

*Laura M. STĂNILĂ, Univ. lecturer Phd status*  
*Sergiu I. STĂNILĂ, Univ. lecturer Phd status*  
*Faculty of Law*  
*The West University, Timișoara*

## **THE LEGAL REGULATION OF THE PROTECTION OF THE DANUBE RIVER IN ROMANIA**

In order to present the way in which the Romanian legislator has understood to regulate the field of environmental protection in Romania, and implicitly the protection of the Danube River, we shall have to analyse first of all in a concise manner the meaning of certain terms that we shall use in our approach.

At its origins, the Romanian term “mediu” comes from the English noun “environment” which used to designate the space surrounding the human being. Together with the evolution of society, the notion of environment has been endowed with new meanings. In the 19<sup>th</sup> century, the most used meaning was that of natural environment or “milieu” for living beings. In a geographical sense, the word “environment” meant the space inhabited and influenced by the human being<sup>1</sup>.

Once the public opinion's interest on the environment has grown, more and more new definitions, and meanings of the notion have emerged. According to one point of view, the environment represents the complex of physical, chemical, biological and social aspects, existent at a certain point, susceptible to create a direct or indirect effect, immediate or subsequent, on living beings, man and human activities.

In another meaning, education, leisure, sports, transports, communications, arts, medicine, criminology, as well as many other fields, all of them used to make up the concept of environment.

---

<sup>1</sup> DUȚU, Mircea, *Dreptul mediului. Tratat.*, vol. I, Editura Economică, București, 1998, pp. 48-49.

There were also the definitions given to the term “environment” by various dictionaries, all of these definitions sharing the same feature, namely the tackling of the notion of environment from a double perspective: life *milieu* of the individual and, respectively, the sum of the conditions meant to act on living bodies and human activities.

International legislations are somehow unitary when coming to define the notion of environment. Thus, *the Benelux Convention on Nature Conservation and Landscape Protection* from 1982 defines the natural environment as “*the physical surroundings of man, including a-biotic elements such as rocks, water and the atmosphere and biotic elements embracing natural and semi-natural biocenoses including plants and animals in the wild states*”.

*The Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* from 1993, defines the environment as “*the totality of natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, property which forms part of the cultural heritage and the characteristic aspects of the landscape.*”

In agreement with the international regulations in the matter, the national legislations converge towards a tripartite approach, from a juridical point of view, of the notion of environment, namely:

- renewable resources (those that have to be protected against pollution, such as air, water, soil);
- all the environment’s resources;
- resources for man (considered according to man’s needs).

Through “environmental protection” we understand the activity through which obligations are being set up, special conditions are being established and interdictions are being stipulated, interdictions regarding the rational use of natural resources, the prevention and fight against environmental pollution and the damaging effects of natural phenomena against its consisting elements. The environmental protection also presupposes the development and improvement of environmental quality, as well as the development of the surrounding environment<sup>2</sup>.

Related to what has been mentioned so far, the environment comprises the atmosphere, the water, the soil and the subsoil, the forms of vegetation, the ground and aquatic fauna, the natural reservations and monuments, the population and the human settlements. The environmental protection, *lato sensu*, presupposes the activity of protection of all these components, activity which gets accomplished through the promulgation of juridical norms and legal institutions which, all together, form the *environmental law*.

---

<sup>2</sup> DUȚU, Mircea, *op.cit.*, p.51.

Taking into consideration the fact that the problem of environmental protection is equally important all over the world, there are numerous similarities in what concerns the juridical approach of the environmental protection, which is achieved according to the following fundamental principles: the principle of preventive action, the precautionary principle, the principle of environmental protection, the conservation principle, the principle of the environmental quality improvement, the “polluter pays” principle.

*The principle of preventive action* against ecological risks and damages presupposes the evaluation of the risks determined by the use of the environmental factors, starting from the premise that such activity is less expensive than the recovery of the environmental factors that have been destroyed.

*The precautionary principle* presupposes that the means of environmental protection be adopted even if no immediate or mediate damage is foreshadowed.

The principle of environmental protection presupposes in fact the synthesis of the two hereabove presented principles.

*The conservation principle* supposes the maintenance of a lasting level of ecological resources, which imposes an adequate use of the renewable resources and a careful and at the same time rational use of the non-renewable resources.

*The principle of the environmental quality improvement* presupposes the undertaking of positive actions for the improvement of the environmental quality.

