RSP • No. 52 • 2016: 14-24

ORIGINAL PAPER

The Right to a Healthy Environment – between a Basic Human Right and a Policy of Form without Substance

Ilie Adrian Barbu*

Abstract
There's no denial that in the last decades environmental concerns experienced a great development, both in highly-developed countries and countries emerging from communism era. The large range of legal instruments at national, European and international level, specialized organs and regional or global agencies that enforces the environmental legislation and activates to protect the environment and our right to a healthy environment is a solid proof for those concerns. The base of environmental protection is the human right to a healthy environment. It is found in many international declarations and treaties regarding environmental protection, as well as national legislation, recognized even by the national constitutions. But this right was often criticized, much of the economic powers of the world refuse to recognize it, it is neither found in the European Convention on Human Rights and Fundamental Freedoms and in many cases the national courts had problems in the application of specific legislation. Given this difference between desiderate and reality, we can ask ourselves why the human right to a healthy environment is often only a declaration of intent without substance and has not found place as a fundamental human right, although it is recognized as such. This analysis should be done in a complex way, beyond the legal text by giving considerations of many social, political and economic factors.

Keywords: *human right to a healthy environment, the European Convention on Human Rights and Fundamental Freedoms, basic human rights, social, economic and political policies*

* Lecturer, PhD, University of Craiova, Faculty of Law, Environmental and Civil law specialization, Phone: 0040723201603, Email: adi_ilie@yahoo.com

Introduction

The concept of human right to a healthy environment is not different from the right to peace, the right to a harmonious development of cultures or other rights that make up the third generation of human rights. All this fundamental rights are a step forward in achieving what is known as a "state of law" (Ticu, 2016: 87). We believe it is a universal right and a right of every individual that needs to be recognized both nationally by the Constitution and laws, as well as at a European and international level. This recognition must not be confined only to its acceptance as a fundamental right, but it must also develop the mechanisms necessary for its implementation.

The problem with these rights, named "of solidarity" between people and also between the present generation and future ones, is that they do not have a very determined character as other rights, being quite diffuse both as applicability, as well as content. In legal doctrine, it was tried to impose the idea that they "do not have a precise meaning or content, do not have a determined owner, are not properly opposed, do not allow their owner to defend the rights before a court because they do not involve a legal sanction. That being the case, these rights are imprecise, which can generate undesirable confusion in a matter so delicate" (Rivera 1982: 646; Dogaru, Dănișor, 1988: 48).

While on the classical system of law, we basically agree with this idea, we cannot fail to see that this kind of legal analysis, although rigorous, is tributary precisely to the legal mentality which dates 20-30 years ago, that these rights are trying to change and from which are trying to evolve. This new type of rights, ranging from human rights to a healthy environment, at present time are trying to change a vision of society and that is why they cannot be analysed in the light of this vision. There are required: changes at the legislative, procedural and institutional levels, creating new tools to meet these challenges, precisely for them to not remain only at a declarative level, but also to be effective.

Supporting that these rights do not have a precise meaning derives rather from their disorganization in legal terms, than the inability to achieving them. Any concept can be extended, adjusted and improved over time if offered a starting point so that in the future it may become completely viable. The problem has to do rather with the abstract elements of these rights, because it conditions us and limits certain rights and tangible present benefits (e.g.: the intensive exploitation of certain resources for material profit, which subsidiary produces pollution) in opposition with other benefits possibly higher in a faraway future and not necessarily easily visible (the same operation performed reasonably and within certain limits brings less tangible economic benefits in the short term, but provides a more balanced and unpolluted environment).

Obviously, it is not easy to define a healthy environment if we want to consider all the elements that compose it and all the interactions between them and, as such, the content of the right to a healthy environment is tributary to the same problem, being a clear link between the elements of the environment and what it wants to be protected. If the elements of the concept of environmental protection, as noted above, are evident, determining the content of this right relies upon complex factors, both individually and overall, since there can be both pollution of a substance well above permissible limit, but at the same time, the ecosystem can be heavily polluted with a lot of elements that are at the upper limit of tolerance for the individual, but the consolidated effect being devastating. We also must consider that ecosystems are in continuous interaction and its effects are difficult to quantify. To deal with such challenges there should exist legal rules which defend this right by imposing a particular conduct, but also technical rules to

establish standards and accepted limits, both individually and overall. This construction is by no means easy and requires time, but hardly impossible.

