NATURAL ENVIRONMENT

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What are the basic law rules on the protection of the natural environment?

The core rules of the environmental protection are grouped in the Article 24 of the Constitution, which entrenches the environmental protection in its three aspects: the natural, the residential and the cultural one[2]. According to this: «The protection of the natural and cultural environment constitutes a duty of the State and a right to every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development». In this article, we also come across specific references to the protection of forests, residential environment and monuments. The provisions of the article establish the fundamental principles of the environmental protection; they mainly refer to the principle of sustainable development (in conjunction with the article 106 of the Constitution), the prevention principle, the precautionary principle and the principle that "the polluter pays"[3].

There are two basic pieces of legislation specifying these constitutional rules: the law 1650/1986 on the protection of the natural environment and the law 998/1979 on the protection of forests and forest expanses. These laws, which constitute the backbone of the legislation on the protection of the natural environment, have been consecutively modified until the present day. Furthermore, it is worth noting that, during 2011 a series of laws have been enacted regarding the environmental protection which aim to illustrate the legal framework and, therefore, facilitate possible investments. In concrete terms, we refer to the law 3937/2011 on the protection of biodiversity and NATURA 2000 network areas , the law 3982/2011 on the establishment and development of Business Parks, the law 3983/2011on the protection and management of the marine environment, the law 3986/2011 on the management of public property and the law 4014/2011 on the environmental licensing of projects and activities. These followed

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2. See *Apostolos Papaconstantinou,* The environmental Constitution: Modern aspects in Environment and Law, vol.3/2011.

3. For the principle of sustainable development see *Apostolos Papaconstantinou,* Social Democracy and welfare state in the Constitution of 1975/1986/2001, 2006 publ. Ant. N. Sakkoulas, pp 1163et seq., Sustainability and sustainable development as constitutional values: Interpretive, regulatory and jurisprudential aspects of the environmental Constitution, Environment and Law 2007, pp.536 et seq., Judicial Activism and Constitution. The example of the environmental jurisprudence of the Council of the State, Environment and Law 2006, pp 222 et seq., The principle of Sustainable Development, Administrative and Public Law Review 2002. pp. 580 et seq..

the law 3894/2010 on the acceleration and transparency regarding the realization of «Strategic Investments». It is, finally, stated that the approval of the general and some specific regional planning frameworks has significantly increased legal certainty in this specific area: We refer to the «General Context of Regional Planning and Sustainable Development» (Gov. 128/A/03.07.08), the «Specific Context of Regional Planning and Sustainable Development for Renewable Energy Resources» (Gov. 246/B/03.12.08), the «Specific Context of Regional Planning and Sustainable Development for the Industry» (Gov. 151/AAP/13.04.09) as well as the «Specific Context of Regional Planning and Sustainable Development for Tourism» (Gov. 1138/B/2009).

Do the rules for the protection of the natural environment entail serious restrictions for the development of investment projects?

The legal framework for the protection of the natural environment is, in the Greek legal order and in common assumption, stricter compared to that of the majority of the European Countries. This is attributable in particular to the fact that Greece's territory includes – owing to the special climate, extensive coastline, the large number of islands and mountainous landscape of the hinterland- many fragile ecosystems requiring increased protection. It is interesting that almost 30% of the territory is included in the European ecological network NATURA 2000. It is, therefore, expected that the rules for the protection of the environment, the severity of which is compounded by the jurisprudence of the Supreme Administrative Court (Council of State) can affect the potential for development of investment projects. On the other hand, these rules constitute a comparative advantage, since compliance with them facilitates the preservation of the unique natural environment and the particular landscape of the country. Hence, the development of significant investments, particularly in the areas of tourism, outing, holiday housing and organic farming is rendered possible.

Which is the process of licensing environmental projects and activities?

