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THE PLACE OF ENVIRONMENTAL LAW PRINCIPLES IN THE SYSTEM OF LEGAL PRINCIPLES

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Summary

The respective article is dedicated to the subject of the place of environmental law principles in the system of legal principles. The principles of environmental law are a subject of great resonance in legal thought, so the topicality of a scientific study is due to the important role they play in the administration of justice.

However, those who are empowered to apply the law must know not only the legal norm, but also its spirit, and the principles of law determine precisely the spirit of the laws.

Keywords: principles of environmental law, system of principles of law, general principles of law.

Introduction. It is rightly argued that establishing the principles and their meanings and the nature and essence of the environmental relationship is an important operation in defining any branch of law. This is due to the constant concern for environmental protection on the part of both the public and the state, which is a decisive factor in revealing its specific nature.

Environmental law principles are a subject of the utmost resonance in legal thinking, so the topicality of a scientific study on the place of environmental law principles in the system of legal principles is due to the important role they play in the administration of justice. Those responsible for applying the law must know not only the legal norm but also its spirit, and the principles of law determine the spirit of the law.

In this context, the principles of environmental law are strongly present in the legal-action framework: both in the implementation phase of the law, a clear identification of environmental law principles is required, as well as in the drafting phase of laws, in order to determine a particular style for environmental regulations. However, the legal rules of environmental law relate to specific legal principles in two senses: on the one hand they contain and crystallise the principles, and on the other hand the operation of the principles is achieved through the drafting and application of the rules.

Based on the above considerations, the place of environmental law principles in the system of principles of law lends itself by its problematics, conceptualization and timeliness of delimitations.

Methods and materials applied. Theoretical, normative and empirical material was used in this scientific approach. Thus, the research on the subject was made possible by consulting lo-

cal literature and applying several research methods, namely: observation, comparative analysis, correlational analysis, generalisation, and other modern methods of study.

Purpose of the research. The main purpose of the work is to determine the place of environmental law principles in the system of legal principles in order to identify the specific elements of application of those principles. To distinguish environmental law principles from other principles of law, which is not only a theoretical, but also a practical issue.

Thus, the subject in question represents a constant segment of scientific concerns, which directly involves original visions, discoveries resulting from clearly defined objectives which must be reflected in legislation. This is due to the fact that the principles of environmental law are closely linked to general principles of law and/or principles specific to certain branches of law.

Discussions and results obtained. Since the emergence of environmental law as a branch of jurisprudence and up to the present time, there are still discussions around the issue of recognition of environmental law as a branch of law. As stated, environmental law (often referred to as environmental law) is a branch of law that is working its way towards the status of "city law", i.e. an autonomous branch. There is no doubt that environmental law is not only a domestic branch of law but also has international significance [1, p.46].

Speaking of the place of environmental law in the system of branches of law, we must establish the position of environmental law as belonging to public or private law, and the relationship of environmental law with other branches of law, whether public or private law [2, p.25].

In this sense, we support the idea that the position of environmental law is clear, being a branch of public law. The fact that environmental law belongs to public law is based on the criteria for delimiting these two systems, which are also accepted in legal theory [3, p.116, 117].

In prefiguring and specifying the profile and specific meanings of this branch of law, particular importance is attached to revealing the specific connections and differences of the principles of environmental law in relation to the other legal principles of the legal system. Environmental law principles therefore extend their framework not only to the legal aspect of environmental protection, but also to all areas of human law related to the use of environmental components.

Just as there are no yesterday's and today's ideas, due to the timelessness of ideas, so the principles of environmental law cannot be immutable and take on the characteristics of the moment in which they are applied. From this point of view, the place of the principles of environmental law in the system of principles of law, the requirement to emphasise their necessity and their own determinations, is primarily concerned with the universalisation of principles. The principles of environmental law are interconnected, but at the same time they are linked to the principles of the other branches of law as well as to the general principles of law. Thus, with the diversification of social relations, the principles of environmental law are evolving and new principles are emerging, such as the precautionary principle and the precautionary principle, which can be found in all systems of law, international, national and union.

In the following we will briefly analyse those principles which are or can be in connection with the principles of environmental law contained in the Constitution of the Republic of Moldova, together with some principles of the Union law and their effect on national principles.

In this context, we note that the Constitution of the Republic of Moldova contains rules that enshrine meanings of the principles of environmental law, such as the use of natural resources only within those limits and areas that would exclude the possibility of worsening environmental conditions.

In this sense, we mention the principle consecrated in the legislation of the Republic of Moldova [Art.3 let.a)]: "the priority of environmental protection purposes and activities within the framework of the realization of the economic and social-human interests of the population for the present and future", which is reflected in Articles 36, 37, 59 of the Constitution of the Republic of Moldova and in the organic laws that reflect the field of use and protection of environmental factors.

Liability of all natural and legal persons for damage caused to the environment; preventing, limiting and combating pollution, as well as recovering the damage caused to the environment and its components on behalf of natural and legal persons who have admitted (even unconsciously or negligently) the damage. This principle is one of the most important principles, which enshrines a new institution of environmental law, namely the *institution of environmental liability*, based on the principle of strict liability for acts causing environmental damage. Being a general and universal principle, it also establishes the right to impose categorical prohibitions on polluting activities [5, p.26].

In the context of the requirements of environmental legislation, as well as guaranteeing fair compensation, we support the idea that the principles underlying liability for environmental damage and tort liability are to be integrated into a single system of principles, which through interaction and mutual support will underpin the regime of specific liability for environmental damage to persons and their property. At the same time, it is also argued that the principles of civil reparatory liability are applicable, which are adapted to the particularities of environmental law legal relationships [6, p.210].

Thus, where acts of pollution cause damage to private individuals, in addition to the principles of full compensation and compensation in kind for damage which are specific to civil liability, the precautionary principle, the "polluter pays" principle and the principle of liability without fault will also be applied.

This principle is expressly laid down in Article 4 letter d) of the Air Quality Act [7]. This Act partially transposes Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (Official Journal of the European Union L 152 of 11 June 2008) and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (Official Journal of the European Union L 23 of 26 January 2005), as last amended by Commission Directive (EU) 2015/1480 of 28 August 2015.

Although this principle is not expressly enshrined in the Environmental Protection Act, there is no doubt, however, that it is deduced from the content of Article 3 let. e) of the above-mentioned law, which provides for the use of soil, subsoil, water, forests for economic and social-human purposes in accordance with the legislation in force; the levying of fees and the imposition of fines for violations of environmental protection legislation; the exclusive use of the funds thus obtained to combat environmental pollution, the drying up of natural resources, the development of dangerous geological processes, the recovery of the environment and its components and the regeneration of natural resources. As can be seen, the principle referred to in Article 3(e) seems to be considered the basis and idea behind the drafting of Law No.1540/1998 on payment for environmental pollution [8]. At the same time, Article 6(b) of the Water Act No.272/2011 [9], enshrines the "polluter pays" principle, according to which the costs of preventing pollution or cleaning up water resources are borne by the polluter.

This principle is already recognised as a fundamental principle of international environmental law, i.e. it has also found a specific reflection in the system of Community legal rules. Moreover, it should not be forgotten that the "polluter pays" principle forms the basis of Community environmental policy. The Community legislator must treat the issues of taxes and subsidies as a matter of priority; the rule has no major implications for liability for environmental damage, the decisive role in this area being played by national law.

With regard to the incorporation and applicability of the polluter pays principle in the matter of liability for environmental damage, which, as we have mentioned, is a civil rather than an environmental one, we have to mention that once the damage caused to the person, resulting from the consequences of the damage caused directly to the environment, in this way we consider that the present principle will inevitably have implications. In this sense, the victim will base his action

on the polluter pays principle, in addition to other principles applicable to civil liability in tort, and this is because environmental law liability implies that when environmental damage is found, and is not foreign to the owner of the environmental asset affected, the rules on full compensation are applied in a particular way. In this chapter, the principle of full compensation for the damage caused is applied in the context of the polluter pays principle [5, p.78].

With regard to the link between general principles of law and environmental principles, we note that there is an intrasystemic interaction between the principle of freedom, which is directly connected horizontally with the principle of responsibility, the principle of responsibility implicitly coordinates with the principle of justice. Access to justice is a fundamental element of the rule of law and the enforcement of the conditions for the realisation and defence of environmental rights is possible through the implementation of the right of access to justice in environmental matters in national practice. In order to determine the conditions of application of the right of access to justice in environmental matters, we propose to analyse in detail the provisions of Article 9 of the Arhus Convention on access to information, public participation and access to justice in environmental matters [10].

By applying the provision of Article 4 of the Arhus Convention, "any person" who has requested information has "procedural capacity" and is entitled to benefit from the examination procedures, which allows him to challenge refusals to provide the requested information. Equally important, in our view, is to accept the idea that "the group of people who have the right of access to environmental information is not limited to the group of people who have the right to go to court, which underpins the principle of public access to environmental information". It was possible to deduce this principle from the case law presented at the seminar for training lawyers on access to justice in environmental matters under the Arhus Convention, which took place in 2001 [11, p.21].

Conclusions. Any system is a set of interacting elements, mutually dependent on each other, with specific properties, as a distinct formation relatively autonomous from others [12, p.104].

The structural element of the system of principles of law is the principle of law. The system of principles of law is the formation of principles of law with quantitative and qualitative determinations specific to the positive legal system, which integrates and subordinates the principles of law according to component elements.

In the light of the above, we conclude that it is not possible to speak of the principle that environmental protection is an objective of major public interest without speaking of general principles, such as the principle of legality or social solidarity, or of specific principles, such as the principle of democracy and sovereignty of the people, of constitutional legality.

Under the first aspect, of interconnection, we have highlighted the link between the principle of civil liability for environmental damage and the precautionary principle, the principle of liability without fault and the polluter pays principle. In turn, the polluter pays principle is linked, through its concrete applications, to principles of criminal law; the principle of preventive action, through its forms of application at the economic level (and here we consider authorisation procedures), is closely linked to principles of administrative law; the principle of integrating environmental requirements into other sectoral policies is closely linked to the principles of the separation of powers in the state and political pluralism.

Another aspect is directly related to the use of natural resources only within those limits and areas which would exclude the possibility of worsening environmental conditions, and which is closely linked to the principle of the exercise by the state of its sovereign right to exploit natural resources in accordance with its national interest and environmental policy. The principle of the right to a healthy environment is linked to the principle of access to information, public participation in decision-making and access to justice in environmental matters.

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