*The “polluter pays” principle* is in fact the most important principle governing the activity of environmental protection. Having in mind the recognition of the individual's right to a healthy and ecologically equilibrated environment, the one who, by using environmental resources, pollutes, has to be charged with all the costs and expenses regarding the measures of prevention and of fight against pollution, made by the public authorities.

The legal protection of the Danube River presupposes a complex activity, bearing in mind the multitude of environmental factors which are to be found here. Thus, the legal regulations regard the proper protection of the River, the legal protection of the Danube flora and fauna, of the Danube Delta or of the human settlements built nearby the River.

In Romania, the activity of protection of the Danube River is regulated through a series of normative acts. Their majority is based on the international and European legislation, as Romania has ratified numerous conventions and international treaties.

Thus, the revised Romanian Constitution<sup>3</sup> itself sanctions man's right to a healthy environment. Art.15 from the Constitution stipulates that „*all citizens enjoy the rights and freedoms granted to them by the Constitution and other*

---

<sup>3</sup> Republished in the Romanian Official Journal no.767/31.10.2003.

*laws (...)*". Starting from this general regulation, we identify in the Constitution a series of rights which are in close connection with the right to a healthy environment, such as: the right to life, physical and mental integrity (art.22), the right to information (art.31), the right to protection of health (art.34), the right to a healthy environment (art.35), the right to a living standard (art.47), the right of a person aggrieved by a public authority to obtain the recognition of his/her right (art.52).

The Romanian Constitution stipulates certain obligations of the state in what concerns the environmental protection. Thus, according to art.135 from the fundamental law, the State must secure the exploitation of natural resources, in conformity with national interests (paragraph 2, letter d), environmental protection and recovery, as well as preservation of the ecological balance (paragraph 2, letter e), creation of all necessary conditions so as to increase the quality of life (paragraph 2, letter f). It should be noted that these obligations, even though the Constitution enumerates them as belonging to the Romanian State, are also in the charge of all those who benefit from the right to a healthy environment.

Besides the indicated legal norms which institute the State's obligation to recognize certain rights to the individuals in order to ensure the co-inhabiting in a healthy environment, there are also some restrictive constitutional dispositions, stipulated for the same finality (art.53 from the Constitution: "*The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: (...) preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe*").

The framework law regarding the environmental protection in Romania<sup>4</sup> regulates in Chapter III Section 1 *The protection of waters and of the aquatic eco-systems*. Thus, the protection of surface as well as ground waters and of the aquatic eco-systems has as object the maintenance and improvement of their quality and natural productivity, with the purpose of avoiding negative effects towards the environment, human health and material goods.

The control of the observance of the regulations concerning the protection of waters and of aquatic eco-systems is organized and exercised by the environmental, water, health authorities, as well as by other authorities, according to their legal competences.

The authorities for environmental protection, for water management, together with the navigation authorities supervise and control the observance of the provisions and apply the legal measures regarding the protection of waters

---

<sup>4</sup> Law no.137/1995, regarding environmental protection, has been published in the Romanian Official Journal, Part I, no.304/30.12.1995 and was modified and republished in the Romanian Official Journal no.70/17.02.2000.

as a result of navigation activities, by keeping up with the international conventions in the field, to which Romania is a party.

With a view to fulfilling the declared scopes of the law, a series of obligations are stipulated in the charge of both natural and corporate bodies:

- a) to execute restoration work for natural resources, to ensure aquatic fauna migration and water quality improvement, stipulated on time limit in the environmental agreement and license in order to monitor the impact zone;
- b) to endow them, in the case of ships, floating platforms or marine drilling ownership, with waste storage and treatment installations, used waters purifying devices and unloading systems through floating or bank devices;
- c) to equip harbors with collecting, processing, recycling or neutralizing installations for oil, domestic wastes or wastes of other nature, stored on river and sea ships, and to organize intervention teams in case of water or coastal zone accidental pollution;
- d) to avoid evacuation of used waters from ships or floating platforms directly into the natural waters or wastes evacuation;
- e) to avoid washing various objects, products, materials which may produce surface water impurification;
- f) to avoid discharging into surface or ground waters of used waters, oil or dangerous substances, waters with a toxic content which contain dangerous substances;
- g) to avoid throwing away and storing on river banks or waterbeds, on wet zones of wastes of all types and to avoid introducing in them explosives, electric tension, narcotics or other dangerous substances.

