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THE LEGAL REGIME CONCERNING THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT IN THE JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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CONTENT

CONCEPTUAL MARKINGS OF THE RESEARCH

Actuality temei de cecetare and importanța problemei abordate. In today's European society, the interdependence between the environment and human rights has become an emerging issue. The majority of the European population is currently affected, in one way or another, by various types of environmental damage. For example, according to the European Environment Agency, around 2030, up to 45% of Europe's urban population could be exposed to air pollution above the pollution limit set by the EU to protect human health [1], and up to 60 % of the population could be exposed to ozone levels exceeding the EU target value. In addition, it has been estimated that 20% of the population of the European Union is exposed to noise pollution [2]. Despite many efforts to promote the right to a clean and healthy environment and related regulation, official recognition and jurisdictional promotion of this right is very limited. Less important is whether it can be understood as a right derived from other substantive rights, as an autonomous substantive right in itself, or as a group of procedural rights. The highly decentralized and far too voluntarist international order is far more concerned with privileging commercial imperatives than protecting human rights and environmental values. However, we may be approaching an unusual opening for change. A variety of civil movements, new types of internet-influenced collaboration and governance, and neorealist schools of economics, environmental stewardship, and human rights are gaining credibility and followers—locally, nationally, regionally, globally—and converging toward implementing a new way of perceiving the role of healthy environment for humanity .

Description of the situation in the research field and identification of research problems. The convergence of human rights and environmental rights points to a new paradigm in law, but also in economics and governance, which could provide a new practical way to reaffirm the human right to the environment as a rights-based ecological governance [3]. Unlike the phrase "right to a healthy environment" - a theoretically appealing but operationally undetermined concept - the human right to ecological governance would be anchored in a rich history of collective consciousness, well defined both from the perspective of substantive law and jurisdictional procedure. The human right to ecological governance could help to protect natural sites and their related rights, which we inherit jointly and freely, which in order to be passed on to future generations need to be managed democratically, both in terms of nature itself, as well as natural resources, in accordance with the principles of human rights .

The purpose and objectives of the thesis. ***The purpose*** of this study to analyze the legal regime regarding the human right to a healthy environment and the principles established by the

European Court in its practice regarding procedural human rights in environmental matters. In this context, the doctoral thesis analyzes the right to a fair trial, the right to effective remedies, the right to freedom of expression, by exemplifying the most important environmental cases brought before the Court of Justice of the European Union. The principles set out in these cases should be guidelines for all Council of Europe countries when dealing with the right of access to a court, the enforcement of final judgments, the right to an effective remedy and access to environmental information.

Research ***objectives :***

1. the theoretical study of the concepts included in the phrase "human rights to a healthy environment";
2. evaluating the institutional relationship between human rights and the right to a healthy environment in international institutional practice;
3. analysis of trends regarding the recognition of the human right to a healthy environment in international and national legal practice;
4. analysis of EU legal regulations regarding the human right to a healthy environment;
5. analysis of the role of the ECHR and ECJ regarding the establishment of the normative framework of human rights to a healthy environment;
6. the study of jurisdictional peculiarities regarding the practical implementation of the human right to a healthy environment at the EU level;
7. the study of the judicial dialogue between the ECHR and the ECJ regarding cases of violation of the human right to a healthy environment;
8. the analysis of some divergences of opinion in the treatment of cases of violation of the human right to a healthy environment;
9. analysis of case studies;
10. elaboration of theoretical recommendations regarding the interpretation of some aspects related to human rights to a healthy environment .

Metodologia de cercetare. This research covers an analysis in a fairly new field, namely, that of international human rights law in relation to the field of the environment and human rights to a healthy environment. Specifically, this research is conducted by studying and analyzing the jurisprudence of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) related to environmental "harm"/destruction and its correlation with human rights violations .

Scientific novelty and originality a rezultatelor obținute. One of the objectives of this research is to determine whether the prominence of European standards regarding the human right to a healthy environment, compared to other legal systems, can also be maintained when

environmental protection through human rights legal mechanisms is discussed. This can be done by analyzing the jurisprudence of the two regionally important courts that have issued decisions in this area, namely the ECtHR and the ECJ. In this sense, to see if the two courts have different standards when evaluating a case, the analysis of the jurisprudence will try to answer the question: what is the level of impact on the environment beyond which it is considered that we are in the presence of a violation of rights man? In order to bring a claim before either of the two courts in environmental damage cases, claimants must have been directly affected by the alleged harm, meaning that the courts have a high threshold of damages in mind to allow a claim to be considered .

Important scientific problem solved. This research covers an analysis in a fairly new field, namely, that of international human rights law in relation to the field of the environment and human rights to a healthy environment. Specifically, this research is conducted by studying and analyzing the jurisprudence of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) related to environmental "harm"/destruction and its correlation with human rights violations. Therefore, in most of these cases it is very difficult to meet the high standards imposed by the courts. In order to achieve these objectives, the research will focus on finding and analyzing the standards established by the two courts for environmental damage, which can be found in their jurisprudence, with the aim of understanding the trends identified in these judgments and what are the differences between their approaches . We will therefore identify the role that different interests play in the decision-making process before the two courts. In this case, we will basically analyze two different approaches regarding environmental rights: the human rights approach versus the business/economic approach .

Importanțatheoretical. There is some conflict between providing high protection for a healthy environment and, at the same time, offering the prospect of unlimited development of socio-economic sectors. Thus, the problem that arises here is to analyze how the courts manage to find a balance between the interests of environmental development in each of the cases brought before them, from the perspective of human rights to a healthy environment. To answer this question, we will examine how court-imposed standards conflict with development issues, particularly in relation to European states .

