

RESEARCH ARTICLE:*Good Administration and the Right to a Healthy Environment***Sonia Andreea STOICA****ABSTRACT**

This study aims to examine the conditions under which ecological Urbanism can be integrated within the framework of public administration Science and practice, so that the Right to a healthy environment, as a key element of Good administration, can be guaranteed and truly respected in Romania

KEYWORDS: *good administration, urbanism, right to a healthy environment, compliance, right to health*

1. Introduction

The main reason for establishing the research topic within this area of *Good administration – Ecological urbanism* was firstly engendered due to the assertiveness wherewith Environmentalism, environmentally friendly practices and the protection of public health were promoted through case law and environmental protection policies at a national and European Union level, especially after Romania's accession to the European Union in 2007.

The year 2008, for instance, became the starting point in which Romania was introduced to the group of EU member states where the World Health Organisation was conducting studies on public health and the correlations between pollutants (exhaust emissions from the burning of fuel, PM10, PM2,5 particulate matter, other pollutants used in the chemical and construction industries) and various diseases relevant to society, the mortality rate, and the correlations to air pollution etc.. Furthermore, the purpose and concern for this topic became all the more serious upon the gathering of various distinct pieces of information within a multidisciplinary scope:

a. The statistics of the European medical research over the past 10 years showed significant correlations between the degree of pollution in various European capitals and states and the impact of heart disease, asthma, mortality rate etc.;

b. Based on comparative analysis, the World Health Organisation and European Environment Agency researchers estimated in 2013 that approximately 28,000 premature deaths were clearly linked to the high level of air pollution in Romania;

c. Following their 2008-2011 study, the same research team concluded that the inhabitants of Bucharest would live approximately two years longer (22 months) if they breathed the air in Stockholm;

d. Romania has a solid environmental and urbanist legislation, whereby the Ministry of Environment clearly exercises the attribution of monitoring and evaluating the air quality, however the Mayor's Offices and County Councils are the bodies responsible for the implementation of plans and specific measures for the improvement of air quality and life quality in general.

2. Urbanism and the Right to a Healthy Environment

All this data enhanced the idea that no environmental approach or doctrine, environmental-oriented measure etc. or environmental policy can exist without the involvement of local, county, regional or national public administration bodies. This means that in fact all environmental policies or their subsequent implementation require the support of public administration comprising public administration institutions and the behaviour of public servants in relation to the Citizen – which again brings us within the frameworks of the idea and practice of *Good administration*.

Given this, the approach of Urbanism in its interconnection to Environmentalism becomes even more crucial, *from the perspective and within the scope of the Science of public administration* providing the conceptual and methodological system of definition and analysis to a fundamental constitutional right: the Right to a healthy living environment (Art. 35, The Constitution of Romania).

Far from being a right that is only stipulated on a list of rights and freedoms, from the perspective of the Science of public administration we will show that it is derived from *the Right to Good Administration*, as laid down in Article 41 of the Charter of Fundamental Rights of the European Union (2010) – thus being defined within the scope of *Good administration*. Moreover, the bases in the primary and secondary national case law

constitute even stronger grounds for proposing and stipulating it as an assessment indicator within tertiary legislation and codes of administrative practice, annual assessment regulations etc. in the form of what the Science of public administration refers to as “Standard of good administration”.

The environmental and urbanism legislation, the difficulty of obtaining building permits, through the correlation of the required file with the environmental Consent and urbanism documents (the General Urban Plan, the Local Urban Plan, the Detailed Urban Plan etc.) seems to gain the trust of analysts regarding the Romanian local and national policy on the compliance with the *Right to a healthy living environment*.

The study conducted at the level of experts in the area of Urbanism – Transportation – Environment in Bucharest also confirms the trust in environmental and urbanism case law in Romania, which is designed in correlation to the one of the European Union. This is also the opinion we arrived to following the examination and analysis of the legislation.

