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The Multifunctional Content of the Human Right to the Environment

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Abstract: If the protection of the environment inevitably entails the attainment of fundamental freedoms, such as, for example, the right to property or the restriction of certain easements or the restriction of the right to move in certain protected areas, it ends up, as we have shown, to broaden other concerns. The right to the environment was initially closely linked to the right to health and the right to life; this later translated into the assertion of a right to better living and working conditions such as occupational health and safety and the development of the right to rest and recreation. But environmental law is the bearer of fundamental rights, such as the right to information and participation, decision-making, the right to association, and, thus, the strengthening of the social and collective function of existing rights. Law is the mass of duties both for the state and public authorities and for the individual. Environmental protection may be the reason for the increased participation of citizens in public life and the democratization of all procedures.

Keywords: rights; health; law; work; information

1. Introduction

In terms of environmental protection, international documents show, in many cases - as I have shown - the nature of simple recommendations, and not of binding norms. This is, for example, the case of the Declaration of Principles from Rio on environment and development, which, without having binding legal force, represents the result of a compromise solution between industrialized countries and the Group of 77; the declaration enshrines the rights and responsibilities of states in the field of environmental protection, proclaiming several 27 principles. Even when they have, by how they are formulated, a normative character, the principles that appear as

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simple recommendations contained in international acts related to the environment are not part of the domestic legislation; this fact is, of course, not of a nature to diminish their importance about the imperative prescriptions of international environmental law (Prieur, 1991).

2. Body of Paper

That being the case, when we evoke principles of international environmental law contained in international acts, we will not insist on their binding legal force (about the nature of the acts in which they find their consecration). This is even more so since, with the development of collaboration and cooperation between states for the protection of the environment, with the increase in the economic power of developing countries and with technical and scientific progress, international environmental law has evolved and will undoubtedly evolve in the direction of widening the scope of binding acts for the states-parties, due to the narrowing of the significance of simple recommendations. What today represents a principle or a norm without proper legal force, thus having the appearance of recommendations, will tomorrow become an imperative text of international law and will be able to be part, according to the Romanian Fundamental Law, of the internal law of the environment (Uliescu, 1994).

The difficulty of the exegete jurist about these principles refers, however, to the fact that a series of international texts aim at a set of general principles without proposing even the smallest definition.

We will not dwell on the problems arising from the semantic aspects of the matter we are dealing with here. We tried to circumscribe the notion of "principle" to what may be of interest from the point of view of law and legislation. Sometimes things are clear even about the formulation in which the notion of principle is included. Thus, if the "principles" referred to in the Dublin Declaration (from January 1992) on waters, as well as the Rio Declaration (June 1992) have, to a good extent, a legal vocation (even when they are not all formulated in normative terms), the "Action 21" Program (Rio de Janeiro, June 1992), evoking the guidelines of the proposed activities or, possibly, their modalities, calls them "principles of action" in numerous lines, in all chapters; it is, however, an different meaning from the one that concerns us in this chapter.

It should be added here that the European economic and political integration corresponds to collective forms of struggle to protect the environment. Apart from the extremely extensive competence in matters of regulation, C.E.E. it has, correlatively, control attributions over how the rules it issues are respected or applied (Lamarque, 1975).

In recent years - especially after the entry into force of the Single European Act (in 1987) - substantial progress has been registered in the collaboration of the states on the continent. No less, however, the community legislative system is laconic and, therefore, susceptible to numerous improvements, including, of course, in the field of environmental protection.

The Single European Act modified the original Treaties of the European Communities and definitively solved the problem of the legal bases of the Community competences in the field of environmental protection (Stancu, 2014).

Likewise, the Single Act gave legal (mandatory) force to the principle of subsidiarity, allowing any member state to maintain or establish more restrictive environmental protection measures. This particularly important document for environmental protection expressly establishes the principles of community action in the field, which in fact are not legal principles, but action guidelines. The document enshrines 11 principles, 4 of which consider the international dimensions of the community's environmental policy (Cans, 1995).

Following the Single European Act, the Maastricht Treaty signed on February 7, 1992, and entered into force on November 1, 1993, brought particularly important amendments regarding the political, economic, and monetary union. In the field of the environment, the principles are on an upward line, developing the previous ones, according to the evolution of the moment, and the principle of subsidiarity becomes dominant.

By advancing the economic and social field, which it considers to be the main objective, a balanced and sustainable progress with respect for the environment is pursued.

Through the Treaty of Amsterdam signed on October 2, 1997, and open for ratification by the member states, the EU tendencies in the field of environmental protection, which, of course, becomes the condition and component of “a harmonious, balanced and sustainable development”, being in fact a reference to environmental protection and to the acts of the UN Conference on Environment and Development from “Rio 92”, including to the Declaration of Principles.

Under these conditions, we propose to examine, one by one, in an order that is not that of importance, the principles of environmental law, first those of domestic law (or those that have a common character) and, subsequently, some of those of the law international of the environment.

