The legislation concerning water resources management and protection

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Introductory Remarks: Law and Water Resources

Water resources are part of the environmental resources and being that they are faced with two dangers: scarcity and pollution. The management of water resources tend towards dealing with the first danger, that of scarcity, and it is linked with the problem of their quantitative preservation. The protection of water resources aims at dealing with the second danger, that of pollution, and it is linked with the problems of their qualitative safeguarding.

In the history of law, the legal status of water resources show significant variations. This is because it is subject to the regulatory function of two rights: the property right and the right of public utility. In the laws of Western European countries, the evolution of their legislation and judicial practice, regarding the problem of environmental effects, is characterised by the expansion of the right of public utility at the expense of the property right ([1]). In addition, the increasing development of rules of administrative law gradually removes water resources from the field of private law and incorporates them into the field of public law.

These remarks are valid exclusively for fresh waters. On the contrary, in the legal status of sea, there is no meaning such as private or public property, and only the rules of public law (national and international) are valid.

Within the framework of this study, the legal status of water is presented, based on two parameters: Management (Part I) and Protection (Part II). The legal status applied in Greece is analysed as well as rules decreed within the framework of the European Union.
PART I. Water Resources Management

In Greece, the recent law Nr 1739/87 (Government Gazette Nr 201A), regulates the management of water resources in a systematic and total way. In this law, the meaning of management is defined as the system of measures and activities necessary for likely complete coverage of the requirements for water for any use, with the aim, on the one hand to cope with the problem of scarcity, of conflicting and competitive uses and on the other hand the preservation of high quality water according to its specific usage. The law Nr 1739/87 incorporates into the meaning of water resources management four basic activities: developmental programming and research (articles 4, 5 & 6), developmental works (articles 7 & 8), multiple uses of waters (articles 9 & 10) and finally their preservation and protection (articles 11 & 12).

1. Developmental Programming and Research
Under developmental programming there are the public sector projects and the projects of municipal enterprises dealing with water supplying and drainage. The law Nr 1739/87 provides for programmes at national level for the medium term (2-5 years) and the long term (over 5 years) as well as for the medium term programmes (2-5 years) for water at a district level. Finally, it provides for programmes for specific purposes such as tracings. It is worth mentioning here that this law, following the French standard ([2], Sironneau[3]), introduces an innovation regarding the division of Greek territory into fourteen water districts. That is, districts separated by hydrocrites or insular regions which include integrated hydrographic networks with similar hydrological conditions.

In principle, the activity for research belongs to the public sector. In parallel, however, every natural or legal person of the private sector has the right of carrying out research for the determination of water resources provided that it will notify the Ministry of Industry, which has the co-ordinating role in research activity, for the results of its research.

2. Water Resources Development Projects
Whilst developmental programming belongs primarily to the public sector, the execution of water resources development projects belongs to natural or legal persons of the private sector under the following restrictions: the development is not allowed to take place without permission from the respective Authorities and it should not exceed the coverage limit of the real needs of the beneficiary party. At this point, it is worth mentioning that the aforementioned permission does not entail the validation of environmental conditions of the whole project as thus is provided for and is binding by both the Hellenic and the European Union legislation (Remelis[4]).
3. Water Uses
The law Nr 1739/87 distinguishes the uses of waters in six categories and respectively apportions the regulatory responsibilities to the proper Authorities as follows:

- Ministry of Agriculture for rural use
- Ministry of Interior for water supplying.
- Ministry of Industry and Energy for industrial and energy uses.
- Hellenic Tourism Organisation (HTO) for spa and recreation uses.
- Ministry of Transport for transportation.
- Ministry of Culture for athletic uses.

In parallel the law recognises in every natural or legal person the right to use the surface, spring or underground waters provided that a permission from the respective authority exists. This permission must clearly define the water quantity supplied on the basis of the upper and lower limits determined by the Ministry of Industry.

4. Preservation and Protection of Water Resources
In regard to the preservation and protection of water ecosystems, the law Nr 1739/87 gives the authority to the Administration to bind a certain quantity of water under the following three ways:

- By defining security limits for the quantitative magnitudes of water resources.
- By imposing restrictions in the use of water resources and
- By defining a minimum continuous flow in rivers and a minimum water level in lakes.

In respect to the confrontation of the problems of water scarcity, the legislator with the recent law Nr 2118/93, tries to cope with it, which during the last two years has become a great environmental problem for Greece. The basic provisions of the law are focused:

- on the absolute ban of use of drinkable water for the watering of gardens, in swimming pools and for the cleaning of pavements, and
- on the imposition of restrictions in the water consumption both for domestic or occupational use.

Regarding the water supply of the capital, Athens, the law Nr 2145/93 provides for the transport of water from other regions, in order to augment the water supply of the main water pipe (Mornos river) leading to the capital, in two ways:
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• from the Trichonis lake using pumps and delivery pipes (600,000 m³/day) and
• from Achelous river using delivery pipes and tankers (150,000-200,000 m³/day)

PART II. Water Resources Protection

Whom belongs the water to? The science of law cannot provide us with a firm and certain answer. Is water a common heritage of mankind or is simply property's object for someone?(Cazzaniga[5])

The Civil Law classifies public waters into the category of public use objects. We can call public waters, those flowing freely and continuously, that is, the small or big rivers regardless of being navigable or not, as well as the great natural lakes along with their banks and beds. Streams, small or artificial lakes, pluvial waters, stagnant waters and underground waters don't belong to public use waters ([6], Georgiadis[7]). The spring waters fall to the public use category only in the case that these waters create a natural bed by flowing continuously and freely. Also, in the category of public use waters belong the lagoons and the salt-marshes which have access to sea (Dagtoglou[8]).