The reality on the ground – that is, the strategies, plans for sustainable development, actual policies of the Mayors’ Offices and County Councils, of the central and local-regional public administration on the safeguarding and compliance with the Right to a healthy living environment is, however, entirely different.

Let us consider a recent example on the Right to a healthy living environment in the area of the municipality of Bucharest.

In spite of the proceedings opened against Romania at the EU Court of Justice in the timeframe of January-May 2018 by the European Commissioner for environmental protection regarding the infringement of the right to a healthy living environment by the Romanian state, an independent monitoring carried out in the

timeframe of October-December 2018 showed a record level of infringement of the legal provisions for air quality¹.

The pressures of the European Union on the Romanian state in the period 2016-2019 seems even more significant, taking into account that the same European Commissioner, Karmenu VELLA, in charge of environment, maritime affairs and fisheries came to Bucharest twice in the same year – in February and December of 2018².

What is the meaning and, why not, the grounds for this attitude of the institution of the European Commissioner for Environment towards Romania?

What is the extent to which the Commissioner’s interest towards the issues of pollution with dust suspensions from road traffic, thermal power stations, construction sites breaching the legal provisions and regulations, along with the issues of the gathering and recycling of waste and the lack of green spaces in Romania is justified³?

3. Romania – EU member state entering the European statistics and studies on environmental issues

¹The values are offered by the first non-state network for the assessment of air quality - AERLY, October-December 2018 in Bucharest. Apud <http://www.business24.ro/articole/bucuresti+poluat>; <http://www.business24.ro/mediu/stiri-mediu/iata-cele-mai-poluante-orase-din-tara-ce-loc-ocupa-bucurestiul-1602196>

²The European Commissioner, Karmenu VELLA, in charge of environment, maritime affairs and fisheries came to Bucharest on February 22nd – 23rd, 2018 and on December 6th, 2018; available at https://ec.europa.eu/romania/news/20180221_vizita_1_a_bucuresti_comisar_european_karmenu_vella_ro; https://ec.europa.eu/romania/news/20181206_comisar_mediu_karmenu_vella_dezbatare_bucuresti_economie_circulara_ro

³On December 6th, 2018, the main concern of the visit of the European Commissioner Karmenu Vella to Bucharest was due to the issues on the gathering and recycling of waste, as a component of what is known as “circular economy”; according to https://ec.europa.eu/romania/news/20181205_comisar_karmenu_vella_vizita_oficiala_romania_2018_ro

The study carried out by the World Health Organisation in the period of 2008-2011 provides worrisome data on the air quality in the capital of Romania. The most significant issue on the pollution in Bucharest concerns the particulates of solid dust and liquid drops suspended in PM10 along with PM2.5 – a category of pollutant classified as fine particulates, with an even higher negative impact on public health⁴, the most exposed categories of the population being, according to the WHO, children, the elderly and people suffering from asthma⁵.

These various categories of pollutants are generated by any type of combustion, along with the dust on the streets and, mainly, the intense traffic and dust from tyres of vehicles upon the release of the brakes. The impact of this category of pollutants of the type “suspension particulates” is aggravated by the very small speed of circulation of vehicles, especially for the persons in the surroundings of congested roads,⁶ and the

particulate matters from thermal power plants.

The World Health Organisation informed the European Commission during the press conference for the launch of the study in 2013 that Bucharest is a champion-city when it comes to pollution with particulates, and the Institut de Veille Sanitaire (INVS) in France⁷ showed that over the examined period of 2008-2011 Stockholm was the only European city in compliance with the provisions for public health maintenance on suspended air particulate matters.

agglomerations with a case study on the municipality of Bucharest, Ph.D. thesis, manuscript, 2012, p. 9: “The issues concerning the safety of circulation become very difficult to manage in situations of overly congested traffic. Whereas environmental protection is at a discursive level an important goal, it becomes impossible to achieve given that an inventoried 1,300 buses (the size of the RATB bus inventory) circulates with an average technical speed of between 5 km/ hour and 14 km/hour.

