

The functions of law in connection with sustainable development

¹Ruxandra M. Petrescu-Mag, ²Tania Mihăiescu, ²Laura Paulette, ²Dan Vârban

¹Babeş-Bolyai University, Faculty of Environmental Sciences and Engineering, Cluj-Napoca, Romania, European Union; ²University of Agricultural Sciences and Veterinary Medicine Cluj-Napoca, Cluj-Napoca, Romania, European Union. Corresponding author: R. M. Petrescu-Mag, malina.petrescu@ubbcluj.ro

Abstract. The paper emphasizes the importance of law for society's sustainable development. The authors have identified four main functions of law in connection with sustainable development: regulatory function, the function of governing the society, the function of defense and guarantee the essential values of human society, the function of institutionalization of the social and political organization. In organization and functioning of a society, we have seen law as an instrument that confers order, discipline and it ensures safety and stability for the general interest of community. The challenge for all societies is to create a system of governance that promotes a sustainable development. Principle 27 of Rio Declaration (1992) calls specifically for further development of international law in the field of sustainable development.

Key Words: law, sustainable development, environment, institutions.

Introduction. The defining role of sustainable development in the evolution of international law and policy on protection of the environment secured near universal endorsement at the Rio Conference on Environment and Development, 1992 (Boyle & Freestone 1999). Principle 27 of Rio Declaration (1992) calls specifically for further development of international law in the field of sustainable development: "States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development" (United Nations 1992). The concept of sustainable development had begun to evolve at the Stockholm Conference in 1972, where principles such as rational use of natural resources, the correlation between development and environment and state responsibility for transboundary environmental damage of resource use were initiated (Schrijver & Weiss 2004; Tulbure 2010; Petrescu 2013). Later, the concept was endorsed explicitly by the Brundtland Commission and in the declarations and policy statements of numerous intergovernmental conferences and international organizations including the World Charter for Nature (Boyle & Freestone 1999; Petrescu 2007). The interest of the European Union in sustainable development grew in parallel with the initiative of the United Nations on the same issue culminated in the Rio Conference on Environment and Development. The output of this conference was two documents, fundamental for understanding the philosophy and strategy of sustainability, namely the Rio Declaration and the Agenda '21. Equally important was the outcome of the European initiative, i.e. the Fifth European Action Plan on the Protection of the Environment and Sustainable Development under the title "Towards Sustainability" (Decleris 2010).

Material and Method. Methodological stages and their main tools consist of: setting the research topic, documentation, placing the issue in the legal and political context, drafting the work. The choice of topic was made considering our scientific background,

available scientific resources, theoretical and practical importance of the research topic. Systematic documentation was developed on the entire front of the issues mentioned and it took place after the setting the research topic. In this regard, the authors have used legal and political documents, scientific articles. It was identified, appraised, selected and synthesized all high quality research evidence relevant to this topic. Therefore, as regarding the bibliography, the authors made use of scientific sources such as scientific articles and books in the field, as well as of legal documents and online sources. For evaluation of methodological framework we had in mind indicators as (by way of illustrative): determining the importance of subject and of research activities, choosing research methods and techniques according to the field and objectives.

Law Functions Related to Sustainable Development. Sustainable development is known as that development that meets the needs of the present without compromising the ability of future generations to meet their own necessities. In broad terms, the concept of sustainable development is an attempt to combine growing concerns about a range of environmental issues with socio-economic issues (Hopwood et al 2005; Negucioiu & Petrescu 2006). Unfortunately, when one attempts to implement the concept, one quickly discovers that, except in its most obvious applications, sustainable development is, if not meaningless, an oxymoron (Hodas 1998). Attempts so far to define sustainable development reiterate the high aspirations behind the ideal, but fail to teach us how to identify which of the details of our decisions are the devilishly unsustainable ones (Hempel 1996). If there is any agreement on what sustainable development means, it is that economic and environmental factors are combined into a single decision. Principle 16 of the Rio Declaration confirms this vision: "[n]ational authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment" (United Nations 1992). The notion of "sustainable development" has, in essence, two basic characters (Rusandu 2008): anthropocentric and biosferocentric. Broadly, anthropocentric character represents survival of humanity and ability (possibility) of carrying out (sustainable) development for a long time, providing our descendants all the opportunities the current generations have, in order to fulfill their own needs in terms of natural resources and assuring favorable environmental conditions of the Earth and Cosmos. Biosferocentric character of sustainable development concept is related to the maintenance of the biosphere as a natural foundation of all life on Earth, its natural sustainability and development. The UN report – "Our common future" states that "sustainable development strategy is aimed at achieving harmony between people and between society and nature" (United Nations 1987), which can be characterized as a principle of co-evolution between nature and society. Sustainable development means the conservation of biosphere and humanity and their co-evolution. In this sense, sustainable development is seen as a future form of co-evolutionary interaction of nature and society, which ensures their mutual existence. Creating the new development strategies means gradual integration into a single self-organizing system of economic, environmental, social and other spheres of activity (Rusandu 2008).

