

## FUNDAMENTAL HUMAN RIGHT TO A HEALTHY ENVIRONMENT IN ECHR'S JURISPRUDENCE

Chebelev Mircea\*

\*University of Oradea, Faculty of Environmental Protection, 26 Gen. Magheru St., 410048 Oradea, Romania, e-mail: [chebelevmircea@yahoo.co.uk](mailto:chebelevmircea@yahoo.co.uk)

### **Abstract**

*The right to a healthy environment is an indirectly guaranteed right by the European Convention of Human Rights, being considered by some authors as part of the third generation human rights, called solidarity rights, alongside with the right to peace, the right to development etc, but which are not granted by express dedication in the Convention. Given the importance of this right, the European Court of Human Rights has used the „indirect protection” technique which allows the extension of the protection of some guaranteed rights by the Convention, to other rights which are not covered by it.*

**Key words:** human rights, environmental law, European Court of Human Rights, jurisprudence

### **INTRODUCTION**

The right to a healthy environment is an indirectly guaranteed right by the European Convention of Human Rights, being considered by some authors as part of the third generation human rights, called solidarity rights, alongside with the right to peace, the right to development etc, but which are not granted by express dedication in the Convention. Given the importance of this right, the European Court of Human Rights has used the „indirect protection” technique which allows the extension of the protection of some guaranteed rights by the Convention, to other rights which are not covered by it. Thus, through an extensive interpretation of the domain of application of some rights expressly stipulated by the Convention, the right to a healthy environment was assimilated to the right to privacy, being considered a component of this right. In this way the environmental right is indirectly protected. In this paper we analyze the evolution of this right, both in terms of its establishment in the national and international legal instruments, as well as in the case-law developed by the European Court of Human Rights.

### **MATERIAL AND METHOD**

Many international and regional regulations on the environment using different formulas to determine the generic notion of individual right to a certain environmental quality - the "right environment", "right to a healthy environment", and, often, not it specifies the content. Initially, a

primary concept, the right environment would mean the right to existence of a suitable environment to maintain human life. This concept was abandoned, as was highlighted in various international instruments, human dignity environment relationship, which implies not only a level of environmental quality to ensure biological survival and basic human needs.

Then, using the phrase "healthy environment" has come to consider that environmental law involves not only the absence of environmental conditions directly harmful to human health and environment to enable the individual to achieve the highest possible level of health.

In fixing the fundamental right to the environment had an important role to draft international declaration of human rights and the environment, adopted in Geneva in 1994, according to which environmental law requires in principle:

- the right to live in a clean, non-degraded by activities that may affect the environment, health and well-being and sustainable development;
- right to the highest level of health, unaffected by environmental degradation;
- access to adequate food and water resources;
- right to a healthy working environment;
- the right to housing, land use and conditions life in a healthy environment
- the right not to be expropriated because of their environmental activities, unless justified and the right of expropriated in conditions laws, to obtain appropriate redress;
- the right to assistance in case of natural disasters and man-made;
- the right to benefit from sustainable use of nature and its resources;
- the right to representative elements of nature conservation

Considering that the traditional, fundamental rights form the content of relations between individuals and state that these rights correlative obligations upon the State recognizes and guarantees. Therefore, the right to a healthy environment at the same time requires the fulfillment of obligations relating to environmental protection. Thus, states have a general obligation to take legal, administrative and other measures necessary to ensure the right to a healthy environment. These measures should be designed to prevent environmental degradation, and regulation establish appropriate remedies sustainable use of natural resources.

It should be noted that the content of this right can identify a single dimension - involving the right of every individual to pollution prevention, cessation and causing pollution damages suffered by this pollution and a collective dimension - involving the obligation of states to cooperate in preventing and combating pollution, environment protection, regional and international level. Precisely because of this double dimension of environmental law was reached in discussions about whether we can

consider this right as an individual subjective right - on the grounds that only man can be considered the holder of such right or a right to environment as a "right to solidarity" (collective right) - putting the environment right on the same level as the right to development, right to peace.

