

THEORETICAL FOUNDATION AND LEGAL CONTENT OF THE CATEGORIES OF LEGAL RELATIONS OF ENVIRONMENTAL LAW

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Abstract

Given that human society has reached high levels of development, which involves using natural resources in huge volumes, an important issue that arises is environmental protection. This requires the set up of rules that would protect the environment, and the result is a distinct bundle of legal relations, the environmental ones. News of a scientific study on the relation of environmental law is emphasized by the existence of divergences from the correct application of legal norms and the development of appropriate legal framework that refers to environmental protection.

The subject of the article focuses on the system of theoretical, methodological and applicative issues, related to the environmental law relations. Good knowledge of the characteristics of application of rules and principles related to environmental law relations will largely determine the proper functioning of the mechanisms of environmental protection.

Key words: environment, environmental relation, environmental damage, environmental contract.

INTRODUCTION

Global environmental problems began to become prevalent and have created the need to initiate further action to increase public awareness, to determine the international community to take timely functional measures, both at a national and at an international level (Teodorescu I., 2002). Environmental Law is a law of interactions, tending to penetrate in all branches of law to introduce the **environmental dimension**.

Environmental norms are binding upon all individuals or legal entities (public or private) as the obligation of environmental protection is provided by the Romanian Constitution (art. 35), GEO, 195/2005, and many laws that lay down environmental standards. Obviously, the forms of realization of environmental thinking and behavior are many and varied, but hopefully addressing these problems, at school, will be a moment of reflection and a real encouragement for all those involved in the education act, for environmental protection has become a matter of social practice. (Guguiman A., 1990; Zalana M, Goran G., Parpala D., 2004)

MATERIAL AND METHOD

The Regulatory method in environmental law represents the attitude or the position that the State chooses to regulate social environmental

relations. Social relations on environmental protection and development are regulated by mandatory rules, compulsory, from which there is no derogation. The mandatory nature covers all rules, both the preventive and defensive, and the reparatory ones which regulate the legal environmental relations.

The state intervenes in a direct and authoritarian way to legally regulate the social environmental relations, as the environmental protection and development environment are a matter of national interest. Social relations and activities covered by other branches of law had to take into account the norms on protection and preservation, which has become a point of interest and priority.

E. Lupan defines **the legal environmental relation** (Lupan E, 1996), as “the social relations governed by the rules of environmental law, between people, related to the reasonable use of natural resources and environmental protection as a whole, whose implementation is provided, if necessary, through coercive force of the state” (Drago R., 1974).

Daniela Marinescu defines the legal environmental report as being the “social relation that arises between people in connection with the prevention of and fight against pollution, and with the protection, preservation and sustainable development of environmental elements to relations governed by norm of the environmental law” (Lupan E., 1997, 2009)

Before detailing a definition that we deem correct, we must mention that in the specialized literature there are three important trends which address the meanings of the essence of environmental law. *According to the first doctrinal position*, the environmental relations may occur only between people and only in connection with **the protection, preservation and development of environmental components** (Dutu M., 1995, 1996).

This is explained by the fact that expression in a broad sense, “the use of environmental components” is related to the issued of property rights, right of usufruct, the right of servitude, lien, etc. The subject of legal environmental relation may not be the use of the environment, as this is the subject of civil law.

In the second principle, the environmental law relations appear between man and natural resources and do not reflect a special category of relations.

As for the third opinion, although basically we agree with it, we think that clarification was needed, which by its nature is essential. Thus, in the definition of legal environmental relations, using the expression, “components of the environment” does not always rule out all the differences. Thus in defining the legal environmental law relations, some doctrinaire sources include the phrase “natural resources”, thus limiting the

field of environmental relations, only to the reasonable use, preservation, development and protection of natural resources.

The Russian author V. Petrov has a more formalist approach and in the same sense he claims that by environmental law relations one must understand a relationship governed by the norms of environmental law (Petrov V., 1999).

From the analysis of the above, we conclude that the *environmental law relation is the relation that arises between people about the reasonable use, protection, preservation and development of bioethical abiotic and anthropogenic components of the environment, relationships governed by norms of environmental law and which if necessary are defended by the coercive force of the state apparatus.*

The premise for any legal relation to come into being, legal environmental relations included, is represented by the **legal norm**.

Sources of environmental law relations are *human actions or natural events*. In order to represent a source of a legal environmental relation, *human actions* should be about preventing pollution, environmental pollution, the reasonable use of natural resources, the improvement of the environmental conditions, environmental restoration, etc..

Natural events (floods, storms,) are the circumstances stipulated by law that appear independent of human will and have polluting effects on the natural or artificial environment.

Features of the environmental law relations are all features characteristic of environmental law relations in accordance with which those relations are *social, willful and ideological*.

1. *Legal relations are a category of social relations* as they are relations that are established only between people, not being able to form outside society and whose content is governed by legal norms.

