



"HENRI COANDA"  
AIR FORCE ACADEMY  
ROMANIA



"GENERAL M.R. STEFANIK"  
ARMED FORCES ACADEMY  
SLOVAK REPUBLIC

INTERNATIONAL CONFERENCE of SCIENTIFIC PAPER  
AFASES 2014  
Brasov, 22-24 May 2014

## FEW ASPECTS REGARDING THE PRINCIPLES OF ENVIRONMENTAL PROTECTION IN THE EU

Alexandru Florin MĂGUREANU\*

\*Faculty of Juridical and Administrative Sciences, Spiru Haret University, Brasov, Romania

**Abstract:** *Environmental law has a specific character, due to his interdisciplinary curriculum, as it contains elements of law but also elements that are specific to other sciences, as economics, ethics, civil law, criminal law etc. As a result of the fact the environmental issues are global in nature, environmental law must have, at its turn, an international character. It is therefore necessary for the environmental regulations to become uniform and compulsory (with respect towards diversity and principles such as the principle of subsidiarity) at a European and even global level. The first steps towards a unified environmental law are being made under the strong influence of some general principles.*

**Keywords:** *environmental law, European Union, principle, sustainable development*

### 1. INTRODUCTION

According to Constantin Noica [1], only the European culture, at least from our perspective, after it has experienced such different influences (Byzantine, Romano-catholic, Italian, French, Anglo-Saxon), has opened towards all the known cultures. As a result, we can assert that there are, in spite of the important differences (especially between Eastern and Western Europe), common cultural elements for all the member states, common values that are protected. Environmental protection is, with certainty, such a value.

Environmental law may be defined as the complex ensemble of juridical rules, which regulate the relations established between individuals, regarding their attitude towards the environment, as a vital element and support for sustaining life, in the process of using, in economic, social and cultural

purposes, its natural and artificial components [2] and also the relations regarding the protection, the preservation and sustainable development of the environment.

The general principle of environmental law is an idea with a high degree of generality, which is common for the environmental law protection system in its entirety, has the character of general and fundamental rule of law, and it is an expression of the essence of the environmental juridical rules. Some of the principles are expressly stipulated by the law, while others can be deduced by means of interpretations.

According to the Stockholm Declaration [3] 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.

## **2. National legislations, common principles and sustainable development.**

National legislations recognize the principles, as they are formulated in international treaties, principles that afterwards become part of national law (in a rough estimate, there are about one thousand international treaties that contain environmental references. Some international documents expressly refer to environmental principles: The Stockholm Declaration contains 26 principles (that must inspire and guide the efforts of humankind in order to preserve and improve the quality of the environment); The Rio Declaration [4] contains 27 principles and the Dublin Statement [5] refers to 4 guiding principles. Art. 6 of the Amsterdam Treaty refer to sustainable development, concept that was defined by the Resolution nr. 42/187 of the U.N. General Assembly as that type of economic development that ensures the present needs without affecting the possibility of the future generations to satisfy their own needs. The Resolution refers to measures that are meant to provide sustainable development, such as: preserving peace, reviving growth and changing its quality, remedying the problems of poverty and satisfying human needs, addressing the problems of population growth and of conserving and enhancing the resource base, reorienting technology and managing risk, and merging environment and economics in decision-making

The Charter of Fundamental Rights of the European Union [6] stipulates 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”. The principle is based on art. 3, para. (3) of the Treaty on the European Union and articles 11 and 191 of the Treaty on the functioning of the European Union, and also on the provisions of national constitutions [7].

In Romanian legislation there is a distinction between the means of implementing general principles and strategic elements. Art. 35 of the Romanian Constitution recognizes the right to a healthy environment.

## **3. The polluter pays**

“Pollution “ comes from the Latin “*polluero-ere*” and means to soil, defile, contaminate, make unclear or contaminate. The principle we analyze was first formulated in the OECD Recommendation nr. C (72) 128 from 1972. According to the principle, the polluter needs to pay for the measures taken by the public authorities in order to cleanse the environment. Without forcing the polluter to pay for his act, the society as a whole would have to pay in order to remove the effects of pollution. According to the principle, the persons that are generating pollution are forced to use filters, to adopt the latest environmental friendly technologies. Such measures can sometimes imply great costs for the polluter, however without this obligation, the “cost” for the environment would be a lot larger. The main objective of the international and European legislation regarding pollution prevention is to harmonize national legislations. The principle was recognized in the Single European Act (signed in 1986), title VII, art. 130 R, para. (2), which stipulates that environmental measures are based on the principle of preventing pollution at its source, remedy and on the principle according to which the polluter pays. The Rio Declaration reiterates the principle, at art. 16, according to which, the national authorities must make efforts in order to promote the internationalization of the costs for environmental protection and for the utilization of economic instruments, taking into consideration the approach according to which the polluter must cover, in principle, the cost of pollution, with regard towards the public interest and without affecting commerce and international investment. The principle was also recognized by The Paris Convention from 1992, according to which the polluter must cover the expenses for preventing, reducing and fighting against pollution.

