

HISTORICAL DEVELOPMENT OF THE ENVIRONMENTAL MANAGEMENT IN BULGARIA: LEGAL ASPECTS AND CURRENT PROBLEMS

George PENCHEV¹

ABSTRACT: This article is dedicated to the historical development of the management of activities for protection of the environment in Bulgaria. The attention is paid to the stages of this development as well as to the competent bodies during corresponding historical period. The main features of the development of the environmental management for this period are outlined. Finally some general conclusions and recommendations are given from the examined regulation.

KEY WORDS: Historical development, Environmental management, Bulgaria.

РЕЗЮМЕ: Тази статия е посветена на историческото развитие на управлението на дейности по опазване на околната среда в България. Вниманието е насочено към етапите на това развитие, както и към компетентните органи за съответния исторически период. Разгледани са главните особености на развитието на управлението на околната среда за съответния период. Накрая са направени някои по-обща изводи и препоръки от разгледаната правна уредба.

КЛЮЧОВИ ДУМИ: Историческо развитие, Управление на околната среда, България.

1. Introduction.

The management of environmental protection activities in the Republic of Bulgaria is essentially related to the competence of individual state or municipal bodies in this field. It is closely related to the development of environmental legislation². After the Russian-Turkish war 1877-1878 which was liberation war for Bulgarian people from Ottoman empire, and to the present day, 3 periods in the development of the environmental management can be conditionally distinguished, namely: a) 1878 - 1944; b) 1944 - 1989; c) after 1990. They will be considered more generally and the attention will be focusing primarily on those executive authority bodies that have been established with special competence in the field of environmental protection.

2. The period of 1878 – 1944.

No specialized ministry or environmental protection agency was established during this period. It could be mentioned some reasons for this, such as: a) the state of the environment; b) the level of environmental management views and approaches of this time; c) the specifics of the post-liberation historical period related to the development of the economy and legislation. Hereinafter will be

¹ Doctor of Legal Sciences, Professor in Environmental Law to the Faculty of Law, Plovdiv University 'Paisiy Hilendarski', Bulgaria.

² For historical development of the Bulgarian environmental legislation see for example Penchev, G., Historical Development of the Bulgarian Environmental Law, in *Justitias Welt* [online], Hamburg, 2019, Ausgabe 36, Februar, pp. 1-9 [viewed 01.05.2023], available from: http://justitiaswelt.de/Aufsaetze/AS130_201902_GE.pdf and quoted literature.

mentioned in brief only some bodies of central administration whose activities were of major importance for the environmental protection during the period considered.

2.1. *Ministry of Agriculture and State Real Estate.*

In the Tarnovo³ Constitution of 16 April 1879 (i.e. the first Bulgarian Constitution – N.B., G.P.) it has been used a very useful, in my opinion, approach, which consists in a comprehensive listing of ministries. In the original (i.e. first) version of Art. 161 there was no provision for a specialized ministry in the area in question. As a result of the amendment of this provision in 1893 (State Gazette (SG), No. 15 of 1893), the Ministry of Trade and Agriculture was established, and as a result of its amendment in 1911 (SG, No. 149 of 1911), Ministry of Agriculture and State Real Estate was established.

The Ministry of Agriculture and State Real Estate exercised specialized control in the fields of agriculture (including the rational use of agricultural land), water economy, forestry, hunting and fisheries, as well as the protection of protected natural areas. In fact, during this historical period, it was the most important ministry in the field of environmental protection.

2.2. *Ministry of Public Buildings, Roads and Public Works.*

This Ministry was established under Art. 161 of the Tarnovo Constitution as a result of the above mentioned its amendment in 1893. It exercised specialized control in the field of water supply and sewerage in settlements.

3. *The Period of 1944 – 1989.*

From the beginning of this period until 1976, also no specialized state body with control powers was established only in the area in question. The departmental (sectorial) approach in the management of environmental activities prevailed. In Art. 39, par. 3 of the Constitution of the People's Republic of Bulgaria of 1947 (SG, No. 284 of 1947, as amended), which was into force until 1971 (i.e. the second Bulgarian Constitution – N.B., G.P.), lists the ministries, among which are relevant in the field under consideration: Ministry of Agriculture and Forests⁴, Ministry of Public Utilities and Public Works, Ministry of Electrification and Melioration⁵ and Ministry of Mines and Underground Resources. In par. 4 of Art. 39 of this Constitution, however, in comparison with the Tarnovo Constitution, it was provided a power for the National Assembly (NA) to decide, by simple majority, establishment a new ministries and closing them, merger or renaming some of the existing ones. In this such a way, the

³ Now – Veliko Tarnovo city.