The settings of the law 1650/1986 (articles 3 and 4) on the procedure for environmental licensing were recently replaced by the law 4014/2011. The recent provisions were set to enable the simplification and rationalization of related procedures since the previous legislative framework has, in many cases, turned out to be inflexible, complex and eventually ineffective. The ultimate but yet visible target of the recent provisions is to facilitate the completion of investment projects, in such a way as to ensure the sustainable development of the country. According to the provisions of the law 4014/2011, projects and activities of both public and private sector, the construction or operation of which may have an impact on the environment, are classified in two categories (I and II) depending on the effects on the environment. The first category (I) includes projects and activities likely to cause significant effects on the environment which additionally require an Environmental Impact Study (EIS) in order to impose specific conditions and restrictions for the protection of the environment on the specific project or activity. The second category (II) includes projects and activities entailing local and non-significant effects on the environment which are subject to general standards, conditions and restrictions placed on the protection of the environment.

In order for new projects or activities falling in category I to be carried out or for the existing ones to be migrated, it is required that an environmental licensing procedure is being established through holding an EIS and issuing a Decision Approving the Environmental Conditions (DAEC). The operator of the project or activity in category I may request the opinion of the competent environmental authority with the submission of a dossier of Preliminary Determination of Environmental Requirements (PDER), before submitting the EIS. For each new project or activity, an opinion of the Ministry of Culture and Tourism is required on whether the region, where the project or the activity is to be located, is of archaeological interest, with the exception of projects or activities within regulated receptors of productive activities. An opinion of the forest service is only required for projects located in forests, forest and reforestable expanses, groves and parks, and, generally, in areas outside the approved urban projects, outside the limits of settlements and outside organized receptors of productive activities. The DAEC imposes conditions, terms, limitations and variations for carrying out the project or activity, in particular as regards the location, size, type, the applied technology and general technical characteristics. Furthermore, any necessary remedial or preventive as well as compensatory measures are equally imposed via the DAEC.

On the other hand, projects or activities in category II do not follow the procedure of elaborating an EIS; however, they are subject to Standard Environmental Commitments (SEC). The afore-mentioned projects or activities, depending on their type, are automatically subject to SEC with the responsibility of the competent authority, which has granted the operating permit, and, after the relevant statement of the researcher or the operator of the project or the activity.

What is provided specifically for the development of investment activities in NATURA 2000 network areas?

It is clear that in these areas, the conditions for environmental licensing are more stringent. Nevertheless, neither the Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora or the national legislative framework prohibit such development projects and activities, provided, of course, not to cause significant deterioration of the natural environment. The integrated touristic developments, for example, are, in principle, permissible provided that it is comprehensively deduced by the EIS that their construction and operation will not lead to a serious risk of damage to the natural environment of the region. The environmental conditions of these activities are, besides, expected to ensure sustainable development.

The law 3937/2011 (article 9), in the areas of the NATURA 2000 Network, prohibits «especially disturbing and dangerous industrial installations covered by Directive 96/82/EC» as well as «nuisance high industrial installations». The minimum integrity and fragmentation limit of the land in these areas is set to 10.000 square meters. However, land areas of at least 4.000 square meters are exceptionally considered sound and notwithstanding buildable in case they were already beneficiaries of these characteristics in accordance with the existing urban planning regulations when the law 3937/2011 was published (31.03.2011).

Is there a legal provision for other areas of increased environmental protection?

The law 3937/2011 (articles 5 και 6) provides for the adoption of presidential decrees concerning the designation of special areas with fragile ecosystems as well as the delimitation and definition of land use within their boundaries. Namely: a) «Strict Nature Reserves» including extremely sensitive ecosystems and also rare and endangered species of flora and fauna. In these areas, any activity is prohibited, b) «Nature Reserves» including areas of high ecological or biological value. In these areas, any activity which may alter or affect their natural status is also prohibited, c) «Nature Parks» including areas with particular environmental value due to the quality and the diversity of natural and cultural characteristics. In these parks, it is allowed exclusively to exercise cautious agenda and activities.

What is provided for the environmental licensing of «Strategic Investments»?

