Fundamental Human Right to a Healthy and Ecologically Balanced Environment in the Light of ECHR Decisions

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ABSTRACT

Fundamental human right to a healthy and ecologically balanced environment as a relatively new law, contained in the third generation, the "rights of solidarity" is not expressly established major international treaties, such as "Universal Declaration of Rights human "(adopted by the UN in 1948), " European Convention on human Rights "(1950) or " International Covenants on human Rights "(1966), because at the time of their adoption the ecological crisis is not broke, so there was no question right there in the environment. Therefore the only solution found its recognition by the European Court of Human Rights, who used the technique "indirect protection", which allows the extension of protection of rights recognized by the European Convention rights are not provided for this. Thus, by the "attraction" and under cover art. Article 8. (1) of the European Convention, which recognizes "the right of everyone to respect for his private and family life, his home and correspondence" right to a healthy and ecologically balanced environment was introduced in the field of the Convention.

KEY WORDS
Fundamental human right to a healthy and ecologically balanced environment, the European Court of Human Rights (ECHR), due process, compensation

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1. Introduction

At European level is enshrined expressly, the right to a healthy environment and ecologically balanced, EU Charter of Fundamental Rights stating in Art. 37 entitled "Environmental Protection" only that "A high level of environmental protection and improvement of policies must be integrated into the European Union and ensured in accordance with the principle of sustainable development".

But after a history exceeding 50 years, the Convention on Human Rights and Fundamental Freedoms (the European Convention) provides, through the institutions they created, effective protection of human rights, the first international instrument in human rights aimed at protecting a wide range of civil and political rights, which, on the one hand, takes the form of a treaty legally brings constraints for the High Contracting Parties and, on the other hand, establishes a control the application of rights internally.

In this context, consider that "the European Convention has established one of the most remarkable mechanisms of control and guarantee the fundamental rights inherent in every human being", even if not recorded in the European Convention concepts of "environment" and "right to a healthy environment ".
 Apparently, this right is part of the rights and freedoms which it guarantees. Moreover, not including this as among those protected by the European Convention can be explained considering the fact that anthropogenic influences on the environment at the time of its adoption, were not in the public spotlight.

It is possible that such regulations will be provided in future treaty law, as the Council of Europe for several years studying how human rights protection in an evolving society, must widen.

One method used is the extension of rights protected by the Convention mechanism compiled in the protocol which states are invited to sign and ratify them (e.g. Protocols 6 and 7)

Even if the right to a healthy environment was the subject of numerous international regulations, the importance of the Convention and ECHR jurisprudence in this area is crucial in determining to what extent the right target is transformed into a subjective right protected by the European Convention and the extent to which individuals can claim a subjective right to a healthy environment, with correlative obligation incumbent upon States to the Convention organs.

Recognizing the importance of the right later to a healthy environment, in private, with recording on an international scale ecological crisis, and acting on the need to cover the absence of express dedication in conventional text, the European Court of Human Rights has used the technique of "protection indirect ", which allows the extension of protection of rights recognized by the European Convention rights are not provided for this.

2. Appearance and regulation of the fundamental human right to a healthy environment and ecologically balanced

The "attraction" and under cover art. Article 8 (1) of the European Convention, which recognizes "the right of everyone to respect for his private and family life, his home and correspondence" right to a healthy environment field was introduced in the Convention.

And under cover art. 6 § 1 of the same Convention, which guarantees the right to a fair trial was possible to apply human rights in organic - right of access to justice in environmental matters expressly provided Aarhus Convention.

In our view, the European Court has come to ensure protection of the right to a healthy environment as an individual right under the three main aspects:

✓ belonging to the scope of the right guaranteed by Article 8. (1) of the Convention;

✓ existence of a right to information on environmental quality and environmental hazards (Article 10 of the Convention);

✓ existence of a right to a fair trial in the matter (Article 6 of the Convention).

Over time, the European Court has developed a concept of "private life" within the meaning of Article 8. (1) of the Convention and, in fact, this dynamic and flexible interpretation allowed "indirect" defending the right to a healthy environment, which is considered a “part of privacy (Muraru and Iancu, 1992)".

