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Constitutional principles of environmental law in Romania:
enshrinement in the Constitution and jurisprudence of the Constitutional
Court**

Abstract

The consolidation of the right to a healthy environment as one of the fundamental human rights can be seen as a result of the enshrinement in the Constitution of Romania since its revision in 2003, as well as the interpretations offered by The Constitutional Court in its pertinent jurisprudence. The present study aims to review previous research results in the field of legal doctrine and case law pertaining to environmental law in Romania, as well as to continue the examination of the most relevant cases contributing to the consolidation of constitutional dimensions of the right to a healthy and ecologically balanced environment.

Keywords: environmental law, right to a healthy environment, fundamental laws, Romanian Constitutional Court, case law.

1. Introduction

The need to review and to evaluate the relevant legal doctrine and jurisprudence pertaining to the right to a healthy environment in Romania presents itself as a particularly welcome endeavour in the context of assessing the evolution and consolidation of its constitutional dimensions. Romanian scholarship¹ is unequivocal in characterizing this process as rather slow in its beginning phase, as opposed to the general legal movements in Western European states, and also to some other Central European states.²

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¹ Naming here only a few: Cobzaru 2011, 121–197; Duminică & Pârnu 2019, 563–569; Duțu-Buzura 2021, 74–103; Duțu 2014; Enache & Deaconu 2019, 357–380; Matefi & Cupu 2020, 86–93; Matefi 2014, 75–80; Mocanu & Mastacan 2009, 219–225; Mocanu 2013, 137–144; Moraru 2009, 76–79; Șaramet 2018, 634–642; Șaramet 2020, 29–40; Stârc-Meclejan 2014, 167–179.

² A synthesis on the evolution of constitutional processes in Central Europe is presented in Șaramet 2018, 634–642, while a detailed in-depth analysis is offered in the issue of the *Journal of Agricultural and Environmental Law* 15(31) (a thematic issue which aims to present the interface between environmental protection and constitutional law in Central Europe).



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Decisive turning points in the Romanian legal framework comprise the revision of the Constitution of Romania in 2003, so as to include the right to a healthy environment in the category of fundamental human rights, complete with other dispositions: the right to private property corroborated with the obligation of the owners in protecting the environment and the state's obligation in protecting the environment and maintaining a balanced ecology. In parallel with the constitutional revisions, the beginning of the new millennium marks also an increase in the field of environmentally related case-law of the Romanian courts.

Additionally, the consolidation of the constitutional dimensions of the right to a healthy environment in Romania must be understood in the more general and ample framework of Euro-Atlantic integration too, entailing a series of international conventions and treaties, all of which have played a significant role in shaping the national legal landscape. Suffice to name here only a few, like the EU Charter of Human Rights, enshrining in Art. 37 the principles to environmental protection: "*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 Kyoto Protocol committing industrialized countries and economies in transition to limit and reduce greenhouse gases emissions (1997); the United Nations Framework Convention on Climate Change (1992). A surge in the number of environmental jurisprudence of the Court of Justice of the European Union (CJEU), as well as a firm commitment at European level towards its implication in environmental and climate protection causes, supported by in-depth procedures in European environmental law need to be mentioned when detailing international impact on the challenges the evolution of Romanian environmental law has faced over the last decades.

All developments presented above need to be factored in when presenting the premises of the advancement of Romanian environmental rights with special regard to the status of constitutional environmental protections, but when discussing jurisprudential aspects, the interpretation offered by the CJEU in relation to Art. 8 of the European Convention of Human Rights in its case-law is of particular importance. The interpretation offered by the CJUE in its decisions points to the positive obligation of the states in protecting citizens against severe violations of the environment, here including also the relations between private persons. Another obligation of the states, in the interpretation of the Court, refers to the maintaining the balance between individual rights and public interest in restricting the right to a healthy environment, such as the economic welfare of a country.

The option for reviewing environmental jurisprudence in Romania through the optics of constitutional law is based in part in its status as an essential basis for the entire national law system, having a position where it accredits or repels all novelties, inventions or institutions in the field of law. The constitutional system is the first receptor and major filter for international juridical currents and progress of ideas towards their propagation into the national legal system. Interpretations of legal phenomena anchor frequently in the Constitution, taking into consideration its singular and decisive character, and constitutional references – the general framework of constitutional environmental law as well as its effect on fundamental liberties and rights

– are also to be found with a higher frequency in motivations offered by courts of law.³ The importance of a balanced relation between the Constitution and the environment is evident, but in the same time, it remains a highly topical issue, implying controversies and debates both in the public sphere, as well as in legal scholarship and jurisprudence.

Taking all these premises into consideration, a review of the environmental jurisprudence of The Constitutional Court of Romania (hereinafter ‘Constitutional Court’), corroborated with pertinent observations formulated in the legal doctrine offers a chance to assess whether the Romanian legal landscape has successfully assimilated the principles of a new social-environmental reality and further, whether the interpretations offered by the Constitutional Court have created the basis for a solid regulatory, jurisprudential and scholarly framework as a means to a new generation of Romanian constitutional environmental and climate law.

2. Sedes materiae

The right to a healthy environment is part of the third generation rights category, also called solidarity rights given that the states need to cooperate in order to ensure they are respected. Based on its juridical core values, the right to a healthy environment is a social-economic right.

The revised Constitution of Romania stipulates that the right to a healthy environment implies also an obligation, both for natural persons, as well as for legal persons. The right to a healthy environment presents a series of obligations to the state which has to construct a regulatory framework in order for this right to be properly applied. This particular right is also considered a positive right, taking into consideration that the state has to offer legal guarantees for ensuring a healthy and ecologically balanced environment. A healthy environment offers people the proper living conditions necessary for their unobstructed growth and guarantees the possibility to fully exercise other rights such as the right to a decent life, the right to health and the right to physical and psychic integrity.