⁴ Concerning the historical development of forest administration for this period see Дерменджиев, И., *Общество и околна среда*, София: Отечествен фронт, 1982, с. 47, 49; Костов, Д., *Горско и природозащитно право. Лекции. История на горското законодателство*, София: УИ „Св. Климент Охридски“, 1997, с. 7-8, 10, 12-16, 18-19, and concerning the development of soil (agricultural land) administration - see Дерменджиев, И., *Цит. съч.*, с. 59-64, 82.

⁵ This ministry pursued the state water policy for the period 1949-1953 (Art. 3 of Water Use Act – SG, No. 40 of 1949, as amended, repealed). A Water Council was established within this ministry with advisory functions, which included representatives of individual ministries and agencies (Art. 6 of the same Act). Concerning the water administration during this period see Дерменджиев, И., *Цит. съч.*, с. 53, 55-56, 78; Пенчев, Г., *Историческо развитие на законодателството на НР България за опазване на водите от замърсяване, в Проблеми на морското право*, София, 1989, № 2-3, с. 49, 51, 53; Стайнов, П., *Правни проблеми на водното стопанство в Народна република България*, София: БАН, 1957, с. 151-156; Стайнов, П., *Борбата срещу замърсяването на реките в НРБ (правни изследвания)*, София: БАН, 1966, с. 59-70.

legal opportunity for various and numerous structural changes in the Council of Ministers (CM) has been created, with all flowing, no rarely negative, consequences.

In the next Constitution of 1971 (SG, No. 39 of 1971, as amended), which was into force until 1991 (i.e. the third Bulgarian Constitution – N.B., G.P.), there was not enumeration of ministries, but it was reaffirmed the power for the NA to carry out structural amendments to the CM (Art. 78, item 14). This tendency has continued after the adoption of the present Constitution of the Republic of Bulgaria (i.e. the forth Bulgarian Constitution – N.B., G.P.) of 1991 (SG, No. 56 of 1991, in force since July 13, 1991, as amended and supplemented) (Art. 84, p. 7). As a result, several mergers and transformations of ministries and agencies were carried out, their names were changed, and sometimes the control of the conservation of a certain natural resource (e.g. water) was carried out by several ministries and agencies, thereby reducing its effectiveness.

3.1. Ministry of Forest and Protection of Natural Environment.

A kind of "step forward" in the field of environmental protection was made by a Decision of the NA of 9.07.1971 (SG, No. 55 of 1971). According to item 6 of this decision, the Ministry of Forest and Forestry was transformed into the Ministry of Forest and Natural Environment Protection. As a weakness of this structural change in the CM, the merger of economic with non-economic (nature protection) functions within one ministry could be mentioned. This ministry functioned for the period of 1972-1976. The need for a specialized body of executive power with control functions in the field of environmental protection was gradually emerging.

3.2. Committee for Protection of Natural Environment to the CM.

In 1976, for the first time in the historical development of our environmental legislation (respectively the management of environmental protection activities), a specialized state body was created to carry out state environmental policy. This body was the Committee for Protection of Natural Environment (CPNE) to the CM, established by Art. 1 of Decree No. 873 of the State Council of June 19, 1976 (SG, No. 50 of 1976). It functioned for the period of 1976-1990.

4. Period after 1990.

This period was characterized by a transition to a free market economy and further democratization of public relations, which in turn was connected with paying more attention to environmental problems⁶.

4.1. Ministry of Environment.

According to item 3 of the Decision of the NA of February 8, 1990 on structural changes in the CM (SG, No. 14 of 1990), the CPNE was transformed into the Ministry of Environment (ME). In my opinion, both the differentiation and the name of this ministry were a "step in the right direction" and more accurately reflected its functional character. It functioned under that name for the period of 1990-1997.

