

# THE CONSTITUTIONAL DIMENSION OF THE RIGHT TO A HEALTHY ENVIRONMENT

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## Abstract

*Paradoxically, for some of us, and first of all, our lives depend on the Planet Earth on which we live. A healthy Planet Earth will allow us a beautiful, long and healthy life. In international treaties or conventions, as well as in constitutions, there is written about the right to a healthy environment, a right that is usually recognized to each human being. Although this right is recognized, protected and even guaranteed, shouldn't we speak about our fundamental duty to ensure a healthy environment? On the other hand, even if we are speaking about the right or the duty to a healthy environment, or both of them, first of all, from a legal point of view, there should be a constitutional regulation and not just the need to ensure a healthy environment. This article, being the first step in analyzing this fundamental right of every person, examines some of the international regulations of the right to a healthy environment, but also some of the provisions from different documents of international organizations at regional level, like Council of Europe, or European Union, or Organization of American States, or African Commission on Human and Peoples' Right, and also from eleven constitutions of Eastern Europe countries, but also some aspects regarding the content of this right.*

**Keywords:** *right, environment, health, constitutional, provisions.*

## 1. Introduction

It is the end of February, the beginning of March, 2018, and in one of the Romanian cities – Brașov – the winter of December – February, 2018, has really come true just now. Nothing special could say many, but it is one of the cities located in the heart of the Carpathian Mountains where practicing winter sports should be a true tradition. We did not intend to analyze and discuss other aspects about the practical or not practical possibility of such sports, whether economic or social, but only reveal a less pleasant and unacceptable truth for many of us – the climate with which we have grown up 20, 30 or even 40 years ago is no longer the same? We often wonder where the winters or the springs are, we limit ourselves to these two seasons which, perhaps in a paradoxical way, coexist at this time because in the calendar we read about the end of the winter and the beginning of the spring, but when we go out we have to face the winter. And, unfortunately, we are not talking about a last cry of the winter, but a real one – with serious snow, with terrible frost, with a strong blizzard. Having spent most of my life in a mountain city, I knew that winter can not only keep the three calendar months of this season, but on the contrary, it can last even 5 or 6 month, from November to March, but under no circumstances manifests itself in the fullness of its forces towards the end of February.

Moreover, paradoxically, even this municipality surrounded by mountains and forest is one of the three, alongside Bucharest and Iasi, here the standards set for improving air quality are not met, which is why they

are subject to an infringement procedure by the European Commission, in Case 2009/2296 concerning the finding of non-fulfillment of the obligation established by art. 13 para (1) in conjunction with Annex XI and art. 23 para (1) of Directive 2008/50/EC on ambient air quality and cleaner air for Europe, Directive transposed at national level by the Law No. 104/15.06.2011 on ambient air quality published in the Official Journal of Romania, Part I, No. 452 of June 28, 2011.

We have certainly witnessed, for years, climatic changes that have become more and more visible or felt more and more, affecting the planet we live in, and obviously ourselves. It is true that it is difficult to accept the production of climate change that affects the environment and the fact that the human being is one of the primary factors that causes these changes, and also their emphasis, but we believe that the moment of acceptance has gone a long way, now being a critical moment when words must be turn into actions.

Certainly we will not be able to heal the earth by returning lost health, but at least we will be able to stop its deterioration because “[t]omorrow it is now. We are confronted with the unrelenting threat of the present moment. In this mechanism, always moving, made up of our life and history, it is possible to get too late. There is an unseen book of life in which is written, without fail, as long as we are constant in our negligence”<sup>1</sup>.

For a long time, the international community has not been concerned about the effects that human activity, especially industrial, has done on the environment. Perhaps, when the negative effects of his activities have repercussions on the environment, being

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<sup>1</sup> Speech of Martin Luther King, quoted by A. Gore in *Un adevăr incomod, „An inconvenient truth”*, RAO International Publishing Company, Bucharest, 2007, pp. 3-4 from Introduction.

more and more visible, people has not even been aware of them, “[t]he technical congregation generating the conviction that he is master of the planet”<sup>2</sup>. Time has shown to people that the Planet has its limits that it can not force because of its actions it can trigger even irreversible reactions that would endanger its own life and even existence on this planet. So we have begun to learn and we are still in such a process that humanity, its existence and its evolution, depend on this planet, the reciprocal being not necessarily valid, perhaps not at all. We like and even managed to control, to rule some natural phenomena, but in the same way “[t]he mankind is increasingly threatened by the processes that it has itself generated and which seem to escape to an ever increasing degree under its control”<sup>3</sup>.

