SEA & COASTAL POLLUTION

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In what way are the sea and coastal areas protected?

Greece is privileged with a coastline, the total length of which extends approximately to 17.000 kilometers. This coastline covers, almost half of the total coastline of the Mediterranean. The marine Mediterranean habitats as well as the rarely found biodiversity hosted by the coastal areas and the numerous islands constitute the greater natural wealth sources of the country, which probably award leadership of the country, regarding this area, in a global perspective. It is, therefore, clear that the effective protection of the sea and coastal areas is listed as one of the major challenges for ensuring the sustainable development of the country.

The legal framework for the protection of the sea and coastal areas is, primarily, based on the article 24 of the Constitution which constitutes the backbone of the legal protection of the natural environment[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». 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].

Furthermore, the constitutional protection of the natural environment of the insular regions is complemented by the provisions of the articles 101[4] and 106 par. 1[5] of the

1. Apostolos Papaconstantinou has taught Public Law for a series of years in Greek Universities, being at the same time in significant positions in the Public and Private sector.

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.

4. According to the interpretive clause attached to the article 101 of the Constitution: «OThe common legislator and the administration when regulating share the obligation to take into account the particular conditions in the island areas».

5. According to the article 106 par. 1 of the Constitution the State «shall take all measures necessary ...to promote especially the economy...of insular areas».

Constitution. The combination of these provisions with the article 24 of the Constitution results in the principle of sustainable development of insular regions[6], which constitutes a more specific aspect of the general principle of sustainable development. However, the particularities characterizing the insular regions generally confer a stand-alone content to this principle. Hence, there forms a grid of constitutional rules, the combination of which structures the regulatory content of the principle of sustainable development of insular regions[7].

The aforementioned constitutional provisions are particularized through the law 1650/1986 on the protection of the natural environment and, regarding the protection of sea and coastal areas, the law 2971/2001 for the foreshore and beach and, more recently, the law 3983/2011 («National Strategy for the protection and management of the marine environment»)[8].

What are the fundamental characteristics of the current legislative framework?

The protection ensured by the aforementioned legislative provisions is, undoubtedly, of especially high standard. The construction of works and installations in coastal areas is governed by a strict legal framework. In particular, according to the law 2971/2001, the foreshore, the beach, the shore and the riparian zone constitute properties of common use with ownership of the State which is responsible for their protection and management. The protection of the ecosystem of these zones is also a responsibility of the State, while their main destination is the free and deprived of any obstacle access to them. Exceptionally, the foreshore, the beach, the shore and the riparian zone can be of practical use when serving public environmental and cultural purposes as well as the broader public interest (article 1). Their «simple use» is also a possibility, provided that it does not violate their intended purpose as properties of common use and causes no alteration in their natural morphology (article 13). The construction of buildings and, generally, of any other works is not permitted in the foreshore, the beach, the shore and the riparian area with the exception of the pursuit of the above objectives.

Moreover, the law 3983/2011 specifies the legal framework for the adoption of the necessary measures aiming at achieving or maintaining proper environmental status for the marine environment until the year 2020 the latest. This purpose promotes the development and implementation of strategies for the sea through the adoption of measures which: a) ensure the protection and preservation of the marine environment, prevent its deterioration or, when possible, restore the marine ecosystems in areas where they have suffered adverse effects, b) prevent and reduce the depositions in the marine environment, with a view to gradually eliminate pollution as defined in paragraph 8 of

6. See *Apostolos Papaconstantinou,* The constitutional principle of the sustainable development of the island areas, www.nomosphysis.org.gr (October 2004).

7. See *Apostolos Papaconstantinou,* Ecological constitutionalism and sustainable development: The example of island regions, Public and Administrative Law Review, vol 3/2005, pp 465 etc.

