

Juridical Protection of Waters and Aquatic Ecosystems in Romania

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Key words: juridical protection, water management, ecosystems, pollution, juridical liability

SUMMARY

In Romania, the right to a healthy environment is one of the fundamental rights of the citizens. This right has been provided for in the Law for environment protection no.137/1995, amended by the Romanian Constitution also amended. The Romanian state recognizes the right of any person to a healthy and ecologically balanced environment. This right has a corresponding obligation for the juridical and natural persons to protect and improve the environment.

The juridical framework regarding the ecological use, preservation and management of water resources and of the ecosystems is set out by the Law of waters no. 107/1996, amended, as well as by other provisions which completes it.

The juridical regime of waters gains a special configuration as a result of the importance of water not only for life itself but also for the human activities (navigation, agriculture, industry etc.). The waters with electric power potential those who can be used in public interest and the territorial sea are the exclusive object of public property. The protection and sustainable use of water resources are actions of general interest. The necessity of water protection rose as a result of water pollution generated by the industrial revolution and has been one of the community priorities in matters of environment. Underwater pollution can take place either by infiltrations and direct discharges or by the pollution of surface waters and soil. The protection of surface waters, of underwater and of ecosystems consists in maintaining and improving their natural quality and productivity, in order to avoid the negative effects on the environment, human health and on the material goods. The balance of the aquatic ecosystems is highly influenced by water quality. That is why it is imperative to take action in order to progressively reduce the discharges of substances with high risk potential. The juridical protection of waters is done at the quantitative, qualitative and sanitary level. Sustainable and rational water management it is based on knowing the country's water resources which is realized through a permanent and integrated activity of supervising, observing and measurement of the hydro-meteorological phenomena and water resources.

Within the process of water management, where the water is regarded as an active force in sustainable development and in the conservation of the integrity of the environment, the overall politics must point to the public awareness concerning water protection and juridical liability; the initiation of ecological programs for water protection; the improvement of risk analyzing activities and disaster prevention with direct impact on aquatic life.

Sustainable development in the meaning of the Law of waters no. 107/1996, amended, consists in the present use of waters according to the necessities without compromising legacy of the future generations.

The alteration of water quality by discharging toxic waste and residue brings about the liability of the perpetrator. The forms of juridical liability for disregarding the legal provisions regarding the environment protection are: civil liability, contravention liability and penal/criminal liability.

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1. PRELIMINARY STATEMENTS

Environmental protection is a major public interest objective whose achievement influences the sustainable development of society, which is that development corresponding to present necessities without compromising the possibility for future generations to satisfy their own necessities.

Basically, environmental protection means our care for nature in all its forms specific to various regions or elements. As a result, administrative, legislative, management, technical and educational measures are being taken. The environment must be protected because it is man's living place, a supplier and reserve of natural resources. In nature conservation, the most essential rules are taken into account: ecological equilibrium preservation, resource rational exploitation, biodiversity conservation.

Environmental problems in general and those of water and ecosystems protection in particular are difficult and complex, knowing that pollution can't be stopped by boundaries, having a global effect. Therefore, water quantity and quality represents a global problem which must be solved at once. Environmental health or pollution have become a global problem for each and every country knowing the fact that the health and diversity of environment general elements: water, air, soil, forests, biodiversity, etc., also mean the very health of future generations.

In the field of environmental protection, Romania's major preoccupation is represented by stopping water quality decline, a clean Romania in a clean Europe.

2. GENERAL STATEMENTS AND REGULATIONS

Although Romania possesses all geographical types of waters: lakes, underground waters, rivers, big rivers and the sea, on dry years there are large areas which get dry.

The water juridical regime gets a special characteristic as a result of water importance not only for life as such, but also for various other human activities (navigation, agriculture, industry, etc.)

Romania's Constitution, revised, stated that waters with valuable energetic potential, those used in public interest and the territorial area of the sea make the exclusive object of public property.

The knowledge, protection, evaluation and sustainable usage of water resources are actions of general interest. Water juridical protection has been imposed by water pollution itself as a result of the industrial revolution and it constituted one of the EU priorities in matters of environment. The first regulations concerning waters appeared from the necessity to solve litigations concerning the right of property. To this effect, according to Art. 579 Civ. C., "a person who possesses a water spring on his property can do whatever he wants to with it,

without damaging the right of the downstream owner by any title or prescription over that spring.” The establishing of water resource utilization regime, irrespective of the type of property, is the exclusive attribute of the Government, being exercised by the central public authority in the domain of waters, with the exception of geothermal waters. In Romania, the right for a healthy environment is one of the fundamental rights of citizens. This right has been settled for the first time in the Law of Environmental Protection No.137 /1995, modified, then in Romania’s Constitution, revised. Romania acknowledges any person’s right to a healthy and ecologically balanced environment. To this right, we attach the correlative obligation of both natural persons and corporate bodies to protect and improve the environment.