After 1989, with a view to develop the environmental protection in general and especially that of the Danube River, numerous normative acts have been adopted, of which we shall illustrate with the following examples: Law no.82/1993<sup>5</sup> regarding the establishment of the “Danube Delta” Biosphere Reservation, Law no.14/1995<sup>6</sup> regarding the ratification of the *Convention from 29 June 1994 concerning the cooperation for the protection and sustainable use of the Danube River (The Danube River Protection Convention)*, Law no. 107/1996<sup>7</sup> of waters, Law no.192/2001<sup>8</sup> regarding fish stocks, fishery and aquacul-

---

<sup>5</sup> Published in the Romanian Official Journal no.283/07.12.1993.

<sup>6</sup> Published in the Romanian Official Journal no.41/27.02.1995.

<sup>7</sup> Published in the Romanian Official Journal no.244/08.10.1996.

<sup>8</sup> Published in the Romanian Official Journal no.200/20.04.2001.

ture, Government Ordinance no.79/2000<sup>9</sup> regarding the navigation system on the Danube - Black Sea Channel and on the Poarta-Albă-Midia-Năvodari Channel, Government Ordinance no.42/1997<sup>10</sup> regarding the naval transport, Emergency Ordinance no.107/2002<sup>11</sup> regarding the establishment of the “Romanian Waters” National Administration. Also, the authorities of the public central administration have adopted a series of resolutions and orders which regulate aspects linked to the administration and the protection of the Danube River.

The Romanian authorities’ preoccupation for the protection of the natural factor of the environment – the water—is suggestively expressed in art.1 of Law no.107/1996, the Water Law, modified, where the following fact is proclaimed as principle: *“water represents a natural legacy which has to be protected, treated and defended as such”*. With a view to the centralization of the activity of water protection, as well as for an easy coordination of the activity of its protection, Romanian legislation stipulates that waters are an integral part of the State’s public property. The Romanian legislator has also stated, as a principle, the fact that all the activities of protection and utilization of this inestimable resource which is the water, are activities of general interest. The water resources, both surface and ground water, represent a natural monopole of strategic interest. The establishing of water resource utilization regime, irrespective of the form of property, is the exclusive attribute of the Government, being exercised by the central public authority in the domain of waters.

The conservation, protection and improvement of the aquatic environment, in the conditions of a lasting use of water resources, are based upon the principles of precaution, prevention, avoidance of damages at the source and the “pollueur payeur” (polluter pays) principle and, at the same time, they must keep in mind the vulnerability of the aquatic eco-systems located in the Danube Delta and in the Black Sea, as their balance is highly influenced by the quality of the interior waters that flow into them.

Having as a goal the harmonization of Romanian legislation with international and, respectively, European provisions in the field, the activity of water protection is oriented around the following objectives:

- a) to prevent deterioration in the status of all bodies of surface water;
- b) to protect, enhance and restore all bodies of surface water with the aim of achieving a good surface water status, by December 22<sup>nd</sup> 2015;
- c) to protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecologic potential or surface water chemical status, by December 22<sup>nd</sup> 2015;

---

<sup>9</sup> Published in the Romanian Official Journal no.413/30.08.2000.

<sup>10</sup> Published in the Romanian Official Journal no.221/29.08.1997, republished in the Romanian Official Journal no.210/10.03.2004.

<sup>11</sup> Published in the Romanian Official Journal no.691/20.09.2002.

- d) to take the necessary measures with the aim of progressively reducing pollution due to priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances;
- e) to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater;
- f) to protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status by December 22<sup>nd</sup> 2015;
- g) to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

With a view to the protection and conservation of the surface water resources, the discharges into these waters are regulated by the use of a mixed approach through the establishment and implementation of the control of the emissions based on the best techniques available or on the important limit values of the emissions, or, in the case of the diffuse impact, on the control and on the best practices from an environmental point of view established in specific regulations regarding the integrated pollution prevention, reduction and control, the purification of used urban waters, the protection of waters against the pollution caused by nitrates from agricultural sources, the evaluation of the risks and the discharging of dangerous substances into the water, by December 22<sup>nd</sup> 2012.

