



THEORETICAL GROUNDS OF ENVIRONMENTAL LAW

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ABSTRACT: This article is dedicated to the theoretical grounds of the environmental law. For this purpose the legal problems related to the environmental law as a branch of the legal system, as a science, as a school subject and as a system are evaluated. The author formulates his own definition of the term “environmental law” and substantiates its complex and at the same time independent character. In the conclusion are formulated some more general deductions from the evaluated legal problems.

KEY WORDS: Environmental Law, Theoretical Grounds, Branch of the Legal System.

RESUME : L'article est dédié aux fondements théoriques du droit de l'environnement. A cet effet sont analysés les problèmes juridiques liés au droit de l'environnement comme une branche du système juridique et de la science. L'auteur donne sa propre définition de la notion “droit de l'environnement” et représente des arguments de son caractère complexe et ainsi indépendant. Somme toute quelques conclusions plus générales sont faites. Elles sont consacrées aux problèmes juridiques analysés.

MOTS CLES : Droit de l'environnement, Fondements théoriques, branche du système juridique.

1. Preface

The problem of interaction between society and nature is one of the most important problems of our nowadays. Its actuality is determined by the growing degradation of the environment on a world-wide scale in spite of the efforts on a national and international level¹. This fact shows the significant and increasing role of the environmental law as a special branch of law which regulates, in general, relations in system “society – nature”. Because of the various views in the legal literature of the separate countries on the content of the environmental law, there is a necessity for clarification of its essence. The theoretical grounds of the environmental law are related to its four components, as follows: a) as a

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¹ See for example: *Saving Our Planet: Challenges and Hopes*, “UNEP”, Nairobi, 1992, p. 175; G. Penchev, *Old Testament, Contemporary Environmental Problems and Bulgarian Environmental Law*, in: *Revista Crítica de Historia de las Relaciones Laborales y de la Política Social*, Malaga, No. 9 (Noviembre-2014), pp. 5–6.

branch of the legal system on a national or international level; b) as a science; c) as a school subject; d) as a system.

The formation of environmental law is determined by several factors, such as legal traditions and customs, geographical position of the country, scientific and technical progress, ecological situation, economic situation, political regime, cultural development, etc. But deeply reason for current deterioration of the state of the global environment, in my opinion, is related to the inefficient and unreasonable balance between ecological and economic interests of the society, as well as to insufficiently level of morality in the society. That is why religious traditions and spiritual movements which require and recommend love and care to nature will play an important role for both creating of well-balanced environmental regulations and implementation of the environmental legislation. Some aspects of the influence of the religious traditions to environmental law are envisaged by several authors². For example, in the Old Testament it is written: “And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth” (Genesis 1:28)³. In my opinion the words “replenish the earth, and subdue it” must be interpreted as well-balanced and reasonable use of natural resources, non-harmful to the environment and in the light of the modern concept of sustainable development as well as the development of ecology as a science⁴. In the Bulgarian theological literature predominates the standpoint that, according to the Bulgarian Orthodox Church, the nature (physical world) is created by God and it is home and place for development and salvation of mankind⁵. On the other hand, in the Bulgarian philosophical literature, the Master Beinsa Douno (Peter Danov) emphasizes that “Man must live according to nature laws. If he does not observe them, the nature by force will constrain him to fulfill them”⁶.

As we see from above mentioned examples, the Christian religion and some spiritual movements can help to policy-makers in creation of effective ecological approaches for solving the current environmental problems of the society through environmental law.

2. Environmental Law as a Branch of the Legal System

In both Bulgarian and Russian legal literature on theory of law predominates the standpoint that for the formation of one branch of law as a separate in the legal system there must be available two basic criteria: a) subject of legal

² See for example: D. Hughes, *Environmental Law* (Second Edition), “Butterworths”, London, 1992, p. 13; D. Shelton, A. Kiss, *Judicial Handbook on Environmental Law*, “UNEP”, Nairobi, 2005, pp. 4–5.

³ See <https://holybible.com/gen.1.28>.

⁴ See G. Penchev, *Op. cit.*, p. 3.

⁵ See Д. Киров, *Богословие на обществения живот (Очерци по християнска социология)*, „Манта принт”, София, 2003, p. 22.

⁶ See *Просветено съзнание: Лекции на общия окултен клас на учениците от Всемирното бяло братство*. Г. X (1930–1931), Т. 2, София, 1940, p. 50. For more details, see www.beinsadouno.org; www.beinsa-douno.com.

regulation, and b) method of legal regulation⁷. That is why the essence of the environmental law as a branch of the legal system could be clarified in the light of these criteria.