Developments over the last 10-20 years regarding the rights of solidarity have determined the evolution of their legal approach. It is much easier now to define and coagulate juridical concepts that were impossible to accept at that time. The major change stems from the fact that these rights are now recognized by national and international legislation, their existence being no longer in question on grounds of lack of determinable ownership or lack of enforceability itself. Now, given their recognition, we must pass to the phase concerning the complete construction of the legal instruments and institutions which they are based upon. Given their recognition as rights, it is clear that they have a determined or a determinable holder, regardless that this occurs only when someone's right has been violated. Their enforceability is also in the same situation specific to subjective rights, where there is a general obligation not to prejudice them, their specific passive subject being revealed when defending that right.

Trial procedures require the existence of clearly defined parts. The interest of future generations may be seen as non-existent, because they do not exist. But the law is very good at creating simulations and fictions with legal basis. Taking a slightly asymmetrical parallelism with the situation of the child conceived but unborn who enjoys rights before his birth subject to his birth alive, here too we can create the same kind of law. It is obvious that on an individual level we cannot know how, who or when will give birth (here is the slight asymmetry to the situation of the unborn foetus, which is actually determined), but we are sure that future generations will exist, the alternative that nobody would conceive being absurd. Moreover, unlike the situation of the conceived child, whose rights hang upon being alive at birth, in this case it is sure that the future generations will exist. Therefore, recognition of standing capacity to pursue the proceedings for future generations, whose rights should be defended by those present, is not a challenge but an issue of legal will.

Finally, we can give the example of the right to health, with whom the right to a healthy environment has many connections and common goals. It involves the same gender of challenges, being equally abstract, with the same kind of vague content (what is health?), with right holders equally undetermined, future generations being affected by the health of those present too, but no one denies the existence of this right. The right to a healthy environment must be approached in the same spirit as the right to health and it should receive the same kind of standardization.

Recognition of the right to a healthy environment in the Romanian legislation

The first environmental protection law that expressly recognized the right to a healthy environment in Romanian law was Law no. 137/1995 on environmental protection. Subsequently, environmental protection and the right to a healthy environment has experienced a strengthening and a clear constitutional defining through Law revision of the Constitution of Romania (Official Gazette no. 669 / 22.09.2003), adopted by national referendum on 19 October 2003. Beside the fact that there were kept all previous articles which refer to environmental protection and human right to a healthy environment from the Constitution of 1991, it was introduced in the Constitution a new provision, at Article 35, entitled *The right to a healthy environment*, which clearly stipulates: 1) the State recognizes the right of everyone to a healthy and ecologically balanced environment;

2) the State shall provide the legislative framework for exercising this right; 3) natural and legal persons have the duty to protect and improve the environment.

The Law no. 137/1995 (Environmental Law) was replaced in December 2005 by Government Emergency Ordinance (G.E.O.) no. 195/2005 (amended and approved by Law no. 265/2006 and subsequent normative acts). G.E.O. no. 195/2005 also has preserved the provisions of the old law on the right to a healthy environment, changes in article 5 of G.E.O. being strict formal: "The State recognizes any person the right to a "healthy and ecologically balanced environment" ensuring for this purpose: a) access to environmental information, in compliance with the confidentiality required by the legislation in force; b) the right of association in environmental organizations; c) the right to be consulted in the decision-making on environmental policy and legislation development, issuance of regulatory acts in the field, developing plans and programs; d) the right to appeal directly or through organizations for environmental protection, to administrative and/or judicial authorities, where appropriate, in environmental matters; e) right to compensation for damage suffered". The provisions regarding the right to a healthy environment in the Romanian Constitution are on par with every European constitution and in most cases, even better except for Environmental Charter from French Constitution, that "are more complete and more clearly prove" than those from the Romanian one (Diaconu, 2006: 98, Thieffry, 1998: 28).