The environmental protection general law is Law No. 137 /1995, modified, which settles in Section I of Chapter IV, water protection and aquatic ecosystems items, while in Chapter VI ,the elements which constitute offences and infractions, as well as sanctioning modes.

The Water Law No. 107 /1996, modified, settles the water utilization regime, waterbed utilization, water management, minor waterbed protection, of shores and of water management, water planning, water structures regime, protection against floods, water management activity control, responsibilities and sanctions.

According to the Water Law, “waters represent a renewable, vulnerable, and limited natural resource, an indispensable element for life and society, a raw material for productive activities, source of energy and means of transportation, an essential factor in preserving the ecological equilibrium. Provisions concerning water protection are to be found in Law No. 192 /2001 about the piscicultural fund, fishing and aquaculture, modified. Water policy and its sustainable usage represented a major problem of EC in the 1970s which led to a more elaborate and efficient protection method based on holistic approaches. The first set of regulations in the field of water protection appeared since 1975 and went on, with a view to creating a juridical frame at a Communitarian level.

The provision of Direction No.2000 /60/CE by the European Parliament Council of October 23, 2000 of establishing the Communitarian frame of action in the field of water strategy meaning that “the water is not a commercial product as such, but rather a legacy that must be protected, defended and treated well” is shown in the Water Law as: ”water is not a commercial product as such, but it is a natural patrimony that must be protected, treated and defended.”

3. WATER PROTECTION AGAINST POLLUTION

In the medical world they use to say that it is much easier to prevent than to cure ,so in the field of environmental protection the principle of preventing environmental degradation is based upon the idea that prevention is less costly than redressing ecological damage, which is often irreversible.

In accordance with this principle and in keeping up with it the environmental policy will be carried out in order to avoid negative changes of environmental quality. In other words,

planning, decision taking and execution activities must lead to pollution prevention. By applying the principle of environmental degradation prevention, national and European regulations imposes member states to elaborate edification plans and establish water/nature protection zones.

In Romania, surface and underground water protection, and of aquatic ecosystems have as major aim quality improvement and maintenance as well as their natural productivity with an impact upon people's health.

The industrial revolution, random agriculture, extreme urbanization has contributed to environmental pollution, water pollution included. Water, as a natural resource, regulates and influences demography, people's health, being an essential factor of biodiversity.

The object of surface and underground water protection and aquatic ecosystems consists in the improvement of its quality and natural productivity with a view to avoiding the negative effects upon the environment, human health and material goods.

The aquatic ecosystem equilibrium of the Danube Delta is strongly influenced by the quality of the waters that flow into it. In Romania, 70% of the water volume comes from the Carpathians as rivers that flow into it directly or indirectly. Almost half of its navigable length crosses Romania (1075 km) with its Delta and river mouths. After the completion of the Danube – Main – Rhine Canal, which connects Rotterdam and Constantza, the European integration along the Danube extended even more. The Danube Delta is where the Danube flows into the sea through its three branches: Chilia, Sulina and St. George. Its surface, 4152 sq. km., (82% in Romania and 732 sq. km. in Ukraine) plus the lagoon complex Razelm of over 1000km. The Danube Delta biosphere reservation occupies the 26th position in the world, while in Europe, it occupies the 4th after the Volga, the Pad and the Kuban. A real bird paradise, the Danube Delta, as a national and international heritage, requires an individual sustainable development plan.

As its environment consists of a multitude of fish, a very rich underwater and floating flora, a complex fauna, birds, and others, the fight against pollution must play an extremely important role. Water juridical protection can be achieved quantitatively, qualitatively and sanitary.

Water quantitative protection is achieved by compelling the users to save water by using it judiciously, to ensure the upkeep and repair of installations, to use the best technology available which allows the use of smaller quantities of water as well as small water consumption by water recirculation and/or recycling, etc.

A water user is, according to the Water Law, any natural person or corporate body who uses water, the water surface, or its fruit in his activities.

As for water qualitative protection, the Law states the following: the interdiction of all kinds of water resource pollution, of introducing, in any way, of wastes and residues into waterbeds, lakes or ponds, in the Black Sea, in wet areas, as well as the storing of wastes on their banks, the introduction of dangerous substances and/or dangerous wastes into the sanitary installations or sewerage, the evacuation of used waters into underground waters, natural or accumulation lakes, into fish ponds, swamps, pools, except decantation ponds.

