIO DECLARATION AND SUSTAINABLE DEVELOPMENT

After Rio '92, 7 fundamental principles of harmonizing environmental protection and sustainable development could be enunciated:

- Principle 1 of the Rio Declaration reiterates in another form the human right to the environment proclaimed in Stockholm (16 June 1972): "Man is at the heart of concerns for sustainable development, having the right to a healthy and productive life in harmony with nature"

Therefore, a first principle is the general obligation to protect the environment and natural resources and which is manifested, at the same time, by the human right to the environment, the obligation to protect the environment for future generations and preserve common natural resources (UNESCO Convention, 1972).

The common heritage of humanity must also be reconciled with the maintenance of the sovereign right of states over their own resources, provided that they do not harm the environment of other states (Principle 2 of the Rio Declaration and the preamble to the Convention on Biological Diversity and Climate Change).

- A second principle takes into account the need to coordinate the development and protection of the environment (Principle 4 of the Rio Declaration and Article 130 of the Treaty on European Union - Maastricht, 1992).

We believe that we could notice at least four consequences:

- the systematic integration of the environment in all sectoral policies;

- eradicating poverty - an indispensable condition for sustainable development (Principle 5 of the Rio Declaration);

- the need to eliminate or reduce unviable modes of production and consumption (Principles 7 and 8 of the Rio Declaration);

- the need to associate, in future policies, new factors of sustainable development: social groups, women, young people, local communities, etc. (Principles 20, 22 of the Rio Declaration);

- A third major principle is the polluter pays ("pollueur-payeur") - which involves the international and national legal obligation with the mechanisms related to the liability of the polluter (Principle 13 of the Rio Declaration, European Council Convention, Lugano, 1993, art.3 letter d and art. 81 of Law no. 137/1995 on environmental protection);

- The principle of good ecological behavior is a fourth principle. It applies to cross-border issues and international trade. Special legal mechanisms must condition the implementation of polluting activities (impact assessment, consultative procedures, information, equal access to justice, etc.) (1991 ESPOO Convention on Transboundary Impact Assessment, Article 14 of the Convention on Biological Biodiversity, Rio 1992, (principles 12 and 14 of the Rio Declaration).

- A fifth principle focuses on the idea that the environment and sustainable development are inextricably linked to solidarity and participatory democracy (principles 18, 19 of the Rio Declaration).

- The principle of prevention was one of the first principles declared since the '70s - Avoidance of any harm and damage to the environment, given their irreversible nature (ESPOO Convention 1991, art. 14¹²; Convention on Biodiversity, principles 11, 17 - Rio Declaration).

¹² The ESROO Convention was signed and ratified by Romania by Law 22/2001 published in the Official Gazette. 105 of March 1, 2001

- The last principle calls into question technique and science and admits uncertainty or ignorance as elements of the stage of development of science (man does not yet master all scientific data). So, caution in behavior towards the risks still unknown or incompletely known. The new prudent behavior thus becomes the precautionary principle (enshrined in principle 15 of the Rio Declaration) and consists in taking precautionary decisions regarding actions that are not fully controlled, for example, the nuclear moratorium or taking legal precautions to limit the effects. harmful. In this regard, we can also take into account the many concerns, worldwide, regarding the management of risks related to the development of biotechnology (Cartagena Protocol to the Convention on Biodiversity).

Law 137/1995 with subsequent amendments¹³ provides in art. 3 on the principles and elements of the strategy, that they govern the regulation of the environmental protection framework for the stated purpose of ensuring sustainable development.

In order to achieve social, economic and ecological parameters, dimensions that, in fact, constitute the basic elements of the National Strategy for Sustainable Development, the institutional aspects meant to implement these objectives were also taken into account in Romania.

Thus, the National Council for Environment and Sustainable Development was established by law¹⁴, an autonomous body of public interest with the main purpose and function of providing an organized institutional framework for consultation and dialogue between public authorities and civil society on fundamental issues. Regarding current and future policies, programs and action plans in the economic and social sectors, taking into account environmental protection.

In the same sense, by the Government Decision no. 115 of 2002¹⁵, the Permanent National Commission for the elaboration of the Sustainable Development Strategy of Romania - Horizon 2025 was established.

The commission includes groups of experts (independent, appointed by the Government or political parties), reflection groups recommended by the Romanian Academy, representatives of employers, unions, cults of the Romanian Orthodox Church, personalities of science, culture, representatives of non-governmental organizations, of public administration, etc.

In drawing up its work, the Commission shall take into account the provisions of strategies and action plans agreed with international bodies, the European Commission, NATO, the International Monetary Fund or the World Bank.

The Commission shall be completely independent of its design and opinion.

On this occasion, internationally, the need to integrate economic development and environmental protection into the goal of sustainable development was officially recognized, and the growing importance of international environmental law as a mechanism for codifying and promoting sustainable development was affirmed. .

