Some Considerations on Environmental Law Evolution

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Abstract: This paper presents a general view on the environment concept within the general legislative framework along with its evolution, trends and possible future developments. A complete characterization is crucial for connecting the environment concept to a legislative framework. Several definitions of the environment concept are presented, all trying to include the most specific features of its components. Since the environment requires protection it must be connected to legislative framework. A series of phases in Romania’s environmental law history are briefly highlighted and the consequences and effects produced after the transition to market economy, in 1990 are then presented.

Key-Words: environment, law, legislative framework, quality of environment, quality of life, environment protection.

1 Introduction. Definitions

Environmental law comprises two central concepts of what is meant by “environment” and what is meant by “law”. These two concepts are capable of many different meanings, all of which have some substance, but which would be distinctive enough to lead to very different formulations of the boundaries of the subject. Environment is a relational concept that is relative to whatever an object is surrounded of. Environment stands for a polymorph reality that comprises the totality of the living entities (organisms and communities: biological populations and human populations) and non-living entities (geo-physical-chemical, objects created by the human being) as well as the complex of the necessary constructive factors (climatic, edaphic, hydrological, cosmic etc.). They make up, together, through specific relations (direct, indirect), a relatively stable structure, distinct in relation to a given system: from the environment “close by” to the one “far off”. On global level, this reality consists in the following systems: atmosphere, geosphere, biosphere, sociosphere and the cosmos [4].

The emergency ordinance 91/2002 settles that the environment stands for the entireness of conditions and natural elements of Earth: air, water, soil and sub-soil, characteristic aspects of the scenery, atmospheric layers, organic and inorganic matters, as well as the living beings, natural systems in interaction, comprising the previously enumerated elements, inclusively the material and spiritual values, the quality of life and the conditions that may influence the human being’s wellness and health.

Due to the fact that it implies actions of protection and improvement, the concept of environment is closely connected to the legislative frame. The first legislative initiatives in this field are dated in the year 1960. Until that date, some partial legislative regulations existed, which only referred to the interface with the possession (property) rights. More recently, laws have been elaborated, which refer to protecting biodiversity. In general, there are manifold definitions for the term of (surrounding) environment, whereof some are presented below from different legislative acts [3].

Definition 1. All, or any of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.

Environmental Protection Act, 1990

Definition 2. Surroundings in which an organization operates, including air, water, land, natural resources, flora, fauna, humans and their interrelation. Surroundings in this context extend from within the organization to the global system.

Environmental and Protection Act, 1990

Definition 3. The combination of elements whose complex inter-relationships make up the settings, the surroundings and the conditions of life of the individual and of society, as they are or as they are felt.

European Commission definition

Complex entity, the environment comprises several components [1]:

a. Natural environment
   - Non-modified natural environment
   - Modified natural environment

b. Human environment
   - Environment of human population
   - Artificial environment
     - Arranged environment
     - Built environment
       - Environment of the socio-cultural products
       - Industrial environment.
Law

Environmental law is the scientific field whose study object consists in the juridical relations referring to the utilization of the natural resources, as well as to the protection, conservation and development of the environment components and of the overall environment, on the basis of the principles of durable development [1].

The sphere encompassing environmental law may be settled according to a number of three criteria:

1. **international criterion**, according to whom environmental law is defined as the overall juridical norms referring to issues that come within the competence of an environment ministry or of other administrative structures, with competences in the field of the environment;

2. **material criterion**, according to whom environmental law are the overall juridical norms referring to natural factors and to anthropic factors, which determine the natural, social and economic frame and which, through their interaction, influence the ecological equilibrium and determine the life conditions for the human being, fauna and flora;

3. **the criterion of finality** settles that the environmental law is defined as the overall juridical norms referring to the maintenance of the ecologic equilibrium and to the protection of human health.

In the legislation referring to the environment, the provisions have impact upon the entire society and these effects may be further extended to comprise non-human interests, as well as the existence of human generations. As forms of the legislative acts, mention may be made of: notes, circulars, documents of official politics, codes of practices and even certain political declarations that have a significant effect upon the manner of enforcing the laws into practice.

Numerous directives or other regulations with local application brought about legislative processes that led to formulating more comprehensive laws. Beside these concepts, the juridical vocabulary also retained other terms.

**Quality of environment** is the key concept resulted from the convergence of the biological, ecological and juridical perspectives. It refers both to the natural environment and to the modified or arranged environment. The states are preoccupied, resorting to international juridical means, with the protection and improvement of the human environment, cooperating in the direction of promoting a new generation of rights, in conformity with the human being’s new social and ecological needs [1].

**Quality of life** represents the totality of the possibilities offered to the individual by society, to the purpose of assuring his existence, of availing himself of its products and of using its services for organizing individual existence according to his own needs, requirements and desires.

**Protection of natural environment** means the totality of the actions undertaken for improving the environment quality, which is for ensuring increasingly better environment conditions to current generations. These actions are based, in terms of theoretical and methodological aspects, on a concept-frame created from the perspective of natural sciences, and social sciences: from considering the interdisciplinary approach and the regional approach to the oriented application (respectively, to the use of an operational concept referring to the environment quality). It supposes perceiving and evaluating the environment factors (soil, water, air, fauna, flora, mineral and energy resources), at regional (international) ecosystem level, there being also circumscribed the elements of the modified or arranged environment. The sense of this concept-frame is unique (which means “exterior” to the human being and society), and the final goal of “ecological conservation” resides in the juridical protection of the environment quality, according to the (complex) objective functions and to the means for their satisfaction [6].