Application value a lucrării. The main objective of this paper is closely related to a more extensive and important issue than the issue of the right to damages resulting from violations of the right to a healthy environment, namely the need to find a balance between a healthy environment and the further development of our society. The need to achieve this balance will result from the jurisprudence of national courts. From this perspective, the research will focus on identifying how this balance was achieved through the jurisprudence of the two institutions,

the most important courts in Europe regarding the defense of human rights in relation to a healthy environment. The novelty of the approach consists in appealing to arguments related to sustainable development, in the context in which one cannot talk, today, about environmental rights, especially in European society, without also referring to development, as a fundamental human right. In other words, in the process of developing society from a socio-economic point of view, the issue of the right to a healthy environment becomes an inherent one .

The main scientific results submitted for support: The jurisprudence of the European Court of Justice (CJEU) on environmental issues is vast, both quantitatively and qualitatively. According to a rough estimate, this includes more than 700 judgments relating to more than 50 different Community normative acts, which regulate, directly or indirectly, environmental matters, as well as measures taken at national level in the field, general principles and treaty provisions .

For these reasons, the thesis focused on two aspects. The first aspect concerns what is probably the main task of the CJEU in this area: balancing the often contradictory requirements of market integration with those of environmental protection, both at national and Community level. The most relevant decisions of the CJEU in this field were discussed, in order to elaborate the standard model of environmental protection through the human rights system. Based on this jurisprudence, we have identified some of the key elements of the CJEU's general environmental position.

Then, some more general aspects of the functions of the CJEU and the special role of the CJEU in the application of the Community environmental policy were discussed. This study aimed to analyze this trend of CJEU jurisprudence, by comparing it with the European Convention of Human Rights [4], as a result of which we could conclude that the ECHR's tendency to correlate with CJEU jurisprudence is a natural extension of the interpretation given by the Court of the European Convention on Human Rights .

The implementation of the scientific results of the research may consider the implementation of measures such as: the need to expand the concept of "legal personality" in relation to human rights to a healthy environment; the need for epistemological diversification of concepts related to the environment in contemporary legal doctrines; developing semantic foundations and strategies regarding the environment and climate injustice/injustice.

Approval of scientific results: Principalele rezultate efectuate au fost prezentate și aprobate conferințe naționale și internaționale.

Publications on the topic of the thesis. The research results were reflected in the reports presented at national and international scientific meetings (colloquiums, conferences, congresses), as well as in a series of scientific publications, among which we list the most important:

- *Evoluția politicii comunitare în materia drepturilor omului la un mediu sănătos*. Materiale ale Conferinţei ştiinţifico-practice cu participare internaţională 17 mai 2019. Teoria şi practica administrării publice Chișinău, 2019. Pag. 431-438;
- *Consacrarea legislativă internațională a dreptului la un mediu sănătos și echilibrat ecologic.* Perspectivele şi Problemele Integrării în Spaţiul European al Cercetării şi Educaţiei Vol.6, Partea 1, 2019 Conferința "Perspectivele şi Problemele Integrării în Spaţiul European al Cercetării şi Educaţiei"6, Cahul, Moldova, 6 iunie 2019. Disponibil în IBN: 24 decembrie 2019. Pag. 143-152;
- *The right of Humans to a Heathy Environment, a Fourth Generation Human Right.* Postmodern Openings - Covered in: Web of Science (WOS); EBSCO; ERIH+; Google Scholar; Index Copernicus; Ideas RePeC; Econpapers; Socionet; CEEOL; Ulrich ProQuest; Cabell, Journalseek; Scipio; Philpapers; SHERPA/RoMEO repositories; KVK; WorldCat; CrossRef; CrossCheck. 2021, Volume 12, Issue 2, pages: 274-297 ; ISSN: 2068-0236 | e-ISSN: 2069-9387. DOI: https://doi.org/10.18662/po/12.2/308.
- *Theoretical considerations regarding the human right to a healthy environment*. Publicat în: JOURNAL OF ROMANIAN LITERARY STUDIES numărul 34/ 2023 (apariţie: 15 octombrie 2023), Editor: Institutul de Studii Multiculturale ALPHA; Editura Arhipelag XXI, ISSN: 2248-3004, Web site: http://asociatia-alpha.ro/jrls.php. Indexare Baze de date internaţionale: CEEOL, Global Impact Factor, Google Academic,Research Gate, Academic.edu, WorldCat, SSRN, BDD, OCLC, SJIFactor, Electronic Journals Library (EZB), Scilit.
- *The role of insolvency proceedings. the concept and characteristics of the insolvency procedure.* Publicat în: *JOURNAL OF ROMANIAN LITERARY STUDIES* numărul 34/ 2023 (apariţie: 15 octombrie 2023), Editor: Institutul de Studii Multiculturale ALPHA; Editura Arhipelag XXI, ISSN: 2248-3004, Web site: http://asociatia-alpha.ro/jrls.php. Indexare Baze de date internaţionale: CEEOL, Global Impact Factor, Google Academic, Research Gate, Academic.edu, WorldCat, SSRN, BDD, OCLC, SJIFactor, Electronic Journals Library (EZB), Scilit.

The volume and structure of the thesis includes: introduction, three sections, general conclusions and recommendations, bibliography of 408 titles, 140 pages of basic text.