4.2. Ministry of Environment and Waters.

⁶ See. more generally about the competent environmental authorities in the country during this period for example Божанов, С. *Законодателна уредба в областта на околната среда*, София: Арго Пъблишинг, 2006, с. 28-35; Наумова, С. *Основни въпроси на екологичното право*, 2. прераб. и доп. изд., София: БАН-ИДП, 2012, с. 101-111; Пенчев, Г., *Екологично право. Обща част*, 3. прераб. и доп. изд., София: Сиела, 2023, с. 174-179 и цитираната там литература.

According to Decision of the NA of May 21, 1997 (SG, No. 41 of 1997), ME was transformed into the Ministry of Environment and Waters (MEW) which is still pursuing the state environmental policy. However, in my opinion, the new name of the ministry is too unfortunate because water is an environmental component, i.e. part of it and it is logically incorrect to include it in its name. However, with this name, it still functions. Major functions of MEW are regulated in Art. 11, par. 1 of the Environmental Protection Act (SG, No. 91 of 2002, as amended). More generally they are connected with the performing of monitoring on the state of the environment (item 2), carrying out of specialized control for compliance with the environmental legislation (item 3), issuing of permits for different kinds of the use of the natural resources (item 5), the approval of limit values for the state of the environmental components (item 6, letter "a"), collection and giving of information on the state of the environment (item 6, letter "d"), presentation of reports to the Commission of the European Union (EU) on the implementation of the EU environmental legislation in Bulgaria (item 9), etc. Certain functions of this ministry related to the protection of separate components of the environment are regulated in the special environmental legislation. Their more detailed examination is necessary to be the subject of independent research⁷.

5. Conclusion.

Finally as a result of a reviewed legal regulation some more general conclusions can be drawn from the issues discussed and proposals for improvement of the environmental legislation.

5.1. During the period from 1878 to 1976 in Bulgaria prevailed the departmental approach in the management of environmental protection activities. It was gradually overcome after the creation of the CPNE in 1976 and especially after 1990 with the establishment of an independent ministry with functional competence in environmental protection.

5.2. It is necessary, *de lege ferenda*, for the future structural changes in the CM for the name MEW to be changed to "Ministry of Environment".

5.3. The effectiveness of the control in the protection of the environment can be enhanced if the competent bodies of the executive power involve scientists and specialists from different fields of science in their activities. It is necessary in our nowadays also because of climate changes.

Bibliography

Божанов, Симеон, *Законодателна уредба в областта на околната среда*. София: Арго Пъблишинг, 2006, 319 с.

Дерменджиев, Иван, *Общество и околна среда*, София: Отечествен фронт, 1982, 171 с.

Костов, Димитър, *Горско и природозащитно право. Лекции. История на горското законодателство*, София: УИ „Св. Климент Охридски“, 1997, 21 с.

Наумова, Стефка, *Основни въпроси на екологичното право*, 2. прераб. и доп. изд., София: БАН-ИДП, 2012, 328 с.

⁷ See in this direction for example Божанов, С., *Цит. съч.*, с. 31-33; Наумова, С., *Цит. съч.*, с. 107-111; Пенчев, Г., *Екологично право. Обща част*, с. 198-204.

Пенчев, Георги, Историческо развитие на законодателството на НР България за опазване на водите от замърсяване, в *Проблеми на морското право*, София, 1989, № 2-3, с. 48-55.

Пенчев, Георги, *Екологично право. Обща част*, 3. прераб. и доп. изд., София: Сиела, 2023, 436 с.

Стайнов, Петко, *Правни проблеми на водното стопанство в Народна република България*, София: БАН, 1957, 191 с.

Стайнов, Петко, *Борбата срещу замърсяването на реките в НРБ (правни изследвания)*, София: БАН, 1966, 224 с.

Penchev, George, Historical Development of the Bulgarian Environmental Law, in *Justitias Welt* [online], Hamburg, 2019, Ausgabe 36, Februar, pp. 1-10 [viewed 01.05.2023], available from: http://justitiaswelt.de/Aufsaeetze/AS130_201902_GE.pdf

<i>Recibido el 01 de mayo de 2020. Aceptado el 03 de mayo de 2023</i>
