

## ENVIRONMENTAL LAW IN URBAN CLIMATE

Mihaela AGHENIȚEI<sup>1</sup>,  
Jafar SAMDANI<sup>2</sup>

### Abstract

*According to the report of the Brundtland Commission (1987), the true universal balance of environmental policies, there was a clear need to combine development with environmental protection, a precondition of the concept of sustainable development and the new principle of "sustainable development". This principle was also proclaimed within the "Rio Declaration" (point 3), a declaration signed by most of the states of the world, including Romania and Kuwait, at the UN Conference for Environmental Protection and Development of June 1992. In accordance with the principle 3 of the Declaration regarding the environment and development, "the right to development must be realized so as to equitably meet the needs regarding the development and the environment of present and future generations".*

**Keywords:** "environment", "development", "protection", "rights", "generation"

In 1893 appears the first element of case law: arbitration between the US and British Columbia in the Bering Sea seals business, which established rules hunters, seals designed to avoid extinction.

Protecting species<sup>3</sup> is manifested by traditional instruments as at the beginning of the twentieth century and extends until the fourth decade of the century, being considered as phase "pre-ecologic". Now appear the first international multilateral conventions on the protection of species of wildlife. For a long time, the loss of biological diversity was treated with total indifference to public opinion and official powers, only few naturalists were interested. At the beginning of the last century, concerns about the risks weighing on African wildlife and certain birds wanted for their plumage often considered useful for agriculture generate the first warning signs.

The rise of liberal globalization has meant the decline in international cooperation on global environmental problem solving.

At the end of this training and incursions in the historical development of international environmental law, there are required some observations on its current stage of affirmation. First, it appears that **environmental law is an international law** as a consequence of nature and size of pollution. **International environmental law is a branch of public international law in full development;** this process has accelerated in recent decades under the diversity and number of legal instruments adopted and institutions established by them. To the above observations we can add that we have a specialized development of this law rules and a considerable expansion of their field of application.

Moreover, environmental law uses all varieties of international action and normativity: soft law (such as statements of three UN Conference on Environment: Stockholm (1972), Rio de Janeiro (1992) and Johannesburg (2002), such policies made incite implemented under the aegis of the United Nations Environmental Programme (UNEP), especially in the "Agenda 21", preventive measures (for example, those

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<sup>1</sup> "Dunărea de Jos" University - Galati - Romania, Legal Research Institute - Romanian Academy, maghenitei@gmail.com

<sup>2</sup> Mircea Dușu, *Environmental Law* (București: Economic Publishing House, 1996)

provided by the MARPOL Convention of 1973), the possibilities or the use of original techniques such as re-cut specific surface areas according to the needs of environmental protection (as in marine areas) or recognizing a right of intervention on the high seas in cases of cases of pollution (or risk of pollution). Finally, environmental law tends to reconcile the "irreconcilable", member entitled to full development of all possible risk to pollute, and the the right of all states to safeguard their environment, compliance with legislation supranational supranational sovereignty of increasingly burdensome for the state; equality of states and shared responsibility, but their differential environmental protection tasks.

Environmental concept, notion chameleon, as characterized by Michel Prieur<sup>1</sup> knows many facets and meanings used with more or less different in many environments of human society.

Scientists, economists, lawyers, politicians, ministers arts imperative aware of paramount importance to environmental protection and natural resources, highlights certain aspects of the environment, which, in fact, is unique. Medium term remains, however, a general concept, difficult to synthesize a definition that satisfies everyone.

For the European Community "environment" means all elements in the complexity of their relations, the framework, environment and conditions of people's lives, as there are or as understood.

As the field of inter-state and international regulation, environmental protection and conservation has been the subject of a new classification in the science of Law - Environmental Law.

Training and affirmation of international environmental law occur, in fact, in the late 1960s, when international ecological crisis took valences and was favored by the joint action of a multitude of factors which have made cooperation between states as a means of stopping and mitigation its effects. This does not mean that earlier era, there were a number of regulations aimed directly or indirectly protecting the environment. Much time, the essential problems of human communities, including ecological, were laid and were regulated mainly local and national. Scientific and technical development and increasing human impact of socio-environmental impact caused a process of internationalization of these problems and favored the emergence of interstate relevant regulations. By their nature, environmental problems imposed international cooperation as a result of the Trans boundary nature of pollution and global implications appearance. Moreover, this reality has imposed gradual affirmation of a concept "mondialist".

From a historical perspective, since the Middle Ages have been some legal action, including through international cooperation, for example to diminuate the effects of pollution such as smoke, noise, pollution of watercourses, etc.

