

LEGAL ASPECTS OF BIODIVERSITY CONSERVATION IN BULGARIA

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PART 1

PRESENTATION AND ANALYSIS OF THE EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK THAT DEFINES THE PROTECTION OF THE NATURAL ENVIRONMENT AND ITS BIODIVERSITY IN BULGARIA

I. INTERNATIONAL LEGAL ORDER

As per art. 5, Para 4 of the Constitution of the Republic of Bulgaria, the international legislative acts ratified by Bulgaria, promulgated and entered into force, are considered part of the internal legislation and have priority over the internal legislative provisions, which might contradict them.

The provisions of the international acts ratified and promulgated in State Gazette do not need any additional implementation in the laws of Bulgaria in order to be applied on equal terms with the laws themselves.

1. Convention on the Conservation of European Wildlife and Natural Habitats

The convention has been ratified by the Great National Assembly with a decision adopted on 25 January 1991 and has been in force for Bulgaria since 1 May 1991.

The convention has been ratified with a reserve based on art. 22, para 1, and it is not applied in respect of some animals among which the European souslik, the wolf, the brown bear and the wild cat;

The ground for the adopted reserve is that these populations are numerous and do not need any protection.

As per Bulgarian legislation: The obligation of the Bulgarian State to establish the respective legislative and administrative measures for protection of habitats has been fulfilled with the adoption of the Law on Protected Areas (LPA) and the amendments (1998) of the Law on Nature Protection (LNP) . In 2000 the government has also adopted a draft of a new Law on Biodiversity (LB), which is expected to widen the approach of LPA in the so-called "protected zones". It is expected that both LPA and LB shall meet the requirements of the European Directive 92/43/EEC for Protection of the Natural Habitats and Species.

2. Convention on Biodiversity

The convention was ratified by the National Assembly on 29 February 1996. It has been in force for Bulgaria since 16 July 1996.

As per Bulgarian legislation: Generally speaking, Bulgarian legislation corresponds to the meaning and spirit of the convention.

3. Convention on Wetlands of International Importance, as Waterfowl Habitats

The Convention was signed by the Republic of Bulgaria in 1974 with no obligation for ratification and was enforced for the country in 1976.

Actually Bulgaria is on the list with four wetlands, their total surface being 2.097 ha:

- Srebarna Maintained Reserve- as of 1975;
- Atanassovsko lake Maintained Reserve- as of 1984;

- Arkutino marsh (as a part of Ropotamo Reserve)- as of 1984;
- Durankulak lake Natural Monument- as of 1984.

4. Convention for the Environmental Impact Assessment in Transborder Context

The convention was ratified by the National Assembly on 16 March 1995 and entered into force for Bulgaria on 10 September 1997.

Under Bulgarian legislation : The Law on Environmental Protection does the transposition of the Convention into the Bulgarian legislation.

5. Convention on the Conservation of the Migratory Species of Wild Animals

The convention was ratified by the National Assembly on 27 July 1999 and entered into force for Bulgaria on 1 November 1999.

6. Convention on International Trade in Endangered Species of Wild Fauna and Flora

The convention was ratified by the National Assembly in 1990 and entered into force for Bulgaria on 16 April 1991.

7. Bilateral agreements between Bulgarian and its neighboring countries, especially those parts of them, which might concern the protection of the biological diversity.

The Republic of Bulgaria has signed bilateral agreements, dealing with environment protection issues, with three of its neighboring countries - Greece, Rumania and Turkey. None of them addresses directly the protection of the biological diversity, but as far as the different aspects of the environment protection are closely related, all agreements address indirectly this issue.

II. NATIONAL LEGAL ORDER

1. Information about the Bulgarian legal system and legal opportunities for the Bulgarian citizens to protect their right for a clean and health environment.

The Bulgarian legal system is a typical sample of the Continental Europe legal systems. It is structured on a system of regulations, united in differed legal fields (civil law, commercial law, administrative law, criminal law, etc.). It is featured by a clearly pronounced hierarchy: The Constitution of the Republic of Bulgaria is the juridical act with the greatest might and it is followed by the international acts, signed by the country, the laws and the by-laws for their application (regulations, orders, instructions etc.).

