

## ASPECTS REGARDING THE RIGHT TO A HEALTHY ENVIRONMENT

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***Abstract:** Dreptul omului la un mediu sănătos și echilibrat ecologic este un drept subiectiv atât universal, cât și individual. Atât la nivel mondial, cât și la nivel regional și național s-a prefigurat treptat necesitatea recunoașterii unui drept uman nou și fundamental, dreptul la un mediu sănătos și echilibrat ecologic. Realitățile economico-sociale și juridice actuale evidențiază importanța majoră a dreptului omului la un mediu înconjurător corespunzător, drept ce decurge din interesul comun al umanității, interes reflectat direct în drepturile recunoscute individului. Recunoașterea și garantarea dreptului fundamental al omului la un mediu sănătos reprezintă atât o premisă a existenței celorlalte drepturi fundamentale, cât și un factor determinant al îmbogățirii acestora și al apariției unor drepturi noi.*

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### **A. In the Romanian System of Law**

The right to a healthy environment had been expressly regulated in the Romanian legislature by the year 2003.

The Romanian legislator had adopted express and systematic regulations in this matter, such as Law no. 9/1973 regarding protection of the surrounding environment; followed by Law no. 137/1995 for environmental protection abrogated by the Government's Emergency Ordinance no. 195/2005 regarding environmental protection.

The 2 latter acts guarantee the right to a healthy environment, as we can deduct from some of its provisions. Article 5 of the Government's Emergency Ordinance no. 195/2005 reads as follows: "*The state recognizes to all individuals the right to a healthy environment*". On the contrary, other provisions resume just to imply the guarantee of this right, such as is believed in case of article 6 that reads: "*Environmental protection*

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*represents an obligation for both central and local public administration authorities, as well as all natural and legal persons”.*

Certainly the obligation enforced by article 6 corresponds to the right to a healthy environment.

In 2003 the revised Constitution marked a new step in the evolution of Environmental Law, because at the level of legal regulations this body of law benefits from legal enforcement expressly obtained through provisions holding superior legal force.

We can make reference to the provisions of article 35 of the Constitution, entitled “The Right to a healthy environment”. The article states as follows: “(1) *The State shall acknowledge the right of every person to a healthy, well preserved and balanced environment; (2) The State shall provide the legislative framework for the exercise of such right; (3) Natural and legal entities shall be bound to protect and improve the environment.*”

Consequently, once with the revised Constitution’s coming into force, “the right to a healthy environment” became a fundamental right, upheld in the 2<sup>nd</sup> Title, 2<sup>nd</sup> Chapter of the Constitution entitled “Fundamental rights and freedoms”.

Yet the right to a healthy environment does not comprise a simple right, since article 35 of the Constitution shows that the legal nuances of this expression are truly complex, covering a whole range of rights and obligations such as: the right to a healthy environment, the right to an ecologically balanced environment, the state’s obligation to ensure a legislative framework for the right’s proper exertion, the legal and natural persons’ obligation to protect and improve the surrounding environment. The same general idea is suggested by the dispositions encompassed in articles 5, 6, and 6 of the Government’s Emergency Ordinance no. 195/2005, which states a series of rights and obligations: access to information regarding the environment’s quality, the right to associate in ecological-oriented organizations, the right to council before taking a decision in this field, the right to petition in certain situations, the right to proper compensation, the obligation of the state’s authorities, of legal and natural persons to protect the environment, specific obligations regarding environmental culpability. Mention of these legal provisions serves not only to underline that the right to a healthy environment is a fundamental right, but also a legal institution in the Romanian Law.

In conclusion, the legal institution of the right to a healthy environment represents the totality of legal norms that cover social relationships resulting from the exertion of the right to a healthy environment<sup>1</sup>.

Before moving on to other matters, we must specify that not only these regulations (article 35 of the Constitution), but also numerous others are applicable in the topic of environment, which will be discussed in another section. The already mentioned regulations are either essential, either basic in this domain.

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<sup>1</sup> Among the definitions of the legal institution, we refer to that given by considers that in the legal language a legal institution represents the totality of legal norms that regulate a certain category (unitary group) of social relationships, thusly generating a totally different category of social relationships. See Radu I. Motica, Gheorghe Mihai, *General Theory of Law*, All Beck, 2001, Bucharest, p. 162 .

### ***B. The right to a healthy environment in the national regulations of other states***

It's notable that in numerous countries environmental protection has been raised to the rank of a constitutional principle.

Even if constitutional modalities of sanctioning and protecting the environment are diverse, they prove common features and often-identical formulations such as:

1) Environmental protection takes place in the community's interest and that is why it represents a fundamental objective necessary towards achieving the community's welfare and progress.

2) The right to a healthy environment is unbreakable, and as such precise obligations must be stated, such as the obligation to respect and protect the environment or the obligation not to take part in any activity that might harm the environment.

3) In the legal content of the right to a healthy environment, by legislative means there are inserted several legal possibilities, such as the public's proper information and participation in improving the active role of the individual in his relationship with nature.

As an example here are a few of the constitutional provisions regarding the environmental concern:

1) article 66 of Portugal's Constitution (1976) sanctions the right to a healthy and ecologically balanced environment;

2) section 45 of Spain's Constitution (1978) states the right to an environment suitable for the development of the person;

3) articles 72 and 73 of the Slovak Republic's Constitution (1991) establish the subjective right to a healthy environment and the obligation of all citizens to protect the natural habitat especially if it represents a rarity.

These examples prove the fact that the necessity to protect the environment is a real concern, on one hand, and the fact that in the domain to which we are making reference the law reached certain maturity.

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