The study conducted on the reduced speed of circulation of vehicles in Bucharest – not just of public transportation vehicles – becomes a significant source for the pollution of the breathable air in the capital of Romania, according to the author: “The lack of investment for the development of the infrastructure for electrical transportation leads to high costs for public transportation in Bucharest. At the same time, the level of pollution remains high. The lengthy duration of transportation correlated with a high and continually growing demand for transportation creates the conditions for a high level of pollution”. The observation of the author is made based on studies from 2012. The first proceeding at the European Court of Justice on issues of air quality was opened in the year immediately following the year when the cited study was conducted, study warning that the traffic in Bucharest is a highly significant source of pollution; Adrian Stoica, *The management of traffic and of the public transportation in large urban agglomerations with a case study on the municipality of Bucharest*, Ph.D. thesis, manuscript, 2012, p. 9.

⁷The data is presented in The Greenweek Conference in Brussels, June 4th-7th, 2013, on the quality of air, in a session where the WHO presented the synthesis study REVIHAA – the study was carried out in the period of 2008-2011; see Domnica Macri, Bucharest in the ranking of fine particulate matter pollution”, National Geographic, the Health Section, available at <https://www.natgeo.ro/stiinta/sanatate/9968-bucurestiu-in-topul-poluarii-cu-particule>

⁴The study of The Romanian Health Observatory “The ranking of efficiency against pollution. Study focused on the biggest 10 cities in Romania”, pp. 3-4, founded on data by the World Health Organisation, stipulates that the solid and liquid particulates suspended in the breathable air (PM) lead to premature death through 3 main categories of diseases: strokes, followed by lung cancer and various cardiovascular diseases. PM10 is the “harsh” type of suspended particulates, whereas PM2.5 represents the “fine particulates”, the impact of PM2.5 on public health being much more significant, even when the concentrations of PM2.5 are relatively small in the air breathed, due to the fact that this latter type can much easily get through the natural-biological barriers of air filtration, children being more exposed than adults to the pollution with fine particulates. According to the study, Romania has an annual average of PM parameters above the one of the European Union; according to http://health-observatory.ro/wp-content/uploads/2018/11/raport_ORIS_poluare_27nov.pdf

⁵According to the National Network for Monitoring Air Quality, available at http://www.calitateair.ro/public/assessment-page/pollutants-page/pulbere-suspensie-page/?_locale=ro; accessed on December 17th, 2018

⁶According to Adrian Stoica, *The management of traffic and of the public transportation in large urban*

In particular, regarding the capital of Romania, the data revealed by the study cannot be ignored by the public authorities: *the inhabitants of Bucharest would live approximately 22 months longer if they breathed the air in Stockholm.*

And the repeated notices and proceedings against Romania by the European Commission in 2013, 2016 and 2018 through successive proceedings opened at the Court of Justice of the European Union on the issue of pollution show that in the years following this study made public in 2013, the public authorities either did not take any measure, or the measures taken were inefficient. Things need to be taken seriously and solved by the authorities, especially since the particulates of the PM category are not necessarily perceived as pollutants by the citizens who are used to breathing polluted air – meaning they stop noticing that the air they breathe is actually polluted⁸.

The first measures for the “cleaning of the air in Bucharest” are explicitly stipulated in policies of the municipal public administration in Bucharest, in documents and strategies of sustainable development *starting January 30th, 2018*, following the ministry Summit on air quality, where the European Commissioner in charge of environmental issues, Karmenu Vella, officially announced that he will open proceedings against the state of Romania at the ECJ⁹.

Bucharest recorded in 2018 an alerting exceeding of a series of parameters of various pollutants – for instance, the nitrogen dioxide from the emissions of road traffic vehicles or from the industry, the suspended particulates from industrial activities or from the heating of houses using individual or shared thermal power stations, traffic, agricultural works, parameters that were non-compliant with the legal provisions for the insurance of the right to a healthy living environment over a period of 38 days¹⁰.

