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## **GENERAL REMARKS ON ENVIRONMENTAL ENFORCEMENT IN ROMANIA**

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### **SUMMARY**

This paper provides an overview of the central and local authorities responsible for enforcement of Romanian laws and policies focusing on the Ministry of Waters, Forests and Environmental Protection as the main central state authority in the field.

This paper also presents the specific methods and tools of different branches of law, their action and gradual interaction in the systematic process of environmental enforcement.

We also discuss what branch of law including its tools and why they have preponderance in assuring the environmental law enforcement in Romania.

### **1 INTRODUCTION**

After 1989 in Romania new organizational structures for environmental protection were established. The building of the new structure started in 1990 with the formation of the Ministry of Environment, which became the Ministry of Waters, Forests and Environmental Protection (MWFEP) in December 1992 (1). The MWFEP carries out a whole range of activities which were previously carried out by sector organizations such as National Water Council, National Council for Environmental Protection and Commission for Protection of National Monuments.

Unlike the institutional structure, the basic environmental legislation currently in force in Romania dates from 1960s-70s (Law no9/1973 on Protection of the Environment) and subsequent supporting laws (including the Water Law of 1974, Forestry Code of 1962, Toxic Substances Law of 1979). However, quite a lot of secondary legislation in the form of governmental Decisions and ministerial Orders and Instructions currently in force were introduced during since 1990. In this way some of the most burning questions concerning permitting, Environmental Impact Assessment (EIA), charges, fines and penalties and other sanctions were regulated. Collateral legislation has been adopted, such as, Law no 18/1991 on Land, Law no 50/1991 on Buildings, Law 82/1993 Danube Delta Biosphere Reserve.

In spite of the fact that there have not been any major environmental regulatory steps in the last four years, it should be underlined that the new comprehensive environmental draft law has been prepared. The draft law has entered the Parliamentary process and is expected to be enacted in 1994. The draft covers the main legal principles, measures, responsibilities and sanctions. Therefore the new law will constitute a basic act for environmental enforcement according to the western country standards and practices.

### **2 THE INSTITUTIONAL STRUCTURE FOR ENVIRONMENTAL PROTECTION AND ITS RESPONSIBILITIES**

#### **2.1 The Ministry of Waters, Forests and Environmental Protection**

The MWFEP is the principal Ministry for the administration, compliance checking and enforcement of legislation relating to environmental protection, water, waste and forests as set out in Governmental Decision no 792 on the Organization and Function of the Ministry of Waters, Forests

and Environmental Protection. The Ministry comprises three Departments: Waters, Forests and Environmental Protection. Waters and Forests management also includes two autonomous State companies Apele Romane ( Water Authority) and ROMSILVA (the States forests company), which are attached to the specific Secretaries of State of the Ministry (2).

The Department of Environmental Protection has four Directorates:

- Environmental strategies, drafting laws, issuing administrative regulations, and environmental impact assessment.
- Environmental monitoring and management of protected areas.
- Environmental inspection.
- International and public relations.

The Department of Waters comprises two Directorates and an Inspectorate. One of the Directorates is responsible for strategic planning, drafting laws, and issuing administrative regulations and for water quality and interministerial coordination, as well as the over all control on standard setting and permitting. The other Directorate coordinates water management and is responsible for hydrological and meteorological assessment and flood control. Day-to-day management of water resources, including permitting are the responsibilities of the autonomous State company, Apele Romane, which operates through its eleven regional river basins.

The Department of Forests comprises the Directorate and State Inspectorate of Forests and is responsible for the promotion of productivity and protection against over-exploitation. Day-to-day management is undertaken by ROMSILVA.

National Commission for Nuclear Activities Monitoring is within the Ministry and controls safety and environmental protection at nuclear facilities including facility location, construction, cocommissioning and operation.

## 2.2 Other ministries having important environmental responsibilities

The Ministry of Health is responsible for monitoring consequences of environmental quality, water and foodstuff quality control, issuing regulations on people health safety requirements (3).

The Transport Ministry and the Ministry of Interior are responsible for controlling the motor vehicles emissions, noise and vibrations, and transport of goods and products.

The Ministry of Agriculture covers soil utilization (4) and protection, the Ministry of Industries is responsible for mineral resources and energy.

The above institutional structure for environmental protection reveals as a main shortcoming the fact that in a number of cases the user of each constituent of the environment and the one responsible for the protection is the same authority. As a consequence the balance between the rights of using the resources and the obligations of protecting them might be affected.

### 2.2.1 Environmental protection agencies (EPAs)

There are 41 EPAs, one in each of the forty counties and one in Bucharest. The EPAs are under direct control of a Secretary of State in the central Ministry of Waters, Forests and Environmental Protection and are managed by the Director, a Direction Committee and an Administrative Council. The agencies play a central role in the practical implementation of environmental policy and law enforcement including permitting, monitoring, compliance checking and instigating legal action for non-compliance. They are responsible for pollution control, conservation and ecological restoration. Key environmental protection functions are the responsibilities of the Section for Regulations, which issues environmental permits and collects data and information and the Section for inspection which makes the systematic control and inspections and applies fines.