General principles of domestic environmental law are: (Klemm et comp., 1989).

a) The principle of legislative recognition of environmental protection as an objective of major public interest. The environmental protection law with subsequent amendments qualifies, from its first article, environmental protection as representing an objective of major public interest. The text considers, through the lens of the purpose of the law, the legislative regulation of environmental protection and, at the same time, enshrines the manner and direction in which the legislative provisions must be oriented: environmental protection must be done based on the principles and strategic elements that lead to the sustainable development of society.

For our country, such a legislative proclamation of the importance of environmental protection is not a novelty; this was declared, indeed, by Law no. 9/1973 as "a problem of national interest" (art. 1). The 1991 Constitution did not directly enshrine this principle, contenting itself with stating, when establishing the state's obligation to exploit the country's natural resources, that this will be done "in accordance with the national interest" (art. 134 paragraph 2 letter. d). But the 1991 Constitution amended by referendum, by provisions amended and taken over by the provisions of art. 35, 42 (al. 7) and art. 135 letter e enshrines a real conceptual change as regards the protection of the environment and especially the human right to a healthy environment.

And if environmental law includes the recognition of the fact that the object of legal protection represents a finality of major public interest, then the principle thus established is equally valid for the different component parts of this branch, corresponding to the environmental elements that claim protection. That being the case, Law no. 137/1995 on environmental protection, with subsequent amendments, which undoubtedly has the character of a framework law, enshrines the character of major public interest not only for the protection of the general values of the environment, to which this law directly refers, but of course, also for what will be the subject of subsequent legislative regulations. (Duțu, 2000).

Indeed, by art. 89 of the Environmental Protection Law, currently repealed, it was stipulated that, in order to effectively apply the environmental protection measures, they will be regulated by special, revised or new laws, which will develop the general

principles of the framework law, a number of 17 areas including, for example: the regime of hazardous substances and waste, household, industrial and agricultural waste management; pesticide regime; protection of the coast and coastal areas; fish farming and fishing; liability for damage caused to the environment.

It is obvious that each of the special laws whose elaboration and adoption was necessary must start, in the specialized regulations they will contain, from the principle according to which environmental protection represents an objective of public interest. It is, of course, self-evident that all the consequences related, on a theoretical and practical level, to the application of this principle, will concern, equally, both the regulation included in the framework law and in the special laws, complementary regulations (Prieur, 2003).

To this first consequence of the principle that we are dealing with here, is undoubtedly added, others.

As stated by Dr. Mircea Duţu, "such a general provision reveals the special social-legal value given to preserving the ecological balance and preserving the state of environmental elements and factors and gives an imperative character to the relevant legal norms. Consequently, the provisions of environmental law are of "public order", not allowing derogations from their prescriptions". (Duțu, 2000).

The recognition of an ecological public order as a limit and as an objective of administrative action is a controversial subject. This subject is affected by the difficulty of admitting the existence of several public orders, each specific to a certain branch of law, as well as by the fact that, in our country, the definition and features of this notion are not sufficiently well specified.

But, even if we admit the existence, in the field of environmental protection, of public order, we could not agree with the opinion mentioned above in the sense that, since certain legislative provisions are of public order, no derogations from them are allowed. Indeed, such a consequence does not belong to the character of public order of legal norms, but of the fact that it is about imperative norms; however, most of the legislation is made up of imperative provisions, but only a part of them pertain to public order (Lascoumes, 1995).

Among other effects of the legislative declaration of the public interest that characterizes activities regarding environmental protection, Michel Prieur refers to the control of legality regarding activities that affect the environment, by applying the balance theory to the assessment of the legality of the declaration as being of public utility of a certain operation. The author also has in mind the creation of public

environmental protection services; thus, in his opinion, "starting from the moment when environmental protection is considered to be of general interest, there is no longer any obstacle for the creation, by public authorities, of public services charged with its management". Such public services existed even at the beginning of the seventies, tasked with environmental protection, either in part (for example, the decentralized services of the state, such as the departmental direction of agriculture), or in total (specialized public establishments, such as national parks or financial agencies of basin); some being private law bodies, including environmental protection associations, rigorously controlled by the state and exercising public power prerogatives (control of a nature reserve) can be recognized by the court as management of a public administrative service for the protection of the environment (Prieur, 1991).

b) The principle of anticipation, prevention, and correction at the source of ecological risks and the production of damages is formulated in point 18 of the preamble of the Rio Convention (June 1992) on biological diversity, which emphasizes that it is of the greatest importance to anticipate and prevent the causes of the reduction or loss of biological diversity at the source. Of course, however, that the action of the principle exceeds the limits of biological diversity, it can and should be applied to all areas of environmental protection - as, for example, about the climate, pollution, desertification, protection of the ozone layer, etc. (Lepage, 1995).

