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THE INSERTION OF THE PRECAUTIONAY PRINCIPLE IN THE ENVIRONMENT PRETECTION AS A LEGAL NORM IN THE EUROPEAN COUNTRIES

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Abstract
The article examines the nature of the precautionary principle ,with reference to the international legal debates and to the European national legislation, as well as the precaution in the international law in connection with the Europe.
Tacit approval of the administrative procedure was introduced in the Romanian law and practice by Emergency Ordinance no. 27/2003, as an instrument of administrative efficiency in meeting citizens fundamental rights and interests.

Keywords: *environmental protection, comparative legislation, emergency Ordinance no. 27/2003, community legal system*

Due to the specific regulatory provisions, as the competent public authority's decision on their request for issue must always be express, tacit approval inadmissible . Tacit approval of the administrative procedure was introduced in the Romanian law and practice by Emergency Ordinance no. 27/2003, (approved with amendments by Law no. 486/2003) as an instrument of administrative efficiency in meeting citizens' fundamental rights and interests. According to art. 1 para. 1 of the ordinance is approved, the aims of setting alternative ways that issuance or renewal of permits by government authorities are as follows:

- Removing administrative barriers to business;
- Accountability of government authorities to meet the deadlines set by law for issuing permits;
- Boosting economic development by providing more favorable conditions as entrepreneurs, with costs as low approval;
- Combating corruption by reducing the arbitrariness in the decision of the administration;
- Promotion of quality public services by streamlining administrative procedures tive.

Also, note that under Art. 1 alin. 1 paragraph. 2 of the ordinance, its provisions apply, as appropriate, procedures for issuing permits (lit. a) procedures for

renewal of their (lit. b) and renewal procedures due to the expiry of the suspension of permits or performance measures established by the competent control bodies (lit. c). The definition of permit is provided by art. 3 of the ordinance approved and amended, in that it is an administrative document issued by the competent government authorities, which allow the applicant an activity, a service or exercise a profession, stating that the terms permit includes approvals, licenses, permits, approvals or other similar administrative operations prior or subsequent approval. We appreciate that it requires a first remark on the extension of the concept of administrative acts and operations not the legal nature of administrative act themselves irrelevant. In these circumstances the question arises whether in this proceeding, we consider that the legislature proposes a simple convenience of terminology, no specific legal implications of the theory concerning the conditions for issuing administrative documents (prior conditions and concomitant posterior) or not?

We believe that it can not be accepted the argument that "the legislature has attempted to partially remedy the situation" passivity of the government "but only for a narrow category of administrative acts."

We hold, contrary, even if we consider that a simple definition of terminological convention, acts that are covered are numerous . It is no less true that, through art. 2 in order to restrict the scope of them, but only with respect to: a) documents issued in the nuclear activities of the regime relating to firearms, ammunition and explosives, and drug precursors and the national security permits and b) exceptions established by the Government, by decision in a reasoned proposal by the administration of each authority involved.

In light of the nature of legal and administrative functions thereby conferred on such a definition covers the obvious category of "regulatory acts" in the environmental field, but this procedure is not admissible on their special considerations .

In the field of environmental protection should be exempted from the procedure established by Government Ordinance no. 27/2003 due to its outstanding importance and secondly, because of the definitions in Annex 1 of the Emergency Ordinance. 91/2002 amending and supplementing

Environmental Protection Law no. 137/1995 approved by Law No. 294/2003 15 data issued by the various environmental acts not clear their legal nature, being qualified legal and technical documents: Environmental opinions, integrated environmental authorization, permit, integrated environmental agreement (in fact, only the agreement and environmental permit is administrative).

On this view the occurrence of he was advised, but with the advent of GEO. 195/2005, it has remained somewhat outdated. According to art. 2 section 9 of the GEO. 195/2005 by environmental authorization means an administrative act issued by the competent environmental authority, setting out conditions and / or operating parameters of an existing activities or new activities may have a

significant impact on the environment required to put into operation . As in art. 2 of the Emergency Ordinance 27/2003 expressly provides that no environmental permits are exempted from this procedure I would be tempted to think that per a contrario, those provisions shall apply to such authorizations.

Another argument in support of it is our opinion that Romania has ratified the Aarhus Convention by Law no. 86/2000. The parties to the Convention had in mind that adequate environmental protection is essential for human welfare and the exercise of fundamental human rights including the right to life itself, also, that any person has the right to live in an environment adequate to his health and welfare and that is responsible, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.

However it was ruled that citizens to be able to maintain this right and meet the objectives of the Convention should have access to information, be entitled to participate in decision making and to have access to justice in environmental matters. It was noted in this regard that citizens need assistance to exercise their rights and the environment that better access to information through public participation in decision-making improves the quality and implementation of decisions, contribute to raising public awareness of issues environment, it provides the opportunity to show their concerns and public authorities are given the opportunity to take such concerns into account.

