

THE LEGAL PROTECTION OF THE NATURAL ENVIRONMENT - A PROBLEM WITHOUT BORDERS

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Abstract

The long history of mankind certifies the fact that within two to three millennia the impact of man on the environment was crucial: man deforested more than half the forest area, degraded huge areas by excessive crops, consumed almost up to exhaustion a part of the Earth's natural resources, reduced the self-purification possibilities of the biosphere through huge amounts of toxic waste dumped at random or in nature, caused by his actions an imbalance between the protective layer of ozone and the oxygen one, polluted the oceans and the seas by substances leaks poisonous for the marine flora and fauna.

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This prolonged process of pollution that the environment has undergone gave rise to the great contemporary ecological problems that result in a disagreement between the man-made environment and the natural one. Through its destructive influence that it had and still has on the natural environment, man has not only destroyed the ecological equilibrium, but he has also caused the reverse reactions from the environment embodied in the natural conditions less favourable to man, serious pollution, global climate disruptions, etc.

Environmental degradation is the result of the conscious or unconscious human action on the natural environment that sustains us and has consequences that are manifested in all forms and in all aspects of social life, such as: reducing per capita agricultural production which lead to increased malnutrition, nuclear, chemical and biological wars that threatened the ecological environment over time, the natural human but uncontrolled desire for prosperity, led to poisoning the environment with a number of substances inimical to life.

Huge amounts of carbon dioxide have also been released into the atmosphere due to increased fossil fuel consumption, enhancing the global climate changes. Pollution remains the most dangerous attack on the human community; as human society evolves, it becomes increasingly destructive both in the productive process and in the personal consumption.

Pollution - a scourge of the modern world – is amplifying as the technical progress is increasing, being one of its direct attributes. That is why today, all over the world, increasingly vehement actions are being imposed in order to support the environmental protection¹.

From the floating islands of plastic in the North Pacific, to the slicing of some mountain slopes, the natural or man made disasters caused the process of natural ecosystems destruction to be more acute than ever.

Thus, the disaster caused by the accident at the Bhopal plant in India in 1984 that killed over 15,000 people and which is considered the largest industrial disaster, whose effects are still felt (the culprits have only received a 2,100 dollar fine and two years

¹ Mircea Duțu, *Dreptul mediului*. Ediția aII a (*Environmental Law*. 2nd ed.), editura C.H.Beck, 2008, p. 20

imprisonment), the Chernobyl accident through which over 50 tons of radioactive material have been released into the atmosphere killing more than 4,000 people, and hundreds of thousands more still have to suffered today, also having a major impact on the agricultural lands, the accident in Hungary in which the toxic sludge reached the Danube, and which comes just a few months after the explosion of the oil platform in the Gulf of Mexico, which was ranked as the worst accident in the oil industry in history are just some examples which show us that people proved to have been guilty over the years of a lot of ecological disasters, which have even made millions of casualties.

What is discouraging is the fact that in most cases the guilty were not punished in any respect or if they received sanctions they were insignificant compared with the tragedies they have produced.

Faced with such a phenomenon, the entire world's countries have adopted a series of normative acts on the environmental protection, acts that, based on the "polluter pays" principle, provide penalties for those who are guilty of their violation. The increasingly difficult task of law is to help create a shared vision of all those responsible, especially the population, both as regards the economic side and the ecological behaviour². This universal character of the environmental issues, but especially the humankind's interest in preserving the environment make the legal regulations the primary means to promote the environmental objectives.

Therefore, a few years ago the European Parliament and the European Union Council considered it necessary to establish within the European Union a series of penal measures to ensure the protection of the environment. To this end, the Directive no. 99 of 19 November 2008 was created concerning the environment protection through criminal law, through which the obligation has been established for the Member States to ensure that a series of acts constitute crimes if they are contrary to the law and if they are committed intentionally or at least with serious negligence.