The following day after the public announcement made by the European Commissioner at the European Ministry Summit, the Mayor’s Office of Bucharest issued an Integrated Plan for Air Quality, based on which there were actions, strategies and action plans for environmental protection planned for 2018. Signalling the lack of efficiency of the policies of Bucharest administrative authorities in the period 2008-2015, The General Mayor’s Office of the Capital City of Bucharest announces that this Integrated Plan for Air Quality of 2018 will take over or finalise environmental action plans and programmes implemented starting from 2016, along with the mandate of the said administration. The General Mayor’s Office of Bucharest thus responded to the proceeding of the European Commissioner at the ECJ announced on January 30th, 2018, through the fact of relaunching the preoccupation for increasing the air quality in Bucharest, by including within the Integrated Plan for Air Quality of 2018 even the Plan for Urban Mobility for the Development Region of Bucharest-Ilfov 2016-2030 launched in 2016, but on a study carried out and coordinated by

⁸The statement was made in Brussels by dr. Anette Peters from Helmlotz Zentrum in Munchen, member of the scientific committee that revised the latest research in the field for the WHO; Apud Domnica Macri, Bucharest in the ranking of fine particulate matter pollution”, National Geographic, the Health Section, available at

<https://www.natgeo.ro/stiinta/sanatare/9968-bucurestiu-in-topul-poluarii-cu-particule>

⁹Brussels, May 17th, 2018, Press release: The Commission takes action in favour of the need of EU citizens for breathing clean air, available at http://europa.eu/rapid/press-release_IP-18-3450_ro.htm

https://ec.europa.eu/romania/news/20181705_masuri_protectie_poluare_atmosferica_ro

¹⁰http://europa.eu/rapid/press-release_IP-18-3450_ro.htm

BERD at the level of the capital city in 2015¹¹.

4. Bucharest in recent rankings of (non-compliance) with legal pollution parameters (2018-2019)

The data provided in 2018-2019 by the Romanian Health Observatory (RHO)¹² shows that Bucharest is the most congested capital in Europe.

The same Ranking of Efficiency Against Pollution conducted by the RHO, along with other studies of the World Health Organisation carried out on multiple European states after 2016 show that over 28,000 persons per year die in Romania from diseases generated by the non-compliance with the right to a healthy living environment, the pollution leading to lung cancer, vascular cerebral diseases, various types of heart disease or forms of lower respiratory infections, or diseases such as the chronic obstructive pulmonary disease.

The same data on the right to a healthy living environment shows that the polluted air results in approximately 10 times more deaths than road accidents, the exact data granted by the World Health Organisation and the European Court of Auditors (2018) showing that in Romania

23,960 premature deaths resulted from suspended particulates¹³.

The study The Ranking of Efficiency against Pollution. Study focused on the biggest 10 cities in Romania¹⁴ carried out by the RHO shows that Bucharest is the most congested capital in the European Union. The capital of Romania is ranked the 5th in the list of capitals with the most congested traffic in the world and Romania is ranked the 5th in the European Union concerning the number of years of healthy living lost as a result of air pollution¹⁵.

There is even more to it – the information below seems to put into question the natural action of protection against the polluted outside air and the well-known practice of “airing one’s room/home”, for the inside air is a few times more contaminated than the outside air¹⁶. To put it even more clearly: the airing brings polluted air inside the home, adding other factors of pollution with suspended particulates from the inside to the outside factors of pollution.

Which leads to the great dilemma: is it adequate to air the room/house, or to keep just the internal factors of pollution inside, and not the particulates from the tyres of vehicles or from other construction-industrial activities as well?

The answer to this type of specific questions however does not fall into the scope and purpose of this study.