Defining the environment, we can say that it is “the complex of physical, chemical, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival”<sup>4</sup>.

If we are looking on the English Environment Protection Act 1990, we'll see that by art. 1 Par.2, the “environment” consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.<sup>5</sup>

A definition in the same way is provided by the Government emergency decree No. 195/2005 regarding the environmental protection<sup>6</sup> in which, by art. 1 para (2) the environment is considered to be the “set of natural conditions and elements of the Earth: air, water, soil, subsoil, landscape features, all atmospheric layers, all organic and inorganic matter, and living beings, interaction, including the elements listed above, including some material and spiritual values, the quality of life and the conditions that can influence the welfare and health of man”.

From the above-mentioned definitions, we can see that the environment and, above all, the provisions of a healthy environment, implicitly recognizing, protecting and guaranteeing a right to a healthy environment as a fundamental right of any human

being, is in close correlation with health, respectively with the right to health or the right to health protection, as found in international and/or constitutional regulations. In fact, the right to a healthy environment, over time, from the right to health, the fundamental international human rights regulations adopted under the aegis of the United Nations, and not only.

In this paper, we propose, as a first step in the analysis of this right, to identify and analyze international regulations, as well as the national constitutional framework of some states through which the right to a healthy environment is legally enshrined.

## 2. Content

### 2.1. The right to a healthy environment in international documents

As we said in the above, “environmental and human rights treaties also neither specifically provide for, nor define the right”<sup>7</sup>.

Thus, we will find that in the process of defining and constructing the fundamental human rights, developed especially, its protection and, moreover, at least the recognition of a fundamental human right regarding it, as well as a correlative obligation of states and even the international community were not taken into account. It was appreciated at that time, paradoxically we said after the detonation of two atomic bombs, that “[t]he environmental preservation was not a priority”<sup>8</sup> which is why “[n]o mention of this would have been required”<sup>9</sup> in the Universal Declaration of Human Rights<sup>10</sup>. In fact, it was noted in the doctrine, that it was not a priority for the international community, “there is no mention of environmental protection under the Universal Declaration of Human Rights”<sup>11</sup>. The doctrine also highlighted the fact that the enrolment in international documents of the right to a healthy environment or just environmental references was considered necessary only when the various climatic changes began to affect our dimensions considerably. In this respect, it is stated

<sup>2</sup> D. Marinescu, *Tratat de dreptul mediului, "Treaty of Environmental Law"*, Universul Juridic Publishing House, Bucharest, 2007, p. 11.

<sup>3</sup> *Ibidem*

<sup>4</sup> Encyclopedia Britannica. This document is available at: <https://www.britannica.com/science/environment>, accessed on: 04.03.2018.

<sup>5</sup> The English Environment Protection Act 1990 is available at: <http://www.legislation.gov.uk/ukpga/1990/43/section/1>, accessed on: 05.03.2018.

<sup>6</sup> This emergency ordinance was published in The Official Gazette of Romania, Part I, no 1196 from December 30th 2005, being adopted, with amendments and additions, by Law no 265 from 2006, published in The Official Gazette of Romania, Part I, no 586 from July 06th 2006.

<sup>7</sup> B. K. Twinomugisha, Some reflections on judicial protection of the right to a clean and healthy environment in Uganda in *Law Environment and Development Journal*, vol 3/3, 2007, p. 247, available at <http://www.lead-journal.org/content/07244.pdf>, accessed on: 10.03.2017

<sup>8</sup> S. Atapattu, The right to a healthy life or the right to die polluted?: The emergence of a human right to a healthy environment under international law in *Tulane Environmental Law Journal* vol 16, 2002, pp. 67-68 quoted by H. Kern, in *The Right to a healthy Environment versus mining: An examination of federal environmental law and its failure to protect people's health in The politics of human rights in Australia. Law under the spotlight*, 2015, School of Law and Justice, Southern Cross University, p. 130, available at: <http://docplayer.net/29001185-The-politics-of-human-rights-in-australia.html>, accessed on: 06.03.2018

<sup>9</sup> H. Kern, *op. cit.*, pp. 130-131.

<sup>10</sup> This Declaration was adopted by the UN General Assembly on 10 December 1948, by its Resolution 2171 A/III. Romania signed the Declaration on 14 December 1955, when it became member of the United Nation Organization, as it is settled by the Resolution R 955 (X) of the UN General Assembly.

