

SOCIAL FUNCTION OF BULGARIAN ENVIRONMENTAL LAW

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ABSTRACT: This article is dedicated to social function of Bulgarian environmental law. The attention is paid to 4 major aspects of this function: a) fundamental right of the citizens to a healthy and favourable environment; b) legal protection of medicinal plants; c) legal protection of resort resources; d) legal regime of specially protected natural areas in the light of tourism and relaxation of the citizens.

KEY WORDS: Bulgarian Environmental Law, Social Function.

РЕЗЮМЕ: Тази статия е посветена на социалната функция на българското екологично право. Вниманието е насочено към 4 основни аспекти на тази функция: а) основното право на здравословна и благоприятна околна среда; б) правната защита на лечебните растения; в) правната защита на курортните ресурси; г) правният режим на защитените природни територии в светлината на туризма и отдиha на гражданите.

КЛЮЧОВИ ДУМИ: Българско екологично право, социална функция.

1. Preface

The antropogenic impact on the environment during last decades is increased through various forms and dimensions. This fact increases the role and importance of the environmental law as a branch of law which regulates various relations between society and nature. The social function of environmental law is related to the legal possibilities for citizens of every country to live and work in a favourable and healthy environment and to use rationally natural resources for the purposes of tourism, relaxation, medical rehabilitation and other health purposes. This function is closely linked with the Principle 1 of the Declaration of the United Nations on the Human Environment (Stockholm, 1972) where is stated that man has the fundamental right to adequate conditions of life in an environment¹. In the Bulgarian environmental legislation² are regulated some legal tools which could be shown as a specific aspects of its social function. In my opinion, the social function of the Bulgarian environmental

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¹ A/Conf.48/14. For more details about this declaration, see A. Kiss, D. Shelton, *International Environmental Law*, London, 1991, p. 39-40.

² See about the structure of the Bulgarian environmental legislation, G. Penchev, "Bulgarian environment policy", in *Water & environment manager*, Lavenham (England), 1999, № 6, p. 22-23.

law has 4 aspects, as follows: a) fundamental right of the citizens to a healthy and favourable environment³; b) legal protection of medicinal plants; c) legal protection of resort resources; d) legal regime of specially protected natural areas in the light of the tourism and relaxation of citizens. They will be examined below in brief in accordance with the state of the Bulgarian legislation as of October 29, 2013.

2. Fundamental right of the Bulgarian citizens to a healthy and favourable environment

The fundamental right to healthy and favourable environment of the Bulgarian citizens is proclaimed in art. 55, sent. 1 of the Constitution of the Republic of Bulgaria⁴ where is stated that “Citizens shall have the right of healthy and favourable environment in accordance with the established standards and norms”⁵. The terms ‘standards’ and ‘norms’ must be interpreted as various kinds of limited admissible levels of polluting substances (i. e. related to the quality of the environment) or related to the quantity of the environment, including legal regimes of activities in specially protected natural areas or protected zones. These ‘standards and norms’ must ensure the ecological equilibrium and sustainable development. They are regulated in sectorial environmental legislation.

3. Legal protection of medicinal plants

The medicinal plants find application in medicine, especially in folk medicine, pharmaceuticals, cosmetics and food industry. Their legal regulation is focused in the Medicinal Plant Act of 2000⁶. It can be mentioned following legal tools for the protection of this natural resource under this act: A) obligation for the owners of lands, forests and water objects to take the necessary measures for protection of the medicinal plants located there (art. 7); B) prohibition for use of

³ The legal problems on safety and health at work traditionally are investigated in the labour law literature, that is why they can not be examined in this article. For more details on the environmental aspects of protection of working environment in the European Union and Bulgaria see Г. Пенчев, “Екологични аспекти на опазването на работната среда по европейското право”, in *Юридически сборник*, Бургас, 2011, т. XVIII, с. 49-81 [in translation from Bulgarian: G. Penchev, “Environmental Aspects of Protection of Working Environment under European Law”, in *Juridical Medley*, Bourgas, 2011, t. XVIII, p. 49-81].

⁴ See ‘State Gazette of the Republic of Bulgaria’ (SG), No. 56 of 1991, as amended.

⁵ For more details on the legal essence of this human right, see В. Панова, “Право на здравословна и благоприятна околна среда”, in *Основни права на човека и гражданина*, София, 1998, с. 134-140 [in translation from Bulgarian: V. Panova, “Right of the citizens of the Republic of Bulgaria to healthy and favourable environment”, in *Fundamental rights of man and citizen*, Sofia, 1998, p. 134-140]; Г. Пенчев, “Право на гражданите на Република България на здравословна и благоприятна околна среда”, in *Проблеми на морското право*, София, 1994, № 1, с. 57-62 [in translation from Bulgarian: G. Penchev, “Right of the citizens of the Republic of Bulgaria to healthy and favourable environment”, in *Problems of the Law of the Sea*, Sofia, 1994, No. 1, p. 57-62]. In Russian legal literature this problem is analysed by M. Brinchuk – see M. Бринчук, *Экологическое право*, Москва, 2009, с. 325 [in translation from Russian: M. Brinchuk, *Environmental Law*, Moscow, 2009, p. 325]. In Polish legal literature L. Łukaszuk and A. Tomaszewski investigate the link between protection of health and pollution of the environment in the light of international law – see L. Łukaszuk, A. Tomaszewski, *Ochrona zdrowia a współczesne ryzyka zagrożeń za strony środowiska naturalnego*, in *Ochrona zdrowia w stosunkach międzynarodowych: wybrane zagadnienia*, Warszawa, 2013, p. 63-71.

