DOI: https://doi.org/10.53486/cike2023.63

UDC: 349.6:504

THEORETICAL DEBATES ON THE RESOLUTION OF LEGAL REPORTS AND REGULATIONS IN ENVIRONMENTAL LAW

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Abstract:
Aim: The environmental issues are becoming an increasingly addressed issues nowadays. Thus, the legislators in various legislative acts impose new and new regulations with a nature of environmental protection, it becomes difficult to identify whether, being incorporated in the text of a certain law, a certain legal norm, belongs to environmental law or, it is a norm that belongs to the field which in substance represents the regulatory object of this law. In other words, it is often quite difficult to determine the boundary of environmental law regulations, especially since the norms of this branch are not always compactly found in environmental legislative acts.
Methodology: It must be recognized that the legal mechanisms for environmental protection change their appearance over time, becoming much more aggressive and relentless. They are often used without taking into consideration certain traditional rules and presumptions that often do not ensure effective protection of the environment. In such cases, it is necessary to understand that the regulatory mechanisms for environmental protection are a component of environmental law, even if they are based in other legislative acts and even if they are very similar to the mechanisms used in the regulation of other categories of legal relations
Findings: The lack of a clear procedure means that the environmental legislation remains unenforced. Although in other countries the problem of environmental protection has been raised to a much more important level, including the fact that objective and joint liability is established for damage caused to the environment

Keywords: environmental law, regulatory mechanisms and methods, contraventional law, liability.

JEL Classification: K 1; K 10; K 15

Introduction

From the very beginning, it was quite difficult to get recognition of the existence of such a branch of law as environmental law. Even today, some specialists in traditional matters claim that environmental law is nothing more than a sub-branch of administrative law.

Although at the moment such approaches are already extremely rare, the claims regarding whether the institutions that are meant to ensure the protection of the environment belong in integrity only to environmental law or to other branches of law are still actual, anyway.

We could exemplify with the approach to the question regarding the ecological expertise. Some authors claim that this is an institution exclusively of environmental law, others argue that this is an institution of administrative law, but which is also applied in order to achieve the objectives of environmental protection.

As a result of the proclamation of independence and sovereignty, the Republic of Moldova stepped

on a path of development towards building a state of law, and, along with this, accepted a series of principles related to ensuring a safe living environment for people. This dictated the need to change the entire legislation of the country. The first changes in these areas occurred in The Land Code, and one of major importance was the adoption of the Law on the Protection of the Environment, which is still in force until now. The Soviet laws were replaced by qualitatively new laws, which regulated the use and protection of water, subsoil, forest resources, air, etc. Also, new laws, which did not exist in the Soviet period, were adopted, such as the Law on Ecological Expertise and Environmental Impact Assessment, The Law on Payment for Environmental Pollution, and other departmental normative acts related to environmental protection.

The European Union (EU) Environmental Law is a complex legal enterprise that has expanded EU legal imagination into three areas. First, there has been an evolution of legal thinking in relation to both positive and negative harmonization of the internal market, as environmental problems have required the reconfiguring and restructuring of markets. Second, when implementing The EU environmental law in Member States, the courts have had to interpret novel legal obligations in directives such as the Environmental Impact Assessment Directive and the Habitats Directive, as well as evolving thinking about direct effect and national procedural autonomy. Finally. EU environmental law has evolved legal thinking in relation to governance and in particular the framing of regulatory objects and the accountability of institutions. One of the biggest tasks to be solved was to bring these documents in accordance with the general principles of law and international treaties and conventions.

Purpose / Stating a Problem

We must mention from the start that the method of regulating a branch of law is determined by the need to legislate certain categories of relationships in relation to the most effective mechanism for achieving the goal of legislating these relationships The method of environmental law regulation is related to the needs of regulating the relations of use, conservation, development and protection of environmental components. As it is argued in specialized literature, the way the state acts on the social relations of environmental protection indicates the method of authoritarianism.[8]

This fact dictates the priority need to establish mandatory norms in environmental law. The application of such regulatory methods is conditioned by the importance of the environmental problem, as well as due to the fact that this is a major issue of public interest. As a result, environmental law methods are public law regulation methods.[9]

However, claiming "purity" in the application of public law methods in solving environmental problems would be a fatal mistake.

Another segment in which such approaches are current, is that of reparative liability for environmental damage. Some scientists consider that reparative liability is a civil one, others argue that we are facing a liability distinct from environmental law.