The challenge for all societies is to create a system of governance that promotes a sustainable development. A good governance comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (UNDP 1994), and therefore, it promotes the rule of law. Law is the base of political-administrative system, of the judicial hierarchy, conferring people a common and consistent life frame (Popa 1997). In organization and functioning of a society, law is an instrument that confers order, discipline and it ensures safety and stability for the general interest of community. Law pursues two basic purposes: a) to formulate rules of conduct by establishing roles that individuals must meet; b) to make such rules to be observed and respected, by using legitimate means of pressure and coercion. Law may appear either as an active force, as an instrument to protect the values and the fundamental relations of society

and ensuring social and normative order, either as a reactive force, a force of conservation and social immobility. For a sustainable development of our society, law fulfills several essential functions (Muntean et al 2013), presented as follows:

Regulatory function: the law seeks to standard, to regulate the actions of individuals towards a certain socially accepted behavior and enforced by state authorities endowed with competencies in the field. Basically, this function is reflected through adopted normative acts. Unfortunately, with regard to sustainable development, few mandatory regulations can be found. Their usefulness is essential, especially in terms of coercive force. One powerful response to the complaint that principles of sustainable development are not incorporated into legal systems is what are known as environmental impact statement (EIS) or assessment (EA or EIA) laws, which are now part of the jurisprudence of nearly every country of the world (Gilpin 1995). At its core, the EIA process requires that each government decision-maker incorporate environmental concerns into the decision-making process at each stage of evaluation so that the final outcome will reflect an integration of all inputs: economic, environmental, political, and social. In theory, EIA laws that are now omnipresent in national and international legal systems, will, by the gradual, but insistent, accretion of project decisions, inevitably advance the world along the road to sustainable development (Hodas 1998). At European Union level, environmental assessment can be undertaken for individual projects, on the basis of Directive no. 2011/92/EU (known as 'Environmental Impact Assessment' – EIA Directive) or for public plans or programmes on the basis of Directive no. 2001/42/EC (known as 'Strategic Environmental Assessment' – SEA Directive). The common principle of both Directives is to ensure that plans, programmes and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorization. On 26 October 2012 the Commission adopted a proposal for a new Directive that would amend the current Directive. The proposal is intended to lighten unnecessary administrative burdens and make it easier to assess potential impacts, without weakening existing environmental safeguards (European Commission 2013). Regarding sustainable development, strategies, action plans and programs predominate. These documents are mostly declarative, but not negligible. They represent soft laws, having a significant persuasive force. Their importance lies in their pointing to the form, which binding treaties obligations might take in the future (Ikoni 2010). Hard and soft laws become a mean of organizing and governing the society, which constitutes a distinct function, namely the function of governing the society.

The function of governing the society can not be achieved without the legal rules establishing the operating rules, responsibilities of the authorities and institutions with expertise in promoting and securing sustainable development. Therefore, each objective state/other subject of international law proposed, it is assigned as a responsibility, obligation to a particular public organ or institution (for example, in the present case, depending on the sustainable development dimension to which we refer, may be involved Ministry of Environment and Climate Change, Ministry of Agriculture and Rural Development, Ministry of Health, a local authority and so on, article 309 of the Treaty of the Functioning of the European Union (2010) states that European Investment Bank shall be to contribute, by having recourse to the capital market and utilizing its own resources, to the balanced and steady development of the internal market in the interest of the Union) and each and every citizen must obey law and state authority.

The function of defense and guarantee the essential values of human society. Fundamental and essential values, namely those rights and freedoms universally recognized, including by the UN Charter (e.g., the right to a healthy and ecologically balanced environment, ensuring universal access to environmental information) are protected and guaranteed by the rules of law, both by recognizing them as such, and by instituting protective measures of defense. For example, on civil liability for nuclear damage, certain rules on compensation system are established. Article 8 (1) of Law no. 703/2001 (with amendments) states that operator liability is limited for each nuclear accident at least in RON equivalent of 300 million SDRs (Special Drawing Rights), where SDRs are the virtual currency of the International Monetary Fund (IMF), designed as a replacement for the gold standard and they are used as: monetary standard, backup

tool, mean of payment for certain transactions between the IMF and its members, mean for purchase of convertible currencies. Its value is calculated based on the U.S. dollar (44%), Euro (34%), Japanese yen (11%), British pound sterling (11%), according to the London stock exchange quotations (Petrescu-Mag 2011).

The function of institutionalization of the social and political organization. Using the rules of law, state/other subject of international law is able to create certain structures, organs, authorities and so on, establishing the way of functioning, their relationships, limits of competence. In the field of sustainable development, a series of institutions are operating, e.g. the National Centre for Sustainable Development (NCSD was established in 1997 under the aegis of the Romanian Academy, as an agency of the United Nations Development Programme - UNDP), the European Institute for Sustainable Transport" –E.U.R.I.S.T., the International Institute for Sustainable Development – I.I.S.D., UN World Commission of Environment and Development, Directorate General (D.G.) Environment of the European Commission with responsibilities related to sustainable development. Following Douglas North (North 1990) definition of institutions -"constraints that human beings impose on themselves", institutions permit or require specific type of action, i.e. political, economic or social. By extrapolating to sustainable development, these constraints include both what individuals are prohibited from doing (for example, GEO 195/2005, art. 96, point 24, states the obligation not to exploit non-renewable mineral resources of national parks nature reserves, scientific reserves, natural monuments and of natural parks' special conservation areas ...) and, sometimes, under what conditions some individuals are permitted to undertake certain activities (for example, GEO 195/2005, art. 96, point 5, lays on obligations of authorized natural and legal persons to maintain the state of running local environmental monitoring capability to detect any significant radioactive contamination that would result from an accidental discharge of radioactive substances). The institutions are the framework within which human interactions take place. Institutions consist of formal written rules as well as typically unwritten codes of conduct that underlie and supplement formal rules. Formal rules and constraints are made up of: constitutions, laws, charters, regulations; enforcement characteristics (sanctions etc), the informal rules are: extensions, elaborations, and modifications of formal rules; socially sanctioned norms of behaviour (customs, taboos and traditions); internally enforced standards of conduct (Jütting 2003). People's behaviour is conditioned by community norms and consensus, so preserving or instituting practices that are environmentally sound requires more than just individual incentives and persuasion (Uphoff 1992). People in both developed and and poor countries rely on informal institutions to facilitate reaching agreements on various aspect concerning sustainable development, but these institutions are relatively more important in poor countries where formal institutions are less developed. Countries and communities can go a long way towards resolving information and enforcement problems without using their formal public legal systems (World Bank 2002).

Formulation of policies on sustainable development cannot ensure effective implementation in the absence of good governance which in turn cannot be achieved in the absence of appropriate institutions. Hence, sustainable development requires good policies and effective provision of institutions conducive to good governance (Roy & Tisdell 1998). These institutions must be designed to contribute to sustainable development by establishing the political, legal, economic and social circumstances for poverty reduction, job creation, environmental protection and the advancement of women (UNDP 1994).

Conclusions. Good governance and sustainable development are indivisible. Laws regulate social behavior, which leads to a society that runs efficiently. The political and institutional structures facilitate building a democratic consensus about sustainability, as well as the institutional decision-making processes required to translate such consensus into effective policy solutions. Law supplies ethical standards and expectations, while providing rules of conduct, measures to enforce those rules, and a means for settling divergences.

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Authors:

Ruxandra Mălina Petrescu-Mag, Babeş-Bolyai University, Faculty of Environmental Sciences and Engineering, 30

Fântânele Street, Cluj-Napoca 400294, Romania, European Union, e-mail: malina.petrescu@ubbcluj.ro

Tania Mihăiescu, University of Agricultural Sciences and Veterinary Medicine Cluj-Napoca, Cluj-Napoca 400372, 3-5 Calea Mănăştur Street, Cluj, Romania, European Union.

Laura Paulette, University of Agricultural Sciences and Veterinary Medicine Cluj-Napoca, Cluj-Napoca 400372, 3-5 Calea Mănăştur Street, Cluj, Romania, European Union.

Dan Vârban, University of Agricultural Sciences and Veterinary Medicine Cluj-Napoca, Cluj-Napoca 400372, 3-5 Calea Mănăştur Street, Cluj, Romania, European Union.

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