Keywords: national security, migration, security policies, international security, illegal migration, threat, vulnerability, security sector reform, international migration, illegal migrants, migration policies.

THESIS CONTENT

In **the Introduction** , the actuality of the research theme, the aim and objectives of the thesis, the scientific novelty of the research, the applied value of the research are presented, a review of the grounds underlying the choice of the research theme, the analysis methods used and the manner in which the research carried out can be used as a starting point in the elaboration of theoretical studies or practical approaches by other law specialists.

In **Chapter I,** entitled *Theoretical and methodological aspects regarding the research of the legal regime regarding human rights to a healthy environment in the jurisprudence of the Court of Justice of the European Union* , it gives a more detailed description of the purpose of this research and will provide a brief overview of the methodology used for investigation. The 'environment as precondition' approach is a starting point that can provide the basis for a complex analysis as a way of framing the relationship between human rights and the environment. However, the lessons of sustainable development in some countries have shown, once again, that it is not always possible to avoid trade-offs and choices between competing priorities, including the priorities of promoting human rights and protecting the environment .

Section I.1., entitled *Theoretical considerations regarding the evaluation of the institutional relationship between human rights and the environment* , analyzes the issue of climate change, which has been on the international political agenda for some time. Thus, human rights to a healthy environment, according to some authors, in the first instance, refer to "a wide range of global phenomena created mainly by burning fossil fuels" [5]. These phenomena include global warming, but also rising sea levels, melting glaciers, changes in biodiversity and extreme weather events, which directly affect the natural living environment of hundreds of thousands of people. However, the attention of the international community has focused mainly on reducing global warming, which is defined as "the tendency of the temperature to increase throughout the Earth, since the beginning of the 20th century and especially since the end of the 70s, due to the increase in emissions generated by the burning of fossil fuels, starting with the industrial revolution" [6].

In the 2015 Paris Agreement, the world community committed to limiting global warming "above pre-industrial levels and aiming to limit growth to 1.5 °C" [7]. Governments had already made commitments to this end, through the 2010 Cancun Agreement, in which the imminent danger of global warming was officially recognized for the first time [8]. But the Paris Agreement [7] also contains a global action plan. The 2˚C target is widely regarded as the absolute limit to avoid the most devastating effects of climate change. In 2015, the global temperature has already risen by 1°C compared to the pre-industrial period of 1851-1880. Moreover, the IPCC

unequivocally clarified, in the Assessment Report [9], the link between human behavior and climate change: "human influence on the climate system is clear," it states, "and recent anthropogenic emissions of greenhouse gases are the biggest in history. Recent climate change has had widespread effects on human and natural systems" [9]. This report concludes that human rights are threatened by human economic behavior through the overexploitation of environmental resources.

In section I.2, entitled *Legal dimensions of human rights to a healthy environment* , we show that "environmental rights", as a legal phrase, are susceptible to interpretation in different ways. As noted by Shelton, the term can refer to rights to a healthy environment, but also to environmental rights [10]. In 1972, Christopher Stone [11] introduced the idea that nature itself has a number of rights, which are eligible to have a distinct position in the field of environmental law. This idea was put into practice by the state of Ecuador in 2008, when it included a chapter entitled "the rights of nature" in its new constitution. According to this thesis, the interpretation of the phrase "environmental rights" is the same as Shelton's definition; "the reformulation and expansion of existing human rights and duties in the context of environmental protection" [11].

An even more comprehensive definition is that environmental rights should be "rights understood as related to the protection of the environment" [12]. Environmental rights advocacy has been criticized for supporting an anthropocentric view of human beings as the most important species on the planet. Critics argue in favor of an ecocentric view, regarding all organisms as having equal value.

Section I.3., entitled *Trends regarding the recognition of the human right to a healthy environment in national and international legislation* , is dedicated to the analysis of the fact that, until now, the right to a healthy environment has not been incorporated into an international convention, but, at global level, it was reflected in various forms, in numerous constitutions and national normative acts. There is broad consensus among states that environmental protection is an important part of contemporary human rights doctrine for a number of traditional rights, such as the right to health and the right to life.

Over time there have been indications of the recognition and development of this right at the international level - for example, the Stockholm Convention of 1972 recognized that "man has the fundamental right to liberty, equality and adequate conditions of life, in an environment of quality, which enables a life of dignity and well-being and bears a solemn responsibility to protect and improve the environment for present and future generations" [13]. However, the UN has not appropriated this level of recognition of the right to a healthy environment [14] (The 1992 Rio Declaration only states that "human beings are at the center of concerns for sustainable development. They have the right to a life healthy and productive, in harmony with nature" [15]).

Chapter II , entitled *Rights and obligations regarding a healthy living environment at the EU level* , aims to analyze the decisions of the two relevant courts at the European level, ECHR and CJEU, and, at the same time, the relevant legal provisions for the jurisprudence of the courts. In the absence of an express mandate or a single institution with a clearly structured mandate, researchers and policymakers creatively use existing international legal instruments. Focusing on the confluence of human rights and the environment, they aim to rebuild the international environmental governance system at the national level, imbuing existing institutions with the capacity to effectively respond to pressing and multifaceted environmental and human rights challenges .

