E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

European Journal of Law and Public Administration

2019, Volume 6, Issue 2, pp. 278-285

https://doi.org/10.18662/eljpa/105

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Covered in:

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Published by:
Lumen Publishing House
on behalf of:
Stefan cel Mare University from Suceava,
Faculty of Law and Administrative Sciences,
Department of Law and Administrative Sciences

SPECIAL LEGISLATION ON THE PROTECTION OF THE ATMOSPHERE

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Abstract

The judicial protection of the atmosphere is a current subject of interest as the atmosphere is an essential part of the biosphere itself. Consequently, certain national and international organizations have set up norms that focus on the protection against the damaging activities. The monitoring of the impact of the pollution of the atmosphere both on the population's health and on the environment as well as the evaluation of the air quality are done based on the implementation of the national and international regulations.

Keywords:

Environment; atmosphere; air quality; pollution; degration of the ozone layer.

JEL Classification: K10

I. INTRODUCTION

As part of the living environment itself, the atmosphere – the earth's gas covering of our planet –does not have a clearly deliniated upper boundary. Thus, the gas covering our planet slowly and gradually enters the exoatmosphere. The atmosphere is defined by the Romanian legislation as the air mass that surrounds the terrestrial surface including the ozone layer, too [1: 262].

By using the very definition of the atmosphere, we are able to coin the term "the pollution of the atmosphere" which refers to the direct or indirect use by the mankind of those substances and forms of energy that are detrimental to people, to the fauna at large, to the environment in its legit forms.

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Air pollution has a tremendous impact outside the borders as the air itself represents the most versatile element of the natural environment. That is why we need to consider air pollution as a phenomenon that manifests on an extensive area. This fact leads to setting up in place an international legal framework. From a theoretical point of view, one can talk about air pollution whenever the value of the components of the free air exceed the upper pure natural limits due either to a change based on the quantitative rise of any of its regular components or to the qualitative changes based on the occurence of new constituent particles.

The present-day law ensuring the legal protection of the atmosphere at large defines the word "polluting" as any type of substance that is present in the air which can have devastating effects on the human health or even on the entire environment. Based on the above mentioned facts, the atmosphere cannot be incorporated in a national legal framework as such. This is the reason why the authorised organizations in the field of the protection of the atmosphere have faced the challenge of establishing a legal framework to be implemented by the majority of the countries that is able to react to the effects of the pollution that are present within the boundaries of their territories. The present study aims to present some legal facets in terms of the protection of the atmosphere as part of the specialty doctrine of this field.

II. NATIONAL AND INTERNATIONAL LEGISLATION ON THE PROTECTION OF THE ATMOSPHERE AGAINST THE AIR POLLUTION PHENOMENON

Taking into consideration that the atmosphere is one of the environment's most exposed components, its pollution was just a matter of case-law in the beginning. Due to the fact that the air pollution is not limited by political and administrative boundaries, it has become a global phenomenon. This fact has required an international joint of forces based on specific conventions or guidlines from the international organizations and institutions.

The worldwide plan in this matter refers to making use of regulations that have universal traits and those that have general traits. Some of those international regulations that are based on the principles referring to the protection of the atmosphere against pollution were formulated between 1968 and 1971 [2], [3], [4], [5], [6], [7], [8]. [3]

[3] The Declaration of the European Council regarding the Action plan in the field of the environment; The provisions on the control of the air pollution that were taken on by the

Based on certain principles, *The Sea Law Agreement from Montego Bay in 1982* laid the foundation for both a national and an international programme for the reduction of the atmospheric and trans-atmospheric pollution.

The framework-convention for protecting the ozone layer which took place in Vienna in 1985 [9] [4] -which was hosted by P.N.U.E. and followed by the Protocol from Motreal in 1987- stipulated the need for a systematic and legal cooperation among all the countries. The protocol recommends that those gases that thin out the ozone layer should be limited as much as possible. The Protocol was changed through an Amendment that was signed in London by the involved parties in 1990 [10][5] which established the limitation of the production time and the gas consumption. In 1992 in Copenhagen strict terms on banishing the exhaustion of certain gases and substances by the industrialized countries were laid out. The consequences of those effects would fall under major sanctions.

