

## Considerations on the legal basis of sustainable development

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**Abstract.** The paper approaches the role of the law in "arranging" social relationships, as it is reflected in European Union and Romanian legal documents. Due to its multidimensional character, sustainable development has gained different interpretations ranging from a key principle of all EU policies and actions, a strategy within the environmental policy, to a free-standing, transversal policy that needs to be integrated in all EU policies. The way concept of sustainable development is reflected in the Romanian Constitution and the Government Emergency Ordinance no. 195/2005 on environmental protection represents a new approach in scientific literature.

**Key Words:** law, sustainable development, European Union, treaty, constitution.

**Introduction.** In the unanimous public opinion poll, there is the idea that sustainable development has a strong moral weight (Pohoată et al 2009). It starts from the realistic premise that each generation builds its own future on the dowry it inherits. From this point of view, it is the duty of the present generation to provide for the new and future entrants at least the same opportunities that it has inherited (Pohoată et al 2009). Sustainability concerns and goals should shift from an emphasis on pollution control and availability of natural resources to a more balanced position that puts human development at the center (Quental et al 2011). In this context, besides the moral rules of conduct, there is the necessity to regulate the social relations by legal norms that are absolutely indispensable to any society. The regulation should be adequate for the society and stem from its interest and will. Basically, the role of the law is to "arrange" social relationships within the limits of a normal and natural state, perceived as such by the society. Because sustainable development promotes the concept of conciliation between economic and social progress without endangering the natural balance of the planet, it has acquired a multidimensional character, and has been assigned different interpretations in the literature, ranging from a key principle of all EU policies and actions (Ginther et al 1995; Comisión de las Comunidades Europeas 2005), to a strategy within the environmental policy (The Fifth Environmental Action Programme 1993-2000, the Treaty of Amsterdam from 1997), to a free-standing, transversal policy that needs to be integrated in all EU policies (like the 2006 EU Sustainable Development Strategy renewed for an enlarged Europe). Binding normative documents (national laws, decisions and orders of government, EU directives, regulations, decisions) are only tangential to the concept of sustainable development. Its multidimensional character is reflected in various normative acts on the environment (for example Water framework Directive 2000/60), economic development, health, agriculture, equal opportunities).

**Material and method.** Four methodological steps were followed, they involved choosing the research topic, finding the documentation, conducting the research itself and writing the paper. The topic was chosen according to the authors' scientific background, available scientific resources and the theoretical and practical importance of the research subject.

Finding relevant documentation in the field was an essential step taken prior to choosing the topic and it led to the conclusion that there is a remarkable gap in the literature about the legal basis of sustainable development, both at EU and Romania's level.

**The concept of sustainable development as reflected in EU treaties.** The term sustainable development has been criticized as being too vague, flexible and unclear whether sustainable development is a principle of environmental law or merely one of policy (Thornton & Beckwith 1997). In the following, the authors have shown that the EU sustainable development is seen both as an environmental law principle and as a principle of all EU policies. The Treaty on the European Union from 1992 formally established the concept of sustainable development in the EU legislation and a few years later, in 1997, sustainable development became a fundamental objective for EU when it was included in the Treaty of Amsterdam as a primary objective of all union policies. However, the starting point in formulating the concept was the World Commission on Environment and Development of the United Nations, also known as the Brundtland Report, which defines it as the development that is able to satisfy the needs of the present generation, without compromising the opportunity of future generations to meet their own needs.

Since December 1st, 2009, the Union has been founded on the Treaty on the European Union and the Treaty on the Functioning of the European Union, both bearing the same legal value. From the same date, the Union has replaced and succeeded the European Community. Therefore, in December 2009 we entered a new stage in the process of creating a more profound union among the peoples of Europe, designed to act for the sustainable development of the continent, based on a balanced economic growth and a very competitive social market economy aiming at protecting and improving environmental quality at a high level. In the preamble to the Treaty on European Union, the signatory states restate the desire and importance of promoting the economic and social progress of their peoples, "taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields, the achievement of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration concurrently in other areas" and in the spirit of solidarity that binds Europe and other countries, to ensure the development of their prosperity, in accordance with the principles of the UN Charter. For the first time, the European Union defines "social cohesion" in the Treaty of Lisbon – the harmonious development of all its territories - as one of its fundamental objectives and implicitly recognizes the local and regional right of self-government.