The conference resulted in:

- The Rio Declaration, containing 27 principles;
- Agenda 21, which is an action plan for sustainable development starting in the 21st century, materialized in 40 chapters for specific program areas, structured in terms of:

¹³ Law 137/1995 on environmental protection amended by Law 159/1999 and republished, amended and supplemented by GEO 91/2002 approved by Law 294/27 June 2003

¹⁴ GD no. 732/2003, published in the Official Gazette. no.500 / 2003

¹⁵ see Law 158/1999 published in M. Of. nr.513 / 1999

- basis for action;
- objectives to be achieved;
- activities to be performed;
- implementation methods.

• Statement of Principles on Forests - a document without binding power, which contains the principles for the management of conservation and sustainable development of all types of forests;

- Institutional organization of the Commission for Sustainable Development (CSD);
- Financing mechanism for the implementation of Agenda 21.

The Rio summit has firmly brought environmental protection and development issues to the public arena. Along with Agenda 21 and the Rio Declaration, an agreement was reached on two binding conventions:

- Convention on Biological Diversity (CBD) and
- Framework Convention on Climate Change.

The Rio summit also generated a whole host of positive reactions, including the launch of numerous initiatives to implement Agenda 21 at the local level and the reorientation of environmental policy.

In the same year, national commissions for sustainable development were set up in many states and strategies for sustainable development were drawn up.

Despite these positive consequences, the overall goal of Agenda 21, which called for a radical change in existing dominant conventional value systems and institutional processes, could not be achieved.

RIO + 5, Assessing progress five years after the Rio Conference, New York – 1997 highlighted a number of shortcomings, particularly related to social equity and poverty.

These aspects were highlighted by:

- reducing official development assistance and increasing international debt;
- failure to improve: technology transfer, capacity building for participation and development;
- failure of institutional coordination and
- inability to reduce excessive levels of production and consumption.

RIO + 10 Johannesburg Summit - 2002vcalled for stronger ratification, strengthening and implementation of international agreements and conventions on the environment and development. Of The United Nations World Summit on Sustainable Development (WSSD), held in Johannesburg from August 26 to September 6, 2002, brought together 104 world leaders and had as main results:

- Johannesburg Declaration on Sustainable Development and
- Plan for the implementation of the World Summit on Sustainable Development (JPOI).

The Johannesburg Summit reaffirmed sustainable development as a central element of the international agenda and gave new impetus to the practical implementation of global measures to combat poverty and protect the environment.

The understanding of the concept of sustainable development has been deepened and strengthened, especially by highlighting the important links between poverty, the environment and the use of natural resources. Governments have agreed and reaffirmed a range of obligations and concrete targets for action to achieve sustainable development goals. The Johannesburg Declaration assumed collective responsibility for the progress and strengthening of the three interdependent pillars of sustainable development: economic development, social development and environmental protection at local, national, regional and global levels.

The implementation plan aims at implementing concrete measures at all levels and strengthening international cooperation, based on the common but differentiated responsibilities expressed in Principle 7 of the Rio Declaration and the integration of the three pillars of sustainable development.

In this sense, the efforts are mainly focused on:

- eradication of poverty;
- changing production and consumption patterns;
- health protection and
- protection and management of the natural resource base for economic and social

development.

Significant progress has been made in supporting the establishment of a global solidarity fund for the eradication of poverty.

Also, the opinions of the civil society were given a special importance, in recognition of the essential role of the civil society in the implementation of the sustainable development and the promotion of partnerships.

RIO + 20 UN Conference on Sustainable Development - UNCSD – 2012, UNCSD is organized in accordance with General Assembly Resolution 64/236, adopted in September 2009. The conference will take place in Brazil in 2012 on the occasion of the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg.

The aim of the conference is to ensure a renewed political commitment to sustainable development, to assess the progress made so far and the gaps in the implementation of the results of the main summits on sustainable development, as well as to address new and emerging challenges. To this end, the focus is on two major themes:

- The green economy, in the context of sustainable development and poverty eradication (links with the Millennium Development Goals, MDGs) must be taken into account, and
- The institutional framework for sustainable development.

The results of the CSD negotiations¹⁹ - especially those on SCP (sustainable consumption and production) - are of major importance for shaping the political commitments to be decided within the UNCSD (Rio + 20).

Additional information on CSD19 - 19th session of the UN Commission on Sustainable Development <http://www.mmediu.ro/csd19/csd19.htm>

All these world conferences have influenced the evolution of international environmental law.

There are also numerous bilateral and multilateral agreements that contain provisions related to one or more environmental protection issues, covering issues of a nature:

- subregional;
- regional and
- global.

Also, a number of fundamental principles for environmental protection have been crystallized in international environmental law. Being a relatively new and emerging field, international environmental law and policy are also evolving on the basis of resolutions and declarations of international organizations, such as UNEP (United Nations Environment Program), the World Health Organization or the International Atomic Energy Agency, which

have played an important role in the crystallization of international principles for environmental protection, although these principles are often not binding.