As far as Europe is concerned, the issue of the air pollution has become a critical one throughout the 70's when the concept of long-distance type of pollution was coined. It covers a pretty large area by stretching over to the scandinavian countries as a result of the air stream especially from the Eastern Europe, of the sulphruous pollutants leading to acid rain. This fact meant the acidification of the scandinavian lakes and the gradual dissapearance of the forests.

The Resolution of the European Union of 1986 established fundamental rules in this field such as:

O.C.D.E. Council in 1974; The statement of principle on the fight against air pollution that was adopted by the Council of Europe in 1968 which was later on followed by a series of regulations on the quality and air protection. From this point of view, we mention the following: The Framework-Directive 96/62 that was adopted by the Council of Europe regarding the evolution and the management of the air quality, the Council's Directive 2002/3 regarding the ozone layer in the atmosphere; the Directive 77/537/CEE regarding the laws of the member states on the measures taken against polluting gases; the Directive 2001/81 adopted by the Council of Europe that establishes the upper national limit for the polluting gases in the atmosphere.

[4] Romania joined the Convention from Vienna as well as the Amendment to Law no. 84/1993

[5] It was ratified by Romania in Law no.8/1991 that was published in the Official Jounal no.18 on January 26th, 1991.

– the national laws need to stipulate the pollution reduction as mandatory;
– the stipulation needs to be based on the prevention principle.

The final document of the Conference from Helsinki in 1975 comprises stipulations that refer to air pollution, to the way of preventing pollution and counteracting its effects. We also need to make reference to the *Convention regarding the long-distance air pollution that took place in Geneva in 1979* which was important for encouraging the international cooperation in this field. It laid the foundation for certain valuable principles such as:

- The protection of the individual and the environment against the air pollution;
- The management regarding cutting down the pollution and the means of preventing it;
- The establishment of certain policies and strategies for reducing and eradicating the air pollutants;
- The establishment of certain strategies regarding the exchange of information on the national policies, the scientific research in the field etc.;
- The necessity of having debates among the polluted and the polluting countries;
- The use of a surveillance program on the long – distance moving pollutants within the European continent.

The Convention of Geneva led to the foundation of an executive body that was meant to monitor the way the convention's stipulations were put into practice. It was afterwards improved and changed in the form of two additional protocols [11] [6] Romania has adopted a series of regulations regarding the air quality, certain laws that are focussed primarily on ensuring the protection of the health of the populations. One of them is Law no. 9/1973 that stated that in order to ensure the air quality, the poisoned gases, vapours, aerosols, solid particles etc. above the official settled limits is completely forbidden by law. Secondly, the openings of new businesses or the development of the already existing ones that could pose a threat for the environment by not being equipped with facilities in full working conditions to neutralize and prevent spreading the polluting substances were forbidden. They needed to ensure the air protection as established by the regulatory bodies.

[6] See the Helsinki Protocol from 1985 that was signed during the Conference in Ottawa in 1984 according to which the 10 signatory countries were made liable for cutting off the sulphurous emissions; the Sophia Protocol from 1988 was signed by 25 countries.

Later on, it was observed that the present frame-work law has certain flaws. Thus, the framework-law no. 13/1995 was issued in regards to the environment protection. It stipulated a series of new concepts and it stated the fact that the protection of the atmosphere refers to preventing, limiting the damages and improving its quality in oder to avoid the manifestation of the negative effects on the environment, the human health and goods. This particular law makes reference to a national policy of protecting the atmosphere as part of the regional and global policies. [12: 357].

Nowadays, in terms of environment, we have the Government's Emergency Act no. 195/2005, a framework-regulation that addresses the environmental issue from the political and strategical point of view includes the legal aspects into the group of the stipulations that are part of its subsequent norms. That specific emergency act focusses mainly on establishing the duties and responsibilites of the main government institutions for environment protection as well as on designing a national policy and the coordination of the subsequent activities within the country's borders based on using a national strategy in the field of environment protection. It also targets the use of the national action plan in this respect, of the programs, records and other types of documents for cutting off the powerful polluting gases, the greehouse gases, the noise levels or surveillance and control by the government's institutions that are subordinated to the authorized organizations or to the Government itself.