Since the emergence of environmental law as a branch of law and until now, there are still discussions around the issue of whether environmental law is a branch of law, or it is a "collection" of legal norms from different branches of law, and as a result, environmental law, can only be seen as a legal

[8] Codul funciar, nr. 828-XII din 25.12.91, republicat: Monitorul Oficial nr.107/817 din 04.09.2001;
[9] E. Lupan, Dreptul mediului, ed. «Lumina Lex», Bucureşti, 1996, vol. I;

discipline. The supporters of this opinion base their opinion on the fact that from the very beginning, the legal norms that protected nature belonged either to administrative law, or to civil law, or to criminal or contraventional law. More than that, even today, in order to achieve the goals of environmental protection, the regulations of legal responsibility are used, as well as other legal methods of these branches of law.

Debatable Approaches

It is necessary to mention that although the relations related to the use of environmental components, having as object natural resources, can refer to the object of civil law, and therefore can be civil relations. This is explained by the fact that the expression with a broad meaning "the use of environmental components" is related to the problem of property rights, usufruct rights, servitude rights, pledge rights, etc. But with regard to environmental law, we have as the object of environmental law relations a specific right, namely "rational use ". The establishment of this specific right resides in the fact that achieving a protection of environmental factors, without a regulation of a rational use of environmental behaviors, cannot provide us with the achievement of the general goal of environmental law

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In any case, discussions on such topics do not stop even up to the present moment, and the set of arguments that researchers make do not always have a beneficial effect on the regulatory field. That being said, since scholars do not have a single opinion, neither does the legislator have a definite position on how and what to regulate.

Another aspect of the question would be to examine the unequal position of the parties in legal relationships. Even if in the multitude of environmental law relationships there are also categories of relationships, which apparently are of private law, such as contractual ones related to the lease of natural resources, however their private law character is broken by the rules that assume the possibility of revocation of the lease contract only on grounds of public interest, a fact that distorts the status of a legal relationship based on the equal position of the parties, a relationship proper to private law. Another example also refers to the fact that if in private law relationships the injured party can voluntarily waive compensation, the perpetrator in this case being exonerated from liability, then in environmental law the option of exoneration from damage is excluded.

It is clear that the protection, regeneration and development measures of the environmental components cannot give a result, without a regulation of the correct (rational) use of the environmental components. In this sense, the regulation of a use of the environmental components represents the area of civil law, and the regulation of a rational use of environmental components represents the area of environmental law. Starting from this, we consider that in environmental law, a new set of rules is taking shape, different from the civil ones, even if they complement them, namely with the rules regarding the rational use of environmental components.

Setting Mandatory Norms in Environmental Law

The idea from which we start is that in order to solve a specific problem for human society, such as

the problem of environmental protection, which is a vital problem[10], it also requires the application of specific rules. These rules do not always have a social foundation. This is because natural phenomena occur independently of human will and that any human intervention in the environment inevitably leads to changes. Therefore, the procedures used to solve these problems must include a spectrum that ensures the achievement of this goal, regardless of the fact of which field they belong to - either public law or private law. They must be the most categorical, drastic and even exclusive, so that in the end they exclude intervention or totally remove the danger or consequences of negative influences on the environment.

It is also undeniable that environmental law is not only a branch of domestic law, but also has an international significance.[11] Even the rules that regulate the use and protection of environmental components cannot be reconciled with the rules of international law. This is largely due to the fact that environmental phenomena "do not know" and "do not obey" state borders.

This is because, in our opinion, environmental law is characterized by the presence of its distinct regulatory object, which are the ratios of rational use, protection, conservation and development of the environmental components.[12] In this sense, the need to ensure a rational use and protection of environmental factors dictates the realization of a combination of regulatory methods present in several branches of law. Environmental law is entitled to take up these methods, provided that their application provides efficiency and results. Therefore, the institutional framework will be composed of its own elements, but also of "the borrowed" ones, but adapted to the needs of environmental protection. Examples can be The Institution of Ecological Expertise, The Institution of Responsibility for Environmental Law,[13] etc.

However, when we "choose" the procedures for regulating environmental relations, we must take into account the fact that "people easily accept collective measures for environmental protection, but easily ignore measures that require individual discipline and personal efforts"[14]. That is why the measures that the legislator adopts at a certain stage, as a rule, are consistent with the level of intellectual development of society. Thus, when from the rostrum of the country's parliament, notes of derision will be heard regarding the importance of examining some draft laws related to the protection of natural environmental elements, so far, internal environmental law will be characterized by an increased tolerance for polluting acts. Whereas on the contrary, when the level of society's perception regarding environmental issues will be more advanced, the less will be the legislative tolerance for polluting acts.