### 2.2.2 Local government

At local level, besides the local branch authorities of the ministries acting in the field of environment, the local governments have less powers. The Law on Local Public Administration (5) requires local authorities to act in order to restore and protect the environment, parks and nature reserves, and to conserve and protect historical and architectural monuments. To carry out such tasks the local councils have the authority to organize local ecological and environmental protection commission (6). However, local authorities have very little financial resources.

### 2.3 The public prosecutor's office and the judicial system

The public prosecutor's office is responsible for criminal prosecution. However, their role in environmental protection is very limited. In the future, no doubt their involvement will increase.

The judicial system with setting up the administrative courts (7) having powers of judicial review over administrative decision will bring new developments in environmental law enforcement. Also the restoration and enhancing the property rights will determine people to litigate using the civil law provisions, and the provisions of the new environmental framework law, which soon will be approved. To this we may add the setting up of the Constitutional court meant to judge the constitutionality of any legal rules (8).

## **3 METHODS AND TOOLS OF ENVIRONMENTAL LAW ENFORCEMENT**

### 3.1 Methods of enforcement

The environmental law has an interdisciplinary character crossing the main branches of laws such as: constitutional law, administrative law, civil law, criminal law and financial law.

The constitutional law provides the public authorities and their powers to implement and to enforce the environmental law. The administrative law establishes the environmental policy and regulates environmental standards, the procedure, and the control of permitting. The civil law is dealing with remedies for getting compensation for environmental damages. The criminal law contains coercive norms ensuring the observance of environmental law. Finally, the financial law comes into action when there is any infringement by economic but illegal goal.

Taking account of its characteristics the environmental law may be enforced by two basic methods. Preventive methods consisting of monitoring compliance through negotiations, permitting and standard setting as well as control. And repressive methods represented by sanctions against violations through administrative law tools in case of the least serious offenses, civil law tools in case of medium offenses and the criminal law tools comes into action on offenses carrying the greatest risks to society, environment and public health (9).

We should mention that, at present, in Romania not only individuals, owners and operators of facilities may be sanctioned, for violating environmental law, but also municipalities i.e mayor, local council, and other political subdivisions are subject to enforcement actions according to administrative and civil law tools except criminal law.

### 3.2 Tools of enforcement

#### 3.2.1 Tools of administrative law

The extensive institutional structure existing in the Romanian system of environmental management and protection illustrates also that the public administration is the most important in environmental law enforcement. After 1989 quite a number of secondary pieces of legislation came in force in order to enhance the role of preventive tools of administrative law, as well as the

administrative sanctions. The introducing in the administrative legal system of the permitting procedure(10) followed by Environmental Impact Assessment regulation (11) and the technical conditions and norms on air protection(12), which puts a great emphasis on preventive measures and tools are examples of this kind.

It should be added that prior to 1989 the administrative tools were also developed, but very seldom applied. Also the very low level of fines as well as the fact that the facilities were owned by State made the enforcement action a very weak action.

In order to obtain the permit or license the environmental requirements ( air, water, soil) must be met. That means the sectoral advice must be obtained beforehand. The environmental impact assessment gathering all such requirements and the sectoral advice is the basis for issuing the environmental consent as a collateral and prior agreement to the operating permit ( license), which is the legal basis for operating. The permit might be issued at the national or local level. On the basis of the content of EIAs the measures to control emissions are defined and the emission levels set up.

Once a permit is granted, the authority, at the national or local level checks to make sure emission levels and other preventive measures specified in the permit are being complied with. Monitoring compliance includes especially reports submitted by facilities and systematic inspections. In the event that the inspector finds out that compliance, then the inspector may give to the person in charge a warning or may fix a period of time to comply with the prescribed measures, or the agency may use the economic instruments or incentives.

At present, the most frequent response is to resort to administrative law sanctions especially to fines, on public, private facilities or municipalities for non-compliance. The fines are applied according to media-specific violations, for water pollution, air pollution, land pollution and hazardous wastes, noise and forest degradation (13). The scale of fines is extensive and the applied amount is proportional to the type and seriousness of offenses. Applying the fines (14) the inspector or the agency for environmental protection may oblige the violators to put into operation the measures meant to reduce or eliminate pollution, or may prohibit the polluting activity and restore the environment (15).

Also if a polluter pays a fine, he still may be required to pay damage compensation. According to the seriousness of offense and the behavior of the violator, criminal law sanctions (criminal fines) may be applied. Unlike the administrative tools which are focused on the violation, criminal tools are designated to impose sanctions on the violator.

Apart from above mentioned tools, in Romanian legislation, Law no 9/1973 on environmental protection, Law 4/1974 on waters, there is the most severe administrative action, known in the most countries, and that is the sanction of revoking the permit, or even to shut down

### 3.2.2 Tools of civil law

In the past, as well as at present, civil law had and still has a limited role in environmental protection. In conformity with the Romanian civil law, matters which may come more frequently in the field of environmental protection are as follow:

- Personal integrity rights.
- Neighborhood right (nuisance).
- Possession rights (trespass).
- Compensation of damages.