From the combination of the above provisions it can be easily understood that the recognition of a property right on waters is extremely problematic. This is because the content of ownership is shrunken by the exercising of the right of public use as it is defined by the public benefit (Karakostas[9]). The right of use of public waters stems from the personality right as it is assured in the Constitution (article 5, paragraph 1) and analysed in the Civil Law (articles 57 and 59).

1. Protection of Water Resources and Civil Law.
In the Civil Law, the protection of water resources as ecological goods is assured within three categories of provisions (Engler[10]). These provisions are concerned with:

1. The personality protection ([11], Papantoniou[12], Karakostas[9], Hochloch[13], Caballero[14], Girod[15], Roehbinger[16])
2. The responsibility arising from tort (Reimond-Gailloud[17], Prieur[18], Karakostas[9]) and
3. The neighbouring law (Georgiadis[7], Reimond-Gailloud[19]).

These traditional provisions and their respective applications which are employed for the protection of ecological goods are not enough for their full protection. In essence, they are regulations stemming from a period when ecological concerns were still unknown. Today, it would be self-evident, the paradox, for the lawyers of the principles of industrial revolution, rule, which
would determine that, whoever creates a situation from which he or she could obtain benefits, is responsible, according to the principles of good faith and equity, to the other, who had sustained a loss from it, regardless of the way this loss happened (Kornilakis[20], Papantoniou[12], Tahos[21]). Until now, the risk does not constitute a reason for responsibility according to the Hellenic Law.

2. Protection of Water Resources and Criminal Law.

The law Nr 1650/86 for the protection of the environment establishes new and specific crimes in the case of violation of the ecological goods (article 26). Especially, it provides for the following:

1. The crime of polluting and downgrading the environment.
2. The crime of downgrading the environment with the use of various activities, without having the necessary permission.
3. The crime of violating the measures, prohibitions, and restrictions which are imposed for the protection of the nature and the scenery and
4. The crime of re-operating an installation whose operation had been cancelled due to pollution of the environment.

In trials which are concerned with the above crimes, public claimants can be either the government or the local Authorities and/or the Hellenic Technical Chamber, even in cases where there is no property loss. Unfortunately, the legislator did not attempt to give the right of public claimant to acknowledged ecological Bodies and Associations (Alexiadis[22], Littman-Martin[23], Georgatos[24], Giannopoulos[25], Derventzas[26]).


Article 24 of the Hellenic Constitution stipulates that the protection of natural and cultural environment is the responsibility of the State, which has to take specific preventive and suppressive measures for this (Nikas[27]). This binding, of the State, appears, on the one hand as a positive commitment for decreeing legislative and administrative measures for the preservation of the environment and on the other hand as a negative commitment of abstention from administrative measures which are against the constitutionally secured protection of the environment (Rotis[28], Siouti[29]).

Especially, the law Nr 1650/86, for the protection of the environment, grants authority to the Administration to take all the necessary measures for the protection of waters, such as: security limits, application of non-polluting technology, use of particular raw materials and fuel, maximum limits of liquid waste, raw and secondary materials, determination of methods, conditions and frequency of sampling and analysing liquid wastes, terms and conditions of collection, transportation and disposal of mud, methods of final disposal of liquid wastes, length of underwater pipes and standards of productive processes.
In addition, it provides for the operation of a network for the control of physical, chemical, microbiological and radiological quality of waters.

Finally, the Fishing Law (Legislative Decree Nr 420/70 and Law Nr 1740/87) provides, in the case of danger from a general disturbance of the equilibrium of the aqueous ecosystem, for the imposition of restrictions in fishing in rivers and lakes, after a decision has been taken by the Ministry of Agriculture.


The quality required for surface-waters used for drinking, swimming, living of fish, cultivation and fishing of shell-fish is defined in the following directives of the Council of EEC: 75/440, 76/160, 78/659, 79/923 and 79/869. In these directives, the required quality standards are defined as well as the sampling conditions and the methods of analysing surface waters. These directives have been incorporated into the Hellenic Legislation under the Ministerial Decision Nr 46399/1352/1986. In addition, the Directive 77/795 of the Council of EEC, for the establishment of common procedures for the exchange of information regarding the quality of fresh waters in the European Union, was incorporated in the Hellenic Legislation under the Ministerial Decision Nr 511/80 ([30], Romi[31], Kraemer[32]).

Especially, for the protection of waters from toxic and dangerous substances, there are valid both the Ministerial Decision Nr 72751/3053/1985, which incorporates into the Hellenic Legislation the directives 78/319 and 76/403 of the Council of EEC for the elimination of polychlorodiphenyls (PCB) and polychlorotriphenyls (PCT) and the Decision Nr 144/87 of the Ministerial Council, issued for the execution of the Law Nr 1650/86, which incorporates into the Hellenic legislation the directives 76/464, 82/176, 83/513, 84/156 and 84/491 of the Council of EEC, for the establishment of marginal quality standards for the content of water in cadmium, mercury and chlorohexamine (HCH). The directive 80/68 of the Council of EEC for the protection of underground waters from disposals of certain dangerous materials, with which:

a) an absolute ban of disposals of certain materials in underground waters is imposed and

b) the disposals of certain other materials are under control. This directive was incorporated into the Hellenic legislation with the Ministerial Decision Nr 26857/553/1988 issued in application of the Law Nr 1650/86. (Skouris & Tahos[33]).

Special provision for the protection of underground waters at the places of disposals of solid wastes is provided in the Ministerial Decision of 9th of July 1986 which incorporates into the Hellenic Legislation the directive 75/442 of the Council of EEC ([34]).
References

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