**2. The principle of preventing of environmental risks and the occurrence of damage (precautionary principle)** According to the principle, there is an obligation to intervene before the harm is done, before any damages are done to the environment. It is



"HENRI COANDA"  
AIR FORCE ACADEMY  
ROMANIA



"GENERAL M.R. STEFANIK"  
ARMED FORCES ACADEMY  
SLOVAK REPUBLIC

INTERNATIONAL CONFERENCE of SCIENTIFIC PAPER  
AFASES 2014

Brasov, 22-24 May 2014

well known that the best way to fight pollution is to prevent it, meaning to evaluate all the possible risks and actions. Although implementing newest technologies, filters etc. (without involving excessive costs) can be very expensive, the costs that polluters would have to pay after pollution has occurred is generally much larger. Sometimes the effects on environment are irreversible. According to the Stockholm Declaration (art. 7), less developed countries should be helped in their fight against pollution, as the negative effects on environment are global. Art. 17 stipulates that national institution must plan, manage and control the main resources of the states, in order to improve the quality of the environment. Also the latest technical and scientific developments must be applied on a large scale in order to avoid and control environmental risks and to find solutions for environmental issues (principle 18). The measures undertake in order to prevent, control and limit natural disasters and diseases will be directed towards these scourges, while avoiding harming effects over the environment [9]. According to the Rio Declaration (preamble, para. 8): "To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies".

The principle was also invoked by the International Court of Justice [10], which stated that in environmental protection vigilance and precaution are imposed, especially considering the fact that the damages done to the environment are irreversible.

The principle is also of great importance due to the fact that pollution implies effects that are dangerous for the environment in ways

we cannot even understand at the present time, as it is impossible to evaluate the effects (in their totality) of even a single pollution act.

**4. The principle of conserving the biodiversity and the ecosystems specific to the natural biogeographic frame**

The natural resources of the Earth, including air, water, soil, flora and fauna (and especially the specimens that are representative for the natural ecosystems) must be protected for the benefit of the future generations, by carefully planning and managing (Stockholm Declaration, principle 2). Conserving biodiversity necessarily implies a careful monitoring, able to detect in due time any harm. Biodiversity is the diversity of the plants and animals from the nature. Sometimes the diversity of the habitats and the genetic diversity are also considered types of biodiversity. The ecosystem is a complex formed by living organisms, the environment, and all the interactions from a given space. Amongst the abiotic constituents of an ecosystem we can identify minerals, climate, soil, water, solar light and any other element that is not considered as "living".

The European Council has adopted an European strategy for conservation, in effect since 1990. In environmental policies, active and precautionary measures are preferred, rather than coercive and reactive ones.

The notion of "conservation" is becoming more and more linked with the one of "sustainable development". The measures of environmental protection are only effective if they are implemented over a long or at least medium period of time. Regarding the biotic factors (living), the principle implies the preservation of the flora and fauna for future generations. According to the Romanian Constitution [art. 135, para. (2), letter e)], the

state assumes the obligation to ensure the environmental protection, the conservation and the improvement of the environmental quality. A strong stimulant in order to protect the ecosystems and biodiversity is to give tax exemptions and compensations for the economical entities that are performing activities of ecological conservation and improvement. Another important aspect is to institute natural reservations, in order to ensure the survival of rare species and organisms, endangered to become extinct. In Romania the first law regarding environmental conservation was the Law nr. 213 from 1930, elaborated with the help of the world famous scholar, speologist and biologist Emil Racoviță. Based on this law the edelweiss and the thermal lily were declared monuments of nature. In Romania there are some of the most important natural reservations in Europe, such as the Retezat mountains or the Danube Delta.

According to the Rio declaration, the states have the sovereign right to exploit their own resources, but they also have the following obligations:

- to integrate conservation and the rational utilization of biological resources in the national decisions;

- to adopt legal regarding the use of biological resources;

- to protect and encourage the utilization of material resources according with their tradition and to allow the rational use of resources;

- to sustain local population in the development of remedying actions in the affected areas where diversity was reduced;

- to encourage cooperation between governmental authorities and economic agents in order to use the resources in a rational manner.

## 5. Conclusions

Environmental protection must be integrated in defining and applying the policies and the actions of the EU, especially in order to promote sustainable development. The principle of environmental protection was recognized by the EU and by the ECHR, which stated that the right to a healthy

environment is a part of the right to family and private life [11]. Environmental protection, as a principle was also recognized at a constitutional level, by most member states. According to the principle of subsidiarity, the EU will directly intervene when it is considered that measures undertaken at a communitarian level are more effective. The principle of prevention was recognized by the European Court of Justice in cases such as: Waddenzee, Castro Verde etc.

While environmental protection is a continuous a vital challenge for humankind alike, there are important steps that the EU has made in order to ensure a clean environment for future generations, although there are even greater and more important steps left to be made from now on.

## REFERENCES

1. C. Noica, Modelul Cultural European, Humanitas, Bucharest, 1993, p.9
2. D. Marinescu, Tratat de dreptul mediului, All Beck, Bucharest, 2003, p. 43
3. The United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, paragraph 2
4. The Rio Declaration on environment and development, 1992
5. The Dublin Statement on water and sustainable development, 1992
6. The Charter of Fundamental Rights of the European Union has entered into force in 2009
7. According to the Official explanations relating to the Charter of Fundamental Rights of the European Union.
8. Government Ordinance nr. 195/2005
9. World Charter for Nature, principle 12
10. C.I.J. Affaire Gabčíkovo-Nagymaros (Hongrie/Slovaquie) arret du 25 septembrie 1997
11. Powell and Rayner vs. United Kingdom