

**Abstract**  
**"PRINCIPLES OF COMMUNITY ENVIRONMENTAL LAW"**

**Academic supervisor - Professor Mircea DUȚU - Buzura**

**Ph.D – VRÎNCEANU (COBZARU) I. Angelica**

We are going through a phase where the society faces destructive environmental phenomena that require solutions as fast and efficient. Global warming, climate change, air pollution, water, soil and subsoil, waste and invasion of genetically modified organisms, the sharp decrease of biodiversity, are some of the most pressing issues that must be kept under control of the protection, conservation and enhance the environment.

The paper entitled "**Principles of environmental law**" has set as its main objective the achievement of a thorough examination of the evolution of environmental law principles in the three legal orders - national, European and international. Principles should be emphasized that the issue at EU level was considered the most detailed, as a consequence of the fact that it is the very basis of this doctoral work.

All aspects of the environment to be protected, preserved and improved can be controlled only if there is a good legal system taking shape. From this point of view, the area of the specific legal environment is rapidly formed absolutely necessary to resolve pressing environmental issues.

At the same fast pace took shape and principles of environmental law is the bone of the whole area. Often when there are specific legal rules to resolve a given situation, the principles of law because of their general ideas, are guiding and ruling the field.

A principle is an ideal start to plan or a source of action. The principles are those basic ideas, widely accepted as a basis for reasoning in a given field. Enunciating the principles is the first stage of their existence as they acquire power only when they are recognized and established. The legislature is required to determine the content of normative principles, but their implementation is possible only when the executive power, namely the Government, establishes the set of measures necessary for their implementation.

Long time environmental issues have been resolved on the basis of civil liability environment and a specific responsibility to form only after being acknowledged "environmental crisis" and they started to outline the penalties applicable environmental damage.

The paper "Principles of environmental law" is of interest to note first the novelty of information theory, especially with data on the evolution of environmental jurisprudence currently in full time training and deepening. Too few "famous" cases on environmental law exists to date, which highlights the novelty of the environmental issues of law principles, on the one hand, and the inertia existing in the process of launching court actions the legal basis of damage environment, on the other.

Motivation to achieve this thesis has left an objective fact: the principles of community environmental law were not subject to review only a relatively small number of scientific papers and articles. Although environmental issues are in the forefront of recent concerns, doctrine and jurisprudence of the environment are still at the stage of formation and consolidation.

Principles of environmental law in general and those of Community Law, in particular, are an interesting topic, current research and open, just the lack of too many specialized works. In other words, we stand on a land explored only very small percentage. Moreover, in carrying out his doctoral thesis, I had the pleasant surprise to witness the changes in the evolution of principles. A clear example is the French environmental law decisions of very recent date (2008 - 2009) given by the court for damage to the antenna relay location in proximity to housing. These decisions are certainly legal precedent that will open a new path and a different perspective development of Community environmental law principles.

Principles are representing the bone of a domain, but nevertheless ensuring the principles does not ensure their application to natural and legal persons. For environmental law, the concept of principle developed amid growing importance of regulations on the protection, conservation and environmental improvement. In turn, regulation has been driven to build and develop the ecological crisis situation which required the most urgent legislative action.

The concept of "fundamental principle" of law is more understanding that differs from one legal system to another, from one branch of law to another. Novelty that brings the concept of principle in environmental law lies in its content differently depending on the law to which they relate:

- In national law, the principles enshrined explicitly as rules of positive law and are granted the status of rules of conduct for maximum generality and universality, binding in that area.

- Community environmental law principles have an interim status is not fully and directly applicable legal rules but rather guidelines that the community must base their overall environmental policy and legislation in particular.

- In international environmental law, the concept of principle remain imprecise, the most frequently used to describe a constant obviously a relevant fact, the findings of an analysis and general binding rules.

Depending on the extent and influence the content of all environmental legal regulations, principles of this branch of law can be grouped into two categories: basic principles and general principles (subsidiary of the first category).

The criteria by which this classification is made on the scale and influence the content of all the principles of environmental legal regulations.