In section II.1., *Legal regulations on ensuring a healthy living environment at the EU level from the perspective of sustainable development* , we show that currently the European Union has a well-developed legislation in various fields related to the environment and, therefore, the European Court of Justice has an extensive jurisprudence in the matter environment [16]. The Single European Act (1986) [17] includes Articles 174-176 and Article 95, which make explicit provisions regarding the policy-making powers of the EU institutions in relation to environmental protection. The Maastricht Treaty (1992) [18] also recognizes, in articles 2 and 3, the evolution of law towards the sphere of environmental protection and affirms a new objective to promote economic development and sustainable growth that respects the environment. The Treaty of Amsterdam (1997) [19], in Article 6, provides that environmental protection requirements must be integrated into the definition and implementation of Community policies, in order to promote sustainable development.

Most EU environmental legislation is quite technical as it sets detailed technical and scientific standards. EU legislation covers all environmental sectors, which relate to water, air, nature, waste, noise and chemicals, and may cover issues such as environmental impact assessment, access to environmental information, public participation in environmental decision-making and liability for damage to the environment. This body of law is part of the European environmental acquis, an area in which EU legislation has grown significantly and is constantly improving [20].

The role of the ECHR and CJEU in establishing the legal framework regarding the human right to a healthy environment is the subject of analysis addressed in section II of this chapter. The European Court of Human Rights is an international court established in 1959 by the Council of Europe, founded in 1949. The Court has jurisdiction to rule in accordance with the European Convention on Human Rights [4] . The ECtHR rules on the claims of natural persons against states, when they invoke violations of the civil and political rights provided for in the Convention. The Court has been a permanent court since 1998, when Protocol no. 11 to the European Convention

on Human Rights [21], and which also offered the possibility for natural persons to refer directly to the Court.

The European Court of Human Rights has jurisdiction over the 47 member states of the ECHR system. In more than 50 years, the Court has issued more than 10,000 judgments, which are binding on the countries concerned [22]. The European Convention on Human Rights [4] is an international treaty signed by the member states of the Council of Europe in Rome in 1950, and which entered into force in 1953. Individual complaints are examined by the first chamber and are assessed for admissibility. Decisions of great importance can be appealed to the Grand Chamber. A decision of the Court is binding on the Member States and must be respected [23].

Along with the ECHR, the CJEU applies EU environmental policies in its jurisprudence, thus interpreting the texts of the treaties establishing the European Union and the European environmental directives. Together, these two courts make a decisive impact on the law in the states that are subject to both jurisdictions.

With regard to the *Particularities of the implementation of the Community environmental policy on ensuring the right to a healthy environment* , which are the subject of study of Section III of Chapter II, the EU judicial system is unique in its effectiveness, compared to all international and transnational courts. First, this is due to the direct effect of EU law, which allows affected persons – or environmental organizations, although they are subject to national rules, given that the place of registration of their status determines the national law applicable to them – to be compensated for environmental damage by their own national courts, due to the direct effect of some Community rules in the national legislation of the EU member states. In most cases, when a judgment is handed down by an international court - the International Court of Justice, the European Court of Human Rights or others - it will be necessary for the state concerned to be given a period of time to take all the necessary measures, including the adoption of any legislation necessary to be able to comply with the court order. Persons whose claims have been pursued before international courts may not have remedies in their national law and any legislation implementing the decisions of these courts may be considered to be prospective. This is not usually the case with the CJEU.

The judgments issued through preliminary rulings become immediately enforceable, if, as happens in many cases, the community measure is based on a community norm with direct effect in national legislation, and will be immediately applicable, even on the basis the proceedings before the CJEU. Furthermore, the CJEU ruling will be binding on all EU courts where the same legal issue is raised. Even if the Community provision does not have direct effect, the national court will be obliged to take all steps to interpret its own national legislation so as to give full effect to the Community provision. If this is not possible, the Member State will be

obliged to amend its legislation, but, in addition, the person wishing to rely on the Community provision will benefit from a remedy that anticipates this amendment: he may, immediately, in in accordance with the jurisprudence of the CJEU, to claim damages from the member state for any loss suffered.

Chapter III , entitled *The Jurisprudence of the Court of Justice of the European Union regarding human rights to a healthy environment* , will focus on the answer to the question regarding the existence and achievement through the jurisprudence of the courts of a balance between the need for high environmental protection and the need for the development of society (environmental infrastructure, environmental protection institutions, institutional interdependence between the economic sector and environmental protection). The research carried out in this chapter leads to the conclusion that, in order to incorporate environmental issues, the ECtHR focuses on the reinterpretation of human rights established in the Convention. However, the European Court of Justice focuses more on achieving effective sustainable development that can support the economy of EU member states .

The judicial dialogue between the European Court of Justice and the European Court of Human Rights regarding the establishment of the legal regime of human rights to a healthy environment is analyzed in section III.1. When addressing the issue of judicial dialogue between the European Court of Human Rights and the Court of Justice of the European Union, it is important to determine the common features between the two jurisdictions. Both courts are binding supranational or international jurisdictions. Their creation aimed at external judicial control over member states. Moreover, both courts were established to ensure compliance with the law of the treaties establishing them. At the same time, we should also analyze the crucial differences between the two judicial institutions [24]. It is important to show the evolution of the relationship between the Strasbourg and Luxembourg courts, before and after the entry into force of the Treaty of Lisbon [25].

