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FULFILLING THE OBLIGATIONS OF THE LOCAL PUBLIC AUTHORITIES ON ENVIRONMENTAL PROTECTION THROUGH ADMINISTRATIVE ACTS

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Abstract: *The administrative acts issued by the public administration authorities of environmental protection have a specificity deriving from the importance given by the state to environmental protection. The role of local public authorities should be investigated not only in terms of implementing the administrative act but also in fulfilling the environmental protection obligations, being considered as the first and the main authorities responsible for environmental protection at local level. This requires a brief review of the environmental protection administrative acts issued by these authorities.*

Key words: *environmental protection, administrative acts, environmental agreement, environmental permit, environmental authorization.*

1. Introduction

Starting from the provisions of Emergency Ordinance 195 of 2005 on Environmental Protection (Ordinance, 2005), hereinafter referred to as OUG 195/2005, which establishes at Art. 6 paragraph 1 sentence 1 that "Environmental protection is the duty and responsibility of the central and local public administration authorities" and in paragraph 2 that "the central and local public administration authorities provide funds in their own budgets for the fulfillment of the obligations resulting from the implementation of the community environmental legislation and for environmental protection programs and collaborate with the central and territorial public authorities for environmental protection with a view to their realization" it is necessary to carry out a short study of the administrative acts by means of which the environmental protection obligations are fulfilled.

The role of the public administration authorities (Şaramet, 2015, p.209) in the field, in the fulfillment of the environmental protection obligations can be classified according to the specific attributions in the role of coordination, regulation and implementation of the environmental obligations and in the role of verification, control of compliance with

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the obligations and protection measures of the environment. If the first role is carried out at the central level by the National Environmental Protection Agency and at local level by the county environmental protection agencies and the Danube Delta Biosphere Reserve Administration, control over compliance with environmental obligations is achieved through the National Environmental Guard, at central level and through subordinate structures at local level.

In the present paper, the research focused on the fulfillment of environmental protection obligations by the public administration authorities with the role of coordinating, regulating and implementing the environmental obligations at the local level, namely by the county environmental protection agencies.

The provisions of art. 90 of OUG 195/2005 establish the duties and the obligations of the local public administration in terms of environmental protection, but which do not have environmental protection as their main field of activity. Where appropriate, the linking and interference elements affecting the administrative acts issued by the county environmental protection agencies will be highlighted.

2. Environmental administrative acts issued by the county environmental protection agencies

2.1. Influence of the importance of environmental protection on administrative acts

The Ordinance (OUG 195/2005, art.2 pc.2) encompasses the administrative acts issued by the environmental protection authorities in the general category of regulatory acts, enumerating in this respect: the environmental permit, the Natura 2000 permit, the environmental agreement, the environmental authorization, the integrated environmental authorization, the authorization for greenhouse gas emissions, the authorization for activities with genetically modified organisms. The last two, together with the separately highlighted administrative acts: the environmental permit of plant protection products and the authorization of fertilizers respectively and the import agreement for genetically modified organisms are not subject to this study being issued by the national authority.

In terms of administrative law, the documents listed above are a unilateral manifestation and express the will of public authorities, mainly a public administration authority, in order to produce legal effects under public power (Petrescu, 2009, p.307). In the same sense it is stated that the legal acts of the public administration, which create or find certain legal situations, allow or prohibit certain activities are manifestations of unilateral will. In these public legal acts, the unilateral manifestation of will by the competent state body produces legal effects (Oroveanu, 1998, p. 122).

Another characteristic of the issuing of environmental administrative acts by the competent local authorities is that they are issued on the prior request of other subjects of law (Vedinaș, 2017, p. 331). The value of the prior request is the value of a condition prescribed by law for the administrative act to be issued (Apostol Tofan, 2017, p.19). There is an opinion (Drăganu, 1959, p. 58) stating that although the authorizations issued on the basis of a prior request generally do not create, modify or extinguish an

individual legal situation, but all they do is assign to their beneficiary a general legal situation, that is to say, with regard to a number of rights and obligations that are predetermined by general law, there are situations in which they constitute subjective legal situations, not specified in the law, such as an authorization to practice a profession, which provides object of activity, place of exercise, etc. In our personal opinion, the administrative act on environmental law can cover both situations.