Before starting the analysis of Article 5 of the framework law, we ought to interpret the meaning of the statement "healthy and ecologically balanced environment". Although not very precise or well defined, the term "healthy environment" clearly refers to an environment whose elements can ensure the health, now and in the future to "any person". Moreover, Article 4 letter s in the ordinance includes in the means of implementation, "the removal with priority of pollutants that endanger human health directly and severely" thus creating an inextricable link between human health and environmental health. The problem does not lie in understanding the abstract concept of the idea of "health" but in the attempt to establish and define its components and the limit that differentiates "healthy" and "unhealthy". The phrase "ecological balance" is defined in G.E.O. no. 195/2005, Article 2 letter 24: "The whole circumstances and interrelations between the components of an ecological system that ensures maintaining the structure, function and its ideal dynamics." Besides, the "health" of the environment and humans is closely related to "ecological balance" as there none without the other can be met, because health involves balance and equilibrium exists where there is health.

A brief discussion is required on Article 5 of the emergency ordinance. These rights are seen differently by doctrine, on the one hand they are considered attributes of the right to a healthy environment (Duşcă, 2014: 62), possibilities that this law gives to "any person" (as an example, the property right has its attributes: the right to possess, the right to use, the right to dispose, and so does the right to a healthy environment – it has its attributes that "any person" can exercise or not) and on the other hand, other theorists regard them as procedural rights-guarantees (Duțu, 2007: 318). Although the theory that these rights provided for in Article 5 should be attributes of the property right is not without foundation, we tend to consider that these are in fact special legal rights-guarantees, institutional and procedural arrangements for the exercise of this right, for the following reasons:

In principle, fundamental rights and freedoms are protected both by their general guarantees, as well as by specific procedural guarantees (Deleanu, 2003: 101). As an example of general guarantees there are: exceptional and conditional restriction of these

rights (Article 53 of the Constitution), the absolute prohibition of suppressing them (Article 152 paragraph 2), subscription to areas that cannot be the subject of revision of the Constitution (Article 152 paragraph 1) etc. General institutional guarantees concern the constitutionality control, control over administrative activity and more. As for Article 5 of GEO 195/2005, interpreting grammatical text it can be observed the usage of the term "guarantee" and not of a phrase that can suggest the idea that right "is composed of..." or "consists in..." (as it is clear from the wording of the right to private property, for example) so it appears that the legislature intended that they be treated as rights-specific guarantees, not attributes, unique components of the right to a healthy environment.

Moreover, attribute means "inseparable appropriation of an object or phenomenon, without which the object or phenomenon can neither exist nor be conceived" (Romanian Academy, Linguistic Institute, 2016), or the right of association, the right to appeal to authorities and the right to compensation for the damage suffered are not unique attributes of the right to a healthy environment. Furthermore, the framework law provides among the principles and strategic elements that underline it: "the information and public participation in decision-making and access to justice in environmental matters" (Article 3 letter h), and as ways to implement the principles and strategic elements: "the education and awareness of the public, as well as its participation in the elaboration and implementation of decisions on the environment" (Article 4 letter p) and it does not consider them attributes of the right to a healthy environment.

Beyond how they are regarded as warranty rights or rights-attribute, it is obvious that they are the ones who determine how the right to a healthy environment must be perceived and how it should be attained and respected.

Access to environmental information, in compliance with privacy under the laws in force (Article 5 letter a of the framework law)

This right to information is based on Article 20 of the United Nations Conference of 1972, which recommends governments to be concerned with increasing exchanges of information resulting from scientific research and provide each individual, both through education and through the availability of means and necessary information, equal opportunities to influence by oneself its environment, and Article 31 of the Constitution concerning the right of a person to have access to any information of public interest and Article 51 of the Basic Law, according to which citizens are entitled address to public authorities by petitions, and the authorities have an obligation to meet the terms and conditions of the law.