Thus, it is useful to recall that the two courts were entrusted, at the beginning, with distinct missions: the Strasbourg Court was created to guarantee the respect of the rights enshrined in the European Convention on Human Rights, i.e. "to ensure the respect of the commitments assumed by the High Contracting Parties to the Convention and its protocols" [4], as provided by Article 19 of the Convention. Under Article 32 of the Convention, "the jurisdiction of the Court shall extend to all matters relating to the interpretation and application of the Convention and its Protocols" [4]. The Luxembourg court is not and never has been a human rights court. Its task is to ensure, in accordance with Article 19(1) TEU [18], that the lex terrae is respected in the interpretation and application of the Community Treaties. A crucial difference between the two courts lies in the respective courts' relationship with the Member States, which is reflected in the

nature of their judicial mission. In particular, the Strasbourg Court, in accordance with Article 53 of the Convention [4], aims to establish a minimum level of human rights protection in all member states. The Convention does not aspire to harmonize the different systems of protection of fundamental rights developed at the national level, but to ensure a common basis to which national legislations can relate .

Section II, entitled *Conflicts related to the exclusive jurisdiction of the CJEU/ECHR regarding human rights to a healthy environment* , analyzes the fact that the jurisprudence of the CJEU, a court that has exclusive jurisdiction for the interpretation of agreements concluded by the EU, sometimes overlaps with the exclusive competence of ECHR in interstate disputes [26], in accordance with Article 55 of the ECHR [4]. Article 55 of the ECHR provides: "With the exception of special agreements, the High Contracting Parties renounce to take advantage of treaties, conventions or declarations in force concluded between them in order to submit, by means of a request, a dispute arising from the interpretation or application of this Conventions, a different mode of regulation than those provided for in the aforementioned Convention". [4].

This provision leads to an exclusive jurisdiction of the ECHR regarding disputes between the parties to the convention under Article 33 of the ECHR [5, 27]. After the EU acceded to the ECHR, human rights conflicts between its member states or between the EU and a member state could be adjudicated by the CJEU (Articles 226 and 227 of the EC Treaty [18]) and the ECHR. Given that both courts would consider their exclusive jurisdiction, the question arises as to which court would have jurisdiction in such cases. Thus, a conflict of jurisdiction could arise . Unlike the jurisdiction of the CJEU, the jurisdiction of the ECtHR is not absolute, as it allows transactions between the parties to the Convention regarding disputes between them. A possible solution to this jurisdictional conflict would be to consider Articles 220 and 292 of the EC [18] as a "special agreement" between the Member States and the EU.

However, the question is whether it would be correct for these articles to be interpreted as being such an agreement. First, it can be argued that Article 55 of the ECHR [4] requires the conclusion of the special agreement between all parties to the convention. And secondly, it could be argued that Article 55 of the ECHR requires that the special agreement specifically refer to the ECHR . None of the conditions would be fulfilled by Articles 220 and 292 of the EC [18], since the EC Treaty is an agreement between only some parties to the Convention and is expressed in general terms.

According to the joint communication of Presidents Costa (European Court of Human Rights, ECHR) and Skouris (Court of Justice of the European Union, CJEU) "the accession of the EU to the Convention constitutes a major step in the development of the protection of fundamental rights in Europe" [28]. The EU member states enshrined the principle of this

accession in the Treaty of Lisbon [25]. "Although fundamental rights have already been recognized by the CJEU as general principles of Community law since the 1960s in cases such as Stauder [29] and International Handelsgesellschaft [30], the Treaty of Lisbon brings the extension of the protection of fundamental rights at the level of the European Union to a climax. First of all, human rights are now more deeply enshrined in the treaty as fundamental values of the EU" [28]. Second, Article 6(2) of the TEU provides for the EU's accession to the ECHR. And thirdly, the Charter of Fundamental Rights and Freedoms [31] annexed to the Treaty of Lisbon [25] has been given binding status in accordance with Article 6(3) TEU [18].

Section III, entitled *Case studies* , emphasizes the fact that the jurisprudence of the two EU courts (ECHR and CJEU) reflects the position of these two institutions regarding the connection between the environment and human rights, by arguing and motivating their decisions on issues inferred judgments. According to this jurisprudence, damage to the environment is strongly linked to the state of health of human beings, since pollution can lead to the violation of the right to health in various forms. The definition given by the World Health Organization, mentioned in the Preamble of the WHO Constitution, adopted by the International Health Conference in 1946, is that the state of complete physical, mental and social well-being is the absence of disease or infirmity [32]. In general, this view results from the jurisprudence of the ECtHR, which analyzes the actual violation / injury to a human right and which is caused by damage to the environment. Therefore, ECtHR jurisprudence is important when it comes to analyzing substantial violations of various human rights standards that are the result of environmental damage. However, the CJEU tends to give priority to the awarding of compensation after a violation of rights has occurred and less to the prevention of such violations.

As we reported in the previous subsections, EU legislation and, implicitly, CJEU jurisprudence do not correlate environmental protection with human rights protection in the same way as the ECHR. Thus, the most frequent link between EU legislation and CJEU jurisprudence concerns human health. This is one of the issues in which the CJEU has the competence to make decisions. The analysis of the CJEU jurisprudence can be fragmented into three different sectors dealing with environmental damage with an effect on human health: industrial pollution, noise pollution and urban / regional development.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Important scientific problem solved . When we look at the decisions of various international bodies with human rights competences around the world, it becomes clear that the use of human rights instruments to implement environmental protection norms is increasing. Given the rise in political and public concern for the environment, it is perhaps not surprising that people should look to human rights systems for remedies, as they have proven to be successful over the past 60 years. In addition, the CJEU's propensity to act when national authorities have disregarded national law adds a significant layer of protection to the application of national environmental law, as potential applicants are given an additional remedy in their effort to ensure compliance with the rule of law. Similarly , we have observed that, at the normative level, the combination of human rights instruments and environmental objectives is not contradictory. An analysis of the reasons supporting the implementation of environmental legislation reveals that environmental protection norms are consistent with human rights instruments.