Sanitary protection consists in preventing the danger of altering the water quality by contamination with viruses, chemical and radioactive substances, substances resulted from pest control in agriculture and forestry, etc. Population health strictly depends on the water quality. Polluted water, or the lack of water, produces serious diseases, such as: dysentery, hepatitis, acute diarrhea, cholera.

Natural persons and corporate bodies' obligations concerning water and aquatic ecosystem protection are the following:

- to execute restoration work for natural resources, to ensure aquatic fauna migration
- and water quality improvement, stipulated on time limit in the environmental agreement and
- license in order to monitor the impact zone.;
- to endow them, in case of ship, floating platforms or marine drilling ownership, with wastes storage and treatment installations ,used waters purifying devices and unloading systems through floating or bank devices;
- to equip harbors with collecting, recycling, or neutralizing installations for oil, domestic wastes stored on river and sea ships;
- to organize intervention teams in case of coastal zone accidental pollution;
- to avoid evacuation of used waters from ships or floating platforms straight into the natural waters or wastes evacuation;
- to avoid washing various objects, products, materials which may produce surface water impurification;
- to avoid discharging into surface and underground waters of used waters, domestic excreta, dangerous and oil substances, toxic waters;
- to avoid throwing away and storing on river banks or waterbeds, on wet zones of wastes of all types and to avoid introducing explosives, electric tension, narcotics or other dangerous substances.

Water and aquatic ecosystem protection regulations are controlled by environmental authorities, sanitation specialists and others.

The supervision and control of regulation observance and legal measures application concerning water protection, as a result of navigation activities, are performed by environmental protection authorities together with navigation authorities keeping up with the international conventions in the field to which Romania is a party.

4. WATER MANAGEMENT

The extremely unequal water territorial distribution (much water in some areas, very little in other areas during droughts), water pollution, the fact that about 14% of running water length is not drinkable have imposed the necessity of an adequate juridical frame and of legislative measures of water resources sustainable management, planning and protection in general. To attain this, it is necessary to impose a set of major principles on a national and an international plan: the principles of precaution, prevention, avoidance of damages at the source and the *pollueur payeur* principle. Water sustainable management is based upon a perfect knowledge of our country's water resources, achieved by means of a unitary and

permanent supervision activity, observations and measurements of hydrometeorology phenomena and of water resources, followed up by a prognosis of their natural evolution.

The general objectives of water management established by the Water Law are:

- the conservation, development and protection of water resources as well as the achievement of a free water flow;
- the protection against any type of pollution and of changing water resource characteristics;
- the insurance of aquatic ecosystem protection in the near coastal vicinity, in gulfs or in the Black Sea, etc.

The administration of the national water management data base is uniquely established by the central public authority in water management.

The organization of the National Fund of hydrological data and water management, and of the Water Cadastre is achieved by the central public authority in water administration, while its keeping up to date is performed by the National Administration of Romanian Waters.

As a result, water administration is achieved by means of a rational use and protection of water resources, as well as by developing unitary, well-balanced and complex activities of water resource management.

5. THE BLACK SEA PROTECTION AGAINST POLLUTION

The Black Sea is placed in the S- E of Romania and Europe, it is twice as big as Romania, and it has a maximum depth of 2245m communicating with the Mediterranean Sea through the Bosfor and the Dardanelles straits. This sea has its origin in the Sarmatic Sea and its main characteristic is the two-layered water: on the bottom, water devoid of oxygen, rich in hydrogen sulphide and very salty, and another surface layer, more oxygenated and with sweeter waters. The Black Sea is an almost closed sea which collects a rich grid of rivers, but with an extremely vulnerable marine environment.

All riverside states (Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine) are interested in the conservation of the Black Sea marine environment and the live resources protection against pollution and on April 21st, 1992, they signed at Bucharest a Convention concerning the Black Sea protection against pollution, accompanied by three additional protocols. This Convention has been ratified by Romania by Law No. 98 of September 16th, 1992. According to this Convention, marine environment pollution means “the introduction by people, directly or indirectly, of substances or energy into the marine environment which has or may have as results such harmful effects: the damage of living resources and of marine life, dangers for people’s health, obstacles for activities on sea, fishing and other legitimate uses of the sea included, the degradation of sea water quality and agreement conditions deterioration.”

The three protocols are: The Protocol concerning the Black Sea marine environment protection from sources on land, The Protocol concerning The Black Sea marine environment

protection by discharge, The Protocol concerning the cooperation in fighting oil pollution and other harmful substances of Black Sea marine environment on emergency conditions. In the Preamble, there are statements concerning the Black Sea protection in particular: "its natural and agreement resources can be preserved only through the common efforts of riverside countries."