It is clear that the area where the Romanian state should be screened this convention into national law by a higher power bill with the Emergency Ordinance. 27/2003, it would be mostly applied under Community law principle that the rules apply immediately.

Under this rule these rules in order of their ranks as a national law Community law, without requiring any implementation procedure, judges of the Member States being obliged to apply the Community institutional rules of law. These rules are applicable from the time of their entry into force, whether there are rules of national law incompatible with Community law.

The applicability of the principle of primacy of Community law over national legal systems has led a rich jurisprudence of the Court of Justice.

Thus, in a decision 19 the Court reaffirmed that treaties have the force of law in all countries, since they have ratified and that they take precedence in their whole set, the domestic law of states. Moreover, the Community legal acts have not only a binding law against the states, Community law with a primary character, but they have enforceable for Member States and the decisions of the Court of Justice, which ensure respect for law in the interpretation and application of the Treaty of Lisbon, are binding. Community legal system includes not only the international treaties concluded between Member States but also other categories of acts of EU institutions and other bodies under the authority delegated to them under treaties and general principles that Union action should be subject.

In this analysis the decisive argument is that what is characteristic for permits (regulatory acts) environment is the need to meet certain procedural requirements of law relating to rights fundamental to a healthy environment, related to advertising, consultation and public participation decision making. According to art. 5 of the Emergency Ordinance. 195/2005 (in accordance with the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters), the guarantees of the right to a healthy and ecologically balanced environment (known in the art. 35 of the Constitution Romania), include access to environmental information [art. 5 lit. 5 letter. a] and consultation in decision-making process for issuing regulatory acts in the field [mandatory operation procedures for issuing regulatory acts, according to art. 20 para. (3) of the Act regulatory framework]. Exemplifying, in terms of advertising (especially needed to ensure public participation in decision), if such a requirement remains indifferent to the legality and validity of classical administrative act, affecting only its enforceability, if the procedure for issuing the "regulatory acts", the environment, that is an essential element of their legality.

However, to substantiate and issue regulatory acts should be undertaken by individuals or legal persons and legal certificates of environmental impact assessment in the form of environmental impact assessment, environmental audit, report or report site security .

The objective of our analysis, the important fact remains that environmental permits (regulatory acts) are issued by the authorities and is the result from a specific - environmental assessment - with the mandatory elements of environmental impact assessment or risk, public consultation, taking expertise into account the conclusions and results of these consultations in decision making and provide information on the decision - which is reflected in the form of decision - expressly or tacitly. Must be stated in terms of procedural requirements of law and fundamental principles (including consultation and public participation in decision environment essential element of democracy) and, as such, compliance with the procedural operations that necessarily require an explicit commitment, continuous and decisive competent environmental authorities, who "led the regulatory procedure and issue permits, agreements and permits" [art. 8 alin. Article 8. (1) Emergency Ordinance no. 195/2005] and, accordingly, the exclusion of the silent approval procedure as an alternative to issue or renewal of environmental permits by the government authorities. It is clear that, while the environmental permits have not been expressly exempted from the category of administrative authorizations tacit approval procedure under the current regulations they can not follow the procedure under the Emergency Ordinance. 27/2003.

First, in formal terms, in terms of environmental protection can not and does not set a deadline for issuing the regulations generally (but possibly subsequent periods for various administrative and technical operations related to the

evaluation procedure), and at 30 days after filing stipulated in art. 6 (2) of the Emergency Ordinance. 27/2003 can not be operated due to the complexity and nature of the numerous procedural documents included, after which the question put to trigger a silent procedure.

Secondly, consultation and public participation in decision-making on regulatory provisions expressly require the development of procedures conducted by public authorities, which excludes the passive attitude of the administration.

Finally, procedures need to conduct environmental impact assessment under the control of public authorities and persons (natural or legal) certified, independent of the plan, program, project or activity subject to review and approval also eliminates the possibility of silent operation procedure the, field.

ELEMENTS OF COMMUNITY LAW

Court of Justice, in its case law has held that an implied authorization system is incompatible with the requirements of Directives 75/442/EEC ,76/464/EEC , 80/68/EEC, 84/360/EEC 85/337/EEC . Directive. 80/68 provides in art. 4 - among others - that: Member States subject to prior investigation any disposal or storage for disposal of these substances, which could lead to indirect discharge. Based on the results of this survey, Member States shall prohibit such action or issue a permit, provided that all the technical precautions necessary to prevent such discharges.

