

## CONSIDERATIONS REGARDING THE EFFICIENCY OF CIVIL SANCTIONS FOR THE DISRESPECT OF THE LEGAL REGIME OF WASTES<sup>1</sup>

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### ABSTRACT:

THE ECONOMIC AND SOCIAL DEVELOPMENT CONTINUES TO LEAD TO PERMANENT INCREASE OF HARMFUL WASTES TO HUMAN HEALTH AND TO THE ENVIRONMENT, IN CONDITIONS WHERE NUMEROUS COUNTRIES, AMONG WHICH ROMANIA ALSO, DID NOT TAKE THE BEST MEASURES FOR THEIR PROPER MANAGEMENT AND PROMPT SANCTIONING OF THE GUILTY ONES IN DISRESPECTING THE REGULATION REGARDING THEIR HOUSEKEEPING.

ANALYSING THE WAY IN WHICH THE FACTS ARE CONTROLLED BY WHICH THE REGIME OF WASTES IS VIOLATED, IT IS CONSIDERED THAT IN OUR COUNTRY, AS WELL, THE ADMINISTRATIVE MEASURES TAKE A CENTRAL PLACE, YET THE EFFICIENCY IN CIVIL RESPONSE IS REDUCED DUE TO SOME INADVERTENCE OF THE SPECIFIC REGULATIONS AND NON-APPLIANCE OF SOME IN PRACTICE, THUS NEW LEGISLATIVE AND MANAGERIAL MEASURES TO REDUCE POLLUTION DUE TO INCORRECT MANAGEMENT OF WASTES, ARE NECESSARY.

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**KEYWORDS:** WASTED, MANAGEMENT, LEGAL REGIME, POLLUTION, CIVIL SANCTIONS.

### INTRODUCTION

The progressive tech of the economy generates numerous ecological problems by accenting the pollution, especially due to toxic wastes, deepening in this way the disharmony between the manmade environment and the natural one<sup>3</sup>, fact that leads to the unbalancing of life in normal conditions<sup>4</sup>.

The right to a healthy environment takes part, along other rights (to peace, security and development), from a third generation of rights, named "of solidarity", which appeared

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<sup>3</sup> Ioan Mișu, *Self-leadership and creativity* (Cluj-Napoca: Dacia, 1989) 259.

<sup>4</sup> Dumitra Popescu, „The common patrimony of humanity – exclusively reserved spaces for peaceful activities”, in the *Magazine of National Commission of Romania for UNESCO*, no. 3 (1984), 227 a.s.o

directly at international level<sup>5</sup>, unlike the civil, political, economic, social and cultural rights recognized firstly in the internal states' rights<sup>6</sup>.

The permanent degradation of the natural environment, inclusively by proliferation and poor management of wastes, determine particularly complex ecological issues, leading not only to the destruction of the ecological balance, but also to an inverse reaction<sup>7</sup>, the environment becoming less and less favourable to achieve the social and economic activities, for human life<sup>8</sup>, which cannot be considered anymore the biospheric centre<sup>9</sup>.

In the past, the management of wastes did not pose a priority, yet in present times, according to the environmental legislation for the waste producers, as well as for the businesses specialized in the valuing or removing them are obliged to insure their housekeeping rationally, with no negative effects, ecologically. Thus, the necessity of environmental protection, but especially the intuition of some profitable businesses, has generated the appearance of numerous waste management companies and of a market where they are ceased to be useless, becoming the objective of commercial transactions<sup>10</sup>.

In the last decades a wide social movement undergoes for the responsibility from the environment, taking into consideration the correct wastes management, which fuelled the civil society and the national and international bodies<sup>11</sup>, as well, on the national level being adopted more and more regulations in the field, which conclude provisions for the punishment of dues by which the legal wastes regime is violated.

#### **THE ANALYSIS OF OFFENCES FORESEEN IN THE LAW NO. 211/2011**

Taking into account the international arrangements and the EU regulations, our country adopted an inclusive legal framework regarding to the management of wastes and the sanctioning of acts by which the environment is touched, followed by filed specific legal provisions violations.

Nowadays in Romania the legal situation of the wastes is ruled by Law no. 211/2011 regarding the wastes regime<sup>12</sup>, republished, with further completions brought by Law no. 187/2012 for the appliance of the Law no.. 286/2009 regarding the Penal Code<sup>13</sup>, yet the legal provisions regarding wastes are comprised in other legal documents as well, as in the Government Emergency Ordinance no. 195/22 of December 2005, with further amendments and completions.

