

ASPECTS REGARDING THE CORRELATION BETWEEN ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS

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Abstract

This paper tries to emphasize the relationship between the environmental protection and the human rights which is recognized in the national legislation of many states in the whole world.

The environmental protection doesn't represent the object of a formula that can allow the penetration of the human universal rights acknowledged so far.

In this paper we try to underline that in the jurisprudence of the European Court of Human Rights hesitates to acknowledge an autonomous and special status related to "human rights with respect to environment".

Key words: environmental protection, human rights, European Court of Human Rights

INTRODUCTION

The literature in the field emphasizes and proves the profound relationship between environmental protection and the usage of the human rights that are recognized in the national legislation of many states around the world. In the case of a detailed analysis, we can state that more than 50 national constitutions contain stipulations referring to environmental protection, formulated under the form of environmental law, or under the form of a major obligation of the rule of law. In the same time, most of these stipulations clearly emphasize the environmental protection (Charbonneau, 2002).

Globally, Stockholm Declaration regarding the environment has in view the preservation of the environmental quality as a precondition for the development of human rights. In these conditions, this Declaration establishes that the amelioration of the human life quality is linked to a better environmental protection. United Nations Convention referring to the child's rights (1989) also adopts a similar position. Thus, this convention foresees that "states must take suitable measures to fight against diseases and malnutritiondue to using available techniques and providing nutritive foodstuffs and drinking water, taking into account the dangers and risks of environmental pollution" (art 24, par 2 c). Rio Declaration acknowledges the promotion of development as being the most important one. Principle 1 in this Declaration proclaims "human beings are at the centre of concern for sustainable development. They have the right to a healthy and productive life in harmony with nature" (Marinescu, 2003).

At a European level, neither European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) nor the European Social Charter (1961) mentions the notion of environment. However, starting with 1970, different proposals of inserting the right for environment into the Social Charter were made, but without any success. The Parliamentary Assembly of Council of Europe recommended in 1990 the adoption of a European Charter and of a convention for environmental protection and sustainable

development including here the recognition of a right for environment. With all these efforts, this recommendation didn't find its echo (Duřu, 1998).

The additional protocol to the American Convention on Economic, Social and Cultural Rights, wherein an individual right for environment is foreseen, remains the only one at that moment. At that moment, protection regarded only sanitary aspects referring to the quality of human life, excluding ecological considerations.

Other document that must be considered is the African Charter on Human Rights and Peoples that recognizes a right to "a global and satisfying environment," stated as being in the benefit of the peoples.

DISCUSSIONS AND ANALYSES

It was acknowledged in the specialized literature that the environmental quality is related to the usage of the human rights, especially by the right for life, health and private life. The fact that a state cannot adopt the necessary measures in case of threat, accident risk or ecologic catastrophe, it could constitute an infringement of the right for life. The Committee of Human Rights, established through the International Pact on Civil and Political Rights (1966), considered that the storing of the nuclear wastes in great quantities "attract numerous questions that regard the obligation of the states to the protection of human life (art 6, par 1) (EHP and C. Canada, Communication no. 67/1980, Committee for the Human Rights, decision on the 27th of October 1982).

The Committee of Experts entrusted with the control and application of the European Social Charter also considers that the commitment ruled out, as it was possible, the causes of a poor health that include the prevention of the environmental degradation that can be detrimental to the human health. The mandate of the committee was prolonged in 1970 before offering increased attention to the issues of water and air pollution, to the dangers that released radioactive substances, to limiting the noise and to the control of foodstuffs. Thus, it is admitted that the prevention of the environment degradation highlights the health promotion.

In more cases, Commission and European Court of Human Rights considered that some certain substances could be detrimental to the right for private life. Thus, the substances produced by the noise in the neighborhood of the airports, by placement of a nuclear power station or by the smell that comes from a water treatment station are susceptible to be detrimental to private life. The right to respecting private life can represent the object of some legitimate restrictions. The reason invoked in this case to justify the restriction measures in the field of environment is that of the good development of a country's economy. For instance, the existence of international airports in the urban areas with high population density and the usage of reaction engine airplanes, or the project of building a hydro-electric power plant were considered as legitimate restriction measures.

In other cases, environmental protection, on the behalf of a good functioning of community, justifies restrictions in performance of some rights, such as the right of respecting the private life or that which refers to the property protection. Land use planning, protection of natural sites, forest protection, game protection and management, water pollution were perceived by the European Court of Human Rights as being legitimate reasons of general interest to justify a limitation of the human rights performance.

In *Fredin* decision, in which the license of a company that exploited rocks was withdrawn, the Court considered that "complainers didn't contest the legitimacy of the law's aim in 1964, nature protection. The court emphasized that the present society is worried about the preservation of the environment." In the same case, the Court underlined that when it is about the application of general politics, the possibility as the states to appreciate the situation from one case to another was also admitted (*Hatton et co. vs.*

United Kingdom of Great Britain, European Court of Human Rights *Curtea*, decision on the 8th of July 2003, Collection of sentences and decisions 2003-VIII, p 34, par.123).

The relationship between human rights and environmental protection is also manifested during the procedures and guarantees meant to favor a better application of the environmental law. In this case, judicial guarantees must be stated, especially the right to underline its protected judicial interests and those through which remedies for the damages are achieved, as well as the right to take part in the making decision process, directly or through elected intermediaries. The last one is recognized by more juridical instruments, as well as by the Convention regarding the evaluation of the impact upon the environment in cross-border context, convention regarding the fight against desertification in the countries seriously affected by draught or desertification (especially in Africa).

All the rights mentioned above cannot be fully acknowledged without an access right for information. Thus, principle 10 from Rio Declaration reminds that “the actual access to judicial and administrative actions, especially remedies and appeals must be guaranteed.” Aarhus Convention regarding the access to information, participation of the public to the decision making process and the access to justice related to environment, establishes a detailed regime. In some fields, the obligation of providing information was established especially in the field of labor right and industrial accidents. The Preamble of the Decision had in view the communication of information to the public and the participation of the public to the making decision process, regarding the prevention and intervention measures applicable to the accidents directly related to the dangerous substances (1988) adopted through the Council of the Organization for Cooperation and Economic Development (OCED). With this occasion it is stated that “the public susceptible of being affected has the right to be informed with respect to the dangers that has in view the human health and environment, including here the goods, dangers that could appear with the occasion of the dangerous installations” (Doc. OCDE C (88)85 FINAL).

It is also stated that the states must watch as the public to receive specific information regarding the security measures that they should take, upon nature, potential effects upon the human health or environment, and as the public to have access to all the necessary information. The European Court of Human Rights acknowledged that in the case in which the authorities don’t provide essential information that allow the evaluation of the risks caused by the industrial installations, represent a violation of the right for private life (*Guerra et co. 39 vs Italia*, European Court of Human Rights, decision on the 19th of February 1998, *Culegere* 1998-I).

CONCLUSIONS

If it seems easy to establish a relationship between man and its environment, the international instruments and practice don’t succeed in objecting enough from a judicial standpoint regarding the existence of a human’s right for a healthy environment. At the moment, environmental protection doesn’t represent the object of a formula that can allow the penetration of the human universal rights acknowledged so far. It is inserted only in the interstice of human right, either as an element of a collective right, or as an element of economic, social and cultural rights. Its limits are susceptible in the jurisprudence of the European Court of Human Rights that hesitates to acknowledge an autonomous and special status related to “human rights with respect to environment”.

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