Thus, sustainable development remains a fundamental objective of the European Union under the Treaty of Lisbon. As emphasized in the European Council from 2009 regarding the review of the EU Sustainable Development Strategy, it will continue to provide a long-term vision and constitute the overarching policy for all the Union's policies and strategies. The articles below can be considered the legal basis for EU sustainable development (Muntean et al 2013).

Article 3, para. 3, of the Treaty on European Union (TEU) (ex Art. 2 TEU) establishes that: "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment..." Paragraph 5 of the same article stresses that: "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter."

Article 21, para. 2, letters d and f (TEU) says that the Union defines and pursues common policies and actions and acts towards establishing a high degree of cooperation

in all fields of international relations in order to: foster the sustainable development of developing countries at economic, social and environmental level, so as to eradicate poverty, help develop international measures to preserve and improve environmental quality and to sustainably manage global natural resources in order to ensure sustainable development.

Article 11 TFUE (ex Article 6 TEC): "Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development."

Article 32 TFUE (ex Article 27 TEC): "In carrying out the tasks entrusted to it under this chapter the Commission shall be guided by: (...) (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union".

Regarding the EU social policy (Title X, Art. 151 TFUE, ex Article 136 TEC) it is mentioned that EU and the Member States, aware of the fundamental social rights such as those set out in the European Social Charter signed at Turin on October 18, 1961 and in the 1989 Community Charter of Fundamental Social Rights of Workers, will have as objectives "the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".

With respect to economic, social and territorial cohesion (Title XVIII), Art. 174 TFEU (ex Article 158 TEC) emphasizes that in order to promote its overall harmonious development, the Union shall develop and pursue actions leading to the strengthening of its economic, social and territorial cohesion. "The Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions." The European Regional Development Fund is the financial instrument meant to help redress the main regional imbalances in the Union, through participation in the development and structural adjustment of the regions lagging behind and in the reconversion of the declining industrial regions.

As to the environmental policy, Article 191 T.F.E.U. (ex Article 174 TEC) enlists the following goals: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilization of natural resources; promoting measures at international level to counteract regional and global environmental problems and especially climate change. The Union's policy on energy shall aim (Article 194 TFEU), in a spirit of solidarity between the Member States, to promote energy efficiency and energy saving, as well as the development of new and renewable sources of energy.

**The concept of sustainable development in the Romanian Constitution and the Government Emergency Ordinance no. 195/2005 on environmental protection (with amendments).** The Romanian Constitution (2003), without using the term "sustainable", speaks of "an ecologically balanced environment", "social protection", "a decent standard of living", "increasing life quality", "ecological balance" approaches that can be interpreted as part of the multi-functional dimension the concept of sustainable development. Thus, in Art. 35 - The right to a healthy environment: "(1) The State recognizes the right of every person to a healthy and ecologically balanced environment. (2) The State provides the legal framework for the exercise of this right. (3) Natural and legal persons have the duty to protect and improve the environment", Art. 47 - Standard of living: "(1) The State is obliged to take measures of economic development and social protection, to ensure a decent standard of living for its citizens". Art. 135 (Economy), paragraph 2, letters f-g, stresses that the State must ensure: e) the restoration and protection of the environment, as well as the maintenance of ecological balance; f) the necessary conditions for improving quality of life; g) the implementation of regional development policies in line with the objectives of the European Union (Parliament of Romania 2013).

Considering these constitutional provisions, it can be argued that the principle of sustainable development overreaches a broad range of disciplines (Petrescu-Mag & Petrescu 2010; Iacobescu 2010; Tulbure 2010; Petrescu 2013). According to McGoldrick (1996) sustainable development can be seen as firmly integrated into the international law of human rights. The quality of human and ecological life can be sustained where