The Law no. 211/2011 – which transposes the national legislation *The Directive 2008/98/EC*<sup>14</sup> of the European Parliament and of the European Union Council, from 19<sup>th</sup> of November 2008, regarding wastes and abrogation of some directives – establishes the

<sup>5</sup> Mircea Duțu, *The right of the environment*, 3<sup>rd</sup> edition (Bucharest: C.H. Beck, 2010), 61 a.s.o.

<sup>6</sup> Dumitra Popescu, „The right to a healthy environment, among other rights”, in *The magazine „Human Rights”*, 1<sup>st</sup> year, no. 1-4 (Bucharest: The Romanian Institute for Human Rights, 1991), 36.

<sup>7</sup> Marie-Louise Larsson, *The Law of Environmental Damage: Liability and Reparation*, (Martinus Nijhoff Publishers, The Hague, 1999), 39.

<sup>8</sup> Ion Avram, Dragoș Șerbănescu, „Earth's environment where to?”, in *The Romanian magazine for International studies*, no. 1 (January - February 1989), 32.

<sup>9</sup> Lynton Keith Caldwell, *International environmental policy: Emergens and dimensions*, Second Edition (Durham: Duke University Press, 1990), 3.

<sup>10</sup> Jose Juste Ruiz, *Derecho internacional del medio ambiente* (Madrid: Mc Graw-Hil, 1999), 308.

<sup>11</sup> Dumitra Popescu, Mircea Popescu, *Environmental Law – International treaties and documents* (Arprint: Bucharest, 2002), 16 a.s.o.; Ramona-Gabriela Paraschiv, *International protective mechanisms of the human rights* (Bucharest: Pro Universitaria, 2014), p. 225.

<sup>12</sup> The Law no. 211/2011 was republished in the official gazette of Romania, 1<sup>st</sup> part, no. 837 from 25<sup>th</sup> of November 2011 and republished in the official gazette of Romania, 1<sup>st</sup> part, no. 220 from 28<sup>th</sup> of March 2014.

<sup>13</sup> Published in the official gazette, 1<sup>st</sup> part, no. 757 from 12<sup>th</sup> of November 2012.

<sup>14</sup> Published in the official journal of the EU (JOUE) series L no. 312 from 22<sup>nd</sup> of November 2008.

necessary measures for the environmental protection and the protection of population's health, by prevention or reduction of the adverse effects determined by generating and management of wastes.

- In the article 61 p. 1 from Law no. 211/2011 *the civil sanctions* are regulated and applicable for the violation of some obligations regarding the management of wastes.

According to the importance of the violated obligation, the offences are divided into three categories, taking into account the fine limits (of which amount starts from 1.000 lei and reaches up to 40.000 lei), stating that in the case of guilty natural persons these limits are smaller than the ones applicable for the legal persons.

Analysing the first category of offensive acts, we find that they are committed by:

- Inconsistency of each type of waste in the list regarding their evidencing and not characterizing dangerous wastes from own activity, in the purpose of establishing treatment and removal measures (art. 8 p. 1, 2 and 4)
- Disrespecting the conditions foreseen by law for waste valuing (art. 13);
- Not collecting separately a certain category of wastes (art. 14);
- Not establishing some special spaces for waste depositing, establishment of some waste depots which can generate pollution or risk to the populations health, as well as for not using the best techniques in the field of waste valuing (art. 15 p. 1 let. a and b);
- Not achieving some reusable and recycling waste standards (art. 17 p. 2);
- Not removing wastes authorized in fixed areas and according to established conditions, totally, without being abandoned (art. 19 p. 2-4);
- Not treating wastes according to law and not transporting wastes to authorized installs (art. 22 p. 1 and 2);
- Mixing dangerous wastes between them (art. 27 p. 1);
- Not labelling properly the dangerous wastes (art. 28 p. 1);
- Not obtaining the environmental authorization for treating wastes, by which companies achieve such activities (art. 32 p. 1).

The second category of offences are committed by:

- Not naming an employee or not designating a third person, by the holders or producers of wastes, which need to insure the fulfilment of all obligations foreseen by Law no. 211/2011 (art. 22 p. 3);
- Not supplying the necessary data in order to elaborate plans regarding the management of wastes (art. 40 p. 3);
- Not insuring the evidences and not keeping the analysis bulletins regarding wastes (art. 49 p. 1, 2, 4, 5).

The third category of offences is achieved by:

- Not insuring, by public authorities, the separate collecting of some certain types of wastes (art. 17 p. 1);
  - Unseparated collecting of bio-wastes and properly mistreating them either in composting stations or by the local public administrative authorities (art. 31 p. 1 and 3);
  - Disrespecting the obligations regarding wastes management, by the local public administrative authorities (art. 59).
- Observing the real situation regarding the pollution of the environment with wastes, we find that in our country a proper management is not undertaken, major quantities from these being abandoned on vacant terrains, forests, on streambeds or lakes, contaminating the nature with toxic substances, harmful for the human health on long terms.