Romania also has a rich historical experience environmental protection. Some researchers<sup>2</sup> appreciate that while they took a series of anti-pollution measures for nature protection by means of regulations, such as Regulation for unhealthy industries (1894); Rules for councils of hygiene and sanitation; Regulations for housing construction (1894); Rules to protect public health against the exploitation of oil (1889); Rules for hunting allowed by the state properties (1899).

In the nineteenth century there is a series of international treaties devoted to fishing, but their provisions referred, above all, to the delimitation of fishing and fish less protection as economic or ecological resource.

Romanian Constitution<sup>3</sup> expressly provides in 35 Article that "The State recognizes the

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<sup>1</sup>Michel Prieur, *Droit de VEnvironnement* (Paris : Ed. Dalloz, 1991), 1

<sup>2</sup> Lucretia Dogaru, *Environmental Law* (Tg. Mureş : Petru Maior Publishing House, 2008)

<sup>3</sup>Romanian Constitution - amended by Revising Law of the Constitution, Act no. 429/2003, published in Official Gazette of Romania, Part I, no. 758 of 29 October 2003; republished, by updating the denominations

right of everyone to a healthy environment and ecologically balanced." Romanian state constitutional concept provides the legal right to exercise this right to a healthy and ecologically balanced environment. Constitution also establishes the duty they have and legal persons to protect and improve the environment.

To meet legal commitments entered internationally, Romania has ratified a 36 governmental and ministerial treaties in force in environmental protection and management as defined in the attached list. EU environmental acquis covered over 450 directives, regulations and decisions, which are horizontal legislation and sectorial legislation<sup>1</sup> on environmental protection.

The Romanian Constitution requires the State to provide the necessary conditions to increase the quality of life and to take necessary measures to ensure a decent living. Law no.137 / 1995 on Article 6 establish state obligations in this way, and responsibility as follows: "Environmental protection is an obligation of central and local public administration authorities and all natural and legal persons" attributing environmental responsibility both central environmental authorities and territorial agencies.

Article 20 of the Constitution provides that constitutional provisions on environmental law will be interpreted and enforced in accordance with the Universal Declaration of Human Rights, with the covenants and the other treaties to which Romania is a party. In paragraph 2 of Article 20 of the Constitution provides: "If there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is a party and internal laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions<sup>2</sup>.

Sectorial environmental regulation was achieved through the legislative process. Environmental framework law governing social relations on environmental protection and conservation of sectorial and cross-sectorial perspective.

In the content of the law are established: the principles of environmental law; strategic elements of sustainable development; ways to implement the principles and strategic elements; definition of the right to a healthy environment and determining its components; authorization procedure of economic and social impact on environmental law; regime of substances and hazardous waste and other wastes; regime of chemical fertilizers and pesticides; regime for the protection against ionizing radiation and safety of radiation sources; protection of national resources and biodiversity conservation (water and aquatic ecosystems, atmosphere, sphere, soil, subsoil and terrestrial ecosystems, protected areas and natural monuments, human settlements); National institutionalization of environmental law and powers of central and local environmental authority; forms of liability for breach of environmental law.

Framework Law on Environmental Protection establishes the unitary system and completely legal techniques specific environmental protection and conservation:

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and for the texts a new numbering in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003. The Revising Law of the Constitution, the Act no. 429/2003 was approved by national referendum on 18-19 October 2003 and got into force on 29 October 2003, following its publication in the Official Gazette of Romania, Part I, no. 758 of 29 October 2003, the Constitutional Court Decision no. 3 of 22 October 2003 confirmed the result of the national referendum on 18-19 October 2003 in connection with the Revising Law of the Constitution of Romania. Romanian Constitution, in its original form, was published in the Official Gazette of Romania, Part I, no. 233 of 21 November 1991 and got into force after its approval, by the national referendum from December 8, 1991.

<sup>1</sup>Horizontal legislation includes those regulations that consider transparency and flow of information, facilitating decision making, development activity and involvement of civil society in environmental protection.

<sup>2</sup>Stefan Tarcă, *Environmental Law* (Bucuresti: Lumina Lex Publishing House, 2008), 40.

ecostandards, authority system, impact assessment, zoning, targeted sanctions in environmental law (environmental licensing refusal, withdrawal agreement and / or permit permit environmental, economic suspension and termination pollutants), criminal, administrative and civil.

Special laws environmental law, which regulates in detail the social relations with sectorial and cross-sectorial protection of the environment, on environmental protection and conservation and its ecofactors highlight the content and essence of this branch of law.