¹¹The plan is documented on over 827 pages, announcing the need for feasibility studies and concrete measures for the proposed investments and goals (investments totalling over 7 billion EUR are announced for the period of 2016-2030), as well as the exact location of the targeted goals, the optimal technical solution and the protection of the environment through the application of each and every objective; see the Plan for sustainable urban mobility 2016-2030 for the Region of Bucharest-Ilfov, http://www.pmb.ro/servicii/transporturi_drumuri/docs/planul_de_mobilitate_durabila_2016-2030.pdf

¹²<https://www.hotnews.ro/stiri-mediu-22990359-statii-care-masoara-calitatea-aerului-din-bucuresti-arata-aproape-zilnic-depasiri-pana-400-pentru-poluarea-praf-nu-facut-primaria-capitalei-ultimii-10-ani.htm>

¹³http://health-observatory.ro/wp-content/uploads/2018/11/raport_ORSPoluare_27nov.pdf

¹⁴See the full study and the team who carried out the study by accessing http://health-observatory.ro/wp-content/uploads/2018/11/raport_ORSPoluare_27nov.pdf

¹⁵In the analysis The Ranking of Efficiency against Pollution. Study focused on the biggest 10 cities in Romania, p. 3, the Romanian Health Observatory cites the study carried out by the World Health Organisation in 2016:

¹⁶<https://www.philips.ro/about/news/archive/standard/news/press/2018/2018-0425-philips-pentru-un-aer-sanatos.html>

5. In Bucharest the right to a healthy living environment is 7-9 times less respected in the winter

If we pretended not to see the real sources of pollution and were we not at all in the know, we could say that it is not the public authorities that are endangering the health of the population of Romania, but Nature itself, given that as summer passes and we enter the fall-winter season, the quality of the air breathed at the level of human stature becomes poorer, although there seems to be no sign of alteration of the data neither in road traffic, nor in industrial activities or in the percentage of green spaces.

The great issue of the capital of Romania is, at the level of the quality of the air, measured by “suspended particulates” – the chemical-physical definition is known under the symbols of PM10, PM2.5, PM1¹⁷. The 14 sensors constantly monitoring the parameters of suspended dust particulates – PM10, but also PM2.5 - PM1 – were recorded in Bucharest at levels showing the substantial grounds for the proceedings against the Romanian state by the European Commissioner on Environmental issues.

Thus, according to the data recorded at the measuring stations, in October 28th, 2018 in Giulesti, the suspended dust particulates of PM10 type reached a level of 190.2 $\mu\text{g} / \text{m}^3$ (3 times the legal amount), and PM2.5 reached 130.5 $\mu\text{g} / \text{m}^3$ - hence exceeding the legal amount approximately twofold. In October, the PM2.5 indicator alone has an average of 26.6 $\mu\text{g} / \text{m}^3$,

meaning approximately 6% over the legal amount.

However, as the winter is coming to the capital of Romania, the quality of the air is plummeting.

The quality of the air breathed by the people in Bucharest drops by approximately 10% in November 2018 as compared to October 2018. What is the scientific data on this infringement of the right to a healthy living environment on the Romanian territory?

In November 2018, the maximum concentration was reached on November 9th. Among the 14 sensors of monitoring the air quality, the one located on Barbu Vacarescu street showed a value that has long stopped being surprising: the dust particulates of PM10 type in the breathed air reached 241.8 $\mu\text{g} / \text{m}^3$ - more precisely, in this case the maximum legally permitted amount was exceeded approximately 5 times.

The suspended dust particulates of PM 2.5 type breathed by the population of the capital reaches a value of 158.37 $\mu\text{g} / \text{m}^3$. For the general public, those digits mean that: the quality of the air breathed by the population of Bucharest is 5 times “worse” (polluted air) than the limit under which we can consider that the right to a healthy living environment is respected.¹⁸

Winter came to Bucharest. With it, the concentration of some of the pollutants in the breathed air increased 7-9 times.