The infringement of personal integrity rights such as the rights~ of personal life, health and physical integrity may rise a number of consequence , i.e. imposing conditions upon use, stopping the unlawful activity until compensation is given.

Neighborhood rights ( Civil Code, Articles 611-615) are based on the rule that the owner must avoid those activities which would disturb others, especially the neighbors. Also in the Civil Code, Article 408 there is the rights to undisturbed possession. If a serious disturbance or damages occur the civil law tools would apply, i.e. damage recovery claims (land clean up), cases against facilities

to prohibit or demand certain activities. Compensation of damages may be awarded in cases brought under Article 998 of Civil Code, which states that any person causing damage to another must repair the damage, or Article 1000 which makes persons liable for damage caused by persons for which they are responsible. Strict liability for damages caused to the environment will be imposed with the coming into force of the draft Law on Environmental Protection (Article 79).

### 3.2.3 Criminal law tools

It might be said for sure that up to the present, in Romania criminal law has not played a supporting role in making the violators comply with environmental requirements and to deter others from noncompliance. The framework environmental law of 1973 and the law on waters, as well as criminal code provide a number of offenses (crimes), such as, putting into operation facilities without necessary equipment for environmental protection, the release of pollutants exceeding the allowable limits, the carrying out of any activity of importing wastes or any dangerous goods in violating the legal rules. The criminal law tools are: imprisonment, fines and payment for restoration. However, in the field of criminal tools there is no practice in our judicial system~16).

## 4 CONCLUSIONS

Since 1991 and especially 1993 the Romanian Government is working on setting a policy and providing a regulatory framework for sustainable development. In line with this the MWFEP took a range of actions and measures meant to develop a policy of environmental protection such as (17):

- Setting the priorities by identifying 14 "hot areas" and the establishment compliance schedule for reducing pollution.
- Enacting a number of regulations, i.e., on environmental impact assessment, permitting, wastes.
- Increasing systematic inspection to ensure that permit requirements are being met and that measures prescribed by authorities are being implemented.
- Promoting integrated and coordinated or even common inspections in order to ensure that pollutants are not simply transferred between air, water and land and to involve veterinary sanitary inspectors and police inspectors for preventive medicine as well as the local units of government in environmental enforcement (17).
- Increasing role of economic instruments, i.e., tax and surtax on water consumption, as well as emphasize on fines, penalties and soil recovery.

## ENDNOTES AND REFERENCES

1. Governmental Decision no 792/ 1992 on the Organization and Function of the Ministry of Waters, Forest and Environmental Protection.
2. Investors' Environmental Guideline, European Bank for Reconstruction and Development, Graham & Tortman/Nijhoff, London, 1994. pp.475-477.
3. Law no 3/1978 on Public Health.
4. The Ministry of Public Works and Urbanism as well as local governments have certain responsibilities on using land within localities (Law no 50/1991 on Buildings).
5. Law no 69/1991 on Local Public Administration.
6. Governmental Decision no 103/1992.

7. Law no 29/ 1990 on Administrative Litigation.
8. Law no 47/1992 on Organization and Function of the Constitutional Court.
9. A. Hamzah and R. Surachman, "The Application of Criminal Law Instrument in the Environmental Law Enforcement," in Proceedings Vol. I, International Conference on Environmental Enforcement, 1992, Budapest, Hungary, pp. 430-432.
10. The ministerial Order no 170/1990 on permitting and the ministerial Order no 113/1990 on Documentation Required for Permit Application.
11. The ministerial Order on Methodological Norms concerning the Procedure on Environmental Impact Assessment.
12. The ministerial Order no 462/1993 on Technical Conditions concerning Air Protection and Methodological norms on Determining Emissions of Air Pollutants of Stationary Sources.
13. Law no 9/1973 on Environmental Protection, Resolution of the Council of Ministers no 2496/1969 on the Establishment of Sanctions for Violations relating to Waters, Law no 10/1982 on Waste Collection Hygiene and Maintenance of the Exterior of Grounds and Buildings Alongside Facilities, The Law no 18/1991 on Land, The Governmental Decision no 2/1994 on Quality of Buildings, The Governmental Decision no 127/1994 on Establishment and Sanctioning of violations to environmental Lawlists 37 such violations.
14. Very often fines are applied for noncompliance with requirements for water, air and soil protection, and very seldom for making the investment without environmental consent.
15. Examples of such measures are: the appropriate exploitation of the water purification station, the cleaning the land and measures for preventing the spilling of oil, stopping the pumping of polluting residues.
16. The Law no 9/1973 on Environmental Protection, Articles 77,78,8,10,14 and 36, Criminal Code of 1968, Articles 248, 249, 302(a).
17. Jurnalul Naturii (The Journal of Nature) edited by the Ministry of Waters, Forest and Environmental Protection, no 1, March, 1994.