We must recognize that it is not possible to put forward to the ECHR violation of a healthy environment because it is a right expressly provided by the European Convention.

Thus, it was to protect the "indirect" right to a healthy environment and the opportunity given to the individual that, when considered that he was injured right to a healthy environment, to invoke the European Court violated Article 8. (1) of the Convention.

In this context, the European Commission of Human Rights (under Protocol. November, it was liquidated), from the 70s admitted with embarrassment at first, and then, sure, that pollution
affect the right privacy of individuals and that "noise undoubtedly affect the physical welfare of an individual and therefore affect privacy" and that it "may also deprive the person of the opportunity to enjoy the quiet home its ".

Continuing the tradition of the former Commission, the Court has subsequently recognized that strong noise generated by operation of an airport near housing applicants have resulted in "reduced quality of life affected private and quiet home" facts likely to affect the right of individuals to privacy and at home "(Powell and Rayner vs. UK, 1990).


After decades in which human rights were seen as something abstract, more like a propaganda tool, given the specific mechanism of the Convention show that, on the contrary, "fundamental human values (lancu, 1998)" can be protected and guaranteed efficiently and effectively.

This was even more evident in the right environment in which situation and character of "right to solidarity" seemed a disability achieve individualization and its meanings. The European over-laws of the document, because the “Article 20 of the Constitution giving priority to international regulations on human rights in relation to the law (Radulescu, 2011)” was that they play an incentive to accelerate the process of constitutionalisation of environmental law.

Given that when adopting the European Convention (Rome, November 4, 1950), environmental issues had global importance, and later, due recognition and complex consequences of such a fundamental right guaranteeing some have hesitated about taking his consecration express, European Court of Human Rights (ECHR) has used the technique praetorian "protection by ricochet" that allowed the extension of protection of certain rights guaranteed by the Convention on the rights that are expressly provided for it.

3. The decisions of the ECHR against Romania on respecting the fundamental human right to a healthy and ecologically balanced environment in our country

Romania has lost at ECHR in 2009 when the first allegations from two people claiming that they were denied the right to a healthy and protected environment, and received from the Court the right to legal costs be covered without but to be awarded damages.

European Court of Human Rights (ECHR) decided, in the 'Tatar and Tatar vs. Romania (2009) that the Romanian state has violated two privacy and family life, under Article 8 of the Convention, one of the Article is that of ensuring a healthy environment.

The Association for Human Rights in Romania - Helsinki Committee (APADOR-CH), organization, together with a law firm, had represented both the ECHR, the applicants, father and son who live in Baia Mare, near of mines belonging to SC Transgold SA Baia Mare, formerly The gold SA, accused technology cyanide used in gold processing the city of Baia Mare company puts lives in danger and that despite repeated complaints in this respect, the Romanian authorities did not nothing to protect.

The two petitioners have asked the European Court in 2001, complaining that the Romanian authorities have not regulated the way effective use of cyanide and other toxic substances by Transgold in the process of extracting gold, and "because of the technological process the lives of two who lived a hundred meters from the factory gold were put in danger."
Problems were claimed by the two highlighted "serious accident" that took place in January 2000, when water contaminated with cyanide was spilled in the lake of Transgold causing an environmental disaster on the river Tisa: "The European Court found that Romanian authorities have imposed able Transgold operating conditions to avoid causing harm to the environment and human health. Furthermore, they allowed the company to work after the accident in January 2000, violating the precautionary principle that would have imposed a restriction of activity so long when there were serious doubts about the safety of the technological process."

In these conditions, ECHR judges unanimously decided that for the two applicants to a healthy and safe was breached by Romania, which did not meet the obligation to properly analyze the risks involved to the mining company's activities and take all necessary measures to ensure the protection of a healthy and safe environment, which is guaranteed as part of the right to privacy and family.

One of the petitioner asked the ECHR judges to find that him disease - asthma – is under the effect of cyanide in gold mining in Transgold, but most judges concluded that it did not prove a causal link between the two aspects.