The 2003 revision of the Constitution of Romania⁴ has resulted in the enshrinement of environmental rights and also obligations in three different articles, namely Art. 35 (Right to a Healthy Environment) and Art. 44 Para 7 (Right to Private Property) in Chapter II – Fundamental rights and freedoms, as well as Art. 135 Para 2 pct. e) and pct. f) in Chapter IV – Economy and public finance.

Article 35: Right to a Healthy Environment “1. *The State recognizes the right of every person to a healthy, well-preserved and balanced environment. 2. The State shall provide the legislative framework for the exercise of such right. 3. Natural and legal persons have a duty to protect and improve the environment.*”

Article 44: Right to Private Property “7. *The right of property compels to the observance of duties relating to environmental protection and insurance of neighborliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom.*”

³ Dușu-Buzura 2021, 76.

⁴ Law nr. 429/2003 on the Revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, nr. 758 from 29.10.2003.

Article 135: Economy “2. *The State must secure: e) environmental protection and recovery, as well as preservation of the ecological balance f) creation of all necessary conditions so as to increase the quality of life.*”

The connection between constitutional law and environmental law presents itself on multiple levels: the Constitution of Romania comprises legal norms that consolidate the principles of environmental law, such as the exploitation of natural resources according to national interest or creating the necessary conditions for decent life. Moreover, constitutional dispositions regarding fundamental rights and obligations for citizens incorporate the right to a healthy and ecologically balanced environment (and are completed by sectorial regulatory measures) and that the right to property implies obligations to protect the environment. Another link between the domain of constitutional law and that of environmental law can be seen in the fact that the principal bodies and institutions of the state mentioned in the Constitution are invested with general competences in the environmental sector and constitutional norms enshrine the core principles of specialized institutions of the sectorial policy, the Constitution also consolidating the principle of local autonomy and decentralized public services.⁵

The case law of Romanian courts in environmental matters is not particularly extensive; a 2014 in-depth review deems it ‘insignificant’ and ‘without notable results on the positive law’ but remarks the growing presence of environmental causes in the jurisprudence of the Constitutional Court.⁶

The Constitutional Court is the sole authority of constitutional jurisdiction in Romania, functioning independently of any other public authority. It functions as the ‘guarantor for the supremacy of the Constitution’, delivering – among other powers – decisions on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration. The Constitutional Court is composed of 9 judges, appointed for a 9-year term of office, which cannot be extended or renewed. The Constitutional Court carries out its activity in plenum and the acts of the Court are adopted by a majority vote of the judges, unless otherwise provided for by law. The quorum for the plenum is two-thirds of the number of judges. Judges must vote in the affirmative or in the negative, since abstention is not permitted.

In the present study, we will examine a selection from the jurisprudence of the Constitutional Court, pertaining to the legal guarantees of ensuring a healthy environment; the right to a healthy environment from three perspectives: obligations of natural persons, obligations of legal persons and obligations of the state (the environmental stamp); the right to a healthy environment in relation to the right of property.

3. Constitutional regulatory framework for environmental issues in Romania

As emphasized in the introduction to the present study, the consolidation process of the fundamental human right to a healthy environment, as well as the process of setting legal guarantees for the unhindered application of this right has been

⁵ Duțu 2014, 93–94.

substantially influenced by the ratification of international conventions in this field of law and by the Euro-Atlantic integration of Romania.

Though the need to recognize and to guarantee the right to a healthy environment has presented itself as an important topic after the fall of the Communist regime, the first democratic Constitution of Romania, adopted in 1991 did not yet validate it as a fundamental right. The text contained multiple references to environmental issues, introducing the obligation of the state to regenerate and to protect the environment, as well as maintaining the ecological balance, but such a partial recognition cannot be assimilated as constitutional guarantee of the right to a healthy environment.⁷

The enshrinement of the right to a healthy environment in the Fundamental Law of Romania took place in 2003, when the Constitution was revised and the national referendum has validated the new form. In drafting of the new legal norm, it is important to mention the Decision of the Constitutional Court regarding the constitutionality of the legislative amendment, stating the following: *“In order for the objective of the legislative amendment to be met, the Court considers that it is necessary that the human right to a healthy environment be inserted to Chapter II of Title II of the Constitution.”*⁸

Consecutively, the right to a healthy environment was formulated in Art. 35 (Right to a Healthy Environment), placed in Chapter II (Fundamental rights and liberties) of Title II (Fundamental rights, liberties and obligations) and structured in three paragraphs. Professor Duțu, one of the pioneers of environmental law in Romania argues that a more precise title for Art. 35 could have been ‘the right to a healthy environment and the obligation to protect it’.⁹

This article explicitly and independently declares the fundamental human right to a healthy environment (Art. 35 Para 1) and defines the role of the state (Art .35 Para 2), recognizing the power invested in state authorities for validating this right, and also assimilating the more general legal doctrine of considering environmental protection foremost a public duty.

The same cannot be said about the correlative obligation of natural and legal persons to protect and improve the environment (Art. 35 Para 3) as this disposition does not entail a self-supporting existence like the other fundamental obligations of citizens (these being featured in Title II, Chapter III – Fundamental duties). These two elements corroborated express the specific character of the new constitutional provisions where the fundamental human right to a healthy environment exists in parallel with the obligation of natural and legal persons to protect and improve the environment. This obligation exists only in relation to the right to a healthy environment, acting as its special guarantee.

⁶ Duțu 2014, 103–104.

⁷ Mocanu 2009, 219–225.

⁸ Decision of the Constitutional Court nr. 148/2003, Published in the Official Gazette nr. 317 of March 12, 2003.

⁹ Duțu 2014, 143.