In other words, serious violations committed against the environment will be punished with criminal sanctions in all Member States. By adopting this report initiated by Hartmut Nassauer, the European deputies have unanimously accepted that governments must apply penal measures to punish such illegal activities which could cause harm to some persons or which would seriously harm the quality of air, water, and soil.

This Directive originally had as main objectives to establish a harmonized catalogue of offences to which one could apply to criminal sanctions by the Member States, as well as the adoption of a common legal framework to harmonize the penalties for serious violations. Thus, if before the entry into force of the Directive an environmental crime was considered only a civil penalty, after its entry into force and the aligning of the Member States' national laws to the Directive, criminal sanctions will be applied to these crimes.

The Directive also sets the unlawful acts against the environment that will be considered crimes:

a) the discharge, emission or introduction of a quantity of materials or of ionizing radiation in the air, soil or water which causes or is likely to cause death or serious injury to any person or substantial damage to water or air or soil quality;

b) the collection, transport, capitalization or disposal of wastes, including the control of such operations and the after-care of the disposal sites, including the waste

² Dumitra Popescu, Mircea Popescu, *Dreptul mediului. Documente și tratate internaționale (Environmental Law. International documents and treaties)*, Editura Artprint, București, 2002, p. 108

management actions that cause or could cause death or serious injury to any person or substantial damage to water or air or soil quality;

c) the illegal transfer of waste, based on the definition given by Regulation no. 1013 / 2006 of the European Parliament and of the Council on the illegal transfer of waste that is carried out in a quantity that cannot be neglected, either executed by a single shipment or by multiple shipments apparently legal among them;

d) the exploitation of a plant in which hazardous activity is carried out or in which dangerous substances or chemicals are stored or used, and which, outside the plant cause or are likely to cause death or serious injury to any person or substantial damage to water, air or soil or plant quality;

e) the production, processing, handling, use, possession, storage, transport, import, export or disposal of nuclear materials or other dangerous radioactive substances causing or likely to cause death or serious injury to any person or substantial damage to water, air or soil or plant and animal quality;

f) the murder, destruction, possession or taking of specimens of protected wild fauna or flora, except the case when the deed concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of species;

g) the production, import, export, marketing or use of substances that deplete the ozone layer³.

The Directive obliges all the Member States in relation to its purpose, but leaves to the national courts the choice of the form and means necessary to achieve the goals.

These penal regulations in the field of environmental protection have emerged as an acute need for all the EU countries, but also outside its borders for reasons such as:

- the current sanctioning systems existing at national level (notably in Romania) are totally ineffective and do not fully comply with the environmental legislation in force. Precisely for this purpose the regulation of some more effective and dissuasive penal sanctions has been imposed as opposed to the administrative sanctions.

- this approach has emerged as a consequence of the concern towards the growing number of environmental crimes and especially towards the consequences that these crimes produce across borders of the countries that have committed them.

These ecological crimes without borders - we call them this way because they are committed in one state, but their consequences are also felt in the territories of other states - are becoming more common. Community laws specifically protect water and air, but there is no effective regulation to protect the soil.

A few years ago, the European Commission proposed a law on soil protection, but a group of European governments have refused to approve it, claiming that its implementation would be too expensive and left this task to the national governments, arguing that the soil, being bounded by borders, is subject to the sovereignty of the state to which it belongs. But facts have proven that a crime against the ecological environment committed in a state may produce serious consequences on the soil of other neighbouring states. I shall give as example the Chernobyl accident, produced in 1986, through which a huge amount of radioactive substances was thrown into the atmosphere. This tragic event caused millions of people in the neighbouring territories to change their lifestyle radically and permanently. Several countries have suffered because of the disaster, but the most affected were Belarus (because on its territory there were deposited almost 70% of the radioactive substances thrown into the air after the tragedy) and Russia.