Through state repetition and practice, which aims to incorporate these principles into national legal systems, they can become mandatory.

Although the states of the world currently have different approaches to these principles, respectively consider them to be principles of international law in formation or recognize them as principles of international law, they are the basis of current debates for policy making on environmental protection at the international level. , and is becoming increasingly important for trade and environmental issues.

Environmental and development considerations must be at the heart of economic and political decisions.

This requires a change in institutional structures to integrate environmental issues into all decisions.

Likewise, new forms of dialogue must be established between the public power at national and local level, the industrial and scientific environment, ecological groups and the population. This requires new forms of public participation in the decision-making process at all levels and, therefore, full access to information.

The state must also adopt a national strategy for sustainable development, influencing sectoral plans and policies. This global strategy must aim to ensure socially equitable economic progress and, at the same time, guarantee the preservation of resources and the environment for future generations.

Efficient legal framework

Environmental law and development law need to improve their content, but above all, the institutional mechanisms for implementing administrative and judicial procedures, which are open to individuals, associations and the general public, need to be improved.

Critical inventories of existing legal norms should be organized in order to provide the government (executive) and legislature with information and proposals combining specialized legal information and expert opinions.

National programs for monitoring and evaluating compliance with or violation of legal norms, enabling the periodic evaluation of the effectiveness of legal instruments and institutions, will also need to be developed.

Taking into account the development of international law, the obligation of the state to implement at national level the international agreements on environment and development, in order to respect the international commitments assumed, is strengthened. This is all the more so as the fundamental principles of environmental law spring from both international and national sources.

Thus, what Kant called cosmopolitan law is becoming widespread thanks to the awareness and global solidarity of the peoples of the planet - which is manifested in treaties, recommendations, declarations, constitutions, national laws, all together forming a right to the environment and development common to all mankind, concerned with preserving natural resources for future generations and developing in harmony with nature¹⁶.

¹⁶ See also the Aarhus Convention of 25.06.1999 published in the Official Gazette. P.I 224 of 22.05.2000 on access to information, public participation in decision-making and access to justice in environmental matters, ratified by Law

Fundamental principles of harmonizing environmental protection and sustainable development

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86/2000, as well as H.G. 1115/2002 on free access to environmental information, published in the Official Gazette. 331/15 January 2003

¹⁷ The ESROO Convention was signed and ratified by Romania by Law 22/2001 published in the Official Gazette. 105 of March 1, 2001

- The last principle calls into question technique and science and admits uncertainty or ignorance as elements of the stage of development of science (man does not yet master all scientific data). So, caution in behavior towards the risks still unknown or incompletely known. The new prudent behavior thus becomes the precautionary principle (enshrined in principle 15 of the Rio Declaration) and consists in taking precautionary decisions regarding actions that are not fully controlled, for example, the nuclear moratorium or taking legal precautions to limit the effects. harmful. In this regard, we can also take into account the many concerns, worldwide, regarding the management of risks related to the development of biotechnology (Cartagena Protocol to the Convention on Biodiversity).

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CONCLUSIONS

European environmental policy is based on the principles of precaution, prevention, correction of pollution at source and "the polluter pays". The precautionary principle is a risk management tool that can be invoked if there is a scientific uncertainty about a possible risk to human health or the environment, arising from a particular action or policy. For example, if there are uncertainties about the possible dangerous effects of a product and if they persist following an objective scientific assessment, instructions may be provided to prohibit the distribution of

¹⁸ Law 137/1995 on environmental protection amended by Law 159/1999 and republished, amended and supplemented by GEO 91/2002 approved by Law 294/27 June 2003

¹⁹ GD no. 732/2003, published in the Official Gazette. no.500 / 2003

²⁰ see Law 158/1999 published in M. Of. nr.513 / 1999

the product or to remove it from the market. Such measures must be non-discriminatory and proportionate and must be reviewed as soon as additional scientific information becomes available.

The 'polluter pays' principle is implemented through the Environmental Liability Directive, which aims to prevent or remedy damage to the environment (ie protected species or natural habitats, water and soil). Operators carrying out certain professional activities, such as the transport of dangerous substances or activities involving discharges into water, must take precautionary measures in the event of an imminent threat to the environment. If damage has already occurred, operators are obliged to take appropriate measures to remedy it and to bear the related costs. The scope of the Directive has been extended three times to include the management of extractive waste, the operation of geological storage sites and the safety of offshore oil and gas activities, respectively.

In addition, since it first emerged following a Cardiff European Council initiative in 1998, the integration of environmental concerns into other EU policy areas has become an important concept in European policies. In recent years, the integration of environmental policy has made significant progress, for example, in the field of energy policy, as reflected in the parallel development of the EU's energy / climate package or in the Roadmap for moving to a competitive economy. low carbon emissions by 2050.

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