This principle is, in terms of the environmental protection law, no. 137/1995 with subsequent amendments (art. 3), established in a simpler form, which omits the reference to the anticipation of risks, which, however, does not change the content of the principle. However, it must be emphasized that the whole concept underlying the regulation of environmental protection in this new law starts from the recognition of the importance of activities to prevent the production of ecological damage. Indeed, the entire regulation of economic and social activities with an impact on the environment contained in Chapter II of the law - regarding the authorization procedure, the regime of dangerous chemical substances and preparations, that of chemical fertilizers and products for bio sanitary use, as well as the regime of nuclear activities, the regime of waste and hazardous waste (Uliescu, 1994).

- mainly considers the anticipation and prevention of risks.

In the light of the formulation given to the content of this principle in other international documents, the anticipation and prevention of risks are complemented with the idea that these objectives must be achieved by using the best available

techniques; this specification is included in the legislative regulations and in the specialized doctrine in France. In this sense, the Paris Convention of September 22, 1992 for the protection of the marine environment of the North-East Atlantic is cited (art. 2 and art. 3 letters a and b), according to which "the contracting parties... shall keep taking full account of the use of the latest technical advances made and methods devised for the prevention and complete suppression of pollution" and also "they shall ensure the application of the best available techniques and the best environmental practice" (Despax, 1980).

Consolidated in the text of French law no. 95-101 of February 2, 1995, the wording of this principle is as follows: "the principle of preventive action and correction, with priority at the source, of impacts on the environment, using the best techniques available at an economic cost acceptable" (art.L.2oo - 1 par.4). As can be seen, the principle of correction at source is, in the reproduced definition, mitigated by the condition regarding the economic acceptability of its realization. It would, however, be wrong to believe that such a condition would represent, in the presence of unreasonable costs, the abandonment of environmental protection; it is, indeed, only about the limitation of preventive action with this aim, and not about the promotion of economic-social development at the sacrifice of the safeguarding of nature. That this is so results from the fact that the definitive formulation of the text was the result of long parliamentary debates in which, as Ch. Cans notes, one could feel the fear that tra the investigation at the source should not sometimes prove to be more expensive and less effective than an a posteriori intervention (Gouilloud, 1989).

Regarding the amendment of Article 3 paragraph a of Law 137/1995 by GEO No. 91/2002, we note that "the principle of prevention, reduction and integrated control of pollution by using the best available techniques for activities that can produce significant pollution, formulations that practically enshrine alignment of Romanian legislation with more advanced legislation. Perhaps it would not be without interest to refer in this context to the legal definition regarding "the best available techniques" from the same regulatory act and which represents "the most advanced and efficient stage of development recorded with the development of an activity and exploitation methods , which demonstrates the practical possibility of constituting the reference for setting emission limit values for the purpose of prevention, and if this fact is not possible, for the global reduction of emissions and the impact on the environment as a whole" (Dusca, 2014).

Even if, psychologically or only sentimentally, it seems difficult to admit that sometimes it is more economical to repair a damage done to nature than to prevent

it, such an ecological policy should be considered in any country, therefore also in Romania. Because environmental protection, as an economic activity, is - also - subject to the rules of the market economy. And sometimes, in this field, where scientific and technical knowledge still has limits, repairing a damage that seemed unlikely can, indeed, cost much less than it would cost to adopt complicated and difficult measures to prevent the production possible damage.

We remind you that the environmental protection law does not condition the activity of preventing damage to nature to certain economically acceptable costs. We believe that one clarification would be necessary: the choice between the use of preventive means and those to repair the damage would be in accordance with the principles of environmental protection only when the virtual damage is reversible, and the repair of the damage ensures the full restoration of the environment to its previous state.

Such a discussion has, however, for us, rather a theoretical character. Indeed, the text of art. 9 and 10 of GEO 91/2002 seems to absolutize the action of the principle of prevention, providing that "environmental authorizations are not issued if the conditions provided by the technical norms and regulations in force are not met and that they are subject to revision if new elements appear".

c) The precautionary principle, closely related to the principle of anticipating, preventing and correcting risks and their assessment, establishes as a rule of conduct in the field of environmental protection, considering, before adopting any decision, the probability and severity of an ecological damage whose occurrence it is not certain.

In the Rio Declaration it appears as principle no. 15, with the following wording: "To protect the environment, states must apply precautionary measures on a large scale, in relation to the possibilities they have. In the case of a risk of serious, irreversible damages, the lack of absolute scientific certainty should not serve as a pretext to delay the adoption of effective measures aimed at preventing environmental degradation" (Nanefang, 2002).

The principle is repeated on a specific level in the Convention on Biological Diversity (Rio de Janeiro, 1992), whose Preamble declares that "when there is a threat of significant reduction or loss of biological diversity, the absence of total scientific certainty must not be invoked as a reason for postponing measures that would allow avoiding a danger or mitigating the effects".