As shown, the regulatory framework for informing the public on environmental issues is well insured, problems occurring in connection with the interpretation and application of these rules. Usually, the state has an inertia to assume a positive and active role regarding information, due to several reasons that cannot be absolutely quantified (from a superficial interpretation of regulations to a lack of staff and adequate budget allocated to this activity). In a society dominated by a media bombardment with superficial information like "junk information", it is very hard for people to select, interpret and decide what information is relevant or not. Most often, the procedure for information on environmental issues is limited to a posting at the headquarters of the institutions so that the public, already oversaturated with garbage, irrelevant and unimportant information and accustomed by media to not make an effort in informing oneself, due to the transmission through all channels (printed, radio, TV, internet) of an enormous amount of information, does not have a real access to relevant information on environmental issues

unless the entities in the media decide that a problem regarding the environment is sufficiently important to draw attention[1]. Even if the public has access to information concerning the environment and participates in decision-making, it is possible for the state authorities not to present all the information on grounds of confidentiality and/or not to present the possible long-term effects of various actions that have an impact on the environment, there for the finality of these situations is the same: namely the absence of real information of the public in environmental issues. Or, as stated earlier, this is the very purpose of the right - to raise public awareness on potential problems and consequences and enabling to act accordingly, as emphasized every time the ECHR jurisprudence including in the Tătar case against Romania.

Therefore we believe, *de lege ferenda*, that it is necessary a review of legal norms, namely that the active role of the state in informing the public in environmental issues should be stronger highlighted by introducing the express obligation to make public these problems in all media channels, not just posting them at the headquarters of the competent authorities and there should be imposed an express obligation for those working in the media to allocate a required space for informing on such issues both at national and local level.

The right to associate in organizations for environmental protection (Article 5 letter b) of the framework law)

It is provided both by Article 40 paragraph 1 of the Constitution, which states that "citizens may freely associate in political parties, trade unions, employers and other forms of association" and by G.E.O. no. 195/2005. We should take into account also the provisions of the Government Ordinance no. 26/2000 on associations and foundations[2], which in Article 1 states that "Individuals and legal entities pursuing certain activities of general interest or in the interest of communities or, where appropriate, in their private not monetized interest can constitute associations or foundations in the conditions presented by this ordinance." Through G.O. 37/2003 on associations and foundations Article 11 was introduced which also states that the protection of the environment and nature is of general interest, and that "the community interest is any interest which is specific to: a) a community: neighbourhood, city, administrative-territorial unit; b) a group of individuals or legal entities pursuing a common objective or the same opinions, the same culture, religious, social or professional orientation etc".

This right is closely connected with the right to information, allowing the public to act to protect the environment in an organized manner and not just at individual level. Moreover, this law overcame the problems of implementing the right to information by allowing those interested in protecting the environment and nature and in publicizing health and education to offset the inertia of the state we discussed about above, by promoting in the public consciousness environmental information that maybe, otherwise, would not have reached them. The only limits of this right are given by people's willingness to act and the possibilities of funding. Although, in Romania, we cannot say that we have an attitude of total involvement and interest in national and community affairs, this result being induced by a prolonged and constant education[3], however, such activities have been used successfully several times in raising awareness on major environmental problems. The most famous example is undoubtedly the case of the association Alburnus Maior, which is an N.G.O. based in Rosia Montana, Jud. Alba and represents the interests of those residents of Rosia Montana and Bucium who oppose R.M.P. and refuse to alienate their properties to make way for the mining project. It was

established on 8 September 2000 and opposes the pit mining project proposed by Rosia Montana Gold Corporation, due to social, environmental, economic and heritage reasons. The activity of the association (under the message Save Roșia Montana) consisted both in actively informing the local and national population on issues regarding that mining plant, but also in addressing petitions to administrative authorities and actions before courts to defend what they to be the right to a healthy environment (Ilie, 2010: 115). The association's campaign had a huge effect both at informing and procedural levels, being one of the decisive factors that led to stopping this more than controversial project.

The right of association, moreover, is closely linked to the right to consultation and to the right of addressing authorities and courts, allowing greater flexibility in terms of how to achieve it. We can say that this right is an instrument for achieving people's and communities' objectives to information in order to arouse the conscience of every citizen for environmental management, protection of the environment and their health, despite they can be "categorized in category of non-commercial professionals when carrying out economic activities, thus exploiting a lucrative enterprise according to the current Civil Code" (Smaradache, 2013: 101).