The results obtained. The rich jurisprudence in the field of environmental issues is proof that environmental rights are gaining importance in the member states of the Council of Europe. The analysis of the judicial practice regarding the procedural rights of human rights indicates several conclusions:

1. In many environmental cases, the members of the trial panel do not have a common opinion on the solution that must be given to the case, formulating separate opinions - for example, in the case of Balmer v. Switzerland, according to the majority opinion, it was appreciated that " Article 6 is applicable only in cases of serious, specific and imminent environmental risks, if there is a sufficiently direct link between the environmental issues and the civil right or obligation" [33]. However, seven judges issued a separate opinion, holding that "Article 6 should be applicable and the applicant need not prove for the admissibility of the application that there is a risk or what its consequences are, but it is sufficient if there is a genuine conflict and serious as well as a real risk that causes damage. It may be sufficient, in order to establish that there is a violation, that there is a connection of the applicant's situation with a potential danger" [33]. The interesting fact in this case is that, before the European Court ruled, the Commission decided, in similar cases, that Article 6 had been violated.

2. In relation to environmental cases with fatal consequences, practice has emphasized that states have procedural obligations: to conduct an investigation into the cause of loss of life, to determine whether the public authority is responsible for environmental damage, and, in the event responsibility of a public authority, the state must provide compensation to individuals for material and human losses.

3. Regarding all environmental cases analyzed in the context of freedom of expression, we can conclude that the European Court places a great emphasis on the environment and health. It has been established that environmental issues are significant issues of public interest and, in accordance with the public interest, measures that interfere with the right to receive and provide information on environmental issues must be provided for by law, as long as they are circumscribed a legitimate purpose. Finally, in a democratic and pluralistic society, the state must ensure public debate and discussion of environmental issues, but this duty does not mean that the state must collect information and distribute it to the public .

The advantages and value of the proposed developments. International treaty bodies, regional courts, special rapporteurs and other international human rights bodies have instead applied human rights norms to environmental issues by "greening" existing human rights, including the rights to life and health . Explicit recognition of the human right to a healthy environment has proven to be secondary to the application of human rights norms to environmental issues.

At the same time, it is significant that the vast majority of countries in the world have recognized constitutional rights to a healthy environment, at the national level, or through conventions concluded at the regional level, or in both ways. Based on the experience of countries that have adopted constitutional rights to a healthy environment, we can conclude that the recognition of the right itself has proven to have real advantages. It helped raise awareness of the importance of environmental protection and provided a basis for more effective environmental laws. When the right was considered by the judiciary, it helped to create a climate of safety for the protection of traditional human rights and created opportunities for better access to justice. Courts in many countries are increasingly applying the right to a healthy environment, as illustrated in the documents and recommendations of the United Nations Environment Program and the Special Rapporteur .

The impact of the obtained results on the development of science. States may be reluctant to recognize a "new" human right if its content is uncertain. To be certain that a right will be recognized, it is important that its conceptual scope and implications are clear. Therefore, the human right to a healthy environment is not an "empty vessel" waiting to be "filled " . On the contrary, its content has already been clarified by the recognition by human rights authorities that it is necessary for humanity to benefit from a safe, clean, healthy and sustainable environment for the full realization of the human rights to life, health, food, water, shelter to.

Even without official recognition, the phrase "human right to a healthy environment" is already used to refer to the environmental aspects of the whole range of human rights that depend on a safe, clean, healthy and sustainable environment. Using the phrase in this way (and for that

matter, independently of the adoption of international instruments that expressly recognize the right) does not change the legal content of the obligations that are based on existing human rights law. However, recognizing an autonomous right to a healthy environment has real advantages, as it helps to raise awareness of the need for human rights norms to address environmental protection and emphasizes that environmental protection is on a par with other interests human rights that are fundamental to human dignity, equality and freedom. The recognition of this right also helps to ensure that environmental human rights norms continue to develop in a coherent and integrated manner.

Environmental protection in international law is one of the most challenging issues of the 21st century. The inability of the 2012 United Nations Conference on Environment and Development (UNCED, Earth Summit or Rio + 20) to generate a firm international commitment to protect the environment and limit the effects of climate change demonstrates the complexity of decision-making on environmental issues at the level legal. As with global social justice, global environmental justice is within the realm of international law. International law is defined and agreed upon by states and reflects their interests, which often do not coincide with the interests of the global community [34].

International law is the result of negotiation between states – the implication being that while international law must answer complex and important questions related to society and the environment, its answer is diminished by the dominance of the national interests of the most powerful states. However, in practice, human rights provide only a "weak" response to environmental challenges. So how do human rights play a role in addressing environmental issues? The answer to this question cannot be limited to the system of human rights as defined in national and international law, but must also extend to the institutions, instruments and practices of international law, to encompass the social, political, cultural and philosophical aspects of human rights, as an interdisciplinary regulatory subject of international law .

Recommendations:

1. **The need to expand the concept of "legal personality" in relation to human rights to a healthy environment.**

Addressing the issue of expanding the concept of "legal personality" should be considered an essential imperative for the achievement of environmental justice in relation to human rights - in part due to the role of the law in granting privileges to legal entities, which have allowed the accumulation of special economic power in the person of corporations, that influence environmental decisions, because the constitution of a "legal personality" of nature itself directly influences the fundamental commitments of states, which will implement efforts to prevent climate change and socio-economic injustice.