The definition of the precautionary principle emphasizes, as we have shown, that the absence of certainties, considering the scientific and technical knowledge of the

moment, must not delay the adoption of effective and proportionate measures aimed at preventing a risk of serious and irreversible damage to the environment, at an acceptable cost economically speaking. However, it is a highly criticized definition in French specialized literature. Thus, Corinne Lepage observes that "the precautionary principle ultimately means that an action or an activity cannot be undertaken when the consequences it may have been not known"; or, the author observes, such a thing does not result from the drafting of the text. Likewise, Pierre Lascoumes specifies that "the precautionary principle, which considers, in the absence of scientific and technical certainties, the adoption of effective preventive measures, can only be applied, in French law, at an acceptable cost from an economic point of view. (Lascoumes, 1995), which leaves industrialists the possibility of any appreciation". (Lepage, 1995).

Finally, art. 3 paragraph 3 of the Convention on Climate Change (Rio, 1992, ratified by Romania through Law no. 24/1994), also affirming the principle we are referring to, uses the term precaution in a meaning much closer to the idea of prevention.

We are in the presence of a principle that, prescribing norms of behavior in environmental protection, expresses either the obligation to accompany any operation undertaken in the field of the environment with sufficient guarantees, or to refrain from measures that may have unforeseeable consequences, so an obligation to not to do, or stand still. Being a principle with general application, the precautionary obligation is easily "portable" in any field of environmental protection. Undoubtedly, there are fields of science that, directly related to environmental protection, assume a greater degree of uncertainty regarding the results - sometimes distant in time - of human action on the natural environment; so are the activities belonging to biotechnology and nuclear ones. However, it could not be argued, for example, that at the current stage of scientific knowledge, the risks involved in the field of nuclear or radioactive waste disposal for future generations cannot be assessed by the natural leakage of such waste; overcoming such a conception, it becomes clear that current practices, based on methods that are limited to the removal of waste from the immediate environment of man, preserving it in the same state mainly on the ground, do not, in fact, in any way represent the elimination real dangers for the generations to come.

Apart from its theoretical importance, the precautionary principle could have, in practice, several consequences in terms of liability for environmental damage. Indeed, the obligation of prudence in organizing and carrying out certain activities serves to establish the fault of the person who is to be held responsible for acts that

caused damage, as well as for the simple failure of some obligations that fell to him according to the law (Antoniu, 2014).

However, if we are to refer to tortious civil liability, in the presence of the provision contained in art. 81 of Law no. 137/1995, according to which "responsibility for damage is objective, independent of fault", the reference to the duty of care is useless. However, for the case of other forms of liability - criminal, contravention, labor law -, where the existence of guilt is essential for liability, reference to the precautionary principle can be very important. Depending on the obligations assumed by the parties, the principle we are referring to can have important consequences for clarifying the relationships arising from the insurance contract.

We believe that it would not be without interest to recall the role given to the precautionary principle in the Biosafety Protocol, the Cartagena Protocol on the Prevention of Biotechnological Risks signed in 2000 and ratified by Romania, at the 1992 Convention on Biological Diversity.

Considering that the principle of precaution is present in numerous international agreements, especially in the conventions that ensure the legal framework of activities likely to be potentially risky for the environment and considering that biotechnology can not only have positive aspects but can also bring impacts to the environment (Agenda 21) and taking into account the risks that genetically modified organisms (GMOs) can carry - especially on biodiversity, human, animal and plant health, the application of the precautionary principle appears indispensable and justified.

In a strictly legal context, the precautionary principle assumes that a possible risk or that has been defined without a scientific proof regarding its realization should not serve as a reason not to put into operation a system to prevent such a risk. Thus, as I have already shown, caution has an anticipatory character, with openness to the future.

There is no doubt that the precautionary principle, introduced in the Biodiversity Protocol, enters this way, albeit timidly, from international environmental law and international food security law.

From the economics of the Protocol, it appears that the principle of precaution has its field of application having multiple utility: the spirit of solidarity regarding risk policy, the universal spirit it embodies; the cooperation mechanisms it establishes especially in the fields: of scientific, technical, and legal (Cans, 1995).

We would allow ourselves, synthetically, to make a comparison between the principle of prevention, which involves the management of a known risk, and the principle of precaution, which requires the control or anticipation of an unknown risk.

d) The polluter pays principle, enshrined in the Environmental Protection Law in art. 3 letter d, can be found in a series of international documents, among which we will mention the Rio Declaration (principle no. 16), according to which "national authorities must to make efforts to promote the internalization of environmental protection costs and the use of economic instruments, taking into account the idea that the polluter is he is the one who must, in principle, assume the cost of pollution, taking into account the public interest and without altering the game of international trade and investments.

As Prof. Michel Prieur rightly writes, this principle raises complicated economic and legal and, I would add, political and scientific problems. I have already shown that if this principle were to enshrine the simple obligation of the one who causes concrete damage to the environment, to repair it, then we would be in the presence of an axiom, without its own legal value; this is not the meaning of the principle under discussion.

In a broad sense, the principle aims to impute to the polluter the social cost of the pollution he generates, which implies all the effects of a pollution not only on goods and people but also on nature itself (Prieur, 1991).