The basic principles are found at all levels established environmental law, national, regional (EU), international, and its entire content concerning bone forming conferring unit, consistency, stability and uniqueness.

In the category of fundamental principles are the principles of prevention, precaution, environmental protection, environmental conservation, improve the environment, "polluter pays" principles of responsible environmental and human participation (human right to a healthy environment).

The general principles enshrined in the right environment and dominate its traditional materials, law, community law and international law, and express their specific. The general principles are:

- Community law is general principles: the principle of rectification at source priority environmental assets, the principle of integrating environmental considerations into all Community policies, the principle of subsidiary;

- international law are general principles (specific): the principle of cooperation, the obligation of States to peaceful resolution of disputes on the principle of shared responsibility, but differentiated states, liability for environmental damage states, the task of environmental assistance, etc..

- in law principles underlying environmental policy in Romania are: the principle of integrating environmental requirements into other sector policies, the precautionary principle in decision making, the principle of preventive action, the principle of retention of pollutants at source, the "polluter" pays, the principle of conservation biodiversity and natural ecosystems biogeographically specific framework, sustainable use of natural resources, information and public participation in decision making and access to justice in environmental matters, development of international cooperation for environmental protection.

Principles of Community environmental law was established for the first time in an embryonic form, in the five action programs. Since 1973 till now, the EEC and later the EU were adopted multiannual 6 action programs that have a significant role in creating the Community policy to protect and enhance the environment.

Guiding idea of this policy document is a higher quality of the living, plus the need for present generations to transmit to future generations an environment "to ensure cleanliness and quality of life" (ideas expressed in the Fifth Schedule action).

First Action Program (1973 - 1976) defined the basic principles of environmental policy. It is the principle of preventive action and polluter pays principle ", which currently find them enshrined in the three legal orders as fundamental principles.

The second action program (1977 - 1981) continued to identify the concerns raised serious problems of pollution and set out 11 principles that have been taken and action programs that have followed, including the principle of prevention, polluter pays principle "subsidiary principle, the principle of environmental protection, the principle of promoting environmental education.

The third action program (1983 - 1986) established the first priorities of Community action in the environmental field and has introduced several new concepts, such as integrating environmental considerations into other Community policies, preventive approach, etc. From this program, emphasis was placed on two fundamental principles: prevention and environmental protection.

The fourth action program (1987 - 1992) aimed to make environmental protection a key element of any community economic and social policies. Activities given priority are: full and effective application of Community legislation in force, controlling the environmental impact of all substances and sources of pollution, better access to public information and better dissemination of information, creation of jobs.

Fifth Action Program (1993 - 2000), suggestively entitled "Towards Sustainability", comes before the extension document, but with a different approach to environmental issues.

Fifth Action Program sets the six elements of sustainable development actions at EU level: integrating environmental considerations into other policies, implementation of the partnership between the EU Member States, business and public and shared responsibilities, broadening the range of instruments environmental policy: taxes, subsidies, firm agreements, changing consumption and production schemes, making the work of European legislation by Member States, businesses, etc., international cooperation in Agenda 21 of United Nations and that of fifth environmental action program.

The document promotes the principles of sustainable development, use of preventive measures and shared responsibility, set out in the Maastricht Treaty.

The Action Program (pending), entitled "Environment 2010, our future, our choice", adopted in 2002, is seen as a sector instrument. The document states that all economic policies to converge with the priorities defined: the fight against climate change, nature protection, biodiversity conservation, environmental link / health, sustainable use of natural resources and sustainable waste management.

Study environmental law principles in the development of doctoral work "Principles of environmental law" is intended route consistent global environmental policy for the protection, conservation and environmental improvement, the stage debut until the time you have to walk, so the early stage when only the outlined ideas for prevention, care, sustainable development, conservation, protection and improvement of the environment and to transform those ideas into real strands, some of them with application and legal consequences.

All work polarize their content around the concept of "rule of law" environment, whether general or fundamental principle or rule of law, Community or international. Detailed presentation of principles emphasizes the idea of the existence of such ruling ideas of areas not just expressed, but also enforced.