2. **The need for epistemological diversification of concepts related to the environment in contemporary legal doctrine**

Western thinking and mentality presupposes binary categorical reasoning and exclusionary implications based on liberal ideas have established the environment as a resource, as a means and not as an end in itself. Ultimately, it is the environment that provides life. It is not enough to treat the environment from the perspective of sustainable development, because, in essence, sustainable development presupposes a rational exploitation of resources. However, the environment must be seen as a "personality", a personality situated between the legal person and the natural person. Thus, it is necessary to research the problem of the environment multiculturally, and some indigenous mentalities and cultures even offer a more or less mystical vision of a "living environment".

3. **Developing semantic foundations and strategies regarding the environment and climate injustice/injustice**

Semantic environmental strategies should be found in the redefinition of corporate capital and prepare mutations in the definition of property right when it involves the environment. Here we refer to the notion of "climate injustice" that corporate ownership inflicts on the environment. Climate injustice explicitly points to the patterns that characterize the history and contemporary realities of a highly unequal global order and the relations of privilege and oppression that mark the overexploitation of environmental resources.

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ADNOTARE

PÎRVU Daniela, „Regimul juridic privind dreptul omului la un mediu sănătos în jurisprudența Curții de Justiție a Uniunii Europene", teza de doctor în drept, Chișinău, 2023.

Structura tezei constă în: adnotări (în trei limbi), listă de abrevieri, introducere, 3 capitole, concluzii generale și recomandări, bibliografie din 408 titluri și - anexe, 140 pagini text de bază, declarație de responsabilitate, CV-ul autorului. Rezultatele obținute au fost publicate în 5 lucrări științifice, unele indexate Web of Science.

Cuvinte cheie: supraviețuire ecologică, guvernanță ecologică, bunuri comune, drepturile omului, biocentrism, cooperare, subsidiaritate, precauție, ecocid, antropocentrism, hegemonie neoliberală, concurență, drepturile procedurale ale omului, drepturile asupra mediului, dreptul la un mediu sănătos, Curtea Europeană a Drepturilor Omului (CEDO), Curtea de Justiție a Uniunii Europe (CJUE)

Domeniul de studiu: drept

Vom analiza pe parcursul acestei cercetări zona jurisprudenței CEJ în domeniul dreptului la un mediu sănătos. Majoritatea cazurilor legate de stabilirea daunelor pentru atingeri aduse sănătății umane ca urmare a poluării și degradării mediului tratează mediul și relația acestuia cu sănătatea umană. Există, desigur, o întreagă problematică ce se referă strict la mediu, cum ar fi fauna, flora și așa mai departe, subiecte care sunt, însă, în afara scopului acestei teze.

Scopul și obiectivele tezei. Acest studiu își propune să analizeze regimul juridic privind dreptul omului la un mediu sănătos și principiile stabilite de Curtea Europeană în practica sa privind drepturile procedurale ale omului în materie de mediu.

Noutatea științifică a cercetării. Unul dintre obiectivele acestei cercetări este de a determina dacă standardele europene în ceea ce privește dreptul omului la un mediu sănătos, în comparație cu alte sisteme juridice, pot fi menținute și atunci când vine vorba de protejarea mediului prin mecanisme juridice pentru drepturile omului. Acest lucru poate fi obținut analizând jurisprudența celor două instanțe importante la nivel european care au pronunțat decizii în acest domeniu, și anume CEDO și CEJ. În acest sens, pentru a vedea dacă cele două instanțe au standarde diferite atunci când evaluează un caz, analizarea jurisprudenței va încerca să dea răspunsul la întrebarea: care este nivelul de impact asupra mediului dincolo de care se consideră că suntem în prezența unei încălcări a drepturilor omului? Pentru a depune o cerere în fața oricăreia dintre cele două instanțe în cazurile referitoare la vătămarea mediului, solicitanții trebuie să fi fost direct afectați de prejudiciul invocat, ceea ce înseamnă că instanțele au în vedere un prag ridicat al daunelor pentru a admite o cerere spre examinare.

Valoarea aplicativă a cercetării. Această cercetare va ajuta la stabilirea unor concluzii cu privire la poziția actuală a fiecăreia dintre cele două instanțe internaționale în evaluarea situației actuale a mediului și a relației dintre problematica de mediu și drepturile omului. Adică, se va stabili poziția lor în ceea ce privește perspectiva reinterpretării drepturilor omului în lumina preocupărilor de mediu, analizând aspectele în care se intersectează jurisprudența celor două instanțe și, în același timp, chestiunile cu privire la care apar contradicții.

Mai mult, obiectivul principal al acestei lucrări este strâns legat de o problemă mai extinsă și mai importantă decât problematica dreptului la daune rezultate din încălcări ale dreptului la un mediu sănătos, mai exact necesitatea găsirii unui echilibru între un mediu sănătos și dezvoltarea ulterioară a societății noastre. Necesitatea realizării acestui echilibru va rezulta din jurisprudența instanțelor naționale.

ANNOTATION

PIRVU Daniela, "The legal regime regarding the human right to a healthy environment in the jurisprudence of the Court of Justice of the European Union", Doctor of Law thesis, Chisinau, 2023.

The structure of the thesis consists of: annotations (in three languages), list of abbreviations, introduction, 3 chapters, general conclusions and recommendations, bibliography from 408 titles and - appendices, 140 basic text pages, statement of responsibility, author's CV. The obtained results were published in 5 scientific papers, some indexed in Web of Science.