Administrative acts issued by environmental authorities, due to the purpose pursued by the legislator and the applicable legal regime, have a specific legal profile, being regulatory acts issued in accordance with specific procedures.

Therefore, the issue of these regulatory acts is subject to a special "environmental law" regime, to which administrative law remains common, and in many respects the proximate genre according to which it expresses and manifests specific, individualistic differences (Sentence, 2009).

At the same time, the procedural requirements related to the fundamental right to a healthy and ecologically balanced environment, consisting in information, consultation and participation of the public in the decision to issue regulatory acts in the field, as well as access to justice for the observance of their legality and their correct application imply a number of specificities of the regime of these regulatory acts (Sentence, 2009).

In this respect, I am referring to an opinion based on a vast jurisprudence practice, it is stated that environmental cases have been at the forefront of the development of administrative law. (Preston, 1993, p. 147; Preston, 2006, p. 17; Preston, 2007, p. 183)

2.2. Aspects regarding the complementarity of the will of the local authorities in the issuance of administrative acts of environmental protection

From the study of the definitions given by the legislator to these acts, we can afirm that they are all administrative acts of an individual nature because they refer to the environmental obligations of predetermined law subjects, who are the holders of plans/programs/projects/activities, depending on the type of administrative act requested/issued, or target specific situations. But this character is a subsidiary, preemption as they fall within acts of environmental law, a feature expressly stipulated by the legislator (Sentence, 2009; Apostol Tofan, 2017, p. 23).

The issuance of these administrative acts may be conditioned by the existence in advance of other administrative acts representing the manifestation of the will of other administrative authorities or the passing of stages/procedures which end with the express consent of the interested persons.

In this respect, the particular aspects of each administrative act for the protection of the environment are emphasized:

- the environmental permit is the administrative act issued by the competent environmental protection authority confirming the integration of environmental issues into the plan or program to be adopted. According to OUG 195/2005 (Article 9 paragraph 4), the notice is mandatory for the adoption of plans and programs that may have significant effects on the environment. Moreover, the approval of the plans and programs, at any hierarchical level, is conditioned by the existence of an environmental

statement for that plan or program. Decision no. 1076 of 2004 establishing the procedure for carrying out the environmental assessment of plans and programs (Decision, 2004) details the procedure for requesting and issuing this technical and legal act indicating in art. 10 that the authorities interested in the effects of the implementation of the plan or program are identified by the competent authorities for environmental protection and are set up in a special committee which has an advisory role. According to art.1 par. 2 of the Decision, the secondary purpose of this normative act is to establish the requirements for consultation of the stakeholders and the participation of the public. In this respect, throughout the procedure, the competent authority for environmental protection takes into account the justified comments and proposals of the public and may even reconsider its decision at the registration stage. This aspect is in line with the same specificity of administrative acts on environmental protection, whereby the legislator expressly regulates access to justice in environmental matters by referring to art. 6 and 7 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters - signed at Aarhus on 25.06.1998 (Convention, 1998).

- the Natura 2000 permit is the administrative act issued by the competent authority for environmental protection containing the conclusions of the appropriate assessment and setting out the conditions for the implementation of the plan or project in terms of impact on protected natural areas of Community interest included or to be included in the Natura 2000 ecological network. According to the provisions of art. 28 par. 10 of the Emergency Ordinance no. 57 of 2007 on the regime of natural protected areas, the conservation of natural habitats, wild flora and fauna (Ordinance, 2007b), "In the procedure of issuing regulatory acts for plans, projects and/or activities that may significantly affect protected natural areas of interest the competent authorities for the protection of the environment shall request and take into account the opinion of the National Agency for Protected Natural Areas/Administrators. Article 28, index 1, of the same normative act states that "Issuance of regulatory acts for plans/projects/activities in protected natural areas shall be carried out only with the approval of the National Agency for Protected Natural Areas/administrators of protected areas of national/international interest. According to the Methodology of awarding in administration and custody of protected natural areas approved by Order no. 1447 of 2017 (Order 2017), the administrators and custodians of the protected areas issue reasoned opinions within the committees and collectives working with the environmental authority or provide the reasoned opinions within the deadlines set by them within the procedures in the form of favorable/unfavorable opinions, underpinning the integrated approach of the effects resulting from the implementation of the plan/program/project and/or the activity on the protected natural area/areas in the area of influence (art.31 paragraph 4 of the Methodology). It is thus found that the opinion of the National Agency for Protected Natural Areas/materializes in favorable/unfavorable opinions given by the administrators/custodians of the areas within the committees and collectives working with the environmental authority. According to some opinions, these acts can be classified as administrative- acts (Podaru, 2010, p. 42, Cobulea, 2017, p. 48).