It could be argued that an explicit formulation of the duties in protecting the environment would be in excess because the right to environment implies on one hand a positive obligation for the state to protect and an indirect obligation to constrain people in this respect. However, such a provision proves its utility not only as a psychological incentive (in eliciting from the public a sense of responsibility and a drive to action), but it acquires a legal signification too, elevating environmental protection to the level of fundamental duty.¹⁰

Other scholars share to a certain extent the critical observations formulated by M. Duțu and see the ambiguous formulation of Art. 35 as the result of a somewhat ‘rushed’ need for harmonizing domestic regulations necessary for Romania’s adhesion to the European Union.¹¹ An issue raised in this regard is the equivocal formulation of Art. 35 Para 1, as it can be considered as leaving room to interpretation: it may be interpreted that the holders of this right are all the natural persons on Romania’s territory (Romanian citizens, foreign citizens, or stateless persons), since it fails to stipulate whether it refers only to Romanian citizens or not. One may deem that this right is not circumstantiated by the principle of the territory where the law is to be enforced (since its holder can be any person residing on Romania’s territory, temporarily or permanently). Furthermore, some researchers feel that this ambiguity is leading to the assumption of a special dimension, which expresses the universality of the right to a healthy environment as a fundamental right.¹² However, the limits and features of a ‘healthy and ecologically balanced environment’ (the notion preferred and used by the lawgiver) are difficult to set. It is also the lawgiver, who, by regulating the maximum acceptable levels of pollution in the receiving environments (the norms of environment quality) and by setting the amount and concentrations of pollutants that may be released by a given source (emission norms), sketches the dimension of ‘healthy’ and ‘ecologically balanced’, since it is believed that as long as these norms are respected, the environment is ‘healthy’ and ‘ecologically balanced’.

Provisions in Art. 44 Para 7 also play a key role in defining the legal specificity of the right to a healthy environment, as this disposition interprets the relationship between the right to property and the right to environment. A direct result of these constitutional provisions are the limitations exerted by environmental regulation on the entire regulatory framework concerning property. According to scholarly literature, this constitutes a phenomenon of constitutional servitude in the purpose of public utility, determining a special legal regime adapted to the public necessities of environmental protection.¹³

¹⁰ Duțu 2014, 143.

¹¹ Ioniță 2012, 12.

¹² Ioniță 2012, 12.

¹³ Mocanu & Mastacan 2009, 225.

4. Strengthening the dogmatic of the right to a healthy environment in the jurisprudence of the Constitutional Court

4.1. The right to a healthy environment

Invoked exceptions of unconstitutionality have presented the Constitutional Court with multiple opportunities to interpret and to deliberate upon the right to a healthy environment and the guarantees of ensuring it.

Interpreting the dispositions comprised in Art. 24 Para 1(c) of the Government Decree nr. 98/1998 regarding the regulation and the administration of the national forest fund¹⁴ which state that *“reducing the forest surface in the national forest fund is forbidden except for the following situations: [...] c) the execution of works, installations and constructions necessary to manage the forest fund or in one’s own interest by the request of the owners and having the approval of the central public authority in charge of silviculture.”*

The author of the exception of unconstitutionality claims that the legal norm comprised in the dispositions cited below represents a violation of several constitutional dispositions regarding the supremacy of the Constitution, the respect of fundamental human rights as instituted by international treaties, as well as the right to a healthy environment.

In its assessment of the exception of unconstitutionality, the Court has found that according to Art. 2 of the Government Decree nr. 98/1998, the state is solely responsible for the economical, social and ecological exploitation strategy of the forests, irrespective of the holder of rights. Romanian forests are administered and managed in the framework of an integrated system, towards the general scope of their continuous exploitation, for the use of their ecological and social-economic utility both in the present as well as in the future. For the safeguarding of this principle, the dispositions in the Government Decree nr. 98/1998 formulate the definite interdiction of reducing the surface of the forests from the national forest fund. As exception from this general rule, the Romanian lawmaker has set out some exemptions, here being included the one criticized by the author of the exception on unconstitutionality (the possibility of reducing the surface of forests for the execution of works, installations and constructions necessary for the management of the forest fund or justified by the own interest of the rights holders of forest areas). In both situations, the lawmaker requires that these areas be removed permanently from the national forest fund, this procedure constituting a preliminary condition for the approval by the central public authority in charge for silviculture for the execution of work processes defined by law. Consecutively, it is the authority in charge for silviculture that holds the duty of monitoring the correct application of the law, in this case the obligation to verify if the conditions are met for deforestation and also the obligation to control the means in which works, installations and constructions necessary for the management of the forest fund or justified by the own interest of the owners are conducted.

¹⁴ Government Decree nr. 96/1998 regarding the regulation and the administration of the national forest fund, published in the Official Gazette nr. 122 of 26.02.2003, completed by Law nr. 120 of 2004, published in the Official Gazette nr. 408 of 06.05.2004).

The ultimate objective of this state control is to allow reduction of forest areas strictly when necessary and in full respect of the sectorial legal framework.

Having observed all these considerations, the Court has arrived to the conclusion that the legal dispositions invoked by the author of the exception of unconstitutionality respect the constitutional principles regarding the right to a healthy environment, the state deciding for this option to guarantee the legal framework necessary for its application.¹⁵

The jurisprudence of the Constitutional Court in environmental matters comprises also cases where the decision had to be passed both in observance of the constitutional right of citizens to a healthy environment corroborated with the obligation of the state to protect and implement the environment, as well as in relation to binding measures of European law (Art. 191 Para 1 of the Treaty on the functioning of the European Union, Directive 92/43/EEC the Council on the conservation of natural habitats and of wild fauna and flora, Directive 2009/147/EC the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds).

In regards to the first aspect of the issue in question, the Court finds that the modification of Art. 10 of the Emergency Government Decree nr. 57/2007¹⁶ is oriented towards the construction of natural protected areas, having to take into consideration, besides the interest of the local community, also the dispositions comprised in the general urbanistic plans. This is meant as a protective measure for land areas that are located within the built-up zone at the time of the creation of the protected natural areas, meaning they can be incorporated within the protected natural area only in strictly justified situations and following a thorough scientific assessment. The modification comprised in the legal text refers to the possibility of incorporating into the protected natural area also land from the urban built-up areas located in the proximity of territories that meet the criteria to qualify as protected natural areas as far as irrefutable evidence is presented regarding the necessity of such operations in a scientifically valid study.

Consequently, the new regulation ensures a just balance between the right of the community to a healthy environment and the requirements necessary for modifying the status from urban land to natural protected area, a procedure mandatorily based on scientifically valid research. In addition, the new law completes the dispositions regarding the modification on the delimitation of protected natural areas of national interest, introducing an exception to the general character of the dispositions validated in the legal framework: the removal of some surfaces from the interior land of the protected natural areas if, by 29 June 2007 (the date Emergency Government Decree nr. 57/2007 entered into effect) there were government decisions in place granting concession licenses for the exploitation of non-renewable mineral resources, based on

¹⁵ Decision of the Constitutional Court nr. 1200 of 13.12.2017, published in the Official Gazette nr. 60 of 25.01.2008.

¹⁶ Emergency Government Decree nr. 57/2007 regarding the regime of natural protected areas, conservation of natural habitats, wild flora and fauna, published in the Official Gazette nr. 442 of 29.06.2007.

the current mining law framework. This exception is designed to operate in the conditions set by the new regulation. The removal of some surfaces from the interior land of natural protected areas takes place following the request of the license holder, under the following conditions: (a) presentation of a copy of the decision by the government regarding the granting of a concession license of mining exploitation; (b) the creation at the initiative and the expenses of the requesting party of a compensation land that is equivalent in surface to the one removed from the interior land of the protected natural area, amended with a 100 m wide buffer zone extending the whole length of the neighboring land strip; (c) evidence regarding the property title of the surfaces designated for compensation: sales contract or land exchange contract, donation, concession or other documents attesting property, or the written accept of the owners regarding the inclusion of land to the protected natural area; (d) documentation finalized in STEREO 70 or GIS applications regarding the limits of the surfaces introduced to or removed from the interior of protected natural areas; (e) administrative documents provided by the head of the central public authority in charge for environmental protection, in cases where the supplementary surfaces meet the criteria in place for designating protected natural areas under the provisions of the legal framework instituted by Emergency Government Decree nr. 57/2007.

Having deliberated on all the above presented arguments, the Court decides that the verification of the cumulative fulfillment of conditions set out by the new law is subsequent to the main condition. Specifically, this refers to the requirement that the removal from the land of the natural protected area comprises a surface for which, by the date the pertinent legal provisions entered into effect, the government approved concession licenses for the exploitation of non-renewable mineral resources, based on the current mining law framework. The Court found that this new law removed from under the jurisdiction of Emergency Government Decree nr. 57/2007 situations existing *de facto* and *de jure* before the legal novelty entered into effect (the mining law in effect at the time conferred a different legal regime to these situations). As a matter of fact, starting with June 29, 2007, the dispositions of the Emergency Government Decree came to be applied retroactively and voided previously valid legal documents (concession licenses for the exploitation of non-renewable mineral resources). In this aspect, the law modifying the Emergency Government Decree presents a character of reparations, introducing for future reference an exception from applying the dispositions of the acting legal norm to situations previously governed by different, sectorial regulation.

On the other hand, the law introduces a series of conditions the license holder of the exploitation of non-renewable mineral resources, in order to grant permission to remove some surfaces from the interior land of natural protected areas and to bring to fruition the concession contract legally signed with the state. In doing so, there are some incumbent duties, such as the creation at the initiative and the expenses of the requesting party of a compensation land that is equivalent in surface to the one removed from the interior land of the protected natural area, amended with a 100 m wide buffer zone extending over the whole length of the neighbouring land strip.

Should this compensation land strip not be provided, the concession license holder loses its right to exploit the land inside the natural protected area and the land in question remains governed by the legal regime on the conservation of natural habitats and of wild fauna and flora.

The Court draws attention on the fact that by introducing provisions on the delimitation of protected natural areas of national interest, the modifications in place ensure the legal framework necessary on one hand, for every person's right to a healthy and ecologically balanced environment, and on the other hand, the free access of every person's right to an economic activity and also to free initiative within the legal premises. The Court emphasizes that in this case, given the importance of the thematic in question, the lawgiver has decided to create a legal framework in accordance with the provisions of Directive 92/43/EEC the Council on the conservation of natural habitats and of wild fauna and flora, Directive 2009/147/EC the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. The restrictive character of the provisions governing the exploitation of natural resources in natural protected areas is explicitly stated, placed within the framework of a regulated market under state monitoring, that is controlled by public authorities. This set of rules is enacted in order to provide a just balance between the general interest regarding the right to a healthy and ecologically balanced environment and the private interest of economic operators that have acquired concession licenses for mining exploitation. As such, this set of rules features the adequate and necessary particularities for the fulfillment of the objectives they were created for.

In examining the alignment to European provisions, the Court finds that the national law-making process has achieved its goals and has provided a valid legal framework to express the core principles of the two directives, while also reconciling legitimate but concurring interests and managing in the end to consolidate the national regulatory framework in the field.

In the legal context of both national as well as European regulation, the fact that the lawmaker chose to exert legal norms over situations that had no applicable dispositions under the previous legal regime cannot be seen as a constitutional impediment.

With regards to the criticism expressed towards the mandatory respect of European legal acts, the Court has stated in several of its decisions that *“using a European legal norm in the framework of constitutionality control, as a norm interposed for reference, implies, on the basis of Art. 148 Para 2 and Para 4 of the Constitution, a cumulative condition: on the one hand, this norm should be sufficiently clear, precise and unequivocal by itself, or its definition should be sufficiently clear, precise and unequivocal interpreted by the Court of Justice of the European Union, on the other hand, the legal norm should assimilate a certain level of constitutional relevance, so that its normative content could override a possible breach by the national law of the Constitution, which is the single direct reference norm in the process of constitutionality control. Under these circumstances, the endeavour of the Constitutional Court is different from a simple application and interpretation of the*

*law, comprising the power courts and administrative authorities are invested with, and it is also different from the control of legality on legislative acts by the Parliament of the Government.*¹⁷

Examining these premises, the Court has drawn the conclusion that the European legal provisions can be considered as clearly and precisely formulated, promoting the core value of the right to a healthy environment. Moreover, the Court states that the European legal norms in question protect the same fundamental values as the ones expressed in the Constitution of Romania, i.e. the right to a healthy environment. Thus, their constitutional relevance which could form the basis for a constitutionality control by indirect reference to the European norms, is absorbed in the content of the constitutional norm guaranteeing the protection of the fundamental right to a healthy environment. Following a control by the Court to assess the relevant constitutional provisions (Art. 35), it has been established that the law modifying the Emergency Government Decree complies with it, and so the Court decides that the arguments on the constitutionality of law corroborated with the constitutional provision expressly formulated are to be applied, Art. 148 of the Constitution being referenced in support of this decision.¹⁸

4.2. The right to a healthy environment – obligations of the state

The Constitutional Court has dealt with in a number of cases regarding the obligation of the state to ensure the safekeeping of the right to a healthy environment, these decisions referring to the legal characters of the environmental tax (a means of budgetary revenue created in the more general framework of implementing environmental tax reforms during the harmonization process inside the EU are).

In deciding over a case disputing the exception of unconstitutionality of the environmental stamp (tax) for auto vehicles, an obligation introduced by the provisions of Emergency Government Decree 9/2013 regarding the environmental stamp for automobiles,¹⁹ weighting on the existing jurisprudence, the Constitutional Court declared that the introduction of the environmental tax is based on the necessity of creating an environmental fund with clearly set objectives, this tax representing a parafiscal charge to be levied one single time. The Court also stated that the legal framework in granting the right to a healthy environment has been created by the provisions of Art. 35 Para 2 of the revised Constitution, and also, in accordance with Art. 1 Para 2 of Emergency Decree nr. 9/2013 of the Government of Romania, this tax constitutes a budgetary revenue to the Environment Fund and is to be used by the Administration of the Environment Fund to finance programs and projects in environmental protection.

¹⁷ Decision of the Constitutional Court nr. 668 of 18.05.2011, published in the Official Gazette nr. 487 of 08.07.2011; Decision of the Constitutional Court nr. 921 of 07.07.2011, published in the Official Gazette nr. 673 of 21.09.2011.

¹⁸ Decision of the Constitutional Court nr. 313 of 09.05.2018, published in the Official Gazette nr. 543 of 29.06.2018.

¹⁹ Emergency Government Decree nr. 9/2013 regarding the environmental stamp for automobiles, published in the Official Gazette Part I, nr. 119 of 04.03.2013.

Taking these arguments into consideration, the Court has drawn the conclusion that the dispositions made by the lawmaker have been justified by the need to fulfil an obligation enshrined in the text of the Constitution.²⁰

In another case, a request for exception of unconstitutionality of provisions was raised against provisions comprised in Art. IV of Government Decree nr. 16/2013 regarding the modification and completion of Law nr. 571/2003 on the Fiscal Code and the regulation of some fiscal-budget aspects.²¹ In its deliberations, the Constitutional Court has found that, in a similar way to the vehicle emission tax or to the vehicle pollution tax, the environmental stamp has been introduced by the lawmaker in order to fulfill its duties enshrined in the constitutional provisions of Art. 35 Para 1 and Para 2. The objective of these dispositions is to ensure the proper legal framework for the exercise of the right to a healthy and ecologically balanced environment. The creation of this type of tax aims to support the protection of the environment and the improvement of air quality, and also, to accommodate the values set by community field legislation. By way of consequence, the positive obligation of the Romanian state in creating a proper legal framework for the exercise of the right to a healthy and ecologically balanced environment is enabled precisely through the creation of such a tax and charging, according to a set of criteria, the auto vehicles for the pollution they emit. It is the opinion of the Court that this specific tax is the legal embodiment of the constitutional provisions formulated in Art. 35 Para 3, enshrining the obligation of natural and legal persons to protect and improve the environment.

The premises in this case reflect the conclusions of an earlier decision by the Court,²² regarding the pollution tax incorporated in the Emergency Decree nr. 50/2013,²³ where the judgment passed also extended over the problem of equity, stating that such a tax should be paid by the polluter. Thus, by way of consequence, these considerations also apply to this type of tax introduced by Emergency Decree of the Government nr. 9/2013, namely the environmental tax.²⁴

²⁰ Decision of the Constitutional Court nr. 118 of 10.03.2015, published in the Official Gazette nr. 318 of 11.05.2015; Decision of the Constitutional Court nr. 121 of 10.03.2015, published in the Official Gazette nr. 245 of 16.04.2015; Decision of the Constitutional Court nr. 127 of 10.03.2016, published in the Official Gazette nr. 433 of 09.06.2016; Decision of the Constitutional Court nr. 70 of 28.02.2017, published in the Official Gazette nr. 404 of 30.05.2017.

²¹ Government Decree nr. 16/2013 regarding the modification and completion of Law nr. 571/2003 on the Fiscal Code and the regulation of some fiscal-budget aspects, published in the Official Gazette nr. 490 of 02.08.2013.

²² Decision of the Constitutional Court nr. 802 of 19.05.2009, published in the Official Gazette nr. 428 of 23.06.2009.

²³ Emergency Government Decree nr. 50/2008 regarding the creation of vehicle pollution tax, published in the Official Gazette nr. 327 of 25.04.2008. Repealed.

²⁴ Decision of the Constitutional Court nr. 487 of 25.09.2014, published in the Official Gazette nr. 901 of 11.12.2014; Decision of the Constitutional Court nr. 40 of 21.01.2014, published in the Official Gazette nr. 140 of 26.02.2014.