2. *The legal report is ideological*. Indeed, if the material relations that arise in society, such as economy relations, form independently of, being objective, legal relations, just as the political, moral or religious ones, come before they are formed, to human consciousness, being ideological (material) relations related to the content of ideas of social superstructure.

3. *The willful nature of the legal relation* - is given by the fact that the legal relations is a willful relation on the one hand, (the fact that it is governed by the will of the state expressed in legal rules) and on the other hand by the will of the subjects participating in this legal relation.

The party's will is present precisely in the (civil-criminal) liability relation in which the author of the offence did not pursue or even avoided to enter into this relation, but acted unlawfully. The double-willful character of the legal relation should not be taken for the bilateral or contractual nature of some categories of legal relations between two parties with opposing

interests (the sale and purchase, the rent, etc.) as a double willful nature is also characteristic of the legal relation, even without the **consent** of the other party, as is the case of wills, or even against his own will as far as taxation documents are concerned.

The *subjects* may be both active and passive subjects of the environmental relation, according to the rights and obligations related to environmental protection that individuals and public legal entities have. Romania may participate directly as a subject of international environmental relations. (Lupan E., 1996,2009).

The *content* of the environmental law relations is given by the correlative rights and obligations of the subjects of environmental law relations. Considering the shared view in legal theory (Popa N,1998; Santai I,2000) on the *object* of legal relations, namely, that it consists of the action claimed or taken by the holder of the subjective right in the legal relation, it means that the object of the legal environmental relation is the behavior itself that the correlative rights and obligations of the subjects refer to.

Categories of legal environmental relations are laid down differently depending on the type, nature and purpose of the activity in connection with which they arise, change or disappear.

a) *Environmental relations between the parties to prevent environmental pollution*

b) *The legal environmental relations which appear in the process of eliminating the negative consequences of environmental pollution*

c) *The legal relations for the punishment of those who pollute* – these are the legal relations between those who pollute and the competent body.

d) *The legal environmental relations that appear in the process of improving environmental conditions*

e) *The legal relations arising from the will of the parties, with double willful character*; Daniela Marinescu, (2008,1996) considered the relations of environmental sustainability as a legal environmental law relation different from others (by the protection and preservation of mineral resources, of other natural products- eg. forests)(Marinescu D.2003; Marinescu C., 2005)

f) *The legal relations of international environmental law*

I'd like to mention that at this point the work reflects the legal content and the fundamental theoretical arguments of the environmental law relations, out of which: - liability relations; - relations related to the management of natural resources or anthropogenic components of the environment; - contractual relations related to the environment.

1. *Liability relations.* It is known that social responsibility refers to behavior that people choose in various possible situations in the social relations. This conduct, whether it is manifested by the observance or the

failure to observe social norms, is the cause of certain social reactions, consequences.

Thus, environmental law, liability, also has its specific features, determined by the following:

- the branch of environmental law includes the regulation field related to the relations between man and nature;
- this institution is not the main regulatory engine, as it is for other branches of law.
- by comparison, the criminal, civil or administrative law, which include legal liability; environmental law includes all of the above.

This way one can distinguish criminal liability, civil liability, administrative liability, material liability, disciplinary liability, and environmental law liability (**environmental liability**).

Establishing legal liability means defining the notion of *damage to the environment* (*environmental damage*) (Dutu M., 1996-2010). The broadly accepted definition for environmental damage is "the damage affecting all elements of a system and that due to its indirect and diffuse nature does not allow for a right of repair" (Priueur M., 1991).

Some authors have argued that environmental damage is damage caused to people and goods by their environment, the environment being thus considered the cause and not the victim of damages (Drago R., 1974). Other authors have considered the environmental damage as "harm to the environment." (Girod P., 1974). In a modern conception, everyone is entitled to protect "environmental goods", and it is acknowledged that there is a subjective environmental law which enables the effective protection of its elements, known as "res communes" (Martin G., 1977).

2. The contractual environmental reports. As far as „**the environmental contract**” or „**ecological contract**” are concerned, the opinion of most of the specialty literature is that such a contract can not be completed.

We consider necessary to have another opinion, contradictory to that above, which shows that environmental law relationships can certainly talk about environmental contract. This contract is already dealt upon in French specialized literature, in case the owners of natural resources agree on activities to improve environmental conditions, not for themselves, but in public common interest.

Beyond the significance of the situation, the initiative of French ecologist Nicolas Hulot (2006), to establish an ecological pact, brings to attention and suggest an important idea: that of redefining the term founding 'social contract', namely its development in terms of a new size: a pact between humans and between humans and Nature, but with a common goal: to stop walking toward ecological disaster. For this we need, “**an**

environmental contract", which expresses the mutual rights and obligations in clear and binding clauses.

▪ In fact, we agree with the authors who expose a formal definition of the notion of contract and we mention that the ecologic contract is a contract agreement of will concluded between two or more people during their life, regarding their birth, modification or termination of rights and environmental obligations in their own interest or in the interest of the whole society.