The present emergency act was abolished and was replaced by Law no. 104/2011 on the air quality. The present law is a valuable support in terms of the prevention, abolition, limitation of the damage and the improvement of the air quality in order to eradicate its negative effects on the health of the human beings and on the environment.

III. THE LEGAL FRAMEWORK ESTABLISHED BY LAW NO. 104/2011 - PRINCIPLES

Law no. 104/2011 focusses both on the development of the operating principles within the environment law and the precautionary principle (i.e. "the polluter pays"), pollution prevention, the initial correction, the rule of using the best available techniques that do not cost much to use. Consequently, the legal action refers to certain aspects that pertain to the protection of the environment such as:

-identifying the objectives in regards to the air quality that are meant to avoid and prevent the catastrophic events to take place and to reduce their effects on the population's health and on the environment [12];
- evaluating the air quality nationwide based on modern methods that were established internationally;
- getting information on the air quality in order to sustain the air pollution and its discomfort eradication;
- preserving the air quality wherever this has adequate values;
- fulfilling the undertaken duties that are stipulated in the international agreements, contracts and treaties that Romania is also member of.

The framework-legislation stipulates that its provisions focus on and need to be interpreted as "ensuring the right of each individual to have a quality life" which can be translated in this case as a quality air. We will not deny the fact that this entitlement – the right of having a quality air – has several components. The management and the surveillance of the air quality are done by the National Organization for the Evaluation and Integrated Management of the Air Quality (SNEGICA) that was established on the basis of Law no.104/2011. The actual purpose of this organization is to ensure the legal framework for the collaboration among the government's institutions in regards to the evaluation and the management of the air quality on the entire Romanian territory.

In spite of the fact that in Romania there are specialized organizations that are concerned with taking care of maintaining the air quality, our country was sued by the Environmental Commissary of the European Union for disobeying the air-quality pre-established limits and for disregarding those appropriate measures that were set in place in order to shorten the overrun of these values as much as possible. Thus, the board takes further steps to rectify the significant and persistent overruns of the threshold values for two key pollutants that have an impact on the health that is both the nitrogen dioxide that comes mainly from the emissions that are generated from the traffic and industrial sectors and solid particles [13: 187] that are present especially due to the heating systems from the apartments, the traffic and by the agricultural sector.

From this point of view, the board decided to sue France, Germany for disobeying the threshold values in the case of the nitrogen dioxide (NO_2) and for ignoring taking appropriate measures in order to shorten as much as possible the periods of time when these values were exceeded whereas Hungary, Italy and Romania were sued for the presence of persistent high levels of solid particles(*particulate matter* - PM_{10}). The threshold values established by the European Union's legislation regarding the air quality (the

Directive 2008/50/CE) should have been reached in 2010 and 2005 respectively.

Generally speaking, within the European Union, the air quality has improved during the last decades mostly due to the common efforts both from the European Union's part and the national, regional and local institutions. In spite of this fact, the life quality of many citizens of the European Union continues to be affected in a negative manner. The air pollution is directly responsible for the existence of chronic and severe ilnesses such as asthma, cardiovascular diseases and the pulmonary cancer. However, the legal framework that enables the enforcement of the legislation on the air protection is set in place and it is organized on two levels (i.e. central and local) and on "horizontal" levels (i.e. the specialized organizations and those that do a related and an additional type of activities).

IV. CONCLUSIONS

The air pollution phenomenon is one of those forms of pollutions that has a major and disastrous impact on the environment. From a technical perspective, any type of air – related physical, biological or chemical change can be named as air pollutionthat manifests itself whenever any harmful gas, dust or smoke enters the atmosphere and affects the plants, animals as well as the human beings.

The purpose of the activity of both the international and national organizations regarding the environment protection is to permanently monitor and oversee the air condition of the planet as the adverse changes in this field will lead to irreparable damage not only to the mankind but also to the entire biosphere.

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