For instance, in the first week of December 2018, the sensor on Barbu Vacarescu showed a 7-fold increase in the

¹⁷The suspended particulates, with the symbols PM10, PM2.5 and PM1 refer to a highly complex mixture, comprised of extremely tiny particles and drops of liquid. The microscopic size of this mixture of dust and liquid results in the particles exceeding the capacity of selection and protection of our biological filters located in the nose and neck areas. These extremely tiny particles thus enter the alveoli of human lungs. The result of this inhaled mixture is found in inflammation, various levels of toxicity in the body, and in other respiratory infections that even include lung cancer.

¹⁸The frame of indicators measured by AIRLY for November 2018 in Bucharest shows the following: the average concentration for (a) PM10 = 58 $\mu\text{g} / \text{m}^3$ - 16% exceeding the maximum legal amount; (b) for PM2.5 = 33 $\mu\text{g} / \text{m}^3$ - exceeding the maximum legal amount by 32%. The pollutants of the suspended dust type were recorded at values con-compliant with public health provisions in the periods of November 9th-11th; November 24th-26th; according to <http://www.ziare.com/mediu/poluare/calitatea-aerului-in-bucuresti-se-deterioreaza-devine-tot-mai-greu-de-respirat-in-fiecare-luna-1541836>

pollution of breathed air – in December 2nd, 2018, at 19:25 hours, the population of the capital of Romania was breathing the air polluted with suspended dust that exceeded the legal amount 7 times: PM 10 = 373.3 µg / m³.

Another indicator of the dust in the breathed air exceeds the legal maximum amount even more. We can say, for example, that the right to a healthy living environment is breached by the indicator PM 2.5 = 231.08 µg / m³ over 9-fold.

The period of monitoring October-December 2018 is not a special or atypical timeframe in which the exceeding occurs only seasonally-annually-purely by accident.

The data provided by stations used, in this case, by the Ministry of Environment in the Romanian Government constantly record the exceeding by 2-3 times of the parameters for the quality of air in the capital of Romania – the suspended dust of PM10 and PM2.5 types.¹⁹

The negative values of the parameters of the polluted air breathed by the population of the capital are even more worrisome – the mere airing of one's home for refreshing the air leads to the passing of those negative values onto the breathed air, along with the suspended particles generated by the cleaning of the homes/industrial buildings, from stoves with solid or liquid fuels-gas, and various types of power plants used for heating. In other words, the pollution generated by the particles produced by the tyres of motor vehicles when braking, other particles generated by the incomplete burning of fuels, with pollutants from industrial waste or various forms of combustion etc. enter into our homes and are added to other suspended dust particles.

¹⁹Under Law No. 104 of June 15th, 2011 on the quality of air, the annual target for the indicators of suspended particulates pollution – PM2.5 is required to be under 25 ug/m3 and 20 ug/m3 before January 1st, 2020; http://www.calitateair.ro/export/sites/default/galleries/Legislation/national/Lege-nr.-104_2011-calitatea-aerului-inconjurator.pdf_2063068895.pdf

It seems we should understand that the practice of airing – as a measure or action for increasing the quality of air – is efficient and necessary only illusively:

“Hence, inside pollution can be 2 or even up to 5 times higher than outside pollution. Other pollutants from the inside can be pollen, the emissions generated by heating systems, upon the practice of cleaning the house or in case there is a pet living inside the house. The pieces of furniture can also release gas and volatile organic compounds”²⁰.

What should be the response of the public authorities of the Romanian state to this type of infringement of the right to a healthy living environment?

From a constitutional and legal perspective – in terms of primary, secondary, tertiary legislation, the Senate, through the local, county, regional and central administrative authorities, is required to systematically address the matter of this fundamental right of the Citizens to a healthy living environment.