2.1. Subject of Legal Regulation of the Environmental Law

According to the Bulgarian as well as the Russian theory of law, the subject of legal regulation consists in the specific, detached circle of public relations between the subjects of the law on the occasion of some material or non-material goods⁸. According to the Bulgarian theory of law, the basic subjects of law are natural persons, legal persons, state authorities and international organizations, but local authorities are in the scope of the term legal persons⁹. It is important to be emphasized that subject of legal regulation of the environmental law are not relations between man and nature, because the environmental law regulates relations between people (i.e. in the society) on the occasion of the environment or its components¹⁰. In the light of their content, there are two groups of public relations which are subject of legal regulation of the environmental law, as follows: 1) public relations on the protection of the components of the environment from pollution; 2) public relations on the rational (i.e. reasonably balanced, sustainable) use of natural resources.

First group of these relations is connected with the quality of the environment, and the second group – with the necessary quantity of natural resources for the separate kinds of use of natural resources. Environment as a whole or its components actually is the object of these public relations, regulated by environmental legal regulations¹¹. The abovementioned public relations originate objectively in process of interaction between man and nature during the development of human civilization. From one hand, the nature is living environment for man, and for the other hand, it is source of raw material for giving satisfaction to his needs¹². That is why, the environmental law has its own and specific subject of legal regulation.

2.2. Method of Legal Regulation of the Environmental Law

From the point of view of the Bulgarian theory of law, method of legal regulation consists in the ways of influence to the behavior of the subjects of

⁷ See for example in the Bulgarian legal literature: *Основи на правото*, Част първа, „Тилиа“, София, 1995, p. 14, and in the Russian legal literature: С. Алексеев, *Общая теория права*, Т. 1, „Юридическая литература“, Москва, 1981, pp. 244–247.

⁸ See *Основи на правото на Република България*, Част първа, p. 14; С. Алексеев, *Op. cit.*, pp. 292–294.

⁹ See Р. Ташев, *Обща теория на правото* (4. прераб. и доп. изд.), „Сиби“, София, 2010, pp. 361–426; *Основи на правото на Република България*, Част първа, p. 18.

¹⁰ See also in this direction in the Russian legal literature: М. Бринчук, *Экологическое право*, „Городец“, Москва, 2009, p. 34, where this author shares the same view.

¹¹ According to § 1, p. 1 of Supplementary provisions of the Bulgarian Environmental Protection act (State Gazette of the Republic of Bulgaria, No. 91 of 2002, as amended), "Environment" shall be a complex of natural and anthropogenic factors and media in a state of mutual dependence, which affect the ecological balance and the quality of life, human health, and cultural and historical heritage".

¹² See Г. Пенчев, *Екологично право*, Обща част, „Феней“, София, 2011, p. 24.

law, i.e. ways for regulation of the separate public relations¹³. The environmental law uses both two main methods of legal regulation: a) imperative, and b) dispositive, i.e. related to the equality of the subjects of law. In fact, environmental law has not its own method of legal regulation. It uses both methods depending on the concrete case. This fact raises a debatable question in the legal literature of the separate countries on the essence of environmental law as a branch of legal system in the light of its independence as such branch of law. Here-in-after in brief will be shown some attitudes of some authors from separate countries on this problem.

In English legal literature, D. Hughes considers that environmental law is a “coherent body” of law¹⁴, part of coherent legal system¹⁵.

American scientist, environmental lawyer, N. Robinson shows that environmental law is in process of development as a new branch of law¹⁶. Another US authors, A. Kiss and D. Shelton, share the view that it is difficult to be established “the limits of environmental law as an independent legal field” because of the fact that all human activities have an impact on the environment¹⁷.

German environmental lawyer L. Kramer considers that environmental law is a set of legal measures for precaution, protection and improvement of a part or of the environment as a whole¹⁸.

In Russian, Ukrainian and Moldovan legal literature predominate the standpoint that environmental law is a complex (i.e. integrated) branch of law which regulates various public relations, connected with the interaction “man – nature” or “man – environment”¹⁹. In the Russian legal literature, M. Brinchuk emphasizes that subject of the modern Russian environmental law are public relations connected with: a) ownership to natural resources; b) use of natural resources; c) protection of the environment from various kinds of harmful influence (i.e. from pollution); and d) protection of ecological rights of the natural or legal persons²⁰.

In Bulgarian legal literature also predominates the standpoint that environmental law is a complex (i.e. integrated) branch of law²¹.

¹³ See *Основи на правото на Република България*, Част първа, p. 15, and for the same view in Russian legal literature, see С. Алексеев, *Op. cit.*, p. 294.