The right to consultation in decision-making regarding the environment (Article 5 letter b) of the framework law)

It materializes through strategic elements and modalities of their implementation of the law (*Article 3 letter h)* "[...] public participation in decision-making [...]" and *Article 4 lit. p*) "[...] his participation (public) in making and implementing decisions on the environment"), and the attributions of competent authorities provided corroborating *Article 20 paragraph 1* "the competent authority for environmental protection, together with other authorities of central and local government, as appropriate, ensure informing, public participation in decisions on specific activities and access to justice in accordance with the Convention on Access to Information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998, ratified by Law no. 86/2000[4]. At European level, we have, for example: Directive of the European Parliament and Council 2003/35 / EC of 26 May 2003 regulating public participation in drawing up certain plans and programs on the environment and another directives[5], all those setting the steps that states must take to make effective public participation to plans and programs. This kind of consultation is not specific jut to environmental law, but in other law branches as well, for example in urbanism law (Bischin, 2016: 125).

We believe it is extremely pertinent the observation expressed in the doctrine (Duşcă, 2014: 66) that "from normative acts mentioned above it results that this right of" any person "implies a passive attitude, someone else has an initiative, someone else has an active attitude; the competent authority for environmental protection, together with other authorities of the central government and local - Article 20 G.E.O. no. 195/2005; project owner - Article 21; The Regional Committee etc. "Any person or the public has the right solely to be consulted, to be asked about: decisions on development of the environmental policy and legislation, issuance of regulatory acts in the field, developing plans and programs". I agree with the idea that it should be required by *law ferenda* to be regulated the right of people "to take initiative to develop environmental policy and legislation, plans and programs etc."

The right to address directly or through organizations for environmental protection, to administrative and/or judicial, as appropriate, on environmental issues, whether or not there was a prejudice (Article 5 letter d of the Act frame)

This right is guaranteed and materialized in infringements of the right to a healthy environment in the Constitution and the G.E.O. 195/2005, where the Article 20 pt. 1, 5 and 6 provides that: "the competent authority for environmental protection, together with other authorities of the central and local public administration, as appropriate, ensure [...] access to justice [...]". "Access to justice for the public shall be according to legal regulations entered into force" and "non-governmental organizations promoting environmental protection have the right to an effective remedy in environmental matters, having locus standi". Beyond the rights already presented previously by *Law no. 86/2000 for ratifying the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998*, other regulation as *Government Decision no. 878/2005 on public access to environmental information* and *Decision no. 564/2006 regarding the framework of public participation in drawing up certain plans and programs relating to the environment* stipulates the ways in which the public can contest the decisions of authorities regarding information, drafting of documents, plans and projects with environmental impact and consultation and public participation to decisions about them. It can be seen that all the mentioned documents do not provide the right to appeal courts as a right by itself, but as a guarantor of those rights.

The right to compensation for damages

Regarding compensation, environmental law has a specific characteristic, given the social relationships and specific legislative provisions that protect them. Moreover, it distinguishes between different types of damage, each of them submitting to different legal rules. The starting point of compensation for harm suffered is the 'polluter pays' principle. Pollution is the act that leads to prejudice (tort/damage). This is defined by *G.E.O. no. 195/2005, at Article 2 pt. 51*, as the direct or indirect introduction of a pollutant that can harm human health and/or environmental quality, damage property or cause damage or hinder the use of the environment for recreation or other legitimate purposes. The pollutant is any substance prepared in solid, liquid, gaseous or vaporous or energy, electromagnetic radiation, ionized, thermal, sound or vibration form which, when introduced into the environment alters the equilibrium of its constituents and of living organisms and causes damage to material goods.

Regarding the prejudice, his legal situation is complex, so we make do with specifying that in accordance with Article 2 pt. 52 of G.E.O. no. 195/2005 prejudice(tort) is the quantifiable effect regarding cost of the damage effect on human health, property or the environment caused by pollutants, harmful activities or disasters. Hence, there are three types of damage: on human health, on goods and on the environment and, of these, according to Article 95 point 1, only liability for environmental damage is objective[6], independent of guilt. Interpreting logically, it results to other cases it is applied the classical theory of subjective liability based on fault/guilt, generating from the common law. It also states that in the case of multiple authors, the liability is joint and several.