One such approach for the identification and presentation of the principles of environmental law in general and environmental principles of Community law, in particular, has wide relevance in today, for many reasons:

- New character concepts presented;
- Understanding the importance of the transposition and implementation of the principles of Community law in a uniform manner in all EU states;
- Approach more awareness of the importance of environmental competence to assist in the reconciliation of man with nature.

Prevention, precaution and sustainable development are concepts that have changed very innovative thinking characterized by inertia until recently hovering over environmental issues.

Be careful, so take environmental protection measures is a risk even if uncertain, to be preventive, i.e. to prevent any harm resources, conserve existing resources, to protect nature, improve natural datum to pay for pollution produced, presents the six main areas for action at Community level but also internationally, which made global environmental policy.

From idea to the principle, development of environmental law principles, whether national or international community, has undergone many successive stages, but the purpose has been achieved at this time because these principles are enshrined in law.

The next step to be done is to implement the principles in the real plane and their transposition into environmental practice of all states to obtain clear results in global environmental policy.

A special feature of the principles of Community environmental law is that they are implemented in all EU countries that joined the EU.

The paper entitled "**Principles of environmental law**" is structured in six chapters, one among five chapters is a comprehensive theoretical approach on the development principles of law generally and the legal environment, especially the sixth chapter it is a case study that addresses issues of prevention and precautionary principles in environmental law and the issue of genetically modified organisms.

Chapter I entitled "**The notion of rule of law**" made an analysis about the origin of the concept of "principle" of historically and chronologically, from his debut appearance as an idea and by the time the acts of consecration. For a better understanding of concepts and ideas contained in the chapter, data were structured in three directions, for the three distinct legal systems: national, community and international respectively. Internal (national) principles are presented throughout as a systematic formula for the purposes of delimitation principles of private law, those of public law.

Chapter II - "**Characteristics of 'principle' in environmental law**" deals strictly with the concept in principle as a distinct concept in environmental law, both at national, EU and internationally. This chapter, made in this regard, a review of the main features of the concept of "principle" a relatively new research area, namely the issue of protection, conservation and environmental improvement.

At Community level, the principles of Community environmental law are presented starting from the formulation of their programs on environmental issues when they had the value of ideas purely declaratory.

Regarding the notion of "principle" at international level, it is noteworthy that there originate many of the principles of environmental law. Established within the first two conferences on environmental issues - Stockholm Conference and Conference in Rio de Janeiro - these principles were taken over time, both nationally and in EU environmental policy.

The Chapter III – "**The fundamental principles of Community law**" - begins with a brief overview of the development principles at EU level (in fact the very subject of the paper) as a distinct branch within the current legal system, then proceed to their analysis - called the fundamental principles Community environmental law.

Since the principles of environmental law issues at EU level is quite complex presentation extends over three chapters. In Chapter III, are only the basic principles of environmental law, namely: the principle of preventing environmental degradation, the precautionary principle, the principle of conservation, environmental protection principle, the principle of environmental improvement, the "polluter pays" principle and environmental responsibility and participation human (basic human right to a healthy environment).

In Chapter IV entitled "**General principles of environmental law**" is still studying the principles at Community level. Thus, it is submitted to the following three principles: the principle of subsidiarity, the principle of giving priority to correct the

source of environmental pollution and principle of integrating environmental considerations into all community policies.

Chapter V entitled "**The principles set out in the Court of Justice of the European Union**" is dedicated to presenting the three principles that formed the practice of the Court: environmental protection and priority expresses an essential interest, freedom of states to set their own rules, the legal foundation environmental directives. Since the doctrine is very poor in content references to the three principles, was used to exemplify Court of Justice of the European Union regarding the applicability of the three principles.

Chapter VI shall constitute a "case study on the applicability of the principle of prevention and the precautionary principle in EU environmental issues. In the study to see how the precautionary principle and the principle of prevention are applied in a new and controversial area, the genetically modified organisms (GMOs)

The entire study examined the issues through the filter GMOs at Community level, benefits, risks and disadvantages of using biotechnology, and the link between care and prevention first and genetically modified organisms, on the other. The study also captures aspects of the implementation of prevention and French content precaution, highlighted by examples of precaution in issues concerning the applicability of natural hazards and technological risks, the precautionary principle into positive law and French law.

What brings new job:

- First an analysis was made of the concept of "rule of law" environment in national, EU and international, especially at EU level:

- The second was conducted a case study on how the principles are applied to some environmental law in practice - it is the precautionary principle and prevent the issue from the perspective of genetically modified organisms.

- Third were analyzed a series of EU environmental law cases, particularly relevant to demonstrate the development field, exploiting in this bibliographical sources in French literature, English, Spanish, Italian.

- Fourth was suggested a different approach to solve current problems, from other positions, more cautious and more attentive to any damage that could affect the environment, sustainable development, present and future generations.

The study concludes with the presentation of proposals for better application of Community environmental law principles, from a personal perspective:

Proposals for better application of the principle of prevention:

- achieve a more thorough and efficient information to the population on the need to prevent environmental damage. Information must be as complex and to achieve a double effect:

A. Administrative type information on the benefits of long-term preventive attitudes towards the environment. In recent years, environmental policy in EU states saw a real climb. Many of the principles of environmental law have occurred at Community level. Thus, general principles (subsidiary, the principle of integrating environmental considerations into all Community policies and principles that giving priority to environmental pollution source) and the principles formulated in the Court of Justice of the European Union (environmental protection and priority expresses an essential interest, freedom of Member to establish its own rules and legal basis of EU

directives on environment) were formed even in the Community, its specific and it can be concluded that there was and there is a real concern for environmental issues, both at the theoretical level, and practical. Information management is conducted at an appropriate level, so those involved in administration and even I know that principle by supporting policies. At community level, prevention was done very effectively in protecting nature and its related problems or other incidents that he (agriculture, industry, health, privacy, family, right at home, hunting, leisure activities, etc). Related to prevention at Community level there are a number of economic and fiscal instruments for environmental protection, which are applied thoroughly and with good results, especially in some European countries (EU).

B. Informs the public (citizens) on the role it can play process efficiency of the idea of prevention. Every citizen can help improve environmental condition. Here are some simple ideas that anyone can apply to prevent actions with negative environmental impacts:

- More rational use of water and electricity;
- Storing waste from domestic activities properly respecting the policy of collecting and recycling them;
- Use of ecological fuels at the expense of lead;
- Waiver and return cars to other less polluting means of transport (bicycles, scooters, transport, etc)
- reviving traditional agriculture to the detriment of transgenic production, which may have a negative impact on human health and environmental quality;
- encourage free enterprise in areas of ecology (eg environmental gas stations, restaurants, organic, organic, eco shops, eco towns, etc..)
- Planting, forestation, reforestation.
- creating public and private institutions, of specific departments to handle the latest issues in the ecological field. Compartment could name "Department of Environmental Education, and should handle the execution of the prevention, care, emergency, disaster and public information about the environment;
- creating an online database containing information useful to institutions, but also to the public (citizens), on news of the environment and the problems they face;
- A system as soon as notification and emergency prevention of environmental events that may harm the environment, which operates between states of the world (and therefore the Community)

Proposals for better application of the precautionary principle:

§ expanding the fields in which the precautionary principle be applied, other than it is already known and implemented (medicine, agriculture, environmental protection). Caution with prevention can be applied in almost all fields and become universal principles. Precaution and prevention can be applied in legal sciences (in administrative law, criminal law, constitutional law), and in other fields (agriculture, industry, research, catering, medicine, education);

§ inform the public about the role of precaution and prevention in achieving environmental policy and beyond, due diligence may become a principle of life, and could apply even in solving problems related to family safety, children, freedom of movement, etc.

Proposals for better application of the principles of protection, conservation and environmental improvement:

§ maintain the role of the three principles in the implementation of environmental policy;

§ stability of the three principles must not be a lack of dynamism of these principles, hence the need to update from time to time their meaning, by renewing strategies, plans, measures and solutions for achieving EU environmental policy.

Proposals for better application of the polluter pay principle ":

§ Closer collaboration between different state institutions to implement the polluter pays principle "and other punishment systems (administrative, criminal, offense, etc.)

§ Establishment of standards "emission control" to supporting all pollutants.

Proposals for better application of the principles that the priority at source:

§ broadening the applicability of the principle framework at EU level and internationally;

§ using sense principle in resolving cases of environmental law.

Proposals for better application of the principle of integrating environmental requirements into all Community policies:

§ widening scope of the principle;

§ Better understanding by officials and the public of the role of such a principle integrator;

§ development of the idea of "integration" of the state in principle, in terms of basic idea of the field, in a principled legal effect.

Proposals for better application of the principle of subsidiary:

§ Overcoming the 'Supranational', meaning that EU states are more open to solutions of the subsidiary principle and to appeal to the national framework only when it is considered optimal for solving a problem (often, environmental problems than boundaries of a state policy is most appropriate, namely the international);

Other proposals for a more effective application of Community environmental law principles:

A . legislative initiative:

Although the law states provided the fundamental principles of Community environmental law in almost identical or similar forms, this could be improved by achieving uniformity of expression and to address them.

Therefore, I propose a legislative initiative to establish the unit on the principles of Community environmental law. This initiative could contribute to more effective and more appropriate recognition of the place and role of principles of environmental law in society today.

This legislation should begin with regulating smooth fundamental principles of Community environmental law, to continue with the general principles of environmental law and conclude with the principles formulated in the Court of Justice of the European Union.

Suggest such a legislative initiative proposed a bill covering the uniform principles of Community environmental law, since, although the wording of the principle resembles in terms of content, vary greatly in terms of their application from one state to another.



## B. environmental training of judges in the Member Community

One of the specific problems of jurisprudence in environmental protection is the lack of judges specialized in environmental issues. As evidence of the lack of specialists in environmental standing case-law practice that many times, resort to legal rules of traditional legal areas to address related environmental cases. Very long time, liability for environmental damage was based on legal framework of civil law, going as so, on an interpretation in terms of civil works such as farming.

At Community level are countries where there is a greater emphasis on training of judges, was ready for "confrontation" with any problems, including environmental. Spain, Ireland, Lithuania, Poland, United Kingdom and Slovenia meet mandatory continuing training assumptions. In other countries, the magistrates appointed permanently, the training is optional. It is not usually taken into account - or too little - in a promotion or a choice of functions, in addition to Germany and Spain (a project to make training mandatory and establishing a system of advancement is in Working in France).

Completion of doctoral work "Principles of environmental law" through all stages of a study natural was to subject the concept of "principle" all forms of analysis, based on the concept of "principle" generally continued with the term "principle" in law at national law, EU and international, and culminating with the Community principles in practical applicability of genetically modified organisms.

The paper examined a number of notions and concepts that I would classify as "unusual" and open research in environmental law because it was concerned to capture the essential elements of the principles of Community law issues. Headquarters matter of Community environmental law is in full stage of determination and dedication, and principles are hitting the road in future case-law.

The general principles and principles embodied in EU environmental law are still under further elaboration. Perhaps so, especially if the principles in environmental law, and literature were scarce, yet there are no sufficient data to support how they work in practice.

New character of the work is given and the issues under review in the case study regarding the applicability of prevention and precaution in the field of genetically modified organisms. Modern biotechnology is a current topic of controversy, was still under uncertain, to say "pro" and against ", and only the passage of time and research will show us how it was good or bad when it started activities change genetics of organisms.

Therefore, it seems inappropriate to say that work is completed, many of the data presented are still very current and finalize happen now so that remains an open-ended work. There is room for a comeback when the scientific data will allow us new conclusions regarding the evolution of Community law principles of environment and genetically modified organisms. The study surprised trends only until now, based on the doctrine and jurisprudence, and hope that everything will happen in the future the environmental realm will help to improve or even stop the state of environmental crisis.