Each contracting party has the obligation, together or individually, to take all the necessary measures in accordance with international law and the stipulations of this Convention, in order to prevent, reduce and control pollution, to protect and preserve the Black Sea marine environment. Contracting parties will also prevent marine pollution with dangerous, harmful substances and they will also reduce and control pollution from sources on land, take adequate measures to prevent, reduce and control pollution from ships, according to international standards and rules; they will cooperate in conditions of emergency. Other obligations are: to cooperate in scientific research meant to improve marine environment protection and to embark upon scientific research common programs, exchange of data and scientific information.

As for material responsibility, both natural persons and corporate bodies are made responsible for damages against the marine environment of the Black Sea in accordance with regulations in all the areas where each contracting party exercises its sovereignty, sovereign rights or its laws in accordance with international law. In order to get a prompt and adequate compensation or any other reparation for damages caused to the marine environment of the Black Sea by natural persons or corporate bodies under their jurisdiction, the contracting parties will provide a last appeal in accordance with their legal systems.

Among other protective measures for the Black Sea we mention: the Ministry Declaration for the Black Sea protection signed at Odessa on April 7, 1993, the International Research Program for the Black Sea at Varna in 1991, the Strategic Action Plan for Black Sea Protection and Conservation (Istanbul, October 31st, 1996) which became the Black Sea International Day, etc.

6. SANCTIONS AND RESPONSIBILITIES

Water quality degradation by toxic or dangerous residues/wastes evacuation and discharge attracts responsibility for the persons guilty of causing a prejudice to the environment.

In the Water Law no. 107/1996, modified, the violation of its provisions attracts disciplinary, material, civil, offending or criminal, as required, and they constitute offences in this field. Others, according to Criminal Law, are considered infractions: the execution of various structures on water or in connection with waters without the observance of Water Management agreement or license; the violation by natural persons or corporate bodies of protection zone regimes; the discharge of oil residues or other dangerous substances into sanitation installations or sewerage; the washing up of vehicles or of other equipments and outfits in water courses or lakes, on their banks, etc. Offences are sanctioned by means of fines whose value is updated by Government decisions.

The Law mentioned above stated as infractions the following facts:

- evacuation, throwing away or injection into surface or underground waters, inferior maritime and territorial sea waters - of used waters, wastes, residues or products containing bacteria or microbes in quantities which may change water characteristics, endangering the life and corporal integrity of persons, animal life, the environment, the agricultural or industrial production or the piscicultural fund;
- the execution, modification or the extension of structures, buildings or installations having connection with water management, without official licenses or permits;
- the restriction for drinkable water utilization for population to the advantage of other activities and exceeding the allotted water quantity ,if it repeats itself or if it produced a disturbance in the activity of a social protection unit or even caused drawbacks in the water supply of population;
- the destruction, deterioration or manipulation by unauthorized persons of dams, grids, valves, barriers or of other hydro technical units or installations, etc.
- For the above-mentioned infractions, the Law stipulated fines or imprisonment as punitive effects.

Law No. 137/1995 concerning environmental protection states that the violation of water protection and aquatic ecosystem regulating norms attracts civil, offending or criminal responsibility, according to situation, and they constitute infractions:

- the facts that represent the non - observance of restrictions and interdictions established for water protection, if they are proved to endanger human, animal or vegetal life or health;
- the fact when a person refuses to accept intervention in cases of water or coastal zones accidental pollutions.

Offence ascertainment and sanctioning are made by inspectors of the central public authority, other authorized persons by central public authority and by the Environmental Guard inspectors.

Infraction acknowledging and checking up are performed *ex officio* by criminal pursuit inspectors according to official competences.

7. CONCLUSIONS

To set water protection right we suggest the following measures:

- water resource sustainable protection and management with a view to satisfying the water request in all sectors;
- elaboration of water and aquatic ecosystem protection programs and follow up activities;
- the management of hydrographic basins based on the evaluation of its characteristics and surface and underground water state monitoring;
- marine pollution measures and aquatic ecosystem protection monitoring situated in the Danube Delta;
- public participation in environmental matters by exercising their rights to have access to information, to participate at decision taking and have access to justice, too;

- the initiation of ecological programs concerning water protection, risk analysis activities and accident prevention, accidents which have as immediate effects aquatic life deterioration;
- the intensification of international cooperation towards transnational pollution, etc.

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BIBLIOGRAPHICAL NOTES

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