- the environmental agreement is the administrative act aimed at the specific regulation of environmental protection measures to be followed by the requesting entity in the case of a project, whether public or private, or for existing activities where there is change or expansion, provided that the activities have a significant impact on the environment. The development in specific provisions for the issuing procedure is done through the following normative acts: Order no. 1.798 of 2007 for the approval of the Environmental Authorization Procedure (Order, 2007), Decision no. 445 of 2009 on the assessment of the impact of certain public and private projects on the environment (Decision, 2009), Order no. 135/76/84/1284 of 2010 approving the Methodology for the implementation of the environmental impact assessment for public and private projects (Order, 2010b), Order no. 19 of 2010 for the approval of the Methodological Guide on the Appropriate Assessment of the Potential Effects of the Plans or Projects on the Protected Natural Areas of Community Interest (Order, 2010a), Order no. 864 of 2002 to approve the Environmental Impact Assessment Procedure in a Transboundary Context and Public Participation in the Decision-Making for Projects with Transboundary Impact (Order, 2002).

As a peculiarity, this administrative act involves the prior obtaining of another administrative act: the urbanism certificate. According to art. 6 par. 1 of the Law no. 50 of 1991 on the authorization of the execution of construction works, the urbanism certificate (Law, 1991) is the information document by which the authorities referred to in art.4 and art.43 lit. a) establishes the list of the approvals/agreements required for the authorization and informs the investor/applicant of the obligation to contact the competent authority for environmental protection in order to obtain the point of view and, if necessary, its administrative act, required for authorization. Also the Law 50 of 1991, par. 1 index 1 of art. 6, states that "The point of view of the competent authority for environmental protection is the written document issued by it after the initial assessment stage, ie after the investment's classification stage in the environmental impact assessment procedure, and the administrative act of the competent authority for the protection of the environment is, as the case may be, the environmental agreement or the Natura 2000 opinion".

- the environmental authorization is the administrative act that specifically regulates the conditions and/or operating parameters of an existing activity or a new activity with a possible significant impact on the environment. This must be done on a mandatory basis for existing activities and before starting new activities with a possible significant impact on the environment. The general rule is found in Order no. 1798 of 2007 on the issuance of an environmental permit (Order, 2007) which in Annex 1 to the Methodological Norms provides the activities for which it is applicable. The documentation required to be submitted provides proof of compliance with the conditions imposed by the environmental agreement and the need to carry out an environmental assessment in case of authorization of the existing activities. In this latter case, the report with the conclusions of the environmental statement is subject to public debate in accordance with the public debate procedure, which determines whether it issues the environmental permit, with or without a compliance program. Thus, we can say that the environmental agreement, as an administrative act for the protection of the

environment, is of particular importance as the starting point for the assessment of the impact of the authorization of an activity with significant impact on the environment.

- the import agreement for genetically modified organisms and the authorization for activities with genetically modified organisms are individual administrative acts which determine the conditions in which these activities can be carried out in accordance with the legal provisions in force. According to Article 11 paragraph 3 of OUG 43 of 2007 (Ordinance, 2007a), "the competent authority within the meaning of this Emergency Ordinance is the National Environmental Protection Agency."
- the integrated environmental authorization, in accordance with OUG 195 of 2005 art. 2 is the administrative act issued by the competent authority for environmental protection, with prior notification of the National Environmental Protection Agency which grants the right to exploit in whole or in part an installation under certain conditions to ensure that the installation complies with the provisions on integrated pollution prevention and control; the authorization may be issued for one or more installations or parts thereof located on the same site and operated by the same operator.

Pursuant to Law 278 of 2010 on Industrial Emissions (Law, 2010), an authorization means an administrative act issued by the competent environmental authorities which allows an installation, a combustion plant, a waste incineration plant or a co-incineration waste plant to operate in full or in part, under conditions which ensure that the installation complies with the provisions of this law. The integrated environmental permit may concern either the activities listed in annex no. 1 to the law or the activities provided in Annexes no. 6-8 to the law.