6.The Constitution of Romania stipulates the compliance with the Right to a healthy living environment

Romania is a state governing over a territory of 237,000 square kilometres. Its

²⁰According to <https://jurnalulbucurestiului.ro/valori-record-de-poluanti/>; also see Almost 7% of the population suffers from respiratory diseases. The biggest problems were recorded in the great urban centres, where the lifestyle, intense traffic or vegetation leave their mark on everyone's health. The Romanian Society of Allergology and Clinical Immunology indicates that among the sources of pollution there are also the allergy-inducing plants from urban vegetation such as the Ambrosia, the allergy-inducing types of pollen from the atmosphere – as sources of pollution with a negative impact on the protection of the right to a healthy living environment; see dr. Polliana Leru - Primary care physician, Allergology and Clinical Immunology, internal diseases with an expertise in respiratory diseases, Vice President of the SRAC; according to <https://www.philips.ro/a-w/about/news/archive/standard/news/press/2018/2018-0425-philips-pentru-un-aer-sanatos.html>

territory is located in the South-Eastern part of Europe, being a full member of the European Union since 2007.

The state that promotes and defends the interests of the community governed within the territory stipulated under the Constitution has a structure specific to the regimes of the semi-parliamentary republic type, the governing authorities being periodically elected following free and fair elections.

The Romanian state – defined as a sovereign and independent, unitary and indivisible national state under Art. 1, paragraph 1 of the Constitution of Romania – has the obligation, under the same founding document, Art. 1, par. 3, to guarantee the “supreme values” of the Romanian people and the rights and freedoms of its citizens:

“Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed”²¹.

6.1. The Right to a healthy environment as a fundamental right of the Citizen

Pursuant to the same founding document of the State, TITLE II, Chapter I. Common provisions, Art. 15-21, the State shall guarantee and respect equal rights and free access to justice in the same manner and at the same time to all its citizens, regardless of ethnic origin, nationality, residence etc..

The fundamental rights, freedoms and duties of the citizens that the State shall guarantee are numerous, in accordance with the international treaties on human rights that the State signed – from the right

to life and to physical and mental integrity (Art. 22), to the right to information, to work, to express oneself, to freedom of association, to inherit, to decent living and to the protection of health etc..²²

Of particular interest to this study are *the Right to the protection of health* and *the Right to a healthy environment*, stipulated in the fundamental Law of the Romanian State under articles 34 and 35, laid down as follows in the document of primary legislation of the Romanian state:

Article 34, par. (1) stipulates a fundamental right:

“(1) The right to the protection of health is guaranteed”.

Paragraph (2) stipulates an obligation of the State, derived from the need – the citizen's right laid down in the previous paragraph:

“(2) The State shall be bound to take measures to ensure public hygiene and health”.

The following paragraph of this Art. 34 stipulates the obligation of the general administration to guarantee the right to health and medical care on the entire territory of Romania and to all Romanian citizens – all the constitutional actions and obligations being directed, under this third paragraph, toward the protection of the physical and mental health of the citizens of the Romanian State:

“(3) The organization of the medical care and social security system in case of sickness, accidents, maternity and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law”.

Article 35 of the Constitution of Romania refers to a fundamental right of

²¹<https://www.constitutiaronaniei.ro/art-1-statul-roman/>

²²We herein refer to the entire Chapter II, TITLE I of the fundamental Law of Romania, Art. 22-52; under the Constitution of Romania, <http://www.cdep.ro/pls/dic/site.page?id=339>

the Romanian citizens, which is one of the key elements of this analysis – the right to a healthy environment, stipulated in the Constitution as follows:

“(1) The State shall acknowledge the right of every person to a healthy, well preserved and balanced environment”.

As in article 34, on the right to health, the Constitution of Romania stipulates in paragraph (2) the State’s obligation to protect this right as follows:

“(2) The State shall provide the legislative framework for the exercise of such right”.

Paragraph (3) of article 35 stipulates the obligations of Romanian citizens, in the form of civic “duties”:

“(3) Natural and legal entities shall be bound to protect and improve the environment”.