So, we can speak of a development of environmental legislation in the main sectors of economic and social activity: water, air, soil (land for agriculture), chemicals, waste, nuclear activities, sustainable development, protected areas, forest fund, fisheries, wild animals.

Regulations in environmental legislation and legislation accompanying social economic legislation, but in Romania legislature did not consider a subsidiary component of economic and social processes during the privatization of the industry. Legislation organizing framework by which to carry out the activities of the transfer of ownership from public to private companies in the economic nature has not provided two situations had to be covered: intellectual property (value and right) and ecological relationships and environmental protection.

Legal aspects of intellectual property and trademark we speak in this material has other meanings doctrine of law. Relations between ecological and environmental protection of new privatized company with the surroundings and society are a subject that we want to approach it without succeeding to discern.

The system of environmental governance in Kuwait has evolved over many years, with a major milestone being Law No 21 of 1995 (amended by Law 16 1996) establishing the Kuwait Environment Public Authority (KEPA) to carry out all activities and functions necessary to ensure the protection of the environment. It sets the role of KEPA to include, among other things to set and implement strategies, policies and plans to safeguard the environment; combat and control environmental pollution of all kinds, coordinate action with relevant organizations to draft laws, prepare legislation; set environmental criteria and standards, and promulgate regulations to ensure environmental safety, protection and development; set and implement strategies to ensure sustainability of the environment and society; and study and review accession to and ratification of the regional and international conventions related to the environmental affairs in coordination with relevant authorities.

While this system of environmental governance has now been in place for some years, progress has been hampered by weak or limited environmental governance capacities, including inadequate enforcement capacities, and fragmented sectoral strategies. This has resulted in systemic challenges affecting overall achievement of environmental results. Kuwait's ranking under the Yale Environmental Performance Index (EPI), for example, decreased from a rank of 42 in 2014 to 113 in 2016<sup>1</sup>. Many environmental challenges face Kuwait, including:

- High per capita carbon footprint
- Heavy reliance on fossil fuel based power generation
- Highly inefficient energy and water consumption
- Vulnerability of development to climate change
- Environmental emergencies and disaster risks
- Long range air pollutants from neighbouring countries including dust storms
- Ineffective management of critical land and natural resources
- Ineffective solid waste management and low levels of recycling

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<sup>1</sup> See *Yale Environmental Performance Index - 2016*, Yale Center for Environmental Law and Policy - YCELP - Yale University, Center for International Earth Science Information Network - CIESIN - Columbia University, and World Economic Forum - WEF.

- Marine pollution and degradation of coastal resources
- Damaged ecosystems from impacts of military actions in the region
- Unsustainable consumption and production patterns

In response to these and other challenges, and to set the stage for a new more ambitious level of environmental measures, Kuwait has recently enacted a new Environmental Protection Law (Law No. 42/2014) which came into force on 14 October 2014. It consists of 181 articles outlining the three bodies involved in the environmental management systems including the Supreme Council, KEPA and an Environmental Protection Fund. The new law mandates KEPA with greater oversight roles and coordination responsibilities among Sectoral Ministries to ensure compliance and enforcement. It also calls for enhanced participation in Multilateral Environmental Agreements, and scaled up actions to implement Kuwait's commitments under global development processes which requires strengthened readiness to implement the new Internationally Agreed Development Goals. Also, recently KEPA has signed an agreement with United Nations Environment Programme (UNEP) to prepare second National Communication and biennial update report. However, capacities to ensure strengthened role by KEPA to implement MEAs, while also enhance its coordination role to strengthen readiness to implement SDG green pillar remain a challenge, where UNDP will provide the needed support through this project complementing UNEP support. In addition, access to integrated Environmental Information Systems (EIS) to enhance the oversight role of KEPA as mandated by the new EPL, which help ensure risk-informed and environmentally sustainable development remains another major challenge. The capacity to implement this new law and achieve greater environmental sustainability results remains a major challenge in Kuwait and is the main development challenge in focus of this project. This project will respond through supporting an enabling environment for effective participation in MEAs, and strengthened readiness to implement SDGs. The project will also provide support to enhance, integration, connectivity, and reliability of Environmental Information Systems (EIS) including validation of environmental data, and use of related statistics and indicators for measuring EPL compliance, and improved decision-making process to ensure development becoming risk-informed and environmentally sustainable.

The project will help set the stage for Kuwait to be aligned with Kuwait National Development Plan (KNDP 2015/2019-2016/2020) and the new SDGs and support the implementation agenda under the new Environmental Protection Law (EPL). The project is well aligned to the fourth pillar of the KNDP which aims to sustainably ensure liveable environment in Kuwait which calls for measures to reduce unsustainable use of natural resources, and address current environmental issues including through compliance with environmental quality performance benchmarks.