8. The provisions of this law aim at harmonizing national legislation with the Directive 2008/56/EC of the European Parliament and of the Council of the 17th June 2008 «on a framework for Community action in the field of marine environmental policy (framework-directive on maritime strategy)».

the article 4, to ensure that there will be no significant impacts on or risks for the marine biodiversity, the marine ecosystems, human health or legitimate uses of the sea.
For the management of human activities, the marine strategies follow the ecosystemic approach which ensures that the total pressure of these activities remains at levels consistent with achieving good environmental status and that the ability of marine ecosystems to react to human-provoked changes is not jeopardized, while at the same time enabling the sustainable use of marine goods and services by both the present and future generations. Furthermore, the aforementioned law provides for the elaboration of a program of measures attaching «due importance to the sustainable development and, particularly, to the social and financial consequences of the above measurements». These programs of measures include, in accordance with the article 12 par. 4 of the law, «measures for the protection of the area, which contribute to the creation of coherent and representative networks of protected marine areas and are sufficient to cover the variety of ecosystems composing these areas, such as the Special Preservation Zones established with 33318/3028/1998 joint ministerial decision and the Special Protection Zones established with 37338/1807/2010 joint ministerial decision as well as the protected marine areas».
Finally, the article 21 of the law 3983/2011 provides, with a reference to the provisions of the articles 28 and 30 of the law 1650/1986, for the imposition of criminal and administrative penalties to «anyone who causes pollution of the marine environment with an act or omission and in violation of the measures laid down by this law and the regulatory acts adopted in its implementation».

What is the importance of the case-law produced by the Council of State in the area of the protection of the sea and coastal areas?

The jurisprudence of the Council of State in this area is consistent with the general tendency of the Court to protect the natural environment. 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[9]. 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» 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

9. 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.

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 labor 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 extent of the imminent harm as well as the nature of the need satisfied through the implementation of the project[10].

In particular, as regards the protection of the sea and coastal areas, the Court seems to be extremely strict, especially in view of the nature of these regions as sensitive ecosystems in need of increased protection[11]. The jurisprudence concerning the foreshore is also characterized as extremely consistent and rigorous. According to its judgment, the provisions of the law 2571/2001 «aim at achieving immediate and effective protection of the foreshore and beach and impose the restoration of their initial form, which has been distorted due to the unauthorized construction of all kinds of technical projects, buildings or constructs (see CoS 2048/2000, 374/1999). The above entail an obligation to the Administration to impose demolition of arbitrary buildings constructed within the limits of the foreshore independently of the time of their construction...» (CoS 50/2010, 2048/2000, 571/1999, 374/1999, 3333/1983).

How can combining, within the context of the principle of sustainable development, the protection of the sea and coastal areas, on the one hand, and development of investment projects on the other hand, be actually achieved?

The rigorous legislative framework regulating the protection of the sea and coastal areas is often a serious obstacle for the development of future investments. This is often amplified by the jurisprudence of the Council of State which clearly acknowledges the priority to the natural environment in relation to socio-economic development.

This legal issue can be dealt with, from the point of view of interested investors, through appropriate Studies which substantiate in a scientific way the securing of the protection

10. C.o.S. plenary 462/2010, 613/2002, 3478/200 etc.

11. See *Apostolos Papaconstantinou,* Protection of sea and coastal areas in the case-law of the Council of State in: www.nomosphysis.org.gr (July 2003).

of these natural resources, provided of course that this is rendered possible. What is practically required in this case is the harmonization of the investment project and ensuring a high level of protection of the sea and coastal areas.
All legal obstacles caused in view of the development of relevant investment projects can be met with through legal and technical means, both preventive and punitive. Specifically, it is essential that, during the preparation of investment projects, any existing restrictions for the protection of the natural environment are taken into account. Thus, it is principally necessary to examine the legal framework governing this area, as well as the conditions laid down for the use of the land in order to calibrate the compatibility of the investment project with them. It is noted that the alteration of land use and the lifting of restrictions imposed for the sake of protecting the natural environment is, in view of the strict jurisprudence of the Council of State, particularly difficult. However, in most cases the provision of special conditions in the Environmental Impact Study relating to the protection of cultural property may have a positive effect when dealing with possible risks for the investment. It is, subsequently, an incontestable fact that the adequate technical and legal documentation of these studies is an essential condition for the successful judicial troubleshooting, if needed.