

LEGAL PROTECTION OF WATERS

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Abstract. *The importance and necessity of water protection is an essential and indispensable condition for the life, survival and well-being of people irreplaceable with any other product. Water covers a large part of the Earth's surface (almost 71%, about 1400 million KM² of water, of which 97% is salty water, namely seas and oceans, and only 3% is freshwater found in ice caps, underground spaces, lakes, rivers, atmosphere, etc.).*

Water is important for the essence of life and for carrying out all human activities, being used in food, agriculture, industry, services, urban development, transport and navigation, fishing, etc. Considered an inexhaustible source for a long time, water is not available under sufficient conditions and of adequate quality in certain periods and in certain regions of the globe.

Keywords: *inexhaustible source, water, balanced management, water resources, pollution, wastewater, national waters, cleansing*

INTRODUCTION

The natural water deficit correlated with the demographic explosion, with the high degree of urbanization, the development of large water-consuming industries, but also large pollutants, caused the emergence and accentuation of the double phenomenon called "water drying and pollution". To the water shortage, we add the accelerated degradation of its quality, with increasingly serious overtones, mostly due to the toxic and dangerous residues and wastes that are discharged.

For these considerations, strict water protection, rational use, balanced management of all water resources are required. The need for such measures is imposed by major factors, such as:

- The continuous and rapid increase of the water consumption that doubles every 15 years, accompanied by a dramatic reduction of the resources, by a water crisis on the globe;
- The works meant for socio-economic purposes of the usable water stock are insufficient;
- The increased water pollution, phenomenon generated by polluting industries, inadequate purging of used and wastewater, massive

deforestation, use of pesticides, explosion of detergent production, radioactive waste, etc.

The first international document in this field is the "European Water Charter", adopted by the Council of Europe in 1968, which contained a series of rules and principles that subsequently received a legal consecration as follows:

- Water resources are not inexhaustible;
- Quality of technically processed water;
- Water has no border;
- Water is a common heritage of nations;
- Water pollution is prohibited.

The principles applicable to the protection and management of waters stipulated in this document, were the starting point of other documents adapted at international level, which have brought essential contributions regarding the protection of waters.

The UN General Assembly adopted a Resolution in 1980, by which the period between 1980 and 1990 was proclaimed the "International Century for Drinking Water", trying to mobilize all the states of the world for the protection and development of these environmental factors.

The classification of waters into different categories that have had different legal regimes is made according to the following criteria:

- a) From the point of view of their administration, waters are grouped into international, territorial and national waters.
 - International waters - are those that enter or pass through the borders of two or more states; those on which two or more states are riparian and those on which the interests of foreign states have been recognized by international treaties and conventions.
 - Territorial waters (inland maritime) - are those between the coast and the sea, their extent being established by national law and international conventions in the field.
 - National waters are inland waterways, rivers, canals and lakes, border rivers established by international legal documents.
- b) According to their settlement and destination, waters are grouped into:
 - Surface waters (streams, freshwater lakes, rivers) and groundwater;

- Waters of natural use - intended to meet the needs of the population (drinking water, water for the population)
 - Waters for agriculture (for irrigation and other activities)
 - Waters for industrial use (used for navigation, fishing, electricity production)
- c) According to the form of property on waters, we distinguish:
- Waters belonging to the public domain (include surface waters with riverbeds longer than 5km, river basins over 10km², groundwater, inland seawater and territorial sea)
 - Waters belonging to the private domain (include waters with riverbeds under 5km and with hydrographic basins under 10km²).

Pollution affects all forms of water in nature. Due to the special importance of water for the existence of life on earth, its protection is required both quantitatively and qualitatively. The big problem of waters is not so much the quantitative aspect that depends on their rational and balanced management, but the qualitative aspect, namely the pollution of waters, which is a generally serious phenomenon, usually invisible because most polluting agents dissolve in water.

CONTENT

One of the oldest international regulations related to water pollution is the case of Sweden from 1734. In our country there have been rules regarding the legal regime of water since ancient times, within the old Romanian law, the first legislation and written codes, in the Civil Code of 1865, the Constitution of 1866 and the one of 1923. The first special law in this field was the Law of the Water Regime of 1924. A series of subsequent normative acts imposed a regime on the use and protection of waters. Currently, the general legal regime of waters is established by the Water Law no. 1071/1996 with subsequent modifications and completions.