The KNDP also calls for measure to help enhance the state of environmental in Kuwait in accordance with international environmental standards and agreements, while aiming to improve air quality, and reduce industrial emissions and pollutants, and recycle of liquefied, solid, and hazardous wastes. The Development Plan aims to develop an integrated system to deal with liquefied, solid, and hazardous wastes, which will help reduce contamination caused by conventional waste management measure. It also aims to promote involvement of private sector in recycling of waste. Moreover, the sustainable development pillar of the KNDP included specific target to enhance Kuwait's renewable energy index to 60% at the end of the Development Plan compared to 40% in 2014.

The project will support Kuwait improve its capacities and readiness to meet its commitments under a set of MEAs, which together will help address environmental

issues and improving the state of environment in Kuwait. The project will help contribute to achievement of Kuwait's priorities which outlined in the 5-Year Kuwait National Development Plan, and the medium-term plan (KNDP 2015/2019-2016/2020) which seeks to balance environment and development to ensure sustainable development in Kuwait. In addition, the project align itself to assist Kuwait meet its commitments under the Sustainable Development Goals (SDGs) agenda, and helping to implement measures called by the new EPL is necessarily crucial to fulfil such commitments through an integrated environmental governance support. In other words, the project help regards achievement of various aspects relating green pillar of the SDGs as mentioned above, and spelt out in more details under the results framework. Specifically, the project contributes to SDG6: Clean Water and Sanitation; SDG7: Affordable and Clean Energy; SDG11: Sustainable Cities and Communities; SDG13: Climate Action; SDG14: Life below Water; and SDG15: Life on Land.

The project will also lead to a functioning environmental compliance and enforcement system, including activation of the new environmental policy unit called for by the EPL, and measures to integrate environmental issues into judicial and prosecution systems. Together these results will support a more general enabling environment for achieving the goals of the EPL, leading to improved environmental quality for people and ecosystems which is basic human right, and progress towards achieving the green pillars of the SDGs in Kuwait. The project helps achieve results under the current UNDP Country Programme Action Plan (CPAP; 2015-2018) and helps achieve results called for by the UNDP Kuwait Environment Outcome Evaluation (2009) which stated a lack of strategic environmental policies and systems as one of the major challenges to achieving environmental sustainability. The project will capitalize on the achievements and capacities built in earlier programmes including eMISK and KIEMs. More specifically, the project includes two strategic areas of focus to set an enabling environment for implementation of the new EPL.

### **CONCLUSIONS:**

Legislative gaps that damage the environment by individual interests stronger than the public interest created social, economic and ecological problems.

Straightening these situations cannot be made only by correcting dysfunctions through firm measures which should reach to act nationalization of the Company located in liquidation and environmental issues.

The adoption of a code is for any field of law and for the more recent and complex branches, such as environmental law, full maturation and expression of its definitive taxation, both within the legal system and the legal theory<sup>1</sup>.

As a general regulation in a particular area the Code best meets the need for comprehensive approach to environmental protection issues. However, due to the stage of development of regulations in the field encodings are rare. Some codes that address specific areas of concern and nature protection issues, such as the Romanian Forest Code, approved by romanian Law no. 26/1996.

**In Kuwait, Enhancing Capacities in MEAs, and SDGs** through capacity assessment and development enhanced compliance with MEA requirements. Kuwait is already a signatory to many MEAs such as the UN Framework Convention on Climate Change, Biodiversity and Desertification<sup>2</sup>, as well as CITES, POPs, Basel Convention, Montreal Protocol, and MARPOL. Capacity development will prioritize readiness for implementing new MEAs including Kuwait's Intended Nationally Determined Contribution (INDC) and related frameworks like the SDGs. The project will support a national capacity self-assessment to assess Kuwait's current status of commitments under MEAs, and identify capacity constraints, needs, and gaps

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<sup>1</sup>Mircea Duțu, *Environmental Law* (București: CH Beck Publishing House, 2008), 61.

<sup>2</sup> <https://unfccc.int/news/un-calls-to-address-linked-climate-biodiversity-and-desertification-threats>

faced by Kuwait in relation to implementation of its MEAs. An action plan to address constrains and gaps will be developed and national capacity building measures will be undertaken including training sessions on green pillars of the SDGs. In these activities UNDP will engage the support of UNEP to benefit from their outstanding technical expertise in this area where needed. The Project will also assist in designing and implementing of an awareness raising and outreaching programme on important environmental issues through proper media campaigns and workshop.

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