It certainly can not be challenged any individual character of environmental law, but no collective character, while the environment is now a heritage of humanity so that the fundamental right holder of a right to a healthy environment and balanced humanity becomes even a whole.

Throughout the European Convention on Human Rights can not find the words "environment" or that the "right to a healthy environment." Thus, it could be argued that this right is not part of the rights and freedoms which it guarantees. Moreover, not including this as among those covered by the Convention is not surprising, since industrial development at the time of its adoption poses no particular problem environment.

Even if environmental law has been subject of numerous international regulations, the importance of the Convention and the ECHR jurisprudence in this area is crucial in determining to what extent the right to environment is transformed into a subjective right protected by the Convention and the extent to which individuals can claim the right to healthy environment with subjective correlative obligation incumbent on states, in front of the Convention.

Given the importance of this right and need to cover shortages caused by the fact that he enjoys an express dedication in the Convention, the European Court of Human Rights has used the technique of "indirect protection" which allowed the extension of the protection of Convention rights to rights not expressly provided for it.

This is considered a specialized part of the legal literature, as part of the third generation of human rights, called solidarity rights, with the right to peace, right to development, etc., Which does not enjoy a express devotion in Convention

Thus, the "attraction" of the meanings of art and under cover. 8, paragraph 1, which recognizes the right of everyone to respect for his private and family life, his home and correspondence and art. 6, paragraph 1, which guarantees the right to a fair trial, ECHR's jurisprudence reached to ensure environmental protection as an individual right under the three main aspects:

- belonging to the content of the right guaranteed by Art. 8 paragr. 1 of the Convention;
- existence of a right to information on quality and environmental hazards;
- existence of a right to a fair trial in this regard.

### **Cause 6586/2003, Branduse against Romania**

The defendant is serving a sentence in prison in Arad. At a short distance of the prison - 18 m - there was a former landfill of the city, used in the period 1998-2003, with an area of 14 hectares. In 2003, the city of Arad chose another place to "store" garbage, but had not taken any measures in relation to the former pit. This continued to be used by locals, who were throwing garbage there.

Numerous reports of state institutions and ngos described the situation and indicate issues that pit the organization and use that contravened current legislation, this having no operation or closure permits required by the legislation in force. in 2006, because of the accumulation of methane gas resulting from decomposition processes of household waste, had been a very strong fire, which firefighters had managed to master it after only 3 days poluasera neighborhoods surrounding clouds of smoke, including prison. arad city environmental guard fined for irregularities in the activity of landfill management. the applicant cell, located very close to that hole, between different flies and other insects, and the smell was, especially in summer, unbearable.

The court considered that article 8 is applicable, very strong olfactory pollution is confirmed by numerous tests. even if the plaintiff's health was not affected, given the existing evidence and the applicant undergone during that pollution, the court held that she was impaired quality of life in a manner that brought touch his private life, and this prejudice was not a simple consequence of detention.

Analyzing compliance with article 8, the court found that the authorities were responsible for this situation, considering that throughout the hole that functioned under their control. however, the formalities provided for by domestic law had not been respected, with no operating license or permit to close the waste pit. In this way, the authorities had broken many of the obligations incumbent on them under domestic law (location in close proximity to the prison, the absence of specific installations and monitoring air pollution levels, etc.). in addition, interested persons rights had not been followed in decision making on the establishment and termination of the landfill. According to the jurisprudence of the court in this matter, the competent authority retains the obligation to perform, before deciding the location of the pit, the necessary studies to measure the effects of the polluting activity and thus to allow the establishment of a fair balance between various competing interests. However, this does not happen only after the event in 2003 and then after the fire of 2006. These studies concluzionasera as garbage storage activity was incompatible with environmental requirements and pollution there is a very strong, exceeding the established legal rules, and those in proximity to

bear pit. Finally, procedures were pending closing of the pit and the government does not provide any information whether or not the work actually begun.

Article 8 was violated.

**Cause 67021/2001, Tatar against Romania**

The complainants, father and son, residents of Baia Mare, the European Court were in 2001. They complained that the Romanian authorities have effective manner governed by cyanide and other toxic substances by Transgold SA Baia Mare (Baia Mare gold old) in the process of gold extraction. Following this process or the lives of two who lived within 100 meters of factory gold were endangered. Complained of problems were highlighted two serious accident occurred in January 2000 when water contaminated with cyanide was discharged from the lake causing an environmental disaster on the Tisa river.