For the protection of water resources, the legislator has set up a series of prohibitions for both natural and corporate bodies, namely:

- a) it is forbidden to set into function new economic objectives or the development of the existing ones; to set up new piles of buildings, to introduce to the existing economical objectives modified production technologies, which might increase the degree of loading of used waters, without concurrently setting into function networks of sewerage and purifying installations or without the achievement of other works and measures that might ensure, for the discharged used waters, the observance of the provisions imposed by the authorization of water management;
- b) it is forbidden to achieve new endeavors for the supply with drinking or industrial water or the extension of the already existing ones, without the accomplishment or the corresponding and concurrent extension of the necessary networks of sewerage or purifying installations;
- c) it is forbidden to throw or to introduce in any way, in the riverbeds of streams of water, in the basins of lakes or swamps, in the Black Sea

- and in the wet zones, as well as to deposit on their shores, waste of any type;
- d) it is forbidden to discharge used waters in ground waters, natural or accumulation lakes, in swamps, ponds or fishponds, with the exception of decantation ponds;
  - e) it is forbidden to use open sewers of any type for the discharges or the leaking of domestic waters or having a dangerous content;
  - f) it is forbidden to wash in streams of water, or in lakes and on their shores, vehicles, other equipments and mechanic units, as well as of materials and objects that contain hazardous substances;
  - g) it is forbidden to wash disinfested domestic animals outside specially arranged places for such purposes;
  - h) it is forbidden to throw or to discharge in sanitary installations or in networks of sewerage of dangerous waste and/or dangerous substances;
  - i) it is forbidden to wash in streams of water or in lakes, on their shores, on dykes or dams, objects of domestic use, by employing chemical substances of any type.

Also, with a view to a rational use of and to the protection of the quality of water resources, the water users, both natural and corporate bodies, have the following obligations:

- a) to adopt production technologies with reduced and the less polluting possible water needs, to save water by recirculation or repeated use, to eliminate water waste and to diminish water losses, to reduce the pollutants discharged together with the used waters and to recover the useful substances contained in used waters and in mud;
- b) to progressively reduce discharges, emissions and losses of priority substances and to cease or phase out discharges, emissions and losses of priority hazardous substances. The program of phasing out of emissions, discharges and losses of priority hazardous substances gets approved by Government decision, on the proposal of the public central authority in the water field;
- c) to adopt techniques of treatment of the water drawn from the source capable of ensuring the qualitative and quantitative needs of water needs;
- d) to ensure the accomplishment, maintenance and exploitation of the stations and processing installations of water quality at the authorized capacity, to control their efficiency by laboratory analyses and to operatively intervene for the framing of the emission indicators in the li-

- mits admitted for the discharge of used waters, limits that are stipulated in the authorization of water management;
- e) to strictly respect the discipline and the technological norms in the production activities that are using water and discharging used waters, as well as in the stations and installations for processing water quality;
  - f) to supervise, through drillings of observation and control, the quality status of ground waters in the zone of influence of purifying stations, industrial platforms, dangerous substances' deposits, oil products and waste of any type.

Although these prohibitions and obligations are meant for the protection of interior running and still waters in general, they are also applicable to the activities of protection of the Danube River, Romania being obligated, on the basis of the ratified international conventions and of the bi- and multilateral treaties, to spare no effort in the organization with maximum efficiency of the management and protection of the Danube's catchment area.

The first document referring to the proper protection and conservation of the Danube waters was one without a juridical character, named the *Declaration on the cooperation of the Danubian Countries on problems of the Danubian water management, in particular for the protection of the Danube River against pollution*, signed on December 13<sup>th</sup> 1985, during the Conference on the Danubian water management – 10-13 December 1985. According to this *Declaration*, the following are proclaimed as objectives of the politics of the Danubian Countries on problems concerning the management and protection of the Danube River:

- a) the rational use and conservation of Danube's water resources;
- b) the prevention of the pollution of the Danube's waters, the control of their quality.

The Danubian Countries committed themselves to take measures according to their legislations in vigor and in the limits of the technical and economical means, with the aim of preventing the pollution of the Danube's waters, especially the pollution through harmful and radioactive substances.

Later on, along with the diversification of the bi- and multi-lateral contracts between the Danubian States, as well as on the background of an effervescence of the international community in the domain of the prevention and control over crossborder pollution, the *Convention on the cooperation for protection and sustainable use of Danube River* was signed in Sofia, on June 29<sup>th</sup> 1994 (*The Convention for the protection of Danube River*), ratified by Romania through Law no.14/1995.