<sup>11</sup> K. Toepfer, *Statement to the 57th Session of the Commission on Human Rights*, CHR, 57th sess, (19 March 2001) quoted by H. Kern, *op. cit.*, pp. 130-131, available at: <http://docplayer.net/29001185-The-politics-of-human-rights-in-australia.html>, accessed on: 06.03.2018

that “most human rights treaties were drafted and adopted before environmental protection became a matter of international concern”<sup>12</sup>.

However, this declaration enshrines, through art. 25, the right to a sufficient standard of living through which it is also understood that “every person must be provided with the health and well-being of himself and of his family”. Even though the Universal Declaration of Human Rights does not refer to a healthy environment, a right to this right, as we have previously mentioned, we could not imagine how the health of any human being can be assured in a unhealthy environment. For this reason, we also appreciate that, through an extensive interpretation of the stipulated provisions of the Declaration, indirectly is also considered “the right to a healthy natural environment as an aspect of collective health law which concerns both the members of a community which live in a certain area of the Earth, as well as the world’s population as a whole”<sup>13</sup>.

Even though for a good period of time, by other international regulation, it has not been envisaged to lay down a provisions that at least recognized the right to a healthy environment, however it is possible to be identified “few references to environmental matters in international human rights instruments, although the rights to life and to health are certainly included and some formulations of the latter right make reference to environmental issues”<sup>14</sup>. So, if we are looking if we are studying the International Convention on Economic, Social and Cultural Rights<sup>15</sup>, we will be able to identify some provisions related to environment, or environmental protection, or right to healthy environment. In art. 7 lett. b, this convention guarantees the right to safe and healthy working conditions, and in art. 10 para 3 it is specified the right of children and young person to be free from work harmful to their health, and the art. 12 settles the two dimensions of the

right to health and, also, in par 2 let. b) it is mentioned that one step to be taken by the States to achieve the full realization of this right shall include those necessary even for the improvement of all aspects of environmental and industrial hygiene. Moreover, in the interpretation that the Committee of Economic, Social and Cultural Rights (CESCR)<sup>16</sup> gives to these latter provisions, it is mentioned, including that “art. 12 para 2 let. b) is about the right to healthy natural and workplace environments and this phrase – “the improvement of all aspects of environmental and industrial hygiene” comprises, inter alia, the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”<sup>17</sup>. Also it is mentioned that “industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment”<sup>18</sup>, thus making reference to a convention of the International Labor Organization<sup>19</sup> which, by art. 4 para (2) provides, referring to the principles of national policy in its field, that “the aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimize, so far as is reasonably practicable, the causes of hazards inherent in the working environment”<sup>20</sup>.

In fact, if we take a look at regional regulations regarding the human rights, we will observe that the “European Convention of Human Rights” does not include in the articles or its Protocols the term “environment” or “the right to a healthy

<sup>12</sup> D. Shelton, *Health and Human Rights Working Paper Series No 1. Human Rights, Health & Environmental Protection: Linkages in Law & Practice. A Background Paper for the World Health Organization*, 2002, p. 6, available at: [http://www.who.int/hhr/Series\\_1%20%20Sheltonpaper\\_rev1.pdf](http://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf), accessed on: 03.03.2018

<sup>13</sup> I. Cloșcă, I. Suceavă, *Tratat de drepturile omului, „Treaty of Human Rights”*, Europa Nova Publishing House, Bucharest, 1995, p.294.

<sup>14</sup> D. Shelton, op. cit., p. 6.

<sup>15</sup> This Covenant was adopted and opened for signature by the United Nations General Assembly on December 16th 1966, Resolution 2200 A (XXI), entered into force on January 3rd 1976, according to art 27. Romania has ratified the International Covenant on Economic, Social and Cultural Rights on October 31st 1974, by Decree no 212 which was published in the Official Gazette of Romania, Part I, no 146 from November 20th 1974.

<sup>16</sup> Office of the High Commissioner for Human Rights Human, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), p. 6, available at: <http://www.refworld.org/pdfid/4538838d0.pdf>, accessed on: 07.03.2018

<sup>17</sup> Ibidem

<sup>18</sup> Ibidem

<sup>19</sup> We are talking about the ILO Convention No. 155 Occupational Safety and Health Convention, 1981, available at: [http://blue.lim.ilo.org/cariblex/pdfs/ILO\\_Convention\\_155.pdf](http://blue.lim.ilo.org/cariblex/pdfs/ILO_Convention_155.pdf), accessed on: 07.03.2018

<sup>20</sup> Regulations regarding the environment are found even in Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990. Romania has ratified this convention by Law no 18/1990 which was published in The Official Gazette of Romania, Part I no 314 from June 13th 2001. Thus, the article 24 recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, and in the para 2 lett.c) it is mentioned that „to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”. This Convention is available at: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, accessed on 07.03.2018. However, in the case of this regulation we can see that it was adopted after the moment when the environment the changes that affect it and, implicitly, our life, was taken into consideration by the states and the international community, starting to find their regulation in various normative acts.