In a narrower sense, the polluter pays principle considers obliging the polluter to bear the expenses of the fight against pollution; it is, therefore, on the level of specific relationships, a partial "internalization", which allows the imposition of depollution taxes or royalties on polluters, in order not to oblige the community to bear the costs of depollution.

The exact understanding of the content of the principle in question requires a clarification; namely that in such an organizational system, the granting, by the state, of subsidies to help polluters finance anti-pollution investments is contrary to the polluter pays principle.

In France, the extension of the polluter pays principle and the royalty's system is being considered for combating noise and agricultural pollution. The adoption, by the Parliament, of art. 421-8 of the Urbanism Code, which provides for non-compensable servitudes around classified installations, represents an infringement

of the polluter pays principle, given that the initially provided texts charged polluting industries with the payment of neighborhood servitudes. In these

58 conditions, the finding that the principle "he who pollutes must pay" often equates to the recognition of the right to pollute to the one who pays and, therefore, legitimizes the most questionable ecological behaviors.

The French legislator - it is interesting to note - did not take over the principle in the meaning contained in the Rio Declaration, according to which, as I have shown, the polluter has to bear only the costs of depollution, but that of the Paris Convention for the protection of the marine environment of North-East Atlantic of 1992, which, in its article 2.2.b. stipulates that "the contracting parties apply the polluter pays principle, according to which the costs resulting from the measures to prevent, reduce and combat pollution must be borne by the polluter". It follows from this definition that in the system of the Paris Convention, adopted by law by France, the acceptability of costs is no longer required (Giroud, 2002).

The regulation contained in Law no. 137/1995 does not seem to be fully agreed with the requirements of the polluter pays principle, as they could be derived from the preceding ones. The unification of the financial efforts of all existing real and virtual "polluters", to prevent and reduce pollution, as well as the fight against it, was realized in the Environmental Fund according to the law; such fund also exists in the regulation of Law no. 18/1991, regarding the improvement of the land fund. It is, however, no less true that, by various provisions of the law, individuals and legal entities that own polluting sources have the obligation to equip them with anti-pollution means, bearing the necessary expenses for this purpose; it is, for example, the case of art. 34, art. 47 letters b, c, d, e of Law no 137/1995.

e) The principle of public information and participation in decision-making regarding the environment.

The environmental protection law envisages, in art. 3 letter i), the creation of a framework for the participation of non-governmental organizations and the population in the elaboration and application of decisions. As far as we are concerned, we believe that participation cannot be conceived without correct and full information, so that the two sides must be examined within a single principle.

Participatory democracy is, of course, not expressly provided for environmental protection policies. No less, however, in this field the state's activity cannot have a chance of success without sharing the responsibility with all citizens, with their organizations.

As specified in the specialized literature, the demand for citizens' participation in environmental protection is linked to the characteristics of the problems in this field: universality, duration, interdependence, and irreversibility.

The right to information appears, in fact, as a right of access to information. It is, moreover, the way in which this right finds its consecration in art. 31 of the Romanian Constitution, according to which "the right of the person to have access to any information of public interest cannot be restricted" (par. 1). The text also specifies, before establishing the limits of the exercise of this right, that "public authorities, according to their competences, are obliged to ensure the correct information of citizens on public affairs and on issues of personal interest".

Containing texts specific to its regulatory field, Law no. 137/1995 specifies that the state recognizes the right of all persons to a healthy environment, guaranteeing for this purpose, among other things, access to information on the quality of the environment (Uliescu, 1993).

We specify that through the amendments and additions made to the Framework Law of GEO 91/2002, letter a of article 5 was also amended, its content being "access to information regarding the environment in compliance with the confidentiality conditions provided by the legislation in force". The text thus amended represents bringing the environmental protection legislation up to date, regarding this aspect, with the new regulations on access to public information, namely Law no. 544/2001 regarding free access to information of public interest and the Methodological Norms of application approved by GD 123/2002.

Law no. 86/2000 which ratified the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters followed by GD 1115/2202 on access to information on the environment represents, in the opinion our guaranteed access paths for the population, on the one hand, and on the other, imperative rules for managing and providing environmental information for the responsible public authorities - all the more so - we would like to emphasize - in accordance with the provisions legal, it is not necessary to justify the purpose of requesting the information.

The birth of the right to information in the field of the environment occurred with the Stockholm Declaration (principles 19 and 20), which evokes, in addition to how the public can exercise its responsibility regarding the environment in full knowledge, the free circulation of information. The final act of the Helsinki Conference (1975) declares, on the other hand, that the success of an environmental

policy presupposes that all categories of the population and all social forces aware of their responsibilities contribute to the protection and improvement of the environment.

It should be mentioned, likewise, Directive 90/313 of the European Union from June 1990 and the new Directive 2003/4 EC (which will, of course, also lead to the amendment of HG 115/2002) regarding freedom of access to information in environmental matters, which aims to ensure freedom of access to information held by public authorities, as well as their dissemination and to establish the basic conditions under which this information should be made accessible. (Cans, 1995).