According to the Convention, the contracting parties shall strive at achieving the goals of a sustainable and equitable water management, including the conservation, improvement and the rational use of surface waters and ground water in the catchment area as far as possible. Moreover, the contracting parties shall make all efforts to control the hazards originating from accidents involving substances hazardous to water, floods and ice-hazards of the Danube River. Moreover they shall endeavor to contribute to reducing the pollution loads of the Black Sea from sources in the catchment area.

The contracting parties pursuant to the provisions of this Convention shall cooperate on fundamental water management issues and take all appropriate legal, administrative and technical measures to at least maintain and improve the current environmental and water quality conditions of the Danube River and of the waters in its catchment area and to prevent and reduce, as far as possible, adverse impacts and changes occurring or likely to be caused.

One essential element of the Danube's basin is represented by the Biospheric Reservation of the Danube Delta, which has a complex juridical statute, with the aim of a proper management and sustainable development of its natural resources. Through the Decree no.187/1990<sup>12</sup>, Romania has adhered to the UNESCO Convention from November 16<sup>th</sup> 1972, the Danube Delta being thus enlisted as part of the world patrimony starting with December 1991, being declared a reservation of the Biosphere. Moreover, in order to consolidate the new status of protection and conservation of the Danube Delta, Romania has adhered, by means of Law no.5/1991<sup>13</sup> to the *International convention on wet zones (Wetlands)* signed at Ramsar on February 2<sup>nd</sup> 1971. As a result of that, the Danube Delta was placed on the Convention's list in May, 1991. Also, Romania has ratified by Law no.58/1994<sup>14</sup> the *Convention on Biodiversity* from Rio de Janeiro, from June 5<sup>th</sup> 1992, and through Law no.13/1993<sup>15</sup> it ratified the *Convention on the Conservation of European Wildlife and Natural Habitats*, adopted in Bern, in 1979.

By means of these regulations, an ensemble of international rules in the field of the protection of the Danube Delta took shape, and they also constitute the basis for the adoption of domestic legislative provisions. Without the adoption of such domestic normative provisions, the principles and objectives established by the above-mentioned international conventions would have remained at the level of simple desideratum. Thus has been adopted Law no. 82/1993 regarding the constitution of the Biospheric Reservation of the Danube

---

<sup>12</sup> Published in the Romanian Official Journal no.46/31.03.1990.

<sup>13</sup> Published in the Romanian Official Journal no.18/26.01.1991.

<sup>14</sup> Published in the Romanian Official Journal no.199/02.08.1994.

<sup>15</sup> Published in the Romanian Official Journal no.62/25.03.1993.

Delta, according to which the Biospheric Reservation is declared an area of national and international ecological importance.

In the acceptance of the Romanian legislator, by reservation of the biosphere one understands the geographical zone with surfaces of water and land, including terrains that are permanently under water, in which there are both physical and geographical elements and formations, species of plants and animals which confer bio-geographical, ecological and esthetical importance to it, having the value of national and universal natural patrimony, being submitted to a special regime of administration with the aim of its protection and conservation, through the development of human settlements and the organization of economic activities correlated with the capacity to support the Delta environment and its natural resources.

The terrestrial as well as aquatic surfaces, together with those which are permanently under water, that belong to the Biospheric Reservation of the Danube Delta, along with the natural resources that it generates, constitute a natural patrimony, a public domain of national interest, under the direct administration of the unique ruling body of the reservation – the Administration of the Reservation, a body having juridical personality constituted in the sub-order of the central public authority for environmental protection.

The Romanian legislator has adopted, in this normative act, provisions from the Ramsar and, respectively, UNESCO Conventions.

Although the regulation of the juridical regime of protection and conservation of the Biospheric Reservation of the Danube Delta is complex, the Danubian Countries, both in their common efforts and individually, will have to preoccupy themselves with a continuous perfection of the legislation, on the background of the emergence of new challenges and of the diversification of commercial activities with a high risk of pollution.

Despite the abundance of normative acts from the field of the protection of the Danube against pollution, in domestic law there isn't, at the present time, a normative act exclusively dedicated to the regulation of the activity of protection of the Danube Delta, a lack that we find as being totally regrettable. In this respect, we welcome the efforts that are being made by the Danubian Countries to elaborate a Convention or a multilateral treaty having as aim the protection and management of the resources from the Danubian basin, treaty that will stand at the basis of the future improvement of the domestic regulation in this field.