Keywords: ecological survival, ecological governance, commons, human rights, biocentrism, cooperation, subsidiarity, precaution, ecocide, anthropocentrism, neoliberal hegemony, competition, procedural human rights, environmental rights, right to a healthy environment, European Court of of Human Rights (ECHR), Court of Justice of the European Union (CJEU)

Field of study: law

During this research, we will analyze the area of ECJ jurisprudence in the field of the right to a healthy environment. Most cases relating to the determination of damages for harm to human health as a result of environmental pollution and degradation deal with the environment and its relationship to human health. There is, of course, a whole range of issues strictly related to the environment, such as fauna, flora and so on, subjects that are, however, outside the scope of this thesis.

The purpose and objectives of the thesis. This study aims to analyze the legal regime on the human right to a healthy environment and the principles established by the European Court in its practice on procedural human rights in environmental matters. In this context, the doctoral thesis analyzes the right to a fair trial, the right to an effective remedy, the right to freedom of expression, through the most important environmental cases brought before the Court of Justice of the European Union. The principles set out in these cases should be guidelines for all Council of Europe countries when dealing with the right of access to a court, the enforcement of final judgments, the right to an effective remedy and access to environmental information.

The scientific novelty of the research. One of the objectives of this research is to determine whether European standards regarding the human right to a healthy environment, compared to other legal systems, can also be maintained when it comes to protecting the environment through human rights legal mechanisms. This can be obtained by analyzing the jurisprudence of the two important courts at European level that have issued decisions in this area, namely the ECHR and the ECJ. In this sense, to see if the two courts have different standards when evaluating a case, the analysis of the jurisprudence will try to answer the question: what is the level of impact on the environment beyond which it is considered that we are in the presence of a violation of rights man? In order to bring a claim before either of the two courts in environmental damage cases, claimants must have been directly affected by the alleged harm, meaning that the courts have a high threshold of damages in mind to allow a claim to be considered .

The applied value of the research. This research will help to establish some conclusions regarding the current position of each of the two international courts in assessing the current environmental situation and the relationship between environmental issues and human rights. That is, their position will be established regarding the perspective of the reinterpretation of human rights in the light of environmental concerns, analyzing the aspects where the jurisprudence of the two courts intersect and, at the same time, the issues regarding which contradictions arise.

АННОТАЦИЯ

ПЫРВУ Даниэла, «Правовой режим права челвеко на здоровую прточную среду в практике Суда Европейского Союза», доктор юридических наук, Кишинев, 2023.

Структура диссертации состоит из: аннотации (на трех языках), списка сокращений, введения, 3 глав, общих выводов и рекомендаций, библиографии из 408 названий и приложений, 140 страниц основного текста, сведений об ответственности, автобиографии. Полученные результаты были опубликованы в 5 научных статьях, некоторые из которых проиндексированы в Web of Science.

Ключевые слова: экологическое выживание, экологическое управление, общее достояние, права человека, биоцентризм, сотрудничество, субсидиарность, предосторожность, экоцид, антропоцентризм, неолиберальная гегемония, конкуренция, процессуальные права человека, экологические права, право на здоровую окружающую среду, Европейский суд по правам человека (ЕСПЧ), Суд Европейского Союза (CJEU)

Область исследования: право

В ходе данного исследования мы проанализируем область судебной практики Европейского суда в области права на здоровую окружающую среду. Большинство дел, касающихся определения ущерба за вред здоровью человека в результате загрязнения и деградации окружающей среды, касаются окружающей среды и ее связи со здоровьем человека. Существует, конечно, целый ряд вопросов, строго связанных с окружающей средой, таких как фауна, флора и т. д., но выходящих за рамки данной дипломной работы.

Цель и задачи дипломной работы. Целью данного исследования является анализ правового режима права человека на здоровую окружающую среду и принципов, установленных Европейским судом в его практике по процессуальным правам человека в вопросах, касающихся окружающей среды.

Научная новизна исследования. Одна из целей данного исследования – определить, можно ли сохранить европейские стандарты, касающиеся права человека на здоровую окружающую среду, по сравнению с другими правовыми системами, когда речь идет о защите окружающей среды с помощью правовых механизмов прав человека. Это можно получить, проанализировав судебную практику двух важных судов европейского уровня, вынесших решения в этой области, а именно ЕСПЧ и Европейского суда. В этом смысле, чтобы увидеть, имеют ли два суда разные стандарты при оценке дела, анализ судебной практики попытается ответить на вопрос: каков уровень воздействия на окружающую среду, за пределами которого считается, что мы находимся в присутствии о нарушении прав человека? Чтобы подать иск в любой из двух судов по делам об экологическом ущербе, истцы должны быть непосредственно затронуты предполагаемым ущербом, а это означает, что суды имеют в виду высокий порог ущерба, позволяющий рассматривать иск.

Прикладное значение исследования. Данное исследование поможет сделать некоторые выводы относительно текущей позиции каждого из двух международных судов в оценке текущей экологической ситуации и взаимосвязи между экологическими проблемами и правами человека. То есть их позиция будет установлена относительно перспективы переосмысления прав человека в свете экологических проблем, анализируя аспекты, в которых пересекается юриспруденция двух судов, и в то же время вопросы, относительно которых возникают противоречия.

PIRVU DANIELA

THE LEGAL REGIME CONCERNING THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT IN THE JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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