European Court found that the Romanian authorities have imposed operating conditions Transgold society able to avoid causing harm to the environment and human health. Furthermore, they allowed this company to work after the accident in January 2000, violating the principle of precaution that would have imposed a restriction of activity so long when there are serious doubts about the safety of the technological process. Conclusions based environmental studies which allowed gold plant operation were never disclosed to the public, which was unable to refute. Although the public's right to participate in environmental decision-making is warranted, the Romanian authorities continued to ignore him even after the accident in January 2000.

In conclusion, the European Court said that Romania did not respect the obligation to properly analyze the risks entailed mining company's activities and take all necessary measures to ensure the protection of a healthy and safe environment that is guaranteed to part of the right to privacy and family.

About worsening health status of the second applicant, who suffer from asthma as a result of cyanide in gold mining activity, most judges have concluded that it did not prove a causal link between the two aspects. However, two of the judges of the Court have held that such a causal link has been proven to a reasonable extent by the applicant, so they concluded that there was a violation of Article 8 of the Convention and in this respect.

**Giacomelli c. Italy, Judgement of 02.11.2006, petition no. 59909/00**

The complainant lives in 1950 near a factory that covers the storage and treatment activity of "special waste" has variously described as either toxic or nontoxic.

Plant and started operating in 1982. Since then, the applicant requested several times in court reconsider factory authorization. Even the Ministry of Environment found in 2000 and 2001 that the operation endangers the health of plant living near them. Other competent authorities have reached the same conclusions. In December 2002, the local council with the applicant's family temporarily moved other families to complete the process in which factory was involved. In 2003, the applicant's request, the administrative court ruled that the decision to reopen factory activity is unlawful and must be annulled, while acting suspension temporary factory work. However, the decision was never implemented and in 2004 the Ministry of Environment issued a favorable opinion to continue the work factory, provided that it change its operating conditions and control court supervision. However, only 14 years after the factory started its work and to 7 years after it began to detoxify industrial wastes, the Ministry asked a report on environmental impact of plant activity.

Therefore the Court finds that public authorities have not fulfilled the obligations imposed by law internăși ignored judgments establishing that factory activity is unlawful. The Court also stated that even assuming that factory activity in 2004 was not dangerous to the lives of local people in the years before, the state has not complied with their obligation to ensure respect for private and family life. The Court therefore finds that Article. 8 has been violated.

**Cause Ledyayeva, Dobrokhotova, Zolotareva și Romashina c. Russia**

The complainants live in a Russian city that is an important steel center. Their homes are within the buffer zone around the steel center where the concentration of harmful substances goes far beyond the recommended maximum. Complainants brought an action in vain asked for their relocation outside buffer zone or a sum of money to purchase a new home in a safer area.

Solving the case, the Court noted that the decision Fadeieva v. Russia (2005) established that the operation does not meet all steelworks norms established by Russian legislation on environmental protection and health. In the case of 2005 the Court concluded that given the seriousness of pollution faced by people living steel center in the State was required to be positive to move the people outside the danger zones or to ensure reduced emissions. In the present case (2006), the Court finds that the State did not present any argument again leading to a different conclusion than that reached by the Court in C. Fadeieva Russia. Therefore, the Court considers that the Russian authorities have failed in making measures necessary to protect privacy against some serious harm the environment. Authorities have not provided the applicants move or have not offered a sum of money

to enable them to buy another house or not developed or implemented a policy to require owners of such effective steelworks to reduce within a reasonable time emissions. Therefore, the Court states that Art. 8 has been violated.

In his jurisprudence, the ECHR, in addition to being recognized right to a healthy through extensive interpretation of the right to privacy, family and his home, showed that the right to an environment of a certain quality can keep respect of goods. Thus, chronologically, in terms of substantive law, issue was raised for the first time in Case Arrondelle c. England (Judgement of 15.07.1980, no. 7889/77).