On the other hand, the principle of participation, which the law does not define as such, emanates from a recommendation of the Committee of European Ministers; stating that if a competent authority proposes to adopt an administrative act, the interested persons must be informed about it and, likewise, that the competent authority must take into account the facts, arguments and evidence presented by the interested persons during the procedure of participation.

Principle 10 of the Rio Declaration expressly refers to this, in the following terms: "the most appropriate way to deal with environmental problems is to ensure the participation of all the citizens involved, at the most appropriate level". We specify that principles 20¬22 of the same Declaration refer distinctly to the participation of women, respectively of the youth and of the native populations and communities.

On a specific level, the Declaration on Sustainable Forest Management (Rio, 1992) also insists on the aspects of participation, indicating, on the one hand, that a series of suitable conditions must be created for indigenous populations, for their communities and for other communities, as well as for forest dwellers, to allow them to be economically interested in exploitation, to carry out profitable activities and enjoy means of existence and an adequate standard of living, especially thanks to land regimes that encourage an ecologically viable forest management; on the other hand, that the full participation of women in all aspects of management, conservation and economically viable exploitation of forests must be actively encouraged.

The participation of local communities and native populations in the preservation or rational management of environmental resources, as stated by "Principle 22" of the Declaration of

Rio is conditioned by the recognition of their identity, culture, and interests by the states; they must, moreover, give the respective communities and populations all the necessary support to make effective participation in the achievement of sustainable

development. Such hair participation in environmental protection implies, instead, participation in the advantages that could arise from it.

The recognized role, in the decision-making of the public administration in the field of the environment, of interested persons outside the established state structures, was, in France, of a nature to frighten the administration; and this appears to be all the more curious since it was clear from the beginning that it could not be a question of a "co-decision" process and that, no matter how democratic it may appear, the principle of participation has a series of limits stemming from the very nature the activities and the structures that carry them out. (Eliescu, 1972).

As for the Aarhus Convention of June 25, 1995, ratified by Romania through Law no. 86/2000, public participation in decision-making is extremely useful for their quality and their implementation, the public also contributing to solving environmental problems and giving the authorities the opportunity to consider their concerns and opinions.

Also, in the text of the Convention, the notion of "public" is defined as one or more natural or legal persons such as their associations, organizations, or groups, and "interested public" as the public affected or having an interest in environmental decisions, mentioning - it is expressed that non-governmental legal environmental protection organizations will be considered as having an interest.

In turn, Article 6 of the Convention provides for the stages and procedures to ensure public participation in decision-making regarding specific activities with an impact on the environment.

In the system of Law no. 137/1995 with subsequent amendments, apart from the reference - already mentioned - consecrating the recognition, by the state, for all persons, of the right to a healthy environment, art. 5 letter a guarantees access to information regarding the quality of the environment, letter b provides for the right of association in organizations for the protection of environmental quality, and letter c refers to the right of consultation in order to take decisions regarding the development of policies, legislation and environmental norms (Dutu, 2000).

As for the content of the provision from letter a of article 5 (after the amendment of the law, it was corrected), it received a not very happy wording, which had more the meaning of restricting the access of interested persons to information; because while the Constitution referred to the right of the person to have access to any information of public interest (art. 31 paragraph 1), the mentioned text guaranteed access only to

information regarding the quality of the environment, which was obviously absolutely insufficient in the field nature protection.

Currently, in Romania, the legal framework for public participation is constituted by: Law no. 137/1995 as amended and supplemented by GEO no. 91/2002 and approved by Law no. 294/2003 which includes express provisions in chapter II and III refers to the environmental assessment for plans and programs and the regulation of economic and social activities with an impact on the environment, including public participation (art. 17), Law 52/2003 on decision-making transparency in the public administration that provides in chapter II sect. 1 and 2, entitled Decisions regarding public participation in the process of drafting normative acts and evaluating decisions; Law 22/2001 for the ratification of the Espoo Convention (1991) regarding environmental impact assessment in a transboundary context, as well as other acts regulating procedures at the level of government decisions and ministerial orders.

The respective regulations establish the public participation procedures, as well as the persons responsible for their compliance.

The importance of public participation seems obvious to the competent authorities in environmental protection, who can learn about the ideas and opinions of "environmental users", thus being able to adopt informed decisions, avoiding risks to the environment and human health.

In practical terms, however, it seems to us of exceptional interest for the application of the principle of participation and information, the regulation, by Law no. 137/1995 with subsequent amendments and additions, of the procedure for assessing the impact of economic and social activities on the environment; among the stages of this procedure are the public disclosure and debate of the report on the environmental impact study, as well as the recording of the observations and the resulting conclusions, and the authorization procedure is public. Media coverage of projects and activities for which environmental approval, agreement and/or authorization and impact studies are required, as well as public debate, is ensured by the competent authority for environmental protection.

With reference to the regulation, contained in the framework law, regarding the protection of human settlements, it provides that: "environmental protection authorities and local councils will initiate information and participation actions, through public debate, regarding the programs of urban development and communal household, on the importance of measures intended to protect the environment and

human settlements, discussing more and more about an "urban environment" equivalent to the notion of environment.