Environmental law reports have a complex character. It is incorrect to deny the fact that in achieving the goals of use, conservation, development and protection of the environment, the use of all methods that can achieve the most efficient goal of legal stability in this sense is required, It is necessary to understand that the major goal of protecting the environment can also be achieved by means of administrative, criminal, contravention law, as well as by other means of law. In this sense, we must recognize that they are entitled to use all possible means to achieve the major goal of protecting the environment for present and future generations. It is important to note, however, that the norms of

[10] E. Lupan, I. Trofimov, «Răspunderea de dreptul mediului», «Fiat Justiţia» nr. 1, Cluj-Napoca 1998;
[11] Gh. Beleiu, Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil, Bucureşti, 1998;
[12] M. Duţu, Dreptul mediului, Editura economică, Bucureşti, 1996;
[13] I. Gheorghe. „Drepturile Fundamentale şi Protecţia Mediului", Bucureşti 1998;
[14] I. Trofimov, G. Ardelean, A. Crețu, Dreptul mediului, ed. Editura Bons Offices, Chișinău, 2015;

other branches of law, which directly regulate some environmental law relationships, do not form the category of environmental law norms, but only complete or ensure the achievement the rules of environmental law. For example, if we refer to the regime of taxes applied for the use of natural resources, we find that the established taxes, as a rule, do not take into account the expenses for the regeneration of environmental factors. Therefore, both the tax for the use of environmental components, and the payment for environmental pollution, even if perceived before the moment of pollution, represents in perspective a way of responsibility for environmental damage, which should be understood as an element that must include the value of works and efforts for environmental regeneration. More than that, this should not be seen as a source of income to the budget, liable to be used according to the needs of the state, but only directed - for the regeneration of the environmental components.

Therefore, even if at first glance the criminal liability pursues the purpose of protecting the environment, it can only be engaged in the general prevention phase, and not at all in the certain regulation of environmental relations. Thus, the relations of environmental law appear as some complex relations, because they sometimes start as legislative relations-civil law (property rights over natural resources), administrative law (concession and management of natural resources), criminal law (bearing criminal penalties for environmental pollution), etc.

The researchers in the field, whose task is to propose and argue the necessity of imposing extraordinary measures to protect the environment, have had huge contribution to the realization of "intolerance". This is often done by "taking over" some institutions from other branches of law.

Many times the proposed solutions have been so extraordinary, that they are initially perceived by the majority as utopian. For example, in some specialized sources it is proposed to recognize religious norms as a source of environmental law. In this sense, it is argued that religious traditions around the world provide a basis for the right to the environment. Representatives of Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Zoroastrianism and other religions, that belong to the Alliance of Religions and Conservation, a non-profit organization, found in religious traditions a common basis for land management. Thus, in ancient Buddhist chronicles dating from the third century BCE, they recount a sermon on Buddhism in which the son of Emperor Asoka of India asserted that "birds of the sky and animals have the same right to live and move in any part of the country. Another rule says that the Earth belongs to humans and all living things, and you are only the guardian of the Earth.[15]

Thus, the complexity and dynamics of social relations often imposes the need to regulate one and the same category of relations through the legal norms of different branches of law. This is also necessary starting from the fact that the branch of environmental law is a new one, and the appearance of new categories of legal relations, qualitatively new, makes it necessary to place them in the space of all other relations. Often this creates the wrong impression of a synthesis branch.

As for example, we could refer to the fact that in environmental law relations, property rights, already considerably worn out over time, create additional reasons to thin out, when it comes to acquisitions (protected areas), use (easements and constructions) or disposition. Although the administrative legislation indicates that the allocation of land for use or alienation is the exclusive competence of local councils or the Government, however, when discussing land, a big question mark appears – "are

[15] M. Cotorobai, P. Zamfi, V. Ursu, "Dreptul funciar", Chişinău, 2001;

we facing an environmental law report or do we have a civil law relationship, whether we are facing a legal administrative law relationship? "[16]