¹⁴ See D. Hughes, *Op. cit.*, p. 13.

¹⁵ *Ibidem*, p. 3.

¹⁶ See Н. Робинсон. *Правовое регулирование природопользования и охраны окружающей среды в США*, „Прогресс“, Москва, 1990, p. 6. This is translation in Russian of the book of N. Robinson, *Environmental Regulation of Real Property*, “Law Journals Seminars-Press”, New York, 1982.

¹⁷ See D. Shelton, A. Kiss, *Op. cit.*, p. 4.

¹⁸ See Л. Кремер, *Европейско право на околната среда*, „Сиела“, София, 2008, p. 63.

¹⁹ See for example: in Russian legal literature, М. Бринчук, *Op. cit.*, p. 47; in Ukrainian legal literature, С. Кравченко, *Социально-психологические аспекты правовой охраны окружающей среды*, „Вища школа“, Львов, 1988, p. 9; in Moldovan legal literature, В. Яковлев, *Екологическое право*, „Штиинца“, Кишинев, 1988, p. 25.

²⁰ See М. Бринчук, *Op. cit.*, p. 35.

²¹ See Г. Пенчев, *Екологично право*, Обща част, p. 26; С. Наумова, *Основни въпроси на екологичното право* (2. прераб. и доп. изд.), „Българска академия на науките – Институт за държавата и правото“, София, 2012, p. 48; П. Стайнов, *Защита на природата (правни изследвания)*, „Издателство на Българската академия на науките“, София, 1970, p. 16, where this author use the term “nature protection”.

As we see in general, the view about the environmental law as a complex branch of the national legal system is predominant in the legal doctrine of the East European countries²². But the most debatable question concerning the essence of the environmental law is related to its independence as a branch of law. The problem is related to the fact that environmental law uses legal regulations from different branches of law, from one hand, and from the other hand, some terms from natural, economic, engineering, medicinal, etc. sciences. This is the main reason for hesitation of many authors to determine the environmental law as a completely independent branch of law. In my opinion, there are already preconditions for the determination of the environmental law as an independent branch of the legal system. In brief and in the light of the Bulgarian environmental legislation, could be shown following existing preconditions for this independence: 1) presence of special legal tools which are typical only for environmental law, such as environmental impact assessment, environmental audit and management scheme, eco-labeling, emission trading (CO₂), environmental integrated permitting, etc.; 2) basic right of the Bulgarian citizens to a healthy and favorable environment (art. 55 of the Constitution of the Republic of Bulgaria, 1991)²³; 3) presence of obligation for state to protect the environment (art. 15 of the Bulgarian Constitution)²⁴; 4) presence of well-formed system of environmental legislation with increasing of the number of regulations in the field of the environmental protection; 5) presence of specific principles, typical only for environmental law, such as “polluter pays”, integrated pollution prevention and control, sustainable development, public access in environmental decision-making, public access to justice in environmental matters, public access to information on the environment, integration of environmental policy to another sectors of policy, priority to preventative environmental measures, etc.²⁵.

In my opinion, it could be formulated following definition of the term ‘environmental law’: the environmental law is a complex of legal rules regulating the public relations on the protection of the components of the environment from pollution and on the rational use of natural resources for the satisfaction of various needs of the society. It is a complex branch of law, but having some abovementioned own special features, it can be determined also as an independent branch of the legal system.

3. *Environmental Law as a science*

The environmental law as a science is a branch of the legal science whose subject consist in the analysis of the environmental legal ties and environmental

²² See *Правовая охрана окружающей природной среды в странах Восточной Европы*, „Высшая школа”, Москва, 1990, p. 35.

²³ See State Gazette of the Republic of Bulgaria, No. 55 of 1991, as amended.

²⁴ This is so-called “ecological function of the state”. See for example, К. Раянова, *Устойчивото развитие и екологичната функция на държавата* (Дисертация), Русенски университет „Ангел Кънчев”, Русе, 2012, 203 p.