Framework Law provisions are complemented by the G.E.O. no. 68/2007 on environmental liability regarding the prevention and remedying of environmental damage[7] which transposes in the Romanian legislation Directive. 2004/35/EC on environmental liability regarding the prevention and remedying of environmental damage.

Under this law, the notion of prejudice is also receiving more definitions, both for prejudice in general, as well as for prejudice regarding the environment[8]. Prejudice is defined in Article 2 pt. 12 as "a measurable negative change in a natural source or measurable impairment of a service concerning natural resource which may occur directly or indirectly" while in paragraph 13 are defined the types of harming the environment.

It is important to note that Article 4 of G.E.O. 68/2007 stipulates that it does not entitle individuals or private or legal entities the right to compensation as a consequence of environmental damage or of an imminent threat of such damage, and in these cases the common law is applied.

Holders of the right to a healthy environment

From the text of Article 35 of the Constitution and Article 5 of G.E.O. no. 195/2005, both using the expression "any person", it results that the holder of this right may be any person in Romania, which resides temporarily or permanently: Romanian citizens, foreign citizens and stateless persons, taken as individuals or as a community (the human species as a whole); they can also be holders of the right to a healthy environment for future generations. This right is recognized, for example, by regulations from Declaration of the Stockholm Conference (1972), the Rio Conference (1992), the G.E.O. no. 195/2005, Law no. 107/1996. All these rules are based on the idea of "human solidarity and common interest" for the sustainable development of environmental protection.

Conclusions

As it could be seen human right to a healthy environment appears as a paradox: on the one hand is obviously an absolute need in modern society and the rule of law, through the protection necessary following changes to intense environmental damage by human civilization, but on the other hand there are still problems of implementation. By competing with short-term benefits brought by an aggressive economic and social development, specific to our era, not once it lost the fight when it was weighed against it.

This struggle goes on many levels: legislation, enforcement, information, application and mentality of the people. It not once happened that application of that law to strike the opposition more or less overt of those who are uncomfortable with the limits that it imposes. Fortunately, the provisions of Romanian legislation are very comprehensive and covers the vast majority of relevant aspects of this right. Unfortunately, there are certain weak normative provisions (e.g. some limitations on the liability for environmental damage) that may hamper the effective enforcement of the rules. Also, because of its novelty (there are no well-established best practices) deficiencies appear in the enforcement of guarantee-rights such as the right to information or the obligation of state institutions to respond effectively to petitions on environmental issues. Lastly, in Romania it is not yet fully developed the "environmental consciousness" that would make people to be more responsible in this regard. Resulting from analysis carried out, without doubt, that the human right to a healthy environment is a fundamental human right, granted by the regulatory interest. Meanwhile, many times it happens that environmental policy be implemented without substance, the reasons being shown. General awareness of the importance of this right will cause the balance to tilt towards observance and the spectre of a law empty of content, a purely declarative form without substance will disappear.

References:

Academia Română, Institutul de lingvistică "Iorgu Iordan - Al. Rosetti" (2016). *Dicționarul Explicativ al Limbii Române*, second edition revised and expanded, Bucharest: Univers Enciclopedic Gold Publishing House.

Bischin, R. (2016). *Elemente de dreptul urbanismului în Romania și Uniunea Europeană, Legislație, doctrină și jurisprudență*, Bucharest: C. H. Beck Publishing House.

Deleanu, Ion: *Instituții și proceduri constituționale – în dreptul comparat și în dreptul român. Tratat*, Arad: Serv-Sat Publishing House, 2003.

Diaconu, M. (2006). Dreptul la mediu sănătos în constituţiile unor ţări ale Uniunii Europene. *Revista de Ştiinţe Juridice* (4), 96-102.

Dogaru, I., Dănișor, D.-C. (1998). *Drepturile omului și libertățile publice*, Chișinău: Zamolxe Publishing House.