Shortcomings in the Environmental Law of The Republic of Moldova

Although the environmental legislation of the Republic of Moldova has experienced a fairly significant development, we must recognize the existence of a series of shortcomings, some of which have an essential character. Thus, at the stage of drafting and adoption of draft laws, the preparation of the text of new laws often has place without being terminologically coordinated with the text of other categories of laws, especially those related to the civil and commercial domain. Thus, in the text of legislative acts in the field of environmental law, inappropriate terms are often used or with content that is not understood and not explained by the text of the law. For example, some laws use the term "lease", although according to its content it is necessary to use the term "location", considering that the purpose of the transmission of the natural objective is not an agricultural one. The text of the law that regulates the use regime can be subject to criticism, considering that it establishes an uncertainty, which was actually removed in the text of the old law - the Water Code, namely the one that refers to the "aquatic objective". Another shortcoming of the environmental legislation is the "chronic" absence in the legal texts of the procedure for ensuring the rights and obligations established by the law, as well as the consequences of not complying with them. Namely, the lack of a clear procedure means that the environmental legislation remains unenforced. Although in other countries the problem of environmental protection has been raised to a much more important level, including the fact that objective and joint liability[17] is established for damage caused to the environment. More than that, the idea of recognizing the right of every citizen to action is put forward regarding the repair of the damage caused to the environment, regardless of whether or not personal damage was caused to him.

Conclusions and proposals

In the context of the above-mentioned, we find that the basic task of the legal science of environmental law is to reveal the criteria for identifying the categories of legal relations under environmental law, in order to delimit them from other categories of legal relations, a fact that produces effect both on the identification of environmental law relations from the multitude of legal relations of other similar branches of law, as well as ensuring the correct application of the legislation in force. According to Professor Prieur, the recognition of the general interest related to the environment has its effects on the control of legality and the emergence of a public service for the environment aimed at ensuring an ecological public order.

For the reasons stated above, often in the practice of environmental law reports, different situations arise in which we are faced with the task of identifying whether a certain legal report, which has as its object environmental elements, is part of the category of environmental reports or, as the case may be it is one of administrative, civil law, labor law, etc.

The solution regarding the identification of the nature of legal relationship, can be identified

[16] I. Trofimov, «Răspunderea ecologică - concepţie contemporană», «Legea şi viaţa» nr. 11, Chişinău, 1997;
[17] M. PRIEUR, 2019, DROIT INTERNATIONAL ET COMPARÉ DE L'ENVIRONNEMENT, Formation à distance, Campus Numérique "ENVIDROIT" TRONC COMMUN COURS n°5 LES PRINCIPES GÉNÉRAUX DU DROIT DE L'ENVIRONNEMENT;

specifically through the lens of the legal mechanisms used, but also in relation to the purpose of the regulations. In this way, if we identify the fact that a specific rule aims to ensure the management of public affairs, such as the realization of an order for the adoption of decisions in a certain concrete field, then these reports are of an administrative nature, and therefore the legal norm is one of administrative law. However, if the norm in question aims to ensure the protection of an environmental factor, even if it incorporates apparently mechanisms of administrative law, then the report in question is a report of environmental law, and the legal norm is attributed to environmental law.

REFERENCES:

1. Beleiu Gh., 1998, Drept civil român., Introducere în dreptul civil. Subiectele dreptului civil, Bucureşti,;
2. Codul funciar, nr. 828-XII din 25.12.91, republicat: Monitorul Oficial nr.107/817 din 04.09.2001;
3. Cotorobai M., Zamfir P., Ursu P, 2001"Dreptul funciar", Chişinău,;
4. Duţu M., 1996, Dreptul mediului, Editura economică, Bucureşti,;
5. Gheorghe I. 1998. „Drepturile Fundamentale şi Protecţia Mediului", Bucureşti ;
6. Lupan E., Dreptul mediului, 1996, vol. I, ed. «Lumina Lex», Bucureşti,;
7. Lupan, E. Trofimov I. 1998 «Răspunderea de dreptul mediului», «Fiat Justiţia» nr. 1, Cluj-Napoca
8. PRIEUR M.,2019 DROIT INTERNATIONAL ET COMPARÉ DE L'ENVIRONNEMENT, Formation à distance, Campus Numérique "ENVIDROIT" TRONC COMMUN COURS n°5 LES PRINCIPES GÉNÉRAUX DU DROIT DE L'ENVIRONNEMENT;
9. Trofimov I. Ardelean G., Crețu A. 2015, Dreptul mediului, ed. Editura Bons Offices, Chișinău,;
10. Trofimov I, 1997 «Răspunderea ecologică - concepţie contemporană», «Legea şi viaţa» nr. 11, Chişinău,;