The constitutionality of the vehicle pollution tax has been extensively examined by the Constitutional Court. The dispositions of Emergency Government Decree nr. 50/2008²⁵ have been analysed in a process for exception of unconstitutionality, referring both in general to the general framework of these dispositions, as well in particular to Art. 11 of the Emergency Government Decree. Concerning the inherent critics on the constitutionality of the Emergency Government Decree, the Court has emphasized the following: the positive obligation of the state to ensure a proper legal framework for the exercise of the right to a healthy environment is enabled precisely by the dispositions formulated in the contested Emergency Government Decree. This legislative act charges the auto vehicles for the pollution they emit, based on a set of criteria, and from a fiscal point of view, such a charge (the environmental tax) can be seen as giving expression in legal form to the obligations formulated in the text of the Constitution.²⁶

4.3. The right to a healthy environment – obligations of legal persons

The right to a healthy environment implies obligations also for legal persons, and the jurisprudence of the Court offers guidance in this sense. Examining exceptions of unconstitutionality raised in regard with provisions comprised in Emergency Government Decree nr. 195/2005,²⁷ the Court has found that provisions comprised in Art. 17 Para 3 and Para 4 of this Decree introduce sanctions for not respecting the obligations imposed by legally binding acts such as the environmental approval, the environmental authorization, and the integrated environmental authorization.²⁸ Failure to respect these provisions result in the suspension and ultimately, in the annulment of these acts. These sanctions have a different legal nature as opposed to penalties or criminal sanctions, given the possibility of their application irrespective of the determination of contravention liability or criminal responsibility.

Regarding the issue of sanctions in the field of environmental law, it is worth mentioning here that research literature also emphasizes the importance of judicial responsibility in this domain: it is considered to be another way of sustaining environmental protection and its improvement by applying more severe sanctions in this field. By sanctioning actions against the environment, the lawmaker also expresses its intention in educating both the parties receiving the sanctions, as well as other citizens, in order to raise ecological awareness for preventing pollution and improving environmental conditions.²⁹

²⁵ Emergency Government Decree nr. 50/2008 regarding the creation of vehicle pollution tax, published in the Official Gazette nr. 327 of 25.04.2008. Repealed.

²⁶ Decision of the Constitutional Court nr. 802 of 19.05.2009, published in the Official Gazette nr. 428 of 23.06.2009.

²⁷ Emergency Government Decree nr. 195/2005 regarding protection of the environment, published in the Official Gazette nr. 1196 of 30.12.2005.

²⁸ Decision of the Constitutional Court nr. 774 of 18.12.2014, published in the Official Gazette nr. 124 of 18.02.2015.

²⁹ Matefi 2014, 75–80.

In the case before the Court, the judges have arrived to the conclusion that these dispositions comprise legal guarantees against abusive application of the sanction to suspend the environmental authorization and to forbid the activities, but in the interpretation of the Court, these dispositions also comprise a method to be used by the lawmaker in providing the economic operators with the real possibility to abide the law, that is to respect the dispositions formulated in the environmental approval, the environmental authorization, and the integrated environmental authorization.

In examining the arguments presented, the Court states that the legal measures at the core of the debate cannot be separated from the general framework of the legal act, created under the auspices of the pertaining articles enshrined in the Fundamental Law, creating an obligation for the state to ensure the legislative context for the exercise of the right to a healthy and ecologically balanced environment, a fundamental right granted to every person. These provisions represent the legal basis for the obligations formulated in Emergency Government Decree nr. 195/2005, stating that every legal and natural person has the obligation to protect the environment, and, correspondingly, they need to respect the dispositions that are comprised in the ensuing regulatory framework. This decree introduces a precise list of cases where fines and sanctions are perceived, while also offering a definition of the terms and expressions formulated in the text of the legislative act.³⁰

The jurisprudence of the Constitutional Court offers other examples in regard to the obligations of legal persons to protect and improve the environment: deliberating upon another case of exception of unconstitutionality, the Court has examined the obligations pertaining to legal persons who produce, store, commercialize and/or use chemical fertilizers and plant protection products and use aerial applications in administering them. The obligation comprises the necessity to obtain beforehand the authorization from the authorities in charge with environmental protection, the authorities in charge with sanitary policies and also the county committees in charge with the melliferous base and nomadic beekeeping, after having published an information in the mass-media, otherwise the activities constitute contravention and is punishable by fines.

The Court interprets these dispositions as the expression of the lawmaker's intention to ensure the exercise of the right to a healthy and ecologically balanced environment. Moreover, Emergency Government Decree 195/2005 is based on these constitutional provisions in creating the general legal framework in the field of environment. Under the imperative of protecting the environment and ensuring the exercise of this fundamental right, certain obligations are conferred to natural and to legal persons. It is important here to make the distinction between obligations pertaining to property titles and property owners and the obligations pertaining to legal persons, or as is the case, economic agents that conduct activities affecting the environment. This is why the Court rules out the incidence of the provisions contained in Art. 44 Para 2 and Para 7 (constitutional provisions regarding the right to property and obligations of the owners).

³⁰ Decision of the Constitutional Court nr. 92 of 03.03.2015, published in the Official Gazette nr. 318 of 11.05.2015.

In conclusion, the Court states that the constitutional provisions regulating the right to a healthy and ecologically balanced environment and the dispositions in the sectorial legislation are not opposing in content.³¹

The jurisprudence of the Court presents also other examples pertaining to the obligations of legal persons in the field of ensuring the fundamental right to a healthy environment. An exception of unconstitutionality was raised towards the obligation of legal persons producing industrial recyclable waste as formulated in Emergency Government Decree nr. 16/2001.³² The provisions in this Decree state that for legal persons active in the field of activity detailed above, it is mandatory to ensure that environmental and public safety measures are respected and that the reintegration of the waste into the productive circuit is done following the standard procedures laid down in the text of the legal act. Examining these procedures, it becomes clear that the waste holder has the option of choosing one of the possibilities enlisted. The exception of unconstitutionality raised in this case refers to the procedure of dispensing recyclable industrial waste by specialized economic agents, authorized to recycle based on documentation of provenience. The author of the exception of unconstitutionality expresses the opinion that these dispositions violate the principles of freedom of trade and fair competition, enshrined in the Constitution (Art. 135 Para 1 and Para 2 pct. a)). The criticism towards the dispositions of the Emergency Government Decree formulated by the author of the exception of unconstitutionality comprised the allegations that this procedure creates in fact a monopole for the activities of economic operators specialized in and authorized for the recycling of industrial waste, taking into consideration that only economic agents authorized according to the dispositions of the legal act have the possibility both to dispense as well as to exploit recyclable industrial waste. It is also the opinion of the author of the exception of unconstitutionality that the dispositions enshrined in the text of Law on competition nr. 21/1996³³ should apply to economic agents holding monopole for this type of activities, so as to prevent foul play with the prices.