⁶ See SG, No. 29 of 2000, as amended.

these plants in a way which do harm to them as well as to their habitats (art. 9); C) permits for economic use of medicinal plants (art. 21-41); D) adoption of plans for protection of these plants (art. 50-55); E) monitoring of the state of the medicinal plants, provided by Ministry of environment and waters (art. 56-57); F) control over activities related to these plants by the competent state and local authorities (art. 58-64)⁷.

4. Legal protection of resort resources

The resort resources have big importance for health and the development of the tourism (including balneological) and relaxation of the population. In Bulgaria they are subject for protection mainly under public health legislation in comparison with the Russian Federation where they are regulated in the environmental legislation as a kind of specially protected natural areas. The Bulgarian Health Act (HA) of 2004⁸ includes a subchapter (art. 75-78), dedicated to protection of these kind of natural resources in the scope of chapter VIII on activities for protection of public health. According to art. 75, sec. 1 of HA, the term 'resort resources' includes mineral water, medicinal mud and beaches.

It can be mentioned following legal tools for the protection of these resources under this act: A) right of the Government with decision to specify borders and conditions for the development of the resorts as areas, including resort resources (art. 76, sec. 2); B) right of Ministry of environment and waters (MEW), Ministry of Health, Ministry of Regional Development and Ministry of Economy and Energetics to establish with regulation the regime of activities in resorts, related to the use of resort resources (art. 77); C) right of places of resorts (i. e. hospitals, rehabilitation centres, etc.) to use mineral water and medicinal mud for the purposes of their activity (art. 78).

5. Legal regime of specially protected natural areas for the purposes of tourism and relaxation of the citizens

The specially protected natural areas usually are promulgated mainly for conservation, scientific and aesthetic purposes. However, the social function of environmental law in this field is related to their use for the purposes of tourism and relaxation of citizens but in accordance with established restrictions to guarantee the ecological equilibrium and sustainable development in these areas. The Bulgarian Protected Territories Act of 1998⁹ specifies 6 categories of specially protected natural areas, as follows: reserves, maintained reserves, national parks, natural parks, protected countrysides and 'natural remarkabilities' (i. e. natural monuments) (art. 5). It can be mentioned following legal tools for the protection of abovementioned areas under this act: A) right of the MEW to categorize and promulgate specially protected natural areas with Order, published in SG (art. 35 and art. 47, p. 2) after special procedure for this promulgation (art. 36-45); B) adoption of management plans for these areas by

⁷ See for more details, Г. Пенчев, "Правна защита на лечебните растения", in *Правото – изкуство за доброто и справедливото*, Пловдив, 2013, с. 199-206 [in translation from Bulgarian: G. Penchev, "Legal protection of medicinal plants", in *Law – art of good and justice*, Plovdiv, 2013, p. 199-206].

⁸ See SG, No. 70 of 2004, as amended.

the Government – on national and natural parks, and by the MOW – on reserves, maintained reserves, protected countrysides and natural remarkabilities (art. 60, sec. 1 and art. 61) after special procedure for this adoption (art. 55-66); C) special rules on the legal characterization and regime of activities in specially protected natural areas (art. 16-34).

The more restrictive measures for human activities are established in the scope of reserves and natural reserves where is forbidden all kinds of economic activity, but tourism could be developed there only in accordance with the restrictive regime of that territories. The difference between reserves and natural reserves consist in the presence of endangered species of wild fauna and flora (endemic and relictant from the point of view of biology) in the area of natural reserves. More possibilities for tourism and relaxation are established in the area of national and natural parks. In management plans of these parks must be envisaged 'touristic zone'. The difference between national park and natural park consist in the possibility for human settlements to be available in the territory of natural parks. The natural remarkabilities and protected countrysides are also suitable for tourism and relaxation in accordance with the established regime for activities in their territory in Order of promulgation of the MEW and respective management plan¹⁰.

6. Conclusions

Finally it could be carried out some general conclusions from examined Bulgarian regulation in this field. The social function of the Bulgarian environmental law has an important meaning for the achievement of sustainable development. It is related to securing of favourable and health conditions for life and work of the citizens.

The development of tourism and rehabilitation of the citizens is closely linked with the environmental requirements to some activities, regulated in sectorial environmental legislation, and especially in the legislation on resort resources, medicinal plants and specially protected natural areas; the complex and complicated character of contemporary environmental problems requires an efficient collaboration between scientists and practicing experts from different fields of science and social practice.

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⁹ See SG, No. 133 of 1998, as amended.

¹⁰ See for more details about Bulgarian legislation in this field: С. Божанов, *Законодателна уредба в областта на околната среда*, София, 2006, с. 223-228 [in translation from Bulgarian: S. Bozhanov, *Legislative Regulation in the Field of the Environment*, Sofia, 2006, p. 223-228]; С. Наумова, *Основни въпроси на екологичното право*, София, 2012, с. 214-216 [in translation from Bulgarian: S. Naoumova, *General Questions of Environmental Law*, Sofia, 2012, p. 214-216]; Г. Пенчев, "Правен режим на защитените природни територии", in *Собственост и право*, София, 2002, № 5, с. 5-8 [in translation from Bulgarian: G. Penchev, "Legal Regime of Specially Protected Natural Areas", in *Ownership and Law*, Sofia, 2002, No. 5, p. 5-8]; П. Стайнов, *Защита на природата (правни изследвания)*, София, 1970, с. 60-69 [in translation from Bulgarian: P. Staynov, *Protection of Nature (Legal Research)*, Sofia, 1970, p. 60-69]. On environmental legislation in this field in some other countries see: М. Бринчук, *Цит. съч.*, с. 320-334 [in translation: M. Brinchuk, *op. cit.*, p. 320-334]; D. Hughes, *Environmental Law*, London, 1992, p. 167-171, 173-177 and 179-183; D. Shelton, A. Kiss, *Judicial Handbook on Environmental Law*, Nairobi, 2005, p. 98-100.