The causes of this situation we consider that they can be identified in one of the inadvertent and insufficient specific regulations, but especially in the non-appliance of the ones linked to the provisions regarding the punishment of the acts which violate the regime of wastes.

- a) Analysing the Law no. 211/2011, it is observed that in its contents there are some inserted obligations for the producers or for the ones that manage wastes, without showing some applicable punishment to those which break such obligations. For example, there is no provision of any sanction for violating the provisions of art. 28 p. 2 in which it is shown that „the transfer of dangerous wastes on the national territory needs to be followed by the identification document foreseen in the IB annex of the Regulation (CE) no. 1.013/2006, with further amendments and completions”. Likewise, in the law there is no foreseeing regarding the express obligation to not abandon wastes of any nature in the stated places or in any other places, thus such facts cannot be sanctioned.
- b) Under the aspect of applying civil sanctions, in art. 61 p. 2 it is shown that: „Finding contraventions and applying fines foreseen at p. 1 is achieved, by case, by commissionaires and empowered persons from within the Environmental National Guard, as well as from within the public local administrative authorities, according to the attributions established by law”. The find of contraventions and the appliace of fines in objectives, areas and enclosures belonging to the component structures of the defence system, public order and national security is realized by the specialized personal from within the Environmental National Guard together with the specialized structures from within the Ministry of National Defence, the Ministry of Internal Affairs, the Romanian Intelligence Service, Exterior Intelligence Service, the Guard and Safety Service and the special Telecommunications Service (art. 1 p. 3).

From the current real situation, it is considered that the competent bodies did not act sufficiently and exigently in all fields, proof being the larger quantities of abandoned wastes or improper managements, with harmful effects for the environment. For example, although the violation of the obligation of the local public administrative authorities to collect separately at least paper, metal, plastic and glass (art. 17 p. 1) is sanctioned (according art. 61 p. 1 let. a from law), in various cases these materials are not collected separately, and the respective authorities are not sanctioned.

## CONCLUSIONS AND SUGGESTIONS

Under the powerful impression of „the public authority omnipresence” in the achievement of contravention responsibility for various acts which lead to the environmental touching, some authors use expressions like: „a new administrative police regime”<sup>15</sup> or „an administrative responsibility regime”<sup>16</sup>, referring to the system of applicable sanctions for the damages brought to the environment.

Other authors find that the improved efficiency of a „mixed system which joins the civil responsibility and the administrative police”<sup>17</sup>, „the fruit of a compromise, which aims

<sup>15</sup> Pascale Martin-Bidou, *Droit de l'environnement* (Paris: Vuibert, 2010), 322.

<sup>16</sup> Anna Karamat, „La directive 2004/25/CE sur la responsabilité environnementale: défis principaux de la transposition et de la mise en oeuvre”, from the volume *La responsabilité environnementale. Prevention, imputation, réparation*, sous la direction de Chantal Cares (Paris: Dalloz, 2009), 208.

<sup>17</sup> Carole Hermon, *La réparation du dommage écologique. Les perspectives ouverts par la directive du 21 avr. 2004* (AJDA 2004), 1792, rec. 1795.

to conciliate apparently contradictory points of view (to prevent and repair damages brought to the environment), following, at the same time, the economic development”<sup>18</sup>.

In order to prevent or fight the disrespect of legal prescriptions in the subject matter, in the right of the environment it is often referred to administrative responsibility (contravention), given the facts that the advantages which are presented to a responsibility form – the procedure of finding and applying civil sanctions being more and more rapid and supple in report with other legal procedures<sup>19</sup>, which is favourable to the speedy ceasing requests and the operative repair of the ecologic damages. Likewise, these disposed measures are decisive, with other formalities, granting an emergency intervention in cases of some actions with negative effect over the environment, in adopting some security and safety measures.

In conclusion, taking into account the above findings, we consider that, *lex ferenda*, is imposed by stipulating some civil sanctions and for violating some foreseen obligations by the contents of Law no. 211/2011. Likewise, improvement measures are necessary for the activities of investigative/finding organisms and for the appliance of these sanctions.

Therewith, we appreciate that it would be useful to carry out a study regarding the competence and the obligation of the investigative and control organisms in the field of waste management, establishing managerial measures but also some responsibilities for the situations in which the law is not properly applied.

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<sup>18</sup> Maryse Deguergue, „Le sens de la responsabilité environnementale”, în *Terres du droit. Mélanges en l'honneur de Yves Jégouzo* (Paris: Dalloz, 2009), 574.

<sup>19</sup> Mircea Duțu, *Environmental law*, 266 a.s.o.

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