According to art.70 of the Law 278 of 2010, "Environmental Protection Authorities responsible for issuing, reviewing, updating integrated environmental permits/ environmental permits, designated under the law, competent environmental authorities responsible for issuing integrated environmental permits/ environmental authorizations, are the territorial environmental structures subordinated to the National Environmental Protection Agency."

From the study of the specific requirements laid down in Law 278 of 2010 and in Order no. 818 of 2003 for the approval of the Integrated Environmental Authorization Procedure (Order, 2003) it is found that the necessary documents as well as the final form of the integrated permit have a predominant technical character, concerning the protection of air, water and soil and the achievement of a high level of protection of the environment as a whole.

The participation of the authorities involved in the integrated environmental permit issuance procedure is carried out within the Technical Analysis Group (CAT), organized at the level of the competent authority for the application of the integrated environmental permit issuance procedure (Order, 2003, Article 3).

Complaints related to the implementation of the Integrated Environmental Authorization procedure are addressed to the "Environmental Complaints Committee" and "Disputes arising from the issuance or rejection, review, suspension or revocation of the integrated environmental permit shall be settled according to the Law of Administrative Contentious No 554/2004."

Any person who is a concerned member of the public and has a legitimate interest or their right is considered to have been infringed upon, may appeal to the competent administrative court to challenge, in procedural or substantive terms, the decisions, acts or omissions that are subject to the public participation provided by the present law, in compliance with the provisions of the Law on administrative contentious no. 554/2004, as subsequently amended and supplemented, and without prejudice to other legal provisions.

3. Comparative law aspects

A local authority, however, can only do the things which is authorised for by the statute (Ashworth, 1992, p.22). Highlighting the link with environmental protection, the same author shows that the role of the local government is that of guardians of the local environment (Ashworth, 1992, p.24).

Regarding the fulfillment of the environmental obligations by the local authorities, a paper which reports on the results of other studies regarding the responsibility of the local administrations regarding environmental problems, it is stated that these ”implement management practices more suited to local needs and interests” (Falleth & Hovik, 2009, p. 225). The study, conducted by the state administration of Norway, also reveals that ”The government in Norway transfers considerable powers in nature conservation management to the local government, hoping to facilitate a wider local involvement in the conservation policy. Decentralisation has proven to be a success in welfare policy but it is rather controversial in environmental policy.”

In the Guide to the Environmental Protection Act (EPA), the Government of Newfoundland and Labrador, Canada, regarding the principle of Efficient and Effective Administration, it is shown that ”The EPA improves administrative efficiency in line with a Regulatory Reform. The government recognizes that over-prescriptive and rigid regulatory control is often not the most effective way to protect the environment and foster sustainable development. Therefore, the Act allows the government to be more proactive and cooperative while still maintaining clear responsibilities for environmental protection” (Guide, 2002)

Analyzing the environmental legislation and the way environmental authorities issue their decisions, the Swedish Environmental Protection Agency concludes that ”The permit authority can essentially reach one of three conclusions in its decision: 1) Permit should be granted, 2) The activity concerned is not permissible due to its environmental impact and the application will consequently be rejected, or 3) The application does not contain sufficient information to determine the environmental impact and the application must therefore be dismissed. If a permit is granted, the decision must always stipulate the conditions for the permit. As mentioned above, the permit review is largely based on an application of the general rules of consideration. The Precautionary principle, for example, stipulates that the mere risk of damage or detriment implies an obligation to take necessary measures to mitigate or prevent adverse health and environmental effects. This in turn must be weighed against the Proportionality principle, which aims to achieve conditions that are environmentally justifiable and financially reasonable. Since the

integrated permit regime covers all relevant environmental impacts from an activity or operation, such precautionary actions, prescribed through permit conditions, can include a wide range of options." (Report, 2017).

3. Conclusion

The interconnection of environmental law with administrative law at the level of administrative acts is a topic that has not been adequately addressed in the literature at national level, regarding this aspect of the fulfillment of environmental obligations by local public authorities. The approach has generally been centred on each field, with only a few case-law elements that have been overviewed. That is why a new approach to the research of the activity of the local public authorities through the fulfillment of the purpose of the issued administrative acts and not only the realization of the administrative act, is considered not only welcome but quite necessary in achieving an effective environmental protection.

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