environment”<sup>21</sup>, considering that “[w]hen it was adopted, namely in 1950, environmental issues were not a major concern, industrial development nor raising a serious environmental problem”<sup>22</sup>. So, as it is noted in the doctrine, in this case one can speak of the recognition of the right to a healthy environment as “[t]he result of a jurisprudential evolution which, without the proper creation of new rights, extends the purpose of existing rights”<sup>23</sup>. Thus, in its jurisprudence, a new content of some of the rights enshrined in the Convention, such as the right to life (article 2 of the Convention), the right to respect for private and family life (article 8 of the Convention)<sup>24</sup>, the right of property (art. 1 of the Protocol No. 1 at the Convention); the right to free expression (art. 10 of the Convention); the right to a fair trial (art. 6 of the Convention), the persons have been guaranteed the right to a healthy environment<sup>25</sup>.

Unlike the human rights regulations of organizations on the European continent, similar ones on the African and American continent contain environmental provisions as foreseen at American level, or even the need to secure a right in a generally satisfactory environment, favorable to their development, as it is called at African level.

So, the African Charter on Human and Peoples' Rights<sup>26</sup>, by art. 24, regulates the right to a general satisfactory environment for all peoples and which has to be favorable to their development. The legal righting has pointed out to this text that it is a “[t]he first conventional, compulsory, stipulation of the right to a healthy environment”<sup>27</sup>, the decision to include it in a charter of rights from the states of a continent that does not grant “in general, a priority for environmental concerns”<sup>28</sup>.

American Convention on Human Rights Pact of San José<sup>29</sup>, as amended by the Buenos Aires Protocol signed on 27 February, 1967, stipulates even in the

Preamble that the representatives on the American States present at this conference “are convinced that the historic mission of America is to offer to man a land of liberty and a favorable environment for the development of his personality and the realization of his just aspirations”, and by art. 95 let. c) no 1 states that “in order to achieve its various goals, especially in the specific area of technical cooperation, the Inter-American Council for Integral Development shall promote, coordinate, and assign responsibility for the execution of development programs and projects to the subsidiary bodies and relevant organizations, on the basis of the priorities identified by the Member States, in areas such as: economic and social development, including trade, tourism, integration and the environment”. Moreover, through a protocol at the American Convention on Human Rights Pact of San José, namely Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", Additional Protocol to the American Convention on (A-52), adopted on 17 November, 1998<sup>30</sup>, more precisely through art. 11, was consecrated, *expressis verbis*, the right to a healthy environment according to which “everyone shall have the right to live in a healthy environment and to have access to basic public services”, and the States Parties shall promote the protection, preservation, and improvement of the environment. Thus, not only the right granted to every person is stipulated, right granted to every persons, which in fac has who dimensions – the rights to engage in a healthy environment and the right to access basic public services, but also the correlated obligation which is the responsibility of each state to protect, preserve and improve the environment and its quality.

So whether at the regional level, through the established organizations, the states, either expressly, through regulations in conventions, or indirectly, by

<sup>21</sup> P. Trușcă, A. Trușcă Trandafir, Dreptul fundamental al omului la un mediu sănătos în jurisprudența CEDO (The right to a healthy environment in the ECHR jurisprudence) in Revista Transilvană de Științe Administrative (Transylvanian Revue (Journal) of Administrative Science), no 1 (23)/2009, p. 99, available at: <http://www.rtsa.ro/rtas/index.php/rtas/article/viewFile/124/120>, accessed on 03.03.2018.

<sup>22</sup> Ibidem

<sup>23</sup> F. Stârc-Meclejan, Rolul creator al Curții Europene a Drepturilor Omului privitor la dreptul mediului (The role of the European Court of Human Rights in the field of environmental law) in Analele Universității de Vest din Timișoara. Seria Drept. Studii, articole, comentarii. Secțiunea de drept privat (Annals of the West University of Timișoara. Law Series., Studies, articles, comments. Section of private law), p. 168, available at: <https://drept.uvt.ro/administrare/files/1481047524-lect.-univ.-dr.-flaminia-sta-rc---meclejan.pdf>, accessed on 03.03.2018

<sup>24</sup> For example, in the Lopez Ostra v. Spain Case, by the judgment from December 9th 1994, ECHR pointed out that „naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health”. Starting from this statement, ECHR has analyzed the matter „[i]n terms of a positive duty on the State - to take reasonable and appropriate measures to secure the applicant's

rights under paragraph 1 of Article 8” from Convention. Lopez Ostra v. Spain, no 16798/90 §51, ECHR, 1994, available at: [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-57905\"\]}](https://hudoc.echr.coe.int/eng#{\), accessed on: 07.03.2018. Thus, the ECHR has highlighted a dimension of the right to a healthy environment that seeks to oblige a state to ensure the protection of this right, to make it possible to achieve it in its fullness.