Water pollution was defined at the International Conference on Water Pollution in Europe in Geneva in 1961, as "directly or indirectly changing the composition or condition of water, as a result of human activity, so that it becomes unsuitable for use." This definition was later enriched with other details contained in international documents.

Law 171/1997 on the approval of the national land-use plan defines water pollution as "any physical, chemical, biological or bacteriological alteration of water, beyond the established permissible limit, exceeding the

natural level of radioactivity produced directly or indirectly by human activities, which make it unsuitable for normal use for purposes where such use is possible before alteration occurs."

A definition given to pollution is also found in the Recommendation of the OECD Council from 1974, which stated that pollution means "the introduction by humans, directly or indirectly, of substances or energy with harmful consequences, which could endanger human health and ecological systems".

Water pollution can be voluntary or accidental (from natural or artificial sources).

Considered as "a renewable natural resource, vulnerable and limited element indispensable for life and society, raw material for productive activities, energy source and transport pathway, determining factor in maintaining the ecological balance", it is necessary to create a legal regime capable to respond to the needs of protecting and preserving waters to ensure their complex and rational use, in order to be presented for the generations to come.

The main normative acts that establish the legal regime of waters and aquatic ecosystems regarding their administration, management and protection are: Water Law no. 107/1996, modified by Law no. 192/2001 and by the Government Decision no.18/1991 regarding the land fund, republished in 1998, Law no. 137/1995 on environmental protection, republished in 2000, Government Decision no. 188/2002 on the wastewater regime, the Romanian Constitution of 2003, etc.

Art.36 of the Law no.137/1995 republished, stipulates that,,the protection of surface waters and aquatic ecosystems aims to maintain and improve their natural quality and productivity, in order to avoid negative effects on the environment, human health and material goods".

Being a natural resource with great economic value in all its forms of use, the conservation, reuse and saving of water are important objectives, which are intended to be achieved through:

- Development of the environmental condition;
- Application of economic stimuli;
- Applying sanctions to those who violate the legal norms regarding water protection.

The legal protection of waters is carried out in the following main forms: the quantitative protection and the qualitative protection.

The quantitative protection of water resources is achieved through their rational use and protection against exhaustion. The legal regulations provide obligations for:

- water users for the rational use of water resources;
- central and local authorities, economic agents, legal entities, to take measures to reduce water consumption, repeated use of water, maintenance of water installations in proper condition to avoid losses;
- those who manage and use water, to take measures to provide means of measuring water flows.

In cases where water flows cannot be provided to all authorized users, competent bodies established by law may apply temporary restrictions on the use of water resources.

The qualitative protection of water aims to maintain its quality and purity. To this end, the relevant legislation establishes that the pollution of water resources in any way is prohibited. The Minister for the Environment and Water approves the norms of drinking water quality, elaborates norms, water quality standards, emission standards, water purification and discharge, the procedure for authorizing the exploitation of water, norms for the accomplishment of the hydro technical constructions for embankments, irrigation, regularization, drainage, etc.

Water management bodies, local bodies of public administration, natural and legal persons have the obligation to carry out works of planning, cleaning, and maintenance of water resources.

For the purpose of the judicial management of waters, of their supervision and forecasting, the Law no. 107/1996 republished, stipulated the establishment of commissions and bodies such as:

- The national data base related to water management, which contains information on water quality, thus recognizing the access of natural and legal persons to relevant information related to water quality;
- National Commission for the Safety of Dams and Hydrotechnical Works;
- Central Defence Commission against floods and hydrological accidents;
- Government commission, county and local defence commissions against disasters;
- "Water Cadastre", for public water records.

Water protection also includes the protection of the riverbeds, of the water management works (hydrotechnical constructions) and of the works. The so-called "protection zones" are thus established.

Another instrument for the protection of waters for preventing and combating their pollution, is the prior control of all activities with an

impact on waters, by mandatory the obligatory administrative permits and approvals, such as:

- the site permit and the water management permit, necessary for carrying out the works on waters or related to waters;
- the water management authorization is the technical-legal regulation that conditions the commissioning or exploitation of existing and new objectives, which are built on waters or related to waters;
- the environmental agreement and authorization for the activities they require.

The special importance of water as a natural resource of economic value, also results from the fact that for its protection (qualitative and quantitative) both economic stimuli for those constantly concerned with its protection, and sanctions and penalties for those polluting it are applied.

International water quality protection includes a vast and complex activity of cooperation and collaboration in the form of international treaties, conventions or bodies.