We will specify, finally, the wide-open character that is represented, in our legislation, by the text of art. 87 of the environmental protection law, through which non-governmental organizations acquire active procedural legitimacy, being able to introduce actions in court to preserve the environment, regardless of who suffered the damage. Very important theoretically and, undoubtedly, from a practical point of view, art. 87 of the law, introduced in the draft during the parliamentary debates, is marked, unfortunately, by the consequences of the excessive haste with which it was discussed and adopted; the text is, in our opinion, at least incomplete if not wrong.

Indeed, this article (87) of the law refers to non-governmental organizations, without any other specification, which would mean that it concerns any non-governmental organization, regardless of its object of activity and the purpose for which it was established; however, such a solution is difficult to conceive, even only in the light of the principle of the specialty of the capacity of use of legal entities. We are talking, we believe, only about non-governmental organizations whose object of activity is environmental protection.

On the other hand, the intervention of the respective organizations - materialized in judicial actions - intervenes not only in the hypothesis that an injury occurred, but also - perhaps, above all - to prevent an injury.

Thirdly, in the hypothesis in which the actual damage was suffered by a particular natural or legal person, it is not conceivable that an environmental protection organization could substitute itself by asking the court for the repair of the damage.

Finally, art. 87 of the law seems to establish a privilege in favor of non-governmental organizations, granting them a right that art. 5 letter c) of the same law guarantees, in a much broader formulation, to all persons. It is - we must note here - the only case in our legislation in which the possibility of exercising a genuine "popular action" is recognized; or, even in comparative law, the legislator is everywhere very reluctant to such a regulation.

f) The principle of the global approach presupposes the unitary, systematic regulation and treatment of the entire environmental problem, starting from the idea that its protection is a complex matter, comprising aspects and elements closely related to each other, interdependent and, at the same time, unitary. At the same time, the vast issue of environmental protection is closely related to the economic and social development of the country, to a sustainable development in which the

satisfaction of current needs through the exploitation of nature leaves room, through a rational policy, for the possibility of the development of generations to come.

We believe that the regulations in the Framework Law on environmental protection adequately reflect these concerns; however, it is necessary to complete or revise the sectoral, specialized legislative regulations, which, for the most part, was carried out together with the harmonization of the legislation in the framework of the EU accession process.

The affirmation of this principle raises some considerations related, including at the international level, to the interdependence between the environment and development or, in other terms, to the principle of articulating environmental protection measures with the demands of development. It is what, in the language of some authors, has been characterized as a principle with two sides; the first of these expresses the idea - important for developing countries - that environmental protection should not be an obstacle for development, while the second supports the idea of developed countries, according to which there can be no sustainable development without taking into account of the environment in the development and application of development policies.

In this sense, principle 2 a) of the Declaration on forests recognizes the sovereign and inalienable right of the states to use, manage and exploit the forests that belong to them according to their needs in the field of development and at their own level of economic and social development.

The development of environmental law as a new tool to protect the environment necessary for people's health and life, is of course involved in the recognition of the fundamental values enshrined in the declarations of public rights and freedoms.

Environmental law has led to long debates regarding the existence of the human right to a satisfactory environment.

On the international level, numerous declarations consecrate the recognition of a human right to the environment, as an expression of the fundamental importance of the environment for humans. In this sense, the Stockholm declaration (1972) mentions: “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. It is a duty of honor to protect and improve the environment for present and future generations (principle 1)”.

The African Charter of Human and Peoples' Rights (Nairobi - June 28, 1981) proclaims in art. 24: "all peoples have the right to a satisfactory environment conducive to their development". (Kamto, 1996).

In Western democracies, several constitutions revised after 1972 inserted the new human right to the environment, such as: Greek Constitution (1975) - in art. 24; Constitution of Portugal (1976) - in art.66; The Constitution of Brazil (1988), in art. 285.

In its advisory opinion of June 8, 1996, the International Court of Justice states: "the environment is not an abstraction but, of course, the space in which human beings live and on which the reality of their lives, their health and that of future generations depends." Therefore, the environment is a reality that has acquired a universal vocation in more than thirty years, transformed into a multitude of international and national rules that, in fact, underpin a new fundamental human right.

The values attached to the protection and good management of the environment are closely related to the satisfaction of essential needs (water, air, food). But the essential needs for humans are conditioned by the great natural balances of the biosphere and therefore by the impact of human activities on the natural environment and natural resources. The protection of the environment and compliance with the rules of ecology thus becomes a vital imperative related to the fundamental right to life.

Biological balance, biodiversity, awareness of the role that species of flora and fauna play in maintaining the natural balance, are indispensable for the survival of humanity.

The environment, its protection, have also acquired a status of fundamental law, because they have become the expression of a public policy of collective interest, of a solidarity not only within the states, but also on an international scale (protection of the human environment, areas coastlines, protection of the ozone layer).

The environment therefore reflects a social value, an ethic, a collective responsibility that is imposed not only on states, but also on all economic and social actors. The ecological movements are, moreover, supported and influenced by a strong popular movement accompanied by non-governmental organizations, and in some countries also by ecological parties. Having a scientific foundation and a social foundation, the environment, organized under a legal aspect by a multitude of international conventions and national laws (mostly similar) acquired a political legitimacy, so

that it was enshrined in the highest regulations in the hierarchy of laws, namely in constitutions as a fundamental right.

The consecration at the constitutional level in many countries, which I mentioned before, has perhaps a more special character as far as the French Constitution is concerned.

The French government, at the initiative of the President of the Republic, decided to introduce environmental protection into the Constitution. Any approach regarding the content of the Constitution is a solemn act, but the experience of the Fifth Republic has shown that numerous constitutional reforms can take place regarding the organization of constitutional powers or other fundamental problems of society.

In 2002, the French president proposed to the French to include the right to the environment in a charter "endorsed" to the Constitution alongside human rights, economic and social rights, noting that great progress would be made.

Of course, the charter that enshrines this right is a "legislative host" until the revision of the Constitution. We think it is worth noting that this way of constitutional consecration proves a certain urgency that did not allow to wait for the opportunity to revise the Constitution, as happened in Romania.

In the same sense, we emphasize the fact that in the Project of the European Charter on the general principles for environmental protection and sustainable development there is "the principle of integration and interdependence, especially with regard to human rights and social, economic and environmental objectives".

Moreover, the human right to the environment, it is noted in this document elaborated by Professor M. Prieur, is recognized, and guaranteed by the international community, by the Council of Europe by the jurisprudence of the European Court of Human Rights, as well as by the constitutions of many of its member states (Prieur, 1993).

If the protection of the environment inevitably leads to the attainment of fundamental freedoms, such as, for example, the right to property or the restriction of some servitudes or the restriction of the right to movement in certain protected areas, it ends up, as we have shown, enshrining fundamental rights already recognized or to broaden other concerns (Giroud, 1974).

The right to the environment, initially, was closely related to the right to health and the right to life; this was later translated into the affirmation of a right to better living

and working conditions (health and safety at work) and through the development of the right to rest and recreation.

But environmental law is the "carrier" of some fundamental rights, such as those regarding the right to information and participation, to decision-making, the right to association, and, through this, strengthening the social and collective function of some already existing rights.

The law constitutes the mass of duties both for the state and public authorities as well as for the individual. Environmental protection can be the reason for the increased participation of citizens in public life and the democratization of all procedures.

It is perhaps difficult to correctly formulate this new fundamental right. Regarding human rights, we have an anthropocentric view, but environmental law does not only concern humans but also all other forms of life, the biosphere itself. It can, however, be admitted, in a broader sense, that the right to the environment concerns man and all the natural elements that surround him, insofar as they form an inseparable ecological whole. It is, of course, a healthy environment, of good quality, convenient for the development of the person, ecologically balanced, and conducive to the development of life. More than a human right in the strict sense, it is a right able to protect at the same time both man and the environment in which he lives.

In Romanian legislation, the guarantees concern:

a) access to information regarding the quality of the environment, which, after the amendment and completion by GEO no. 91/2002, is "access to information regarding the environment in compliance with the confidentiality conditions provided by the legislation in force".

b) the right to associate with environmental quality protection organizations.

c) the right of consultation to make decisions regarding the development of environmental policies, legislation, and norms, the issuance of environmental agreements and authorizations, including for land use and urban development plans.

d) the right to address directly or through associations the administrative or judicial authorities to prevent or in the event of direct or indirect damage (Stancu, 2012).

e) the right to compensation for the damage suffered (Prieur, 2003).

3. Conclusions

If all these legal guarantees are more or less natural, being contained disparately in other regulations belonging to civil law, administrative law, constitutional law, or other branches of law, it seems to us worthy to highlight especially the right of any natural person, directly or through an association, to acquire the active procedural legitimacy for the prevention or reparation of some damages such as environmental issues and which, normally, cannot be considered a direct damage.

Through this, our legislation has become a vanguard legislation in the repair of ecological damage suffered by "good elements of the environment" which, by their nature, are generally not appropriated and therefore cannot be considered objects of direct damage that can be found in the patrimony of individuals or legal entities.

As for the active procedural legalization ex-law according to art. 5 to which we referred, for natural persons, we could invoke the idea of an "Actio popularis" - for common interests, but the actions in this category could only be directed against a general act, insofar as its provisions referred to own legal position. On the other hand, we must mention that jurisprudence has broadened the definition of "legal problem", admitting that certain "ideal interests" can be defended in court.

The framework law for the protection of the environment grants, through this active procedural legitimation, wide access to justice for the protection of the environment, but at the same time a real guarantee for the defense of the right, recognized and now, guaranteed by the constitutional provisions "to a healthy and ecologically balanced environment".

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