<sup>25</sup> Ibidem

<sup>26</sup> African (Banjul) Charter on Human and Peoples Rights was adopted in Nairobi June 27, 1981, and was entered into force on October 21, 1986, is available at: <http://www.achpr.org/instruments/achpr/>, accessed on: 07.03.2018

<sup>27</sup> D. Marinescu, op. cit., p. 381; M. Duțu, Dreptul mediului (Environmental Law), Economica Publishing House, Bucharest, 1996, p. 80.

<sup>28</sup> Ibidem

<sup>29</sup> Adopted at the Inter-American Specialized Conference on Human Rights by the Organization of American States, San José, Costa Rica, 22 November 1969, is available at: [https://en.wikisource.org/wiki/American\\_Convention\\_on\\_Human\\_Rights#CHAPTER\\_III\\_-\\_ECONOMIC,\\_SOCIAL,\\_AND\\_CULTURAL\\_RIGHTS](https://en.wikisource.org/wiki/American_Convention_on_Human_Rights#CHAPTER_III_-_ECONOMIC,_SOCIAL,_AND_CULTURAL_RIGHTS), accessed on: 07.03.2018. The Charter of the Organization of American States, 119 U.N.T.S. 3, was adopted in 1948 and entered into force on December 13, 1951 and it was amended more than one time. This Charter is available at: <http://www.globalhealthrights.org/wp-content/uploads/2013/10/Charter-of-the-Organization-of-American-States-OAS.pdf>, accessed on: 07.03.2018

<sup>30</sup> This Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights "Protocol of San Salvador" is available at: <http://www.oas.org/juridico/english/signs/a-52.html>, accessed on: 07.03.2018.

jurisprudence, have recognized the right to a healthy global environment “[t]he reappointment for the quality and protection of the environment was debated in 1972 at the first World Conference on the United Nations on this issue”<sup>31</sup>, held in Stockholm. Participants at this conference proclaimed that “man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself”<sup>32</sup>. It is also emphasizes not only the need to protect the environment, or, as it is named by the statement itself – “the human environment”, and to improve the quality of life, specifying that “the protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments”<sup>33</sup>. By the first principle, the Stockholm Declaration recalls to every human being the fundamental right to a healthy environment, the content of which has the following dimensions: the right itself, what it is the “[r]ight to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”, as well as the obligation of each human being to protect and improve the existing environment in view of the existence of a “[s]olemn responsibility to protect and improve the environment for present and future generations”. Although the statement does not explicitly define the environment, its main components, elements that may form included in the definition of this environmental concept, can be found in Principle No. 2 of the Stockholm Declaration which mentions that “[m]ust be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate”, “[t]he natural resources of the earth, including the air, water, land, flora and

fauna and especially representative samples of natural ecosystems”.

The Declaration has built a number of 26 principles, a plan of action for the human environment, including a number of 109 recommendations categorized by areas of action, a resolution on institutional and financial arrangements.

The right to a healthy environment and, in particular, to environmental protection, will make sense and develop a series of regulations over time. The states and the United Nations have succeeded in adopting and obtaining ratification by more and more states of conventions, agreements that outline the legal framework in which to secure such protection. One of these last agreements is the Paris Agreement<sup>34</sup>, and art. 4 point 13 stipulates that, “Parties obliged themselves “to promote environmental integrity, transparency, accuracy, completeness, comparability and consistency”, Parties acknowledging, since point 11 form the Preamble, that “climate change is a common concern of humankind, and they should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.

From the analysis of some of the international documents – “[v]arious treaty provisions, general comments or recommendations of treaty bodies and UN consensus documents, it may be possible to delimit some of the major components of the right”<sup>35</sup>. Thus, we also appreciate that “[t]he right to a clean and healthy environment involves many things including clean water, air and soil that are free from toxins, wastes or hazards that threaten human health”<sup>36</sup>, given that the right to a healthy environment is also perceived as a dimension of the right to health and the protection of it, the health of any human being is absolutely conditioned by its existence, including in a healthy natural environment.<sup>37</sup> On the other hand, in the case of this social-economic right, by its third-generation content, if we refer to the chronological classification criteria<sup>38</sup>, but also to the fact that “states need cooperation to

<sup>31</sup> D. Marinescu, *op. cit.*, p. 14

<sup>32</sup> Point I.1. from Declaration of the United Nations Conference on the Human Environment, available at: <http://www.un-documents.net/aconf48-14r1.pdf>, accessed on: 07.03.2018

<sup>33</sup> Point I.2. from Declaration of the United Nations Conference on the Human Environment.

<sup>34</sup> The Paris Agreement was signed in 2015 and entered into force on 4 November 2016, thirty days after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 % of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession with the Depositary. See: available at: [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php), accessed on: 08.03.2018. available at This Agreement is available at: [http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf), accessed on: 08.03.2018.

<sup>35</sup> B. K. Twinomugisha, *op. cit.*, p. 247.

<sup>36</sup> *Idem*, p. 248-249.

<sup>37</sup> In this regard, we just recall that the United Nations Conference on Environment and Development, through the Rio Declaration on Environment and Development, which was adopted during the proceedings of the conference held between 3 June and 14 June 1992, stated in its first principle that people “are entitled to a healthy and productive life in harmony with nature”. Rio Declaration on Environment and Development is available at: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>, accessed on: 08.03.2018.

<sup>38</sup> To see in this respect I. Muraru, E.S. Tănăsescu, coordinators, *Constituția României. Comentariu pe articole*, “Romanian Constitution. Comment on articles”, C. H. Beck Publishing House, Bucharest, 2008, p.326

ensure compliance of this right<sup>39</sup>, it is necessary to appreciate one of the “rights-claims”<sup>40</sup> in which we also refer to “[t]he state’s duty to recognize this right of any person”<sup>41</sup>, even if it is a “[d]iligence dependent on a number of other factor”<sup>42</sup> of various natures.

## 2.2. The right to a healthy environment in constitutions

From the above, we can see that, even though the states and the international community, by the United Nations, quite late, understood that they must first and foremost recognize and then create an international legal framework to the right to a healthy environment so that it can be protected.

Considering the delay in international understanding of the need to regulate the right to a healthy environment, as well as to regulate its protection, at national level the attitude of the states was no different. Thus, the right to a healthy environment will find its place in the constitutions after the Stockholm Declaration in 1972, more specifically “[a]fter 1975 and especially in the 1990s and the present millennium”<sup>43</sup>.

Thus, “more than 100 constitutions throughout the world guarantee a right to a clean and healthy environment impose a duty on the state to prevent environmental harm, or mention the protection of the environment or natural resources. Over half of these constitutions explicitly recognize the right to a clean and healthy environment, including nearly all constitutions adopted since 1992. Ninety-two constitutions impose a duty on the government to prevent harm to the environment”<sup>44</sup>.

Analyzing a number of 10 constitutions of Eastern European states, we have notices that all of them enshrine the right to a healthy environment in various ways and contents, a statement also valid for the Czech Republic<sup>45</sup> which Constitution does not contain a chapter on rights and of the fundamental freedoms, these being provided by a Charter which is part of the Czech constitutional block. Thus, by Article 35 para (1) and (2) of this Charter, it is recognized that “everyone has the right to a favorable environment”, and also “the right to timely and complete information about the state of the environment and natural resources”. More than that, Article 35 para (3) established that “no one may, in exercising her rights, endanger or cause damage to the environment, natural

resources, the wealth of natural species, or cultural monuments beyond the extent set by a law”. In fact, the Czech legislator considers that this right is not limited to being constituted as an act of constitutional value, any person being entitled, to the same degree, to be informed in a timely and complete manner not only about the state of the environment but and natural resources. The Bulgarian Constitution<sup>46</sup> contains similar regulations in the respect that it recognizes by art. 55 that “everyone shall have the right to a healthy and favorable environment corresponding to established standards and norms”. Also, the Bulgarian constitutional legislator also appreciates that everyone has an obligation to protect the environment, as the Czech legislator in essence appreciates in par. (3) of art. 35. However, if we carefully observe the obligation laid down in that article, the Czech legislator extends the boundaries of that obligation, considering that this negative obligation not to endanger or harm any person concerns not only the environment, but also cultural monuments. Besides, in its preamble, the Constitution of Poland<sup>47</sup> states that the Polish nation adopts this constitution by „[o]bligated to bequeath to future generations all that is valuable from our over one thousand years' heritage”. The Constitution of Slovakia<sup>48</sup> also stated, in the preamble, that the adoption of this constitution is also envisaged by the „[e]ndeavoring to implement democratic forms of government, guarantee a life of freedom, and promote spiritual, cultural and economic prosperity”. Moreover, the same constitution regulates „the right to protect the environment and cultural heritage”, through art. 44 and 45, the Slovak constituent legislator appreciating not only that „every person shall have the right to favorable environment”, but also „the right to full and timely information on the environmental situation, and reasons and consequences thereof”, and also that „every person shall have a duty to protect and improve the environment and foster cultural heritage”, even that „no person shall imperil or damage the environment, natural wealth and cultural heritage beyond the limits set by law”. And the Constitution of Hungary<sup>49</sup>, speaking about the constitutional foundations, states in article P para (1) that the „natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation”. The Slovenian