This is a general principle that the acts of the administration are liable to a legal control as far as their conformity with the law is concerned.

2. Law on Protected Areas

The Law on Protected Areas was adopted at the end of 1998. This law regulates the different types of protected areas in Bulgaria, their function and the regime of their protection, use, declaring and management. The law creates a system of protected areas depending on the purpose of the protected area. The purpose of the protection in each category of protected areas is provided for in the law. The higher degree of protection in one protected area determines the higher degree of stringency of the measures there.

The categories of protected areas are: reserve, managed reserve, national park, nature park, protected site.

The protection of biodiversity in the protected areas is executed through measures, directly provided for in the law and subsequently declared in administrative acts. These administrative acts are: the administrative order for declaring of the protected area, the act for promotion of the plan for management of the protected area and the orders for coordination of some of the activities in the protected area.

On each territory, which is declared protected, the provisions of the law and the subsequent administrative acts – the ministerial orders and the management plans apply. In case of violation of these provisions LPA provides for two possible interventions of the administration – preventive measures (in respect of the infringements) and sanctions for punishment of the offenders.

The Minister of Environment and Waters can stop any order of another minister, if such an order violates LPA, or does not correspond to the specified regime of the activities in the protected areas. The Minister of Environment and Waters can also stop the realization of the urban development and technical plans and projects, approved in violation of LPA, i.e. the Minister of Environment and Waters dispose of stronger powers to act than the other ministers in respect of the protected areas, notwithstanding the fact that it could be about activities, which have their legal grounds in other laws. The same principle goes for the directors of the regional directorates for environment and water protection, who can stop the activities of the natural persons and legal entities, which are performed in violation of LPA. The orders by means of which the preventive measures are imposed can be appealed at the court.

Monetary sanctions could be imposed in case of infringement of LPA, or the orders for declaring the protected areas, or the provisions of the management plans. The sanctions may vary from 500 to 50,000 BG levas.

The major criticism when LPA was adopted was connected with the fact that LPA decreased the stringency of the nature-protecting measures for some of the protected areas, such as the natural parks (Vitosha and Strandga).

The other criticism in regard of LPA when it was adopted was that in the vast areas with the strictest protection – the national parks – certain activities were allowed, which in themselves are incompatible with the corresponding degree of protection (e.g. construction works and timber industry projects).

3. Law on Nature Protection

The scope of regulation of the Law on Nature Protection (LNP) is quite broad, however the most important texts refer to the declaring of endangered species of animals and protected species of animals and plants and the regulation of the protection measures. Partial application of the Bern Convention is implemented through LNP. The sanctions for violation of the LNP are extremely low.

4. Law on Hunting and Game Protection

The Law on Hunting and Game Protection (LHGP) is there to regulate the relations connected with the ownership, protection and managing of game, the organization of the hunting grounds, the right of hunting and the trade with game and game products in Bulgaria.

The definition of game includes all mammals and birds listed in the appendix to the law, or introduced to the country with hunting/shooting purposes, which live in the open under natural conditions or are bred in captivity (closed territories) with hunting/shooting purposes. There are 22 species of mammals listed in the appendix, among them bear (*Ursus arctos*) and wolf (*Canis lupus*), and 30 species of birds.

5. Law on Forests

The Law on Forests (LF) is a relatively new law /1997/, which regulates the management, reproduction, use and protection of the forests in Bulgaria. LF provisions do not apply for the forests and lands in the protected areas, the exclusive state property (such as the national parks and the reserves) – LPA are

applicable for them. The regime of use of the forests in the remaining protected areas is also regulated by LPA. So, LF regulates only the regime of use of the forests outside the protected areas.

6. Law on Waters

One of the major subjects of regulation in the Law on Waters (LW) is the ownership and management of the waters in Bulgaria. The provisions of this law could have importance for the biodiversity protection outside the system of the protected areas.

7. Law on Environment Protection

The Law on Environment Protection (LEP) is a framework law for environment protection, where no special attention to biodiversity has been paid.

LEP regulates two of the so-called “horizontal” procedures, which are of indirect, yet very significant importance for the preservation and protection of biodiversity. These are the procedure for access to environmental information and the procedure for evaluation of the effect on environment (EEE).