However, two of the judges appreciated that such a causal link was proven to a reasonable extent by the applicants, so they concluded that there was a violation of Article 8 of the Convention and in this respect.

The decision is the first in which Romania is condemned by the European Court in a case concerning environmental protection. Court concluded in this case are particularly important in the context of efforts to stop a large gold mining project in Rosia Montana through a technology similar to that used in Baia-Mare

After ruling Tartar vs. Romania, the European Court of Human Rights condemned for the first time, the Romanian state for violating the right to a healthy environment guaranteed by Article 8 of the Convention, also in 2009 took place second against Romania in the environment.

ECHR decision is about due 6586/03 vs. crocus. Romania (2009), the Romanian state is condemned to pay 8000 Euros to the applicant, held in prison in Arad, for breach of his right to a healthy environment.

According to the judgment the ECHR, in walking distance of the prison in Arad - 18 m - there was a former city landfill, used between 1998-2003, with an area of 14 hectares.

In 2003, the city of Arad chose another place to "store" waste, but had not taken any action in relation to the former pit which continued to be used by local people who throw trash there.

Numerous reports of state institutions and NGOs described the situation and indicated aspects of the organization and use that hole in contradiction with existing legislation, and it had the operation or closure permits required by the legislation in force.

In 2006, because of gas accumulation processes resulting from decomposition of waste, had been a very strong fire, which firefighters had managed to master only after 3 days, clouds of smoke polluted the surrounding neighborhoods, including prison and the Guard of Environmental Hall Arad fined for irregularities in the activity of landfill management.

For this reason the applicant cell, which is very close to that hole, between different flies and other insects, and the smell, was, especially in summer, unbearable.

Court held that Article 8 is applicable, very strong olfactory pollution is confirmed by numerous tests. Even if the applicant's health was not affected, given the existing evidence and the plaintiff incurred during such pollution, the ECHR held that it had affected the quality of life in
a way that adversely affected his private life, and this prejudice was not a simple consequence of detention.

Looking to Article 8, the Court found that the authorities were responsible for this situation, since as long pit that operate under their control. However, the formalities laid down by national law had not been met, with no operating license or authorization to close 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 facilities and monitoring air pollution levels etc.). In addition, interested persons rights were not respected in decision making on the establishment and termination of the landfill.

According to ECHR jurisprudence on the matter, the competent authority retains the duty to perform, before deciding the location of the pit, studies needed to measure the effects of the polluting activity and thus enabling the establishment of a fair balance between various competing interests.

However, this does not happen than "a posteriori" in 2003 and then, after a fire in 2006. more such studies concluded that that garbage disposal activity was incompatible with environmental pollution and that there is very strong, exceeding the established legal rules and those in the proximity of the pit had to bear.

Finally, procedures were pending closing of the pit and the Government had not provided any information whether the work actually started or not. Conclusion ECHR: Article 8 was violated.

In the same judgment, Romania has been convicted for violation of Article 3 because the conditions of detention of the applicant. For both violations, the amount awarded as just satisfaction, Article 41, was 8000 Euros, which although not very large, is an obvious progress towards Tatar vs. Romania decision, where the Court refused to grant compensation for the rights under Article 8.

4. Conclusions

ECR the "attraction" by and under Article 8 paragraph 1 cover meanings, which recognizes the right of everyone to respect her privacy, family and his home and of Article 6, paragraph 1, which guarantees the right to a fair trial, reached to ensure environmental protection as an individual right under the three key areas: membership to the scope of the right guaranteed by Article 8 paragraph 1 of the Convention, the existence of a right to information on quality and environmental hazards and has a right to a fair trial in this regard (the implications).

Thus was forged the legal basis of a genuine environmental law, broadening the interpretation of the right to quality of life, using a new "droit de savoir".

But requires that at state law provide for these issues through domestic legislation alone can guarantee respect for fundamental human right to a healthy and ecologically balanced.

More is needed as international law to provide such regulations as the ECHR interpretations can be taken by all courts, for the benefit of everyone, especially future generations, the real beneficiaries of the concept of sustainable development

References