The primary legislation on the protection of the right to health and to a healthy environment is expressed within the secondary legislation of organic laws and in tertiary legislation such as Government Decisions, Minister’s Orders, codes and regulations establishing the extent to which the State or public or private natural or legal entities are obligated to respect these two fundamental rights stipulated under Chapter II of TITLE I of the Constitution of Romania.

The urban documentation in Romania is abundant in provisions for the limitation of such abuses of environmental law, urban law and country planning requirements – buildings, industrial and agricultural works, the conversion of green spaces into public or private spaces etc.

In spite of this, given the alliance of the Romanian case law to the EU case law in matters of urbanism and country planning, environmental protection and public health for the population, the field research in the last part of the study identified a series of details that raise solid questions on the compliance with *the right to a healthy environment* in the public policies at the level of local and regional

public administration, a case-study carried out with a focus on strategies, plans for sustainable development, urban mobility, the improvement of air quality in the development Region of Bucharest-Ilfov.

6.2 The right to health

From the primary legislation to the tertiary legislation and regulations for urban planning, country planning and environmental protection – all the said depict both the State and its Citizens as efficiently preoccupied by the right to a healthy environment and public health of the population.

The obtaining of building permits or of alterations of urban planning documentation - for example, a Regional Urban Plan correlating the urban development of the areas in cities to the provisions of the General Urban Plan²³ are not quite easy to obtain, pursuant to the law – the legislation showing a good preoccupation of the State towards its citizens.

The reality on the ground is however completely different – in this case, we need to highlight the conflict between the Romanian case law in the fields of urban and environmental law, which seems to be sufficient for the compliance with the Right to good administration and the Right to a healthy environment arising hereof.

Despite this, Romania and Bucharest in particular are quite frequently since 2008 subjected to notices and proceedings by the European Commissioner. The year 2018 alone brought two warnings and one proceeding against Romania at the ECJ by the European Commissioner Vella Karmenu, who came to Romania twice in the same year addressing concerns of

²³The matter of the Regional Urban Plan is discussed in Dragoș DINCĂ, Cătălin DUMITRICĂ, URBAN PLANNING AND DEVELOPMENT, PRO UNIVERSITARIA Publishing, 2010, pp. 271-274; M. Duțu (2010), Urban Law, Universul Juridic (Legal Universe) Publishing, pp. 136-137.

repeated infringement of environmental provisions.

7. Conclusions

Our study shows, however, that the Romanian State was referred to the ECJ at least 6 times after 2008 on repeated infringement and the exceeding of the indicators for air and environmental pollution – twice in 3 months in 2018 alone (January – March, 2018) – the green space per inhabitant becoming smaller and smaller due to the reduction of the ecological area caused by the deficient urban policies of municipal authorities.

The experts from various fields related to public administration interviewed in April 2019 show a pronounced pessimistic attitude regarding the compliance with the right to a healthy living environment for the capital of Romania in particular over a period of time of 5-10 years, according to the question in the interview Framework.

Their answers are carefully selected, tactful and as non-conflictual as possible towards the Romanian reality, but, when read carefully they hold an implicit message of uncertainty and pessimism, regardless of how much the experts would prefer not to enter a conflict with the institutions of public authorities where they are employed and whereof they need to speak during the interview.

The toughest of the answers received to the questionnaire with 8 open questions is however given by an expert in urban architecture. According to this expert, we are witnessing *the most effective form of infringement of the right to a healthy environment on the territory of the*

Romanian state, proclaimed in the Constitution as governed by the rule of law: despite the solid urban legislation and documentation based on the European case law, the Regional Urban Plans can be undermined by industrial and real estate developers in particular, without entering in conflict with the applicable law.

This observation is particularly interesting, in that it looks like a paradox: *What is wrong, without being wrong?*

Or, *How can one break the Law without breaking the Law?*

We mention that in this case we are close to a veritable paradox, which we could call “the Paradox of Romanian Environmental Urban Planning”.

Finding answers to it will constitute the subject of a future study focusing on the qualitative methodology of semi-structured interviews and focus groups with representatives of the local public administration.

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