8. Law on Fishery and Aquacultures

The Law on Fishery and Aquacultures (LFA) regulates the relations connected with the organization, management, use and protection of the fish resources in the waters of Bulgaria, as well as the trade with fish and other water organisms. The provision of a sustainable development of the fish resources, the reproduction and protection of the biological equilibrium and the enrichment of the fish resources are among the purposes of the law.

9. Law on Medicinal Plants

The Law on Medicinal Plants (LMP) regulates the management of the activities on protection and sustainable use of the medicinal plants. Protection includes measures aiming at maintaining and preserving the ecosystems containing medicinal plants, their natural habitats and maintenance and restoration of viable populations. The law is applicable for plants that are exhaustively listed in an appendix.

PART II TRANSBOPUNDARY PROTECTED AREAS

PROCEDURE TO DECLARE A NATURE PARK PROTECTED AREA AS PER THE LAW ON PROTECTED AREAS

The natural park is one of the six kinds of protected territories, specified in the Law on Protected Areas (LPA). To declare a territory a natural park it should include diverse eco-systems as well as a diversity of vegetal and animal species and their habitats and typical landscapes and still life nature objects.

Declaring a protected territory a natural park is done through an individual administrative act (order) of the Minister of environment and waters, which is promulgated in the Official Gazette.

The procedure provides for several steps in which the public can be actively involved.

PART III

PRESENTATION AND ANALYSES OF THE STATUS OF ENFORCEMENT OF THE FOREMENTIONED FRAMEWORK (LEGISLATION ON THE FIELD)

1. Legal status of the protected areas in Pirin and West Rhodope Mountains.

1.1. Status of the protected areas in Pirin.

A great part of the mountain is a protected territory according to the stipulations of the Law on Protected Areas (LPA) - Pirin is a 'national park' as per the stipulations of art. 18 and following of the said law. Several activities are prohibited within the territory of the Pirin national park such as building (exception for tourist rest-houses and chalets), water piping for drinking water, purification facilities, buildings and equipment for the park management and tourist servicing. Fertilizers and other chemical substances can not be used in Pirin nor clear felling can be carried out. Also, introducing unusual for the region plant and animal species is prohibited. Cattle pasture, collection of herbs and wild fruits and plants, game reproduction are strongly restricted.

Pirin was declared protected area in 1962, whereas it was given the statute of a 'national park' in 1998 when the Law on Protected Areas was passed.

There are two large reserves on the territory of Pirin NP where the protection regime is yet stronger - these are the reserves Yulen (3.156 ha within the lands of Bansko municipality), Bayuvi Dupki-Dzhindzhiritsa (2.873 ha within the lands of Razlog municipality) and Ali Botush (1.185 ha within the lands of Gotse Delchev and Katuntsi). The protection regime in these two reserves is stronger than into the other part of the parc.

1.2. Status of the protected areas in the West Rhodopes Mountains.

On the territory of the West Rhodopes Mountains there is no protected territory with a large surface like those in the national or natural parks.

In the West Rhodopes Mountains there are some large and some smaller reserves. The large reserves are: Beglika (1.463 ha within the lands of the village of Batak), Kupena (1.761 ha within the lands of Peshtera), Chervenata Stena (3.029 ha within the lands of the village of Bachkovo) and Mantaritsa (1.069 ha within the lands of Rakitovo).

2. Some problems relevant to the application of the regulation for protection of the biological diversity within the territories of Pirin and West Rhodopes Mountains.

2.1. The basic problem relevant to the application of the environment protection legislation is the lack of enough personnel to control how the foreseen measures are kept to.

Besides, this is a public secret that forest cuts are carried out in many places within protected territories. They are banned but tolerated by the local authorities and often the people, who are supposed to control the application of the law, also tolerate them.

2.2. Another problem is the non-respect of the legislation for protection of the biological diversity.

2.3. The environmental legislation is often revised in short terms and some of its stipulations turn to be inconsistent or unclear.

2.4. The fact that the Ministry of Environment and Waters avoids making popular the nature protection cause and thus stays away from the remaining interests of the society - those of the entrepreneurs, local population, scientists, etc. - can be mentioned as a general failure in the field of the environmental legislation application.