there is corresponding sustenance of environmental quality. Supporting this opinion, Thornton (1997) highlights that „the achievement of sustainable development is supported by three pillars. Interantional environmental law, international human rights, and international economic law”. The European Convention on Human Rights (European Court of Human Rights 2010) establishes in Article 8, the right to respect for private and family life. The Convention does not use the concept “right to a healthy environment”. Consequently, the violation of the right to a healthy environment cannot be invoked as such before the ECHR (European Court of Human Rights), because it is not provided *in terminis* by the Convention. Through the jurisprudence of the European Court of Human Rights, it is considered that certain types of damages to the environment with serious consequences for individuals or even public authorities' failure to provide information about serious risks that arise in relation to the environment and to which individuals are exposed, may constitute a violation of the rights protected by the Convention. An example is the right to respect for private and family life mentioned in Art. 8, which was invoked in the cases Tatar v. Romania (2009) and Băcilă v. Romania (2010) (Petrescu-Mag 2013a). Therefore, ECHR made that, for the first time, in the Lopez Ostra v. Spain case, the right to a healthy environment enter the field of application of the Convention by way of interpreting Art. 8. The decision of 1994 established that serious damage to the environment can affect people's welfare and the normal use of their home. The European court acknowledged that the right to respect for private and family life involves the right to live in a healthy environment (Duțu 2004). Turning our attention to GEO no. 195/2005, its regulatory object is (Art. 1) the regulation of environmental protection, an objective of major public interest, based on the principles and strategic elements that lead to society's sustainable development. In the light of the ordinance, according to Art. 2, section 23, sustainable development is defined as “the development that meets present needs without compromising the ability of future generations to meet their own”. Among the principles and strategic elements underlying the ordinance, Art. 3, letter g also mentions the sustainable use of natural resources. Through GEO no. 195/2005 and in accordance with Article 5, the state recognizes people's right to live in a healthy environment, warranting for this purpose: access to information regarding the quality of the environment; the right to associate in organizations protecting the environment; the right to reciprocal consultation in order to take decisions regarding the development of environmental policies, legislation and norms, the release of environmental agreements and authorizations and of environmental plans and programs; the right to address oneself directly or through certain associations to the administrative or judicial authorities for preventing damages or in case that a direct or indirect damage has been produced; the right to compensation for any damage endured (for details see Petrescu-Mag & Petrescu-Mag 2010). With respect to the conservation of biodiversity and protected natural areas, Art. 49 states that: (1) The central public authority for environmental protection, together with other central public authorities, as appropriate, develop technical regulations on ecosystem protective measures, conservation and sustainable use of biological diversity components”; in the chapter “Protection of the atmosphere, climate change, management of environmental noise”, Art. 60, para. 2, it is stated that the sustainable and unified management of the available resource of credits of emissions of greenhouse gases is achieved by specially constituted structures within the Environment Fund Administration.

At national level (i.e. in Romania), in terms of the legal regulation of sustainable development, software laws are predominating (strategies, action plans, declarations, etc). The existing binding normative acts make only tangential references to sustainable development and this cannot be considered a solid and coherent legal basis. In the absence of hard laws, the legal texts (which could be considered a complementary legal basis for sustainable development) that make reference to the following principles are of real help: the principle of inter-generational equity, the principle of sustainable use, the principle of inter-generational equity and the principle of integration. These four principles are considered as “distilled” from the principle of sustainable development (Efeakpor 2013; Veinla 2005):

1. The principle of inter-generational equity: the need to preserve natural resources for the benefit of future generations;

2. The principle of sustainable use: the need to exploit natural resources in a manner that is sustainable or prudent;
3. The principle of inter-generational equity: the equitable use of natural resources that urges states to take into account the needs of other states when making use of resources;
4. The principle of integration: the need to ensure that environmental considerations are integrated in the economics of development plans and that development needs are taken into consideration when applying environmental objectives.

**Conclusions.** The problems of water pollution, soil erosion, air quality, extinct species of flora and fauna, waste management, etc., were encapsulated in various international declarations, multilateral treaties, EU directives and national laws, all of which are focusing on ways to protect and preserve the environment for present and future use. Hence, sustainable development involves many things. More appropriate technologies, supportive policies, different ethics and changes in individual behaviour are among the more obvious factors (Uphoff 1992). In this respect, the law fulfills a fundamental role both in shaping and requiring a special type of conduct within the guidelines of sustainable development. But, what is important is the will to translate the principle of sustainable law into concrete enforceable norms. The existence of a small number of legally binding regulations on sustainable development is in contrast with the environmental concern and sustainability stewardship. The law becomes the tool that empowers people to redefine their relationship with nature and with each other (Elworthy & Holder 1997). The continuous existence of this principle as a "soft law" or guiding principle renders its effectiveness to be like teeth that cannot bite (Efeakpor 2013). Romania, as well as other states, has to give life to the wordings of this principle and transpose it in enforceable laws at national level for which, of course, specific constitutional provisions are required.

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