It is, initially, stated that, according to the law 3894/2011 (article 1), «Strategic Investments» are defined as «the productive investments which have quantitative and qualitative results of significant tension in the overall national economy and promote the country's exit from the financial crisis». The provisions of the afore-mentioned law seek to simplify and expedite procedures for environmental licensing of these investments. In this case, the approval of the environmental conditions shall take the form of common ministerial decisions, whilst the opinions of the Services of Ministries which, generally, approve the environmental conditions are not required. Moreover, deviations from the applicable urban planning regulations as well as the conditions and building restrictions are permitted for these investments. In order for strategic investments to be carried out, the main contractor is granted the right to use foreshore, beaches, contiguous or adjoining sea space or bottom soil. Furthermore, the main contractor of strategic investments may be granted leash hold use or tenancy of any property created by the shift of the limit of the foreshore towards the sea due to construction or extension of projects or alluvial terrace. It is also provided for a special procedure concerning the expropriation of land as well as the concession of public land for the construction, extension and modernization of Investment Strategies. Conclusively, it is noted that regional planning or environmental permits for the execution of projects shall be issued within two (2) months as the expiry of that specific deadline leads to the presumption that the requested permit has been granted in accordance with the submitted application.

What is regulated on the management of public property?

The law 3986/2011 includes «urgent measures for the implementation of the Medium-Term Budgetary Framework Strategy 2012-2015». In the context of these measures, we come across regulations concerning location and environmental licensing of investment projects in public property issues. In particular, there is a provision for maximum permissible percentage coverage of the land, while at the same time the law introduces the process of issuance of a joint ministerial decision as the legal means to be granted location rights for investment projects as well as a specific beneficiary legal status enabling the concession use of foreshore and beaches and the issuance of building permits.

What is the case-law of the Council of State in the field of the environmental protection and its impact on the promotion of investments?

Perhaps, it would not be an exaggeration to state that the case-law developed by the Supreme Administrative Court of the country has played, in this area, a decisive role. A key feature in its structure is the acknowledgement of priority to the protection of the environment[4]. The control of legality, exercised by the Court, on the approval acts of environmental conditions and, generally, of environmental licensing is strict; in many cases greater in-depth. The rigid application of the theory of the «environmental acquis», as well as of the «residential acquis», in a way that leaves no room for a substantial rehabilitation of a more equitable balance between environmental protection, on the one hand, and the protection of property rights and promotion of financial development, on the other hand, as the principle of sustainable development imposes, is indicative of the afore-mentioned stringency.

According to settled case-law of the Court, the natural environment has developed into separately protected goods in order for the ecological balance and preservation of natural resources to be ensured in favor of subsequent generations. When taking measures of environmental protection, the legislative and executive power bodies, with respect of the principle of sustainable development, ought to take into consideration more factors regarding the wider national and public interest, such as those relating to the purposes of financial development, management of national wealth, aid for regional development and ensuring labour to citizens, i.e. purposes with constitutional welfare background. However, the pursuit of these purposes and the weighting of the relevant legal goods must be combined with the obligation of the State to ensure the protection of the environment in such a way as to ensure the constituent and, at the same time, community-legislator intended sustainable development. In addition, when weighting factors, in compliance with the prevention and precautionary principle in the field of environmental protection resulting from the above provisions, the competent state instruments must take, primarily, into account the existence of any special risk for the natural environment emerging from the construction and operation of a particular project or the development of a specific activity and not, therefore, grant approval in case of a substantiated observation of that particular risk – including the imminent one from any improper functioning of the project – surpassing, in an obvious way, any expected benefits from its operation. However, in any case, and in order for the evaluation of the situation to be consistent with the need to protect each conflicting legitimate goods, it is essential to expose and sufficiently account, on the one hand, the way and method of construction and operation of the concrete establishment and, on the other hand, the particular nature of public interest, which will be hopefully served by the project or activity, since the above imposed evaluation reflects the type and

4. See *Apostolos Papaconstantinou,* The article 24 of the Constitution as the legal-political tension field in the recent case-law of the Council of State, Law and Nature site 1997, pp.573 and, recently, Judicial Activism and Constitution. The example of the environmental jurisprudence of the Council of the State, Environment and Law 2006, pp 222 et seq., The environmental Constitution:Modern aspects, Environment and Law, vol.3/2011.

extent of the imminent harm as well as the nature of the need satisfied through the implementation of the project[5].

The generally strict nature of the case law of the Court of State is likely to decline in the years to come, particularly due to the severe financial crisis and, subsequently, the country's need to follow a developmental trajectory.

5. C.o.S. Plenary 462/2010, 613/2002, 3478/200 etc.