**Protection of human environment** constitutes the totality of the actions undertaken for improving the quality of life, which means for ensuring increasingly better conditions to future generations. These actions are based, under the theoretical and methodological aspects, on a concept-frame, elaborated from the perspective of several social sciences and natural sciences (ecology): from considering the systemic analysis and the prospective research to the oriented application (respectively, to the use of an operational concept referring to the quality of life). It supposes perceiving and interpreting the fundamental values of socio-human life to the level of the international (regional) socio-ecosystem, there being also circumscribed the fundamental human needs. The sense of this concept-frame is twofold (which means both “interior” and “exterior” to the human being and to society) and the final goal of “social transformation” (intermingled with the one of the “ecological conservation”), resides in the Juridical protection [7].
2 Environmental law in Romania – brief historical background

Environmental law evolved in Romania over a relatively long period, characterized by multiple specific stages. Its first origins can be traced back to the 14th century, Romania’s medieval law regulations generally followed the existing juridical institutions such as private and common property and, although mainly of economical nature, it included statements about natural environment protection. Local authorities (princes, noblemen) established extensive sets of rules regarding fishing, hunting and forest exploitation.

Local princes (Vlad Vintilă, 1533, Ştefan Tomşa 1621 and Matei Basarab, 1646) issued strict orders against those persons who were involved in acts of “nature deterioration” which referred especially to excessive hunting and tree cutting. Certainly, these regulations were intended mainly to the benefit of the landowner, but their effects on natural wildlife protection were also significant and cannot be ignored [4].

Since the 19th century, Romania’s conversion into a modern constitutional monarchy brought about a complex process of analytical evaluations which led to the construction of a new, more elaborate legislative framework. However, the new laws were not expressly addressing the environmental concept, legislative acts on industrial enterprises contained statements in support of a clean, healthy environment for “people and animals”.

More serious approaches envisaging environment protection were undertaken at the beginning of the 20th century. These resulted in various laws among which the adoption, in 1930, of the first law on natural monuments protection represents a significant achievement. This law has created the first legislative framework stating the establishment of 36 natural reserves extending over 15000 ha among which the well-known “Retezat” National Park. During the communist period, specific efforts were made in accordance with the state-owned and centrally planned economy. Natural environment protection was considered a state problem. Legislation continues to diversify but the laws still demonstrate certain limitations and incongruences with respect to representative samples preservation [4].

The World Conference on Environment, Stockholm, 1972, opened a new perspective on environmental problems, with a significant impact on Romania’s legislative, institutional and policy framework.

In 1972, environmental law now evolved into a distinctive conceptual entity based on human understanding of the interaction between natural and man-made environment. Due to the new political and economical context, several regulations became obsolete and were abrogated since the institutional framework which could enforce them had disappeared. A series of international conventions were ratified subsequently to Romania’s adhesion to the UNESCO Convention, 1972 on cultural and natural heritage and accordingly laws were enacted such as Law 82/1992 on the establishment of “Danube Delta” Biosphere Reserve.

At the same time major drawbacks with negative impact on environmental protection occurred after “twisting” the contests of older laws especially in the area of toxic industrial waste imports. After 4 years of parliamentary debates, the environment protection law 137/1995, a framework regulation, was finally enacted, under which 17 special laws were adopted. This was a first phase of legislative transition which abandoned the former totalitarian concept in favour of the European concept in terms of environment protection.

Law 137/1995 expressly states “the right to a healthy environment for all people” in form of warranty rights. Some particular aspects should however be highlighted regarding the legislation package as a whole. Firstly, it must be observed that the main regulatory authority, during this period, was the executive power, while the Parliament’s role remained a secondary one. This could be explained, to a certain extent, by the “technicalities” involved by the preparatory phase of laws regarding the environmental issue, which led to a rather unwieldy process of parliamentary law-making. Secondly, the major impact of international legislation on Romania’s legislation regarding environmental protection and preservation should also be remarked [4].

Currently, two aspects can be distinguished in the environmental domain lawmaking process; on the one hand the ongoing post adhesion process of legislative harmonization and compliance with the negotiated and agreed specific objectives, on the other the adaptation of the resulting requirements to Romania’s socio-economic socio-political and economic context.

3 Worldwide trends and future evolutions

The tremendous changes of natural environment as a consequence of human activities and the afferent social responses have determined sinuous evolutions in environmental legislation. Despite clearly stated policies, it is still uncertain of how and to which extent the legislative framework will be able to reach its specific targets [3,5].

Following the inconsistencies of its early beginnings in 1972, environmental law now evolved into a distinctive conceptual entity based on human understanding of the interaction between natural and man-made environment.
Globalization has sharpened the environmental imperatives, deepening the major divergences among the Kyoto protocol signatories thus rendering ineffective most international mechanism devised for solving problems in this matter.

Among the approaches undertaken to solve this deadlock, the French initiative from February 2007 is worth mentioning, since it proposes the establishment of a new United Nations Environment Organization (UNEO) which is proposed as a better alternative to the existing United Nations Environment Programme (UNEP).

Although embraced by some 50 states, this proposal is still rejected by other states (e.g. Brazil) who are interested in introducing mandatory environmental criteria in future international negotiations.

4 Conclusion

Practical experience has shown that past environmental pollution issues were approached inadequately and incompletely due to both lacking of economic and financial resources and of a comprehensive and effective legislative framework, as well. The historical evolution of environmental law can be characterized by the need of ensuring full compatibility between restrictive norms regarding environmental protection and the socio-economic context.

Romania’s position in this context can be described as acceptance of the necessity of a legislative transition from a set of legislative norms regarding environmental protection aspects to a new doctrine outlining a distinctive, autonomous law domain.

From a broader perspective, worldwide evolutions impose new approaches based on the interrelations between economic, social, political and environmental domains.

References: