

CONCLUSIONS AND COMPARATIVE ANALYSIS OF LEGAL ISSUES

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1. INTRODUCTION

1.1. The Programme

The DAC Programme: *"Eco - Net: Creation Of A Network For Legal Protection And Management Of Protected Areas In The Southern Balkans"* is placed among hundreds of similar programmes coordinated by OECD, aiming at the strengthening and development of legal infrastructure in developing countries, as well as at the exchange of know-how in the field of environmental legislative policy. It was focused on issues related to the protection of natural and anthropogenic environment, and intended to contribute in a substantial way to the establishment of an institutional framework for the protection and the management of trans-boundary protected areas.

The Programme promotes various aspects and levels of the legal protection of environmental resources in five Balkan countries, namely Albania, Bulgaria, Greece, the Former Yugoslav Republic of Macedonia and Yugoslavia. Remarkable structural changes of political and economic character, have taken place during the last 13 years in Central and Eastern Europe, especially in its southeastern edge. These changes have not only transformed legislative practice and institutional choices, but also administrative approaches and rationale within the context of environmental protection, in a radical and rather rapid way.

1.2. General context

After the breakdown of the Eastern Bloc in 1989, states in Central and Eastern Europe undertook a titanic effort so as to harmonise their legislative options and standards with the correspondent ones of the European Union. Since then, these states have generally been successful at incorporating, into their domestic legal regimes, a number of general principles and procedures designed to enhance environmental protection. Although the CEE states have been less successful at implementing specific rules and regulations relating to environmental protection, the municipal environmental protection regimes continue to evolve and are likely to become increasingly proficient, especially as CEE states strive for integration with the EU.

As EU included in its association agreements the requirement that CEE states harmonise their legislation with the over 200 EU Directives comprising the EU framework for environmental standards, most

observers believe the legislation of many CEE states will soon correspond to Western standards. The ultimate ability of this new legislation to improve the environment will in large part rest on the efforts of the CEE States to comprehend and enforce this legislation.

Concerning the consistency of CEE Domestic Environmental Law with International Environmental Law, most of the CEE states' municipal law recognises the principle that the environment should not be contaminated or polluted, and that resources must be equitably utilised. Many CEE states are currently in the process of modifying their domestic environmental laws, so as to include reference to: the precautionary principle, the 'polluter pays' principle and the principle of sustainable development. In some instances, CEE states are also beginning to structure their system of fines and other punitive measures in order to promote their consistency with the emphasis of international environmental law on allocative and preventive measures.

Since the initiation of the transformation in Central and Eastern Europe, the Balkan States more readily identify existing trans-boundary environmental degradation and seek to engage relevant states in the process of resolving the disputes arising from this degradation. This group of states is also significantly more willing to identify cases of potential environmental degradation or threats to environmental security and seek to establish some process for the resolution of these disputes.

As Balkan States continue with their economic transitions, they will experience a general improvement in their environments and the increased possibility of utilising market based mechanisms to enhance trans-boundary cooperation and to further reduce pollution. They will, however, also find that increasing economic growth will lead to new pressures on the environment and possibly to increasingly competitive bilateral relations. As these states continue their political transformation, the enhanced levels of public participation will increase the pressure to take action to improve the environment and to resolve trans-boundary environmental disputes.

Moreover, the increasing development of relation among Balkan states, and between them and Western European states, is likely to ameliorate the funding and institutional support needed to improve environmental protection and engage in a meaningful process of dispute resolution. The strengthened ties with Western Europe may also provide for more opportunities for some western sub-state actors to export their environmental problems to these countries.

Since 1989, Balkan states have begun to take steps that promote the role of International Law in the regime of trans-boundary environmental protection. More specifically, they are establishing a practice of utilising general International Law to regulate their relations and are redrafting and employing Municipal Environmental Law to resolve domestic resource conflicts. As their legal systems develop in a parallel manner, it is likely that there will be more chances of trans-boundary cooperation at both the systematic and sub-systematic levels.

Balkan states are also beginning to correlate their Municipal Environmental Law with the corresponding International Environmental Law and recognise that a number of interested parties are creating and incentive for them to resolve their trans-boundary environmental dispute consistently with the Rule of Law.

As Balkan states, in particular Bulgaria, approach potential EU Membership, EU will be able to counteract the antithetical influence of lax domestic enforcement and decreasing aid programmes by exerting increased pressure on these states to use international law as a tool to resolve their disputes. Similarly, as international environmental laws relating to the precautionary principle become more distinct and generally accepted in international practice and as Balkan states become parties to the increasing number of environmental agreements, these states will have a better understanding of the capacity of these principles to assist in the reduction of pollution and resolution of trans-boundary environmental disputes.

The programme itself aims to assist these states in recognising how International Law can constructively contribute to trans-boundary environmental cooperation as well as to the formation of trans-frontier protected areas of great ecological importance. It is hoped that these states will take from this analysis an understanding of how to better use these legal tools, thus reducing trans-boundary tensions arising from environmental disputes and advance the spirit of regional cooperation within the Balkan Peninsula. The programme also constitutes a promising venture seeking to bring together all parties concerned with the conservation of nature in Southern-Balkans, and attempts to offer them a forum to scientifically discuss possible ways of protecting our natural resources more effectively.

Nevertheless, the ideal way of giving our natural resources effective and long-lasting protection throughout the Balkans is not solely to increase the number of protected areas and to link them through ecological corridors. There is also a need of juxtaposing areas with varying degrees of protection based upon their value, environmental conservation priorities and development requirements for human, economic and social activities. It is therefore vital not only to examine the distribution and state of our protected areas, but also to compare their status in order to track down the different types of protection that shall be applied.

As we focus on the legislative environmental profiles of the five Balkan countries, what is remarkable is that each one, of this rather heterogeneous and motley group of states, views the concept of the protection of the natural environment from a different perspective. They also tend to evaluate existing and arising environmental problems based upon totally different criteria, co-assessing and co-appraising not only the present socioeconomic situation but also the emerging and quite unpredictable parameters of political nature.

Any attempt to compare the level and the quality of the provided and granted legal and institutional protection of environmental goods and resources of the five states with each other is not feasible, due to the

existing differentiability on the economic, social and political level. Even if some experts that depart from different scientific fields and bulwarks insist on facing, regarding and referring to the regions of Balkans as a homogeneous and coherent entirety and body, the real picture as it has indelibly printed on the Balkan history itself as well as on the present political and economic situation is poles apart from the pre-mentioned view.

The particularities of every region as well as the differentiation and the diversification in various sectors from period to period lend fluidity to the whole Balkan area, that is further enhanced and intensified, especially on the environmental field. This is due to the general economic tightness -it is widely known that the sector of professionally organised, well-equipped and scientifically specialised protection and management of natural resources requires investments- as well as to the predominance of other economic parameters.

2. PARTICIPATING COUNTRIES

2.1. Albania

Albania has made an impressive progress in terms of environmental interventions and initiatives. They have even ratified international legal texts that were only recently compiled and agreed upon as the European Convention on Landscape and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). This progress has to be evaluated having in mind that this state was for more than 50 years totally isolated on the international level as also the lack of even elementary infrastructure, organised state context and conditions of fair economic competition.

At the institutional level, new prospects of regional cooperation on environmental issues arise and open up, such as the Adriatic Initiative. This is due partially to the fact that more powerful and well-structured legal framework for environmental protection has been recently enacted and set into force. It is expected that it shall lead to the reconstruction and also to the upgrading of the competent authorities and institutions both on the local and the national level.

However, the fact that the degree and the levels of internal compliance with the enacted norms and the incorporation of the international standards and principles that are related with issues of environmental protection into the national legal order is particularly low, cannot be overlooked. Other remarkable problems are the limited and poorly managed existing network of protected areas, the lack of existing protected areas management plans, the lack of the necessary financial resources for the effective administration of these areas as also the fact the personnel is rather inexperienced and untrained.

2.2. The Former Yugoslav Republic of Macedonia (FYROM)

The Former Yugoslav Republic of Macedonia despite the fact that faces, as does Albania, serious problems of political and economic character that have put the State into an orbit of destabilisation and resetting of its national priorities, has included the sector of environmental protection into its instant and imminent priorities in terms of its legislative policy. More concretely, whereas certain draft laws concerning the sustainable preservation and economic utilisation of concrete natural resources are being promoted and forwarded, the level of international, especially with the neighbouring countries such as Albania and Greece, is still very low. This may be attributed to the constant uncertainty, that is hovering over the country, in relation with the viability even of the State itself, as well as with the urgent need for entrenchment, exclusive and economical oriented use even of the characterised as “trans-boundary ecological resources” aiming at the safeguarding and securing the rather fragile national socio-economic and political cohesion.

Consequently, it is still uncertain whether the national government will respect and abide by the rules that were set in the frame of the bilateral agreements. These legal texts have been signed by the former Federal Socialist Republic of Yugoslavia and regulate the use and the sustainable exploitation of environmental resources of significant economic and strategic importance as Axios River, Ahrida Lake and Doiran Lake.

2.3. Bulgaria

Having the prospect of accession into the European Union, as well as a tremendous international experience because of its long participation to international conferences and meetings of environmental interest, Bulgaria appears institutionally well equipped to incorporate and to put into effect elements and principles of international environmental law and even the corresponding one from the European Community.

At the level of trans-boundary environmental protection, the Republic of Bulgaria has signed bilateral agreements with three of its neighbouring countries, Greece, Romania and Turkey. As in Greece and in many other European countries the activities related to the application of environmental laws are entrusted to the courts and the state authorities, and eventual gaps of the correspondent laws are being bridged through the application of regulation norms by analogy, unwritten or moral law.

The fact that the country is still in an inflexible economic position leads to a general political unwillingness to ban activities which are thought to be economically profitable, such as logging or hunting. Additionally, the absence of an integrated environmental strategy, in combination with the lack of specialised scientific personnel that, has led to the downgrading of the enforcement and supervision of implementation procedures. Furthermore, the entirety of the legal texts of environmental interest are characterised by contradictions, inconsistencies and ambiguities, which make the sector of environmental protection

susceptible to pressures by economic powers, due to the uncontrolled application of market economy strategies.

2.4. Federal Republic of Yugoslavia

Despite the fact that there are extensive political, economic and military problems in Yugoslavia, the level of environmental legislation has managed to maintain high standards. Moreover, the applicability and the effectiveness of environmental regulations is also at a satisfactory level even for Community standards. Having inherited an admittedly rich arsenal of international experience on the level of handling and solving particular environmental problems by the former Federal Socialist Republic of Yugoslavia, the State possess an exceptionally powerful and advantageous position among the Balkan states. It is worth mentioning that the first Yugoslav laws, which dealt even partially with the issues of environmental protection, date from medieval Serbian State (XIV century), while modern legislation dates from XIX century.

However, institutional immobility has been an immediate consequence of this Balkan state's international isolation, during the last ten years. This has resulted in the State not incorporating basic international agreements that regulate and adjust the protection of bio-diversity in its different dimensions. Some examples are: the Bern Convention, the Bonn Convention, the Washington Convention and the Convention on Protection of Biodiversity.

The modernisation and updating of Yugoslavia's environmental legislation is necessary for the country, as is the harmonisation with relevant international texts. Notwithstanding, an effort must be made so as to strengthen the institutional regime that defines environmental protection and sustainable development within 20 protected trans-frontier areas of high ecological importance in the borders with Hungary, the "Former Yugoslav Republic of Macedonia", Bulgaria, Bosnia-Herzegovina and Croatia. At the same time, this State has to enrich and renew the list of protected areas and to connect them through ecological corridors so as to create a coherent and integrated framework of protection and preservation of areas, which may be treated as a whole in legislative terms. The need for stricter and more updated environmental regulations, as well as further development of the network of protected natural assets, and the transformation of some of them into biosphere reservations is more than necessary after the unfortunate environmental degradation caused mainly by the NATO bombings (especially with depleted uranium ammunition).

2.5. Hellenic Republic (Greece)

In terms of environmental protection, the situation in Greece is rather encouraging and promising, despite the malfunctions, deficiencies and delays within the Public Administration. National environmental legislation is being continuously enriched, and the relevant constitutional article was revised towards a more powerful, stricter and more integrated protection of the environment. Furthermore, the existing network of

highly protected areas is constantly being expanded and the level of environmental information and education is continuously increasing.

This programme has also given to those people that deal with the institutional and legal dimension of the protection of the natural environment in Greece a unique opportunity to set out and expound the problems and difficulties that they face. More concretely, they try to overcome both low levels of environmental sensitisation and awareness, and the presence of powerful local economic interests. Added difficulties arise, as the competent state authorities seem weak, or even unwilling, to protect environmental resources in a more substantial way.

Furthermore, the rapid adoption of new national rules of environmental interest as well as the constant ratification of international conventions and treaties of corresponding character constitute an encouraging sign. This route must be continued and strengthened at the level of implementation and observance of national and international environmental norms, as well as at the level of the involvement of experts into the procedure.

3. CONCLUSIONS AND FINALISING REMARKS

Despite the fact that the existing political and economic situation in the wider Balkan Region is indeed precarious, infrastructure in many economic sectors is at the very least rudimentary, even primitive, and the level of correspondence and adjustment to the international environmental challenges is quite low. Nevertheless, the situation still remains reversible on the environmental protection level, not only of the mobilisation of the local NGOs but also of the institutional awakening of the competent state authorities in combination with the recent increase of public interest for the settlement of environmental problems of close or long range.

All these constitute positive elements and encouraging signs that allow optimistic predictions that initiatives, such as the one materialised throughout this programme, will not remain dangling. On the contrary, it is expected that they will form the raw material for the actual institutional arming of those participating in the Programme's countries so as to handle certain environmental issues in a more effective way. It is only through such organised endeavours that the approximation of the international environmental standards and rules that are in force will increase and acquire a more dialectical character in the Balkans.

Furthermore, the achievement of a high level of trans-Balkan approaches and cooperation will become more feasible. The latter, as it was shown through this programme, can also be attained through the institution and the establishment of trans-boundary protected areas where local economic development will step with the protection and the preservation of the extraordinary, in quality and quantity, Balkan bio-diversity.

Undoubtedly, the most hopeful and promising aspect of the programme was that its execution took place during a rather tense political and military moment, notably in the “Former Yugoslav Republic of Macedonia”.