The proposed directive aims to protect groundwater in the Union effectively establishing a specific and detailed provisions requiring Member States to adopt a series of prohibitions, authorization schemes and monitoring procedures to prevent or limit discharges of certain substances. The purpose of these provisions of the Directive is to create rights and obligations for individuals. It was stressed that a practice is consistent with the protection afforded under the Directive does not justify a failure to implement the directive into national law through provisions that are likely to create a situation that is sufficiently precise, clear and open to allow people to be aware of their rights enforcement. As the Court stated in its ruling in Case C-339/87

(Commission v Netherlands [1990] ECR I-851, paragraph 25) to ensure full implementation of directives in law and beyond in fact, Member States should establish a specific legal framework in the area.

The Court in Luxembourg has decided on this directive that it "always ask that, after any investigation, according to the results, to have taken an act expressly authorizing or prohibition. The Court also held that the procedural provisions of the Directive shall, in order to ensure effective protection of groundwater, precise and detailed rules are intended to create rights and obligations for individuals. It follows that they must be incorporated into national law with precision and clarity necessary to fully satisfy the requirement of legal certainty. In addition, the Court has consistently held that administrative practices, which are changed at will by

the authorities and are not adequately publicized, can not be regarded as an appropriate compliance with the obligation imposed on Member States for which a directive is addressed by Article 189 of the Treaty.

In turn Directive. 85/337 shall be subject to environmental impact assessment in accordance with art. 5-10, Member States shall take the measures necessary to ensure that the developer supplies in an appropriate manner, the information specified in Annex III. Member States shall take measures necessary to ensure that the authorities might be interested in the project by reason of their specific responsibilities for the environment have the opportunity to express their opinion on the request, in connection with the application. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case, when the request for authorization. Detailed arrangements for consultation shall be set by Member States.

For this purpose Member States shall ensure that:

- Any request for authorization and the information gathered pursuant to Article 5 are made available to the public;
- Target audience has the opportunity to express your opinion before the project is initiated.

The detailed procedure information and consultation shall be determined by Member States, which may, in particular, according to the characteristics of the projects or sites concerned;

- To determine the public concerned;
- Specify the places where they can be consulted;
- Specify the way in which the public may be informed, for example, display a certain radius, publication in local newspapers, organization of exhibitions with plans, drawings, tables, graphs, models;
- Determine how the public will be consulted, for example, through written communications or survey;
- Fix appropriate time limits for various stages of the procedure to ensure a decision within a reasonable period.

When taking a decision, the authority or authorities shall inform the public concerned with:

- Content of the decision and any conditions attached thereto;
- The reasons and considerations on which it based its decision in cases where state law so provides.

Regarding the Directive 85/337, noted that its main purpose is that, before granting a permit, projects likely to have significant environmental incidents, particularly because of the nature, size or location, that they are subject to an assessment on impact, which is not possible for tacit approval. The Commission argued that the Court has held that a tacit approval system is incompatible with the requirements of Directive 80/68 (C-360/87, Commission v Italy [1991] ECR I-791, paragraph 31). This law should also apply to the authorizations referred to in

Directives 75/442, 76/464, 84/360 and 85/337. Court held unequivocally that, as shown in the art. 2 alin. 2. (1), the primary objective of the Directive is that before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia,* by their nature, size or location would be subject to an assessment of their effects .

Community law of the court, it not possible that the contradiction is not compatible with the tacit approval of the five requirements of Community environmental directives, since they provide or, in respect of Directives 75/442, 76/464, 80/68 and 84 / 360, prior approval mechanisms, or in respect of Directive 85/337, assessment procedures prior to granting a permit. The national authorities have, therefore, according to all these directives, the obligation to consider requests case by case approval addressed to them .

In line with legal armor (the letter and spirit) of Community law and ECJ case law findings, the national laws of Member States of the European Union supports the exemption rule of environmental regulations or administrative provisions of the tacit approval.

The principle of public participation, widely accepted (as both a procedural right to a healthy and ecologically balanced environment, recognized the constitutional and legislative) is made by the public inquiry procedure such as forms, consultation (discussion) that exclude the public and local referendum to express a decision simply by passing a silent period and competent administration. Evoke the fact that this is true in other branches of law (the right planning), which permits the material is subject of investigation, public projects subject to special rules for the scheme or the historical and archaeological monuments are in a or a natural reserve area to protect the architectural heritage, urban and landscape.

In light of the foregoing is imperative, consistent implementation of the provisions of Emergency Ordinance no. 27/2003 with legal armor in the field. Once modified internal legislative act, and would avoid inconsistencies arising in case law, especially since the Environmental issues, albeit of cardinal importance, is not known in practice. Institutional actors such apathy note with regard to the provisions of art. 2 alin. 2 of the Emergency Ordinance. 27/2003 that the Government may, by decision in a reasoned proposal by the administration of each authority concerned and other exceptions to the silent approval procedure.

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