After examining the arguments presented, the Court finds that the dispositions forming the object of controversy are not contrary to the Constitution, as the Emergency Government Decree provides legal persons operating in the field of industrial waste management with options regarding their chosen form of recycling industrial waste. Both legal persons ensuring collection of recyclable industrial waste from natural persons, as well as owners of recyclable industrial waste, that is legal persons active in the field of waste management, are obliged to conduct these activities fully respecting environmental and public safety measures and only based on authorization to exploit by the National Committee of Waste Management.

³¹ Decision of the Constitutional Court nr. 1084 of 20.11.2007, published in the Official Gazette nr. 848 of 11.12.2007.

³² Emergency Government Decree nr. 16/2001 regarding the management of recyclable industrial waste, published in the Official Gazette nr. 104 of 07.02.2007.

³³ Law nr. 21/1996 regarding competition, published in the Official Gazette nr. 153 of 29.02.2016.

The Court finds that any legal person holding industrial waste for recycling and willing to do so, is entitled to conduct such activities, but only in strict observance of the criteria laid down by the dispositions in the relevant sectorial regulation. It is the opinion of the Court that the legal dispositions do not create a monopole as claimed in the exception of unconstitutionality, but rather create the set of conditions for conducting activities in the field of industrial waste recycling. Also, these dispositions do not contravene the constitutional provisions regarding the right to the protection of health and the right to a healthy and ecologically balanced environment.³⁴

4.4. The right to a healthy environment – obligations of natural persons

Deliberating upon another case regarding the regulations comprised in Government Decree nr. 96/1998,³⁵ the Court has come to the conclusion that the dispositions comprised in the legal text establish obligations for the owners of forest areas and also sanctions for disrespecting them, the latter representing the object of the exception of unconstitutionality raised in this case. The strict observance of these dispositions is necessary to prevent massive tree felling and deforestation of the land, which would result in grave consequences for the environment and for the public health situation. These are the major interests that impose the criminalization and the sanctioning of the acts comprised in the legal dispositions, criticized by the author of the exception of unconstitutionality and thus, even if these actions are conducted by the owners of the forest areas, the restriction of the right to property is in this case in full conformity with the constitutional provisions regarding the right to a healthy environment.

The Court emphasizes that the restriction of the right to property in case of forest land areas, enacted by means of criminalizing the cutting of trees, plants and seedlings by the owners without approval takes into consideration the constitutional provisions regarding the right to a healthy environment.³⁶

Another example for the obligations imposed on natural persons regarding the right to a healthy and ecologically balanced environment are to be found in a decision of the Court focused on the dispositions comprised in Law nr. 107/1996.³⁷ In the interpretation of the Court, this law establishes a framework for conserving, protecting and improving the marine environment and so the violation of these dispositions constitutes contravention or crime, to be sanctioned accordingly.

Based on the Fundamental Law, referenced also by the author of the exception of unconstitutionality, local councils and city halls function legally as independent administrative authorities and in this capacity are responsible for managing public affairs in cities and villages. The principles of public local administration as enshrined in the Constitution, such as the principle of decentralization, local autonomy and deconcentrated public services, cannot be interpreted as investing authorities of local public administration with the power to make decisions autonomously, nor as an absolute freedom to function, exceeding the limits of the existing legal framework.

³⁴ Decision of the Constitutional Court nr. 506 of 16.11.2004, published in the Official Gazette nr. 68 of 20.01.2005.

On the other hand, the act of exercising legal attributions of verification and control over the way administrative-territorial units respect legal provisions cannot be seen as violation of the principle of autonomy which offers the basis for their functioning.

Thus, the Court states that the obligations defined in the Law on water are not incumbent on administrative-territorial units, because the field controlled by inspectors from the National Water Resources Management Program is not the property of the legal person, but the public property of the state. This statement should be corroborated with the explicit obligation to protect and improve the environment, enshrined in the Constitution, which affects all legal and natural persons. Moreover, public property is guaranteed and protected by law and belongs to the state or to the administrative-territorial units.³⁸

4.5. The right to a healthy environment in relation to the right to property

The jurisprudence of the Constitutional Court comprises multiple cases focusing on the right to a healthy and ecologically balanced environment in relation to the right to property, and a synthesis of the pertinent case-law is offered in a study by Duminičă & Pîrvu.³⁹ The examination of the decisions implying these two factors reveals a common feature in the pertinent case law, indicating that in the Court's opinion the legislator has the competence to establish an appropriate legal framework for the exercise of the attributes of the right to property, without harming the general or particular legitimate interests of other subjects of law, thus stating a few reasonable limitations of its performance.⁴⁰ In accordance with the principle of proportionality, the limitations brought to the right to property shall be reasonable. It means that those limitations shall have to be appropriate for guaranteeing this fundamental right. Also, by applying the principle of proportionality in the area of the protection of the right to property, the Court has stated that it refers to the compliance with the obligations in the area of the environment protection, obligations established for general interest. Thus, the state is authorized to establish norms for the protection of agriculture, silviculture, domestic animals etc. The Court has also underlined that these norms are constitutional for as long as the obligations stated are reasonable.