Although the waters of the planet form a composite whole, their legal protection regimes vary depending on the category of protected waters. As a result of finding out the diversity of the legal protection regimes, the need for international cooperation was imposed in order to prevent and combat water pollution, as well as their judicious administration and management.

At regional conferences, a series of declarations, rules and documents were adopted referring to the need for the rational protection and management of waters on the European continent.

One of the first texts on the subject was adopted by the UN and it is constituted by the Helsinki Rules of 1966, which state that: "pollution is an alteration of the quality of water" which determines a harmful change in the composition, content or quality of the water produced by the intervention of the human or natural factor. This act introduced the concept of "fair and rational use of an international drainage basin".

In 1968, the EC adopted the "European Water Charter", which included a series of principles such as: water resources are not inexhaustible; water has no borders; water is a universal heritage; water must be protected for the common interest of humankind.

In 1972, the Stockholm Conference followed, where the Declaration of the Meeting containing an Action Plan with five Recommendations on international cooperation in the field of inland water protection against pollution was adopted.

The UN Conference on water from Mar del Plata in 1977 had as objective the rational management of border waters.

The Conference for Security and Cooperation in Europe (CSCE) from Vienna in 1989, in the Final Document of the Vienna Meeting, there is a call for cooperation between states for the protection of cross-border waters against all sources of pollution, for the elaboration of framework conventions in the field, etc.

Among the international Conventions concluded in this field, we mention:

- The draft of the European Convention on the Protection of International Watercourses against Pollution, from Strasbourg in 1973 - provides the general obligation of the riparian states to cooperate in order to prevent and reduce water pollution (by way of negotiation, mutual information, agreements, etc.)
- The Convention of 1985 concerning the protection of the Rhine against chemical pollution (through hydrocarbons and chlorides);
- The Convention of 1986 on the protection of the Tisza and its tributaries against pollution;
- The 1992 Helsinki Convention on the Protection of Transboundary Watercourses and International Lakes; represents the framework regulation in the field.

The main objective of the Convention is to determine the parties involved to undertake the necessary measures for the prevention, control or production of cross-border pollution, without causing a transfer of pollution to another environment. In this respect, they will be guided by the following principles: the precautionary principle, the polluter pays principle and the sustainable water management principle.

- The Convention on Cooperation for the Protection and Sustainable Use of the Danube, from Sofia in 1994, signed by eleven Danubian states and ratified by our country in 1995.

By signing this document, the international regime of the Danube (the second longest river in Europe) is enriched with significant elements of water protection and sustainable use. Based on the status of the Convention, the International Commission for the Protection of the Danube was established.

At European level, a series of acts have been elaborated, Community legislative improvements, which aim at water protection and quality, pollution prevention, elimination of pollution sources, etc.

We mention here: Directive 2000/60/EC establishing the Community framework for actions in the field of water strategy, Directive

91/676/EEC on the protection of waters against pollution with dangerous substances from agricultural sources, Directive 98/83/EC on quality water intended for human consumption, etc.

CONCLUSIONS

In order to protect and conserve the aquatic environment, in addition to its complex and rational management, a particularly important and efficient role rests with the legal instruments used to combat the infringement of the legal regime for the protection of the aquatic environment.

For all the users of waters and their natural resources, Law no. 137/1995 and Law no. 107/1996 establish obligations and responsibilities that ensure the protection of these natural elements against pollution. Failure to comply with these obligations entails civil, criminal or contraventional liability, as appropriate and the application of appropriate legal sanctions.

We mention that the most widely used form of legal liability for water pollution is the contravention liability.

Law no. 107/1996 groups the illicit acts committed in relation to the protection of waters into two categories, giving priority to the contravention and criminal liability. Contraventions are sanctioned with a fine, and offenses can be sanctioned alternately with imprisonment or a criminal fine for an intentional or involuntary offence.

In most cases, the established offenses are dangerous offenses, the legislator considering a significant danger that must be penalized, the mere failure to comply with certain restrictions and measures stipulated. The offenses provided for by Law no. 107/1996 are established by the bodies empowered in this regard and by the personnel competent to ascertain the contraventions.

Subjects of legal liability in this field at international level are the states and governmental organizations or non-governmental organizations. The legal liability of the subjects of law at international level usually takes the form of civil liability, and the sanctions that are applied to the states in the situation in which they resist the measures of protection or violate those established, are of a political-economic nature.

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