<sup>39</sup> Ș. Deaconu, *Drept constituțional, „Constitutional Law”*, C. H. Beck Publishing House, Bucharest, 2011, p. 261

<sup>40</sup> I. Muraru, E.S. Tănăsescu, coordinators, *op. cit.*, p.326

<sup>41</sup> *Ibidem*

<sup>42</sup> *Ibidem*

<sup>43</sup> I. Muraru, E.S. Tănăsescu, coordinators, *op. cit.*, p.328

<sup>44</sup> D. Shelton, *op. cit.*, p. 22

<sup>45</sup> Charter of Fundamental Rights and Freedoms, Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic Constitutional act No. 2/1993 Coll. as amended by constitutional act No. 162/1998 Coll. This Charter is available at: [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/AJ/Listina\\_English\\_version.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf), accessed on: 08.03.2018.

<sup>46</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Bulgaria\\_2015?lang=en](https://www.constituteproject.org/constitution/Bulgaria_2015?lang=en), accessed on: 08.03.2018.

<sup>47</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Poland\\_2009?lang=en](https://www.constituteproject.org/constitution/Poland_2009?lang=en), accessed on: 08.03.2018

<sup>48</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Slovakia\\_2014?lang=en](https://www.constituteproject.org/constitution/Slovakia_2014?lang=en), accessed on: 08.03.2018

<sup>49</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Hungary\\_2016?lang=en](https://www.constituteproject.org/constitution/Hungary_2016?lang=en), accessed on: 08.03.2018

constituent legislator<sup>50</sup> also acknowledges, by Article 72 para (1) that, „everyone has the right in accordance with the law to a healthy living environment”, but, by Article 73, settles that „everyone is obliged in accordance with the law to protect natural sites of special interest, rarities and cultural monuments”. It is, therefore, that some of the fundamental laws speak of the components of the environment as the constitutive elements of the nation patrimony of a state, to the future generations must be transmitted, in its entirety and in no way, the environment of which we (still) rejoice. In this context, we appreciate that even more substantiated and justified the inclusion in a fundamental law „[t]he obligation of the State and everyone to protect and maintain them, and to preserve them for future generations”<sup>51</sup>. We also consider that such a fundamental duty should not only be borne by the state but by any person. For example, the Constitution of Latvia<sup>52</sup>, by art. 115, states that only „the State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment”. In the same way are the provisions of art. 54 para (1) of the Constitution of Lithuania<sup>53</sup>, The „State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of particular value and shall supervise a sustainable use of natural resources, their restoration and increase”, but para (2) of the same article provides that „the destruction of land and the underground, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law”, constitutional text which indirectly imposes such an obligation on any person. On the other hand, the Estonian Constitution<sup>54</sup> established, by art. 53, that „everyone has a duty to preserve the human and natural environment and to compensate for damage caused to the environment by him or her”. The Constitution of Croatia<sup>55</sup>, by art. 69, recognizing the right to a healthy life, also takes into consideration its dimension of the right to a healthy environment, but states that „the State shall ensure conditions for a healthy environment”, as well as that “everyone shall be bound, within their powers and activities, to pay special attention to the protection of public health, nature and environment”. Moreover, the

Constitution of Romania<sup>56</sup>, by art. 35 para (3) stipulating that the „natural and legal persons have a duty to protect and improve the environment”.

### 3. Conclusions

From the moment that Universal Declaration of Human Rights was adopted it had to pass almost 25 years until the right to a healthy environment is recognized and regulated internationally, and then another almost 30 years have elapsed before its incorporation into constitutions becomes a practice of the states. In this respect, the doctrine has highlighted several reasons that have generated such a situation, in addition to those mentioned above, underling that the “different avenues for the integration of environmental concerns in the realization of human rights can be envisaged”<sup>57</sup>, and one of these is regarding the necessity that “a right to environment be formally added to the catalogue of internationally guaranteed human rights”<sup>58</sup>.