The study cited above presents the example of a case focusing on the dispositions of Government Decree nr. 195/2005.⁴¹ The object of the criticism raised under the form of request for exception of unconstitutionality comprised the limitation of the right to property, perceived to be unjust because of the sanctions for changing the destination of the surfaces set as green spaces and/or as such foreseen in the

³⁵ See *supra*, footnote 14.

³⁶ Decision of the Constitutional Court nr. 114 of 11.03.2004, published in the Official Gazette nr. 276 of 30.03.2004.

³⁷ Water Law nr. 107/1996, published in the Official Gazette nr. 244 of 08.10.1996.

³⁸ Decision of the Constitutional Court nr. 497 of 06.05.2008, published in the Official Gazette nr. 407 of 30.05.2008.

³⁹ Duminičă & Pîrvu 2019, 563–568.

⁴⁰ Duminičă & Pîrvu 2019, 565.

⁴¹ See *infra*, footnote nr. 27.

urbanization documentation, the reduction of their surfaces or their relocation, irrespective of their legal regime.

The Court has found that the dispositions of the disputed Government Decree have been adopted in spirit of the relevant constitutional provisions. Moreover, the protection and guaranteeing the right to a healthy and ecologically balanced environment, as enshrined in the Fundamental Law, represent also the purpose of the legal text in question. In the vision of the Court, the right to property invoked by Art 44 of the Constitution is not absolute, aspect emphasized over time in its jurisprudence.

Also, the Court argues that “*the limitation of the exercise of the right to property (...) also has a moral and social justification, given that the rigorous compliance with these norms represents a major objective for the protection of the environment, thus of the existing green areas, having a direct connection with the level of public health, which represents a value of national interest.*” By way of consequence, the Court dismisses the exception for unconstitutionality and states that the dispositions criticized in the legal act are not contrary to the core values of this right, as they establish only an objective and reasonable limitation, in accordance with the fundamental rights.

Another decision of the Court can be brought up here as an example to illustrate the dynamics between environmental exigencies and right to property.⁴² The author lodging in the request for exception of unconstitutionality has claimed that the dispositions comprised in Law nr. 46/2008⁴³ are unconstitutional because they violate the right to property, as the dispositions in question require natural persons, owner of forested areas, to provide guard services through a forest district. In the examination of evidence brought before the Court, it has been decided that the constitutional provisions allow the legislator to state rules harmonizing the incidence of other fundamental rights with the property right in a systematic interpretation of the Constitution, so that they will not be suppressed by the regulation of the property right.⁴⁴ The Court expresses the opinion that the Fundamental Law allows the establishment of legal limitations to the property right with the purpose of protecting the public interests, such as the interest in sanitation and public health, the social, cultural-historical, urbanistic and architectural interests etc., with the condition that these legal limitations do not harm the very substance of the property right.

These considerations have determined the Court to declare that the dispositions in the disputed text of law refer to strict rules concerning the obligations of the owner of a forestry fund, regardless of the form of ownership, on the obligation of compliance with the forestry regime and the rules on environmental protection, of forestry arrangements, as well as other obligations. These obligations represent a legal application of the constitutional provisions regulating the right to environmental protection and assuring neighbourliness, the Court declaring that “*the virtue of the fact that*

⁴² Decision of the Constitutional Court nr. 541 of 12.07.2016, published in the Official Gazette nr. 834 of 21.10.2016.

⁴³ Law nr. 46/2008, regarding the Forest Fund, published in the Official Gazette nr. 611 of 12.08.2015.

⁴⁴ Duminică & Pîrvu 2019, 566.

*the forest represents an asset of national interest, the legislator has established a strict legislative framework in the area of the content of the property right over it.*⁴⁵

5. Conclusions

Case law is considered an auxiliary source of law, and European as well as international examples demonstrate its utility in imposing a series of fundamental principles of environmental law.⁴⁶ From the jurisprudence of the Constitutional Court of Romania, a series of decisions can be selected to the aid of law practitioners and scholars: the decisions made by the judges of the Court since the revision of the Constitution in 2003 and the enshrinement of the right to a healthy and ecologically balanced environment in the constitutional provisions, along with the duty to protect and implement the environment applicable on the state, legal persons and natural persons.

The argumentations and clarifications by the Court regarding the legal character, the definitional context, possible restrictions of this fundamental human right, as well as the extent of obligations also formulated by the legislator present a wide-ranging but unitary scale of interpretation. The Court has examined the notion of right to a healthy and ecologically balanced environment in relation to several sectorial regulations and has come to the conclusion in all the reviewed cases that the dispositions comprised in these regulations can be interpreted as the expression of the constitutional provisions (in fiscal acts, acts of local public administration, contravention liability and sanctions and such).

The reviewed jurisprudence presents also some common features as far as the constitutional basis or rapport to constitutional provisions and sectorial regulation is concerned: regulations have been aligned with the constitutional provisions stating the right to a healthy and ecologically balanced environment, and legislative acts adopted following the revision of the Constitution are anchored in the constitutional provisions, respecting the principles formulated in the text.

The case-law of the Court presents also the necessary references to European law and the alignment to provisions contained in the binding directives, concluding that the national legal framework manages to express the core principles enshrined in the European directives applicable in the field of environmental law.

Besides the conceptual context pertaining to the notion of right to a healthy environment, the Court has had the opportunity to offer interpretations also regarding the relation between right to a healthy environment and right to property, focusing mostly on the restrictions to the right of property, justified by the safekeeping of guarantees for the right to a healthy environment.

The right to a healthy and ecologically balanced environment is granted in the Constitution to all persons, which means that the holder of this right can be both individuals as well as communities, and in a parallel way, the exercise of this right can be made both individually as well as collectively.

⁴⁵ Duminică & Pîrvu 2019, 567.

⁴⁶ Cobzaru 2011, 121–127; Marcusohn 2011, 32–79.

The obligations for natural persons, legal persons and also for the state, formulated in the text of the constitutional provisions can be seen as the legal guarantees for the safekeeping of the right to a healthy and ecologically balanced environment.

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