In fact, the complainant, owner of a pavilion at the edge of the flight and landing runways of Manchester Airport, near a highway, complained noise pollution that violate privacy, but also the right to peaceful enjoyment of pollution contributing to reducing the value of movement of the home. In this case, the Commission acknowledged that complaints suffered by the applicant held the art. 8 the Convention and art. 1 of Protocol no. One concerning the property. In this case, admissibility decision focuses on the particular situation of the applicant "to whose property is so close to the airport runway that aircraft noise a subject, according to a 1976 inspection report, an intolerable stress ".

## CONCLUSIONS

In the past, less relevant and controversial, environmental quality has become a important human rights and now becoming more of a right their fundamental and independent status. As a cutting-edge as the right to a healthy and ecologically balanced environment proved to be the fastest evolving of his generation in terms of guaranteeing and effectiveness of the path of justice. In this sense, we can see constitutionalisation of the states in a few decades, encouraging appropriate development regionally and internationally.

## REFERENCES

1. Berger, V., Jurisprudența Curții Europene a Drepturilor Omului, Ediția a V-a în limba română, Editura Institutul Român pentru Drepturile Omului, București, 2005.
2. Bîrsan, C., Convenția Europeană a Drepturilor Omului. Comentariu pe articole, Vol. I, Drepturi și libertăți, Editura All Bek, București, 2005.120
3. Bîrsan, C., „Protecția dreptului la viață privată și familială, la corespondență și la domiciliu în Convenția Europeană a Drepturilor Omului”, 2003, Supliment la Revista Pandectele Române, nr. 1, Editura Roseti, pp. 11-72.
4. Buergenthal, Th. și Weber, R., Dreptul internațional al drepturilor omului, Editura ALL, București, 1996.
5. Chiriță, R., Curtea Europeană a Drepturilor Omului. Culegere de hotărâri 2003, Editura C.H. Bek, București, 2007.

6. Chiriță, R., Curtea Europeană a Drepturilor Omului. Culegere de hotărâri 2006, Editura C.H. Bek, București, 2007.
7. Constantinescu, M., Iorgovan, A., Muraru, I. și Tănăsescu, E.S., Constituția României revizuită– comentarii și explicații –, Editura All Bek, București, 2004.
8. De Salvia, M., „Mediul înconjurător și Convenția Europeană a Drepturilor Omului”, 2003, Revista Pandactele Române, nr. 6, pp. 162-172.
9. Dragomir, I. și Dragomir, G.A., „Dreptul la un mediu sănătos ca principiu general al dreptului comunitar”, 2006, Revista de drept public, nr. 3, pp. 134-138.
10. Duțu, M., Dreptul internațional al mediului, Editura Economică, București, 2004.
11. Duțu, M., „Recunoașterea și garantarea dreptului fundamental la mediu în România”, 2004, Revista Dreptul, nr. 6, pp. 98-118.
12. Duțu, M., Tratat de dreptul mediului, ediția a III-a, Editura C.H. Bek, București, 2008.
13. Lupan, E., Dreptul mediului, Editura Lumina Lex, București, 2001.
14. Marinescu, D., Tratat de dreptul mediului, ediția a III-a, revăzută și adăugită, Editura Universul Juridic, București, 2008.
15. Nițu, D., „Dreptul la mediu”, 2005, Revista Themis – revistă a Institutului Național al Magistraturii, nr. 3, pp. 45-56.
16. Popescu, C.-L., Contenciosul european al drepturilor omului, Editura C.H. Bek, București, 2006.
17. Popescu, C.-L., Jurisprudența Curții Europene a Drepturilor Omului 2004, Editura C.H. Bek, București, 2006.
18. Popescu, D. și Popescu, M., Dreptul mediului. Documente și tratate internaționale”, vol. I, Editura Artprint, București, 2002.
19. Sudre, F., Drept european și internațional al drepturilor omului, Editura Polirom, 2006.
20. Consiliul Europei: <http://www.coe.int/>
21. Uniunea Europeană: <http://europa.eu>
22. Enciclopedia liberă: <http://ro.wikipedia.org>