Moreover, by some of the constitutions under consideration, the legislator was concerned about the inclusion of this right in one of the consecrated classifications, such as the category of liberties and economic, social and cultural rights, where they included this Constitution of Poland or Croatia. However, the essence of the issue of the right to a healthy environment, its consecration through constitutions, the regulation of its insurance, protection or guarantee mechanisms in principle should not be reduced to the classification of this right. That is why we share the opinion that “[w]e cannot and should not attempt to categorize this new right as, either a civil and political right, or an economic, social and cultural right, or a solidarity right because it transcends the distinctions and embodies elements found in each of the three categories”<sup>59</sup>.

“On a factual level, it has already become apparent that preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of, inter alia, the rights to health, to food and to life including a decent quality of life”<sup>60</sup>. “It is by now clear that environmental protection is intrinsically related to a number of other human rights and comes out as both a precondition and an outcome of the enjoyment of many rights”<sup>61</sup>.

<sup>50</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Slovenia\\_2013?lang=en](https://www.constituteproject.org/constitution/Slovenia_2013?lang=en), accessed on: 08.03.2018

<sup>51</sup> Art. P para 1 of Hungarian Constitution.

<sup>52</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Latvia\\_2016?lang=en](https://www.constituteproject.org/constitution/Latvia_2016?lang=en) accessed on: 08.03.2018

<sup>53</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Lithuania\\_2006?lang=en](https://www.constituteproject.org/constitution/Lithuania_2006?lang=en), accessed on: 08.03.2018

<sup>54</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Estonia\\_2015?lang=en](https://www.constituteproject.org/constitution/Estonia_2015?lang=en), accessed on: 08.03.2018

<sup>55</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Croatia\\_2013?lang=en](https://www.constituteproject.org/constitution/Croatia_2013?lang=en), accessed on: 08.03.2018

<sup>56</sup> This Constitution is available at: [https://www.constituteproject.org/constitution/Romania\\_2003?lang=en](https://www.constituteproject.org/constitution/Romania_2003?lang=en), accessed on: 08.03.2018

<sup>57</sup> P. Cullet, *Definition of an environmental right in a human rights context*, published in: *13 Netherlands Quarterly of Human Rights*, 1995, p. 25, available at: <http://www.ielrc.org/content/a9502.pdf>., accessed on: 08.03.2018.

<sup>58</sup> *Ibidem*

<sup>59</sup> R. S. Pathak, *The Human Rights System as a Conceptual Framework for Environmental Law*, in: Brown Weiss, E. (ed.), *Environmental Change and International Law - New Challenges and Dimensions*, UN University Press, Tokyo 1992, pp. 205-243, quoted by P. Cullet, *op. cit.*, pp. 27-28

<sup>60</sup> P. Cullet, *op. cit.*, p.26

<sup>61</sup> P. Cullet, *op. cit.*, p.27

The existence of a healthy environment or not, as the case may be, affects positively or negatively, as the case may be, their life and quality and, implicitly, the existence and exercise of other fundamental human rights, such as the right to health or the protection thereof, the right to work, economic freedom, the right to a sufficient or decent living. An appreciation of this right and, implicitly, the protection of the environment as fundamental values in society would seem more opportune, the Croatian legislator who, through art. 3 of the Constitution has appreciated that the conservation of nature and the environment, next to “[f]reedom, equal rights, national equality and equality of genders, love of peace, social justice, respect for human rights, inviolability of ownership and a democratic multiparty system” is one of the “[h]ighest values of the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution”.

It is also opportune for us to appreciate the environment as an essential component of the national patrimony of any state and, why not, of the universal heritage, preserving and protecting it more necessary,

more urgently, more imperative than any other component. A sufficient, but not enough, reason for any state, the preamble, and the international community, through its specific organizations and instrument, to be obliged to protect the environment, to establish a legal framework in this respect, knowing that “the right to environment requires States to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality of the environment”<sup>62</sup>. Moreover, this obligation must be regulated so that it rests on any individual and legal entity, for enjoying the environment is possible only if you protect and preserve it, and not just for the present, the development of any society must comply with the principles of development where the environment occupies an important place. In fact, art. 37 of the Charter of Fundamental Rights of the European Union<sup>63</sup>, emphasizes those mentioned, specifying that “a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”.

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<sup>62</sup> P. Cullet, *op. cit.*, p. 28

<sup>63</sup> Charter of Fundamental Rights of the European Union (2016/C 202/02) is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN>, accessed on: 08.02.2018



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