Duşcă, A. I. (2014). *Dreptul mediului*, second edition revised and explanded, Bucharest: Universul Juridic Publishing House.

Duțu, M. (2007). *Tratat de dreptul mediului*, third edition, Bucharest: C. H. Beck Publishing House.

Ilie, A.- B. (2010). Mining Procedures and Environmental Protection in Romania. between Economical Benefits and Sustainable Development–a Case Study. *Journal of Advanced Research in Law and Economics (JARLE)*, volume 1, number 2, 115-119.

Rivero, J. (1982), Vers de nouveaux droits de l'homme. *Revue des Sciences morales et politiques*, (4), 673-686.

Smarandache, L. E. (2013). Calitatea de profesionist a comerciantului şi implicaţiile sale asupra sistemului judiciar naţional. *Acta Universitatis Lucian Blaga-seria Iurisprudentia*, (1),101-102.

Thieffry, P. (1998). *Droit européen de l'environnement*, Paris: Dalloz.

Ticu, M. S. (2016). Repere ale unei filosofii juridice a statului de drept. In Gîrleșteanu, G. (coord.), *Administrația publică și statul de drept*, Bucharest: Universul Juridic Publishing House, pp. 79-88.

[1] Most often those are private entities that operate information aiming for profit, so the significance of information always has an economic filter and not merely an information one. This kind of analysis can lead to a situation where information on environmental issues is not considered relevant in relation to other information fashionable, interesting and perhaps "selling" on very short-term, but useless in the long term.

[2] G.O. no. 26/2000 was published in Official Gazette no.39/2000, amended and completed by G.O. no. 37/2003 (Official Gazette nr.62, 1 February 2002), approved by Law no. 246/2005 (Official Gazette nr.656/2005), Law no. 305/2008 for amending O.G. no. 26/2000 on associations and foundations (Official Gazette no. 855, 19 December 2008).

[3] This kind of education is encouraged at Community level by provisions of point 4 from the Considerations of European Parliament and Council Directive 2003/35 / EC of 26 May 2003 providing for public participation in drawing up certain plans and programs on the environment and amending Council Directives Council 85/337 / EEC and 96/61 / EC with regard to public participation and access to justice by "public" understanding "one or more natural or legal persons ... their associations, organizations or groups of them" .

[4] Law no. 86/2000 ratifying the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus, June 25, 1998 provides in Article 6 Article 7 Article 8 ways the public can participate in decisions on specific activities (article 6, paragraph 3: "public participation procedures shall include reasonable time limits for the different phases,

allowing sufficient time for informing the public and sufficient time to it to prepare and participate effectively during the decision-making process", paragraph 4: "each party shall provide for early public participation when all options are open and can be an effective public participation"), practical measures to ensure public participation in the preparation of plans and policies related to the environment and public participation during the preparation of implementing regulations and legal instruments binding regulations generally applicable. For aspects of public consultation, the Law was enforced by Government Decision no. 564/2006 regarding the framework of public participation in drawing up certain plans and programs relating to the environment.

[5] Directive 2012/18/EU of the European Parliament and the Council from 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82 / EC (OJ L 197/1, 24/7/2012).

[6] It's provided in paragraph 2 of Article 95 that, exceptionally, the liability can be subjective for damage caused to protected species and natural habitats.

[7] Ordinance was published in the Official Gazette no. 446 of 29 June 2007 and was approved by Law no. 19/2008 (Official Gazette no. 170 of 2008). It was later amended by G.E.O. no. 15 of 25 February 2009 amending and supplementing G.E.O no. 68/2007 (Official Gazette no. 149 10 March 2009), Law no. 187 of 24 October 2012 implementing Law no. 286/2009 on the Criminal Code (Official Gazette No. 757 of 12 November 2012), Law no. 249 of 19 July 2013 (Official Gazette no. 456 of 24 July 2013) and Law no. 165 of July 22, 2016 on the safety of offshore oil operations (Official Gazette no. 572 of 28 July 2016).

[8] In the case of environmental damage is distinguished between damage to species and natural habitats, water damage and damage on the ground (Article 2, item 13 a, b and c).

Article Info

Received: November 2 2016
Accepted: November 29 2016