²⁵ For more details on the principles of the environmental law, see: Г. Пенчев, *Екологично право*, Обща част, pp. 36–37; С. Наумова, *Op. cit.*, pp. 30–37; П. Стайнов, *Op. cit.*, p. 24; Л. Кремер, *Op. cit.*, pp. 77–96; Л. Кремер, Г. Винтер, *Экологическое право Европейского союза*, „Городец”, Москва, 2007, pp. 28–31; М. Бринчук, *Op. cit.*, pp. 49–53; М. Бринчук, *Принципы экологического права*, „Юрлитинформ”, Москва, 2013, pp. 24–106; D. Hughes, *Op. cit.*, pp. 17–23; D. Shelton, A. Kiss, *Op. cit.*, pp. 19–25.

legal regulations. In fact this branch of legal sciences is a system of knowledge, ideas and views on the environmental legislation in its statics and dynamics. The main methods in use of environmental law science are monitoring, analysis, synthesis, as well as comparative law and historic law methods. Use of these methods helps in clarifying the content of investigated environmental legal ties and environmental legal regulations. In fact the use of these methods is the main task of the environmental law science.

4. Environmental Law as a school subject

The environmental law as a school subject in the faculties of law at the universities has the same subject like the abovementioned of the environmental law as a branch of legal science. But the difference is related to their main task. The main task of the environmental law as a school subject consists in giving to students of scientific and practical knowledge on environmental law on a national and international level. Another task of this specific school subject is related to the creation of ways and skills of students in analyzing and interpretation of national regulations, European Union's acts and international treaties as well practice of their implementation.

5. Environmental law as a system

The specific system of environmental law as a branch of the legal system as a whole of the Republic of Bulgaria is related to the differentiation (grouping) of the legal regulations under specific criteria. If we use as a specific criterion the direction of the legal regulations (i.e. their relation to the environment as a whole or to some of its components, such as air, water, soil, etc.) they can be differentiated in a two main parts – general and special.

To “general part” of the environmental law could be shown following legal problems: essence, sources and principles of environmental law; management of the activities related to the environment; environmental liability; environmental impact assessment, right to information on the environment; ownership rights to natural resources, etc. The abovementioned legal problems have a general meaning for environmental protection.

“Special part” of the environmental law is related to the protection of the separate natural resource as well as to some activities with significant effect on the state of the environment, such as waste management, chemicals management, atomic energy management (environmental aspects), town and country planning, etc.²⁶.

6. Conclusions

Finally, it could be formulated some general conclusions after this brief analysis of the above-mentioned legal problems.

1. The important meaning of environmental law on a national, European and international level for the achievement of sustainable development and maintenance of the ecological equilibrium will be growing up in the light of

²⁶ For more details, see for example: Г. Пенчев, *Екологично право*, Обща част, р. 29; С. Наумова, *Op. cit.*, р. 53; М. Бринчук, *Экологическое право*, pp. 46–49.

complex and complicated character of the environmental problems. It must be obligatory school subject in the faculties of law at the universities in every country. The global environmental problems, such as climate changes, ozone depletion, long-range transboundary air pollution, etc. probably will bring forward this process.

2. The successful solution of complicated environmental problems requires efficient collaboration between scientists and practical experts from different kinds of sciences. This collaboration must be on the ground of the environmental decision-making. For example definite ideas of some scientists – geographers, such as P. Penchev (Bulgaria) and M. Lvovich (Russia) on the need of the complex use of water resources in the light of the entity of all kind of waters in the hydrosphere could be used successfully in the decision – making in the field of the legal protection of water resources²⁷.

3. The deterioration of the state of the environment is determined mainly by moral degradation in the society²⁸. Because of this reason, the influence of religious traditions, and especially of Christian religion, to environmental law will play a very important role in finding of solution of this abovementioned problem. In the New Testament is written that “God is Love” (1 John 4:18), that is why love to nature have to be on the ground of the upbringing²⁹, education and culture in the society. Besides in just such a way will be improved the creation and enforcement of the environmental legislation. Besides, in the light of the Christian religion, in fact, the love to nature is a variety of the love to God.

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²⁷ See: П. Пенчев, *Обща хидрология*, „Наука и изкуство”, София, 1986, pp. 383–384; М. Львович, *Географические основы водного законодательства*, in: *Известия Всесоюзного географического общества*, Москва, 1967, Т. 99, №. 3, p. 182.

²⁸ For moral aspects of the increasing meaning of environmental law in modern society, see in Russian legal literature, О. Колбасов, *Завещание экологам*, in: *Журнал российского права*, Москва, 2000, №. 5-6, pp. 89–90.

²⁹ For example the upbringing of a feeling of love to nature in the light of its beauty can be formed at the earlier stage of the education in geography in the schools. See: П. Пенчева, Л. Чакърова, *Активизиране на учениците в урок по география в IV клас на тема „Нашето черноморско крайбрежие“*, in: *Начално образование*, София, 1972, №. 1, pp. 50–51; П. Пенчева, *Географската карта – източник на знания при обучението по география в IV клас*, in: *Начално образование*, София, 1973, №. 8, pp. 47–49.