We believe that one of the causes that hinder easy recognition and promotion of environmental protection of contractual relations is the fact that at this stage, the law makes distinctions, although weakly grasped, but firmly implemented, between the notion of legal document and contract. That all contracts are legal documents and not all legal documents are contracts.

We want to reveal **the main features of the environmental contract as a legal act**, namely: - This is an agreement made between two or more people alive; - When signing the contract the agreement is reached by the free will and aims at the birth, modification or finishing legal relations related to rational use, conservation, development and environmental protection and requires consideration of public order and morality

The problem of identification of the ecological contract is of particular importance. The main problem is to differentiate environmental agreements from those of other branches of law in the event that the environmental agreements are applicable with specific contractual rules generated by the nature and importance of environmental objectives.

"Shock" of the global recession erupted in 2008 and moving to the creation of new premises of the new environmental law, that of the requires a radical reform in this area, marked by regression of specific elements of "free market" and resurrection of regulators, including and especially at a global level. For example, it will require providing quality of legal subject not only to "natural and legal persons", as before, but also to some natural elements, starting with animals, whose status has already been reviewed by many national laws.

The principle of intergenerational solidarity, ethically thought according to the Golden Rule ("Everyone should ask themselves how to treat all beings as he wants to be treated in turn") and based, in terms of action, on the precautionary principle, will extend its applicability to the entire variability of living and find a legal basis in the future **"natural contract"**. Classical equation of obligations - do ut des - inherited from Roman law and it will change its perspective as well, that is performance, not necessarily directly correlated and much more nuanced in their contents.

RESULTS AND DISCUSSIONS

Environmental research challenges are important. First of all, because the law is never on time. Since the lawmaker is slow to respond, even when required to do so - such as the transposition of European directives - the positive effects of new legislation are already expected for a long time. Environmental law research should address the critical analysis of legal projects. The role of research in environmental law should not be overlooked. Expanding environmental research contracts is a necessity. It is important to develop networks between lawyers environmental law. This should be done both at a national and at an international level.

CONCLUSIONS

The recommendations stated herein will allow for the development of certain directions in science, law and practice. This in turn will lead to revision of traditional views on environmental relations.

Besides the fact that at a doctrinaire and practical level a clear idea will be outlined about the type of environmental relations, as elements of a different branch, it will also be a first step in supporting the difference of procedure for examining complaints related to environmental issues and disputes dealing with environmental damages.

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REFERENCES

1. Dutu M, Marinescu M., Environmental law, Bucharest, 1995
2. Dutu M, Marinescu M., International and community environmental law, Economica Publishing House, Bucharest, 2004
3. Dutu M, Marinescu M., Environmental law, Bucharest, 1996
4. Duțu M., Environmental law, IIIrd edition –C.H. Beck Publishing House – Bucharest, 2010
5. Duțu M., Environmental law –C.H. Beck Publishing House – Bucharest, 2008.
6. Drago R, Preface to the work of P. Girod, La reparation damage ecologic, These, Paris, 1974, p. 13
7. Lupan E., Environmental law, General Part, tome I, Lumina Lex Publishing House, Bucharest, 1996
8. Lupan E., Minea M., Marga A, Environmental law, Special part, tome II, Bucharest 1997
9. Lupan E., Treaty about environmental law, Ch. Beck Publishing house, Bucharest, 2009
10. Girod P., La reparation damage ecologic, These, Paris, 1974, p. 13.
11. Guguiman A., Ecoeducation, Bucharest, "Tribuna învățământului", no. 40, 1990

12. Hulot N., Pour un Pact ecologique, Calman Levy, Paris, 2006
 13. Marinescu D., Treaty about environmental law, All Beck Publishing House, Bucharest 2003
 14. Marinescu D., Treaty about environmental law, IIIrd edition, Ed Universul Juridic, Bucharest 2008
 15. Marinescu, D., Treaty about environmental law, Casa de Editura si Presa „Sansa” SRL, Bucharest, 1996
 16. Marinescu C., Securitatea ecologica si nationala a statelor in conditiile globalizarii, Ed. Portile Orientului, Iasi, 2005
 17. Martin G., Indemnization des dommages ecologique, Paris, 1977, p. 261
 18. Petrov V., Environmental law of Russia, Moscow 1999
 19. Prieur M., Droit de l'environnement, Daloz, 1991, p. 1034-1041.
 20. Popa N., General theory of law, Actami Publishing House, Bucharest, 1998
 21. Santai I., General theory of law, Rissoprint Publishing house, Cluj Napoca, 2000
 22. Teodorescu I., Risnoveanu G., Negrut C., Ecology and environmental protection, Student's book for XIIth egrade, Constelatii Publishing House, Bucharest, 2002
 23. Zalana M., Goran G., Parpală D., Weprotect nature - Green path of life, Bucharest, "Miniped" Publishing House ,Inv. primar, nr. 1 / 2004
- Government Emergency Ordinance no.195/2005 – on the protection of the environment, approved and modified by Law 265/2006.
- Law no.544/2001 – on free access to environmental information