³ Directive no. 2008/ 99/EC

- Inactive behaviour also produces the same effects as An active behaviour and it should be punished accordingly; this behaviour must be considered a criminal offence within the territory of any state inside or outside the Community. For example, the disaster in Hungary in early October 2010 warns against the dangers that may arise from negligence. The Danube is again in danger of being contaminated with red sludge because the rains in late October 2010 have brought the red sludge in the river's branches, sludge which is still present around the tank which has cracked. Despite the fact that the measures to control the toxic effects have been effective, meaning that the pH was brought to safe levels, the measures carried out indicate that this level has increased and that it could further increase. In its way, the Danube crosses the territories of 10 countries.

Therefore, the European Directive requires the Member States to ensure the regulation of a principle similar to the one from the civil law on the culprit's liability for the acts of the supposed ones. Respectively, the situation in which a legal person can be held criminally responsible if, because of the lack of supervision or control of a person who holds a leadership position and who, by virtue of this position has these powers, an offence has been committed against the environment. But the liability of the legal person shall not exclude the liability of the natural person involved in committing this crime regardless of the quality that he had (author, instigator, accomplice).

Thus, the Directive obliges the Member States to take measures to ensure the application of some criminal sanctions as effective as possible, proportionate and with a discouraging effect for the crimes committed by the natural or legal persons, especially to considerably reduce the number of these offences and, consequently, to preserve the environment which sustains us.

Therefore, the Member States, and thus Romania, are required to ensure the transposition of the provisions of the Directive by means of internal regulations necessary to comply with it before 26 December 2010.

To achieve these goals, the alignment with the European legislation, but also to increase the legislative efficiency on environmental protection, the Romanian Government adopted on October 7, 2010 a draft law on environment protection through criminal law. The incriminations contained in this law relate to the infringement of some legal provisions regulating important aspects of pollutants management.

The law on environmental protection by means of criminal law brings as new element in the national legislation, among others, a new indictment on the regime of collection, transport, capitalization or disposal of waste other than the dangerous ones. Thus, if presently the carrying out of such operations without complying with the legal framework is incriminated only when dealing with dangerous wastes, after transposing Directive no. 2008/99 / EC into the national legislation, the non-observe of these rules will be sanctioned also when dealing with wastes that are not categorized as dangerous.

The offences covered by this law will join those already existing in laws such as: GEO no.195 / 2005 on environmental protection, GEO no. 78/2000 on waste regime, GEO no. 57/2007 on the regime of natural areas, updated Law 137/1995 on environmental protection.

The experience in this field has shown that the existing sanction systems have not been sufficient to ensure the full compliance with the environment protection legislation; therefore, the provision of some criminal penalties has become necessary. The bill provides new incriminations in the field of environmental protection, which are intended to complement the national legal framework for environmental protection.

We shall see to what extent this law will be effective given that a criminal law on the environment emerges with difficulty at all levels: national, international, community and that not even the countries which have a tradition in this sense do not boast with the drastic reduction of the ecological crimes.

Reality shows that worldwide there is a small number of criminals convicted for crimes against the environment, and in Romania this figure will be even lower for several reasons: first because the existence of an environmental criminal law presupposes the existence of some police officers specialized in environmental crimes, of some magistrates specialized in environmental issues, of the conscious and selfless contribution of some state institutions that can make a priority from fighting against environmental crime.

If these conditions are not met, and it is hard to believe that they will soon be met, the enactment will come into force only to ensure Romania's alignment to the European standards in the field and only to meet its obligations as a member state of the Union European.

Bibliography

- 1) Mircea Duțu, *Dreptul mediului*. Ediția a II a (*Environmental Law*. 2nd ed), Editura C.H.Beck, 2008
- 2) Dumitra Popescu, Mircea Popescu, *Dreptul mediului. Documente și tratate Internaționale (Environmental Law. International documents and treaties)*, Editura Artprint, București, 2002.
- 3) Directive no. 2008/ 99/EC.