COMPARATIVE AND LEGAL ANALYSIS OF CONTRAVENTIONAL, CRIMINAL LIABILITY IN THE FIELD OF PROTECTION OF AQUATIC RESOURCES IN THE REPUBLIC OF MOLDOVA AND THE EUROPEAN UNION

Abstract. In this article we will examine the problematic aspects in the field of aquatic resources, because water is an essential component of the environment. It was found that the use of aquatic resources should be rational, because, according to experts, the Republic of Moldova is one of the poorest countries in Europe in terms of water resources per capita. It concludes the need to revise the concept, the existing notion of contravention, criminal liability for contraventions, crimes committed in the field of use and protection of water resources, namely, increasing the existing system of fines and introducing the «polluter pays» principle. Thus, the Republic of Moldova will be able to approach the states of the European Community and meet the requirements of the European Union in this field.

Keywords: aquatic resources, environmental / ecological crime, infringements of the legislation on the use and protection of aquatic resources, contravention, criminal liability, European Union Water Directive.

Introduction. The process of integration of our country in the European Union requires certain necessary changes in different spheres of the public such as politics, culture, social, economic, legal, etc. Of all these components listed, the legal component certainly plays an important role. Last but not least, the goal of successful integration requires an adequate level of coherence of the national legal system, where the main component is the system of legislative acts and the practice of its implementation in the legal system of the European Union.
Integration is a process that should cover all spheres of public life in the state. An important place among such spheres belongs to natural resources. Water resources play a special role in this, because water is the most important component of the natural environment. This can be explained by the fact that people’s lives and survival depend largely on the availability and condition of water resources. Therefore, providing the population and all sectors of the economy with quality water resources will be one of the main priority tasks of the social and economic policy of our state.

The use of water resources, in any case, should be rational, because, according to experts, the Republic of Moldova is one of the least prosperous countries in Europe with water resources per capita. In this regard, our state’s water resources policy should be based on measures for the rational use of such a natural component, in connection with which certain mechanisms are needed to encourage such use.

As a rule, certain mechanisms are not sufficient and, therefore, there is always a need for methods of managing liability (contraventions, criminal, etc.), in the case of contraventions, offenses in the use of water resources. Given the desire of the Republic of Moldova to enter the international space as a member of the European Community, ie a member of the European Union, its legislation, as well as the degree of responsibility for contraventions, environmental crimes (in this case, a special natural component - water) must meet the basic requirements set by the European Community for States wishing to join the European Union. In this sense, there is a relevance in the study and implementation of a generalized legal analysis on the conformity or inconsistency of the contravention or criminal liability for contraventions or crimes in the field of water resources, as established by the legislation of the Republic of Moldova to the legislation of the European Union.

The main purpose of the study is a generalized analysis of the administrative and criminal liability in the field of water resources in the Republic of Moldova and the European Union.

It should be noted that the issue of criminal liability for crimes against water resources in the Republic of Moldova and the European Union has been little studied in scientific circles. At the same time, general information on criminal liability for
environmental crimes in general and, in particular, those relating to water resources in the Republic of Moldova and the European Union, has been the subject of research by several scientists.

**Results obtained and discussions.** Turning to the direct study of criminal liability, it should be noted that the Government of the Republic of Moldova approved in 2014 «Environmental Strategy for 2014-2023 and the Action Plan for its implementation.» The elaboration, approval of this Environmental Strategy was also dictated by the political vector of European integration of our country, by the current requirements of aligning the national legislation with the provisions of the European Union directives and ensuring a sustainable development of the country by promoting the green economy. of the priorities of the Association Agenda, Moldova - EU (including water). The process of European integration is a challenge for the environmental sector and includes two main directions of action: the harmonization of national environmental legislation with the acquis communitaire in the sector and institutional reform, which involves the development of an institutional mechanism capable of implementing the newly adopted legislative framework [8].

Lately, we find that the Republic of Moldova quite often attracts certain experiences and skills from European countries, because, by comparison, it is possible to find more ways to solve the problems faced not only by the Republic of Moldova.

Water resources in the European Union are recognized as the most regulated area of environmental legislation. Due to the need for a fundamental revision of the legal framework and to develop a new policy on the use and protection of water resources, as well as on the basis of consultations with relevant experts, in 2000 the Economic Commission proposed the adoption of a European Union framework directive on water, which aimed to achieve such goals:

1. achieving «adequate status» for all waters by a certain date and maintaining that status, where it has already been achieved;

2. extending the scope of protection of water resources to all waters: both surface, especially coastal / coastal, and groundwater;
3. setting tariffs for the use of water resources, taking into account the principle of reimbursement and the principle of charging for pollutants;

4. the development of a comprehensive Community policy on the use of water resources and its implementation in accordance with the principle of subsidiarity;

5. expanding the participation of citizens involved in the protection of water resources;

6. water resources management of river basins, based on a combined approach of setting emission limit values and quality standards, with appropriate provisions on the coordination of international river basins, when the river basin is located in several EU Member States or when it covers the territory of third countries;

7. improving the legislation governing liability for water resources offenses [5].

This Directive is one of the most important international laws on the protection of natural objects, as it sets out the basic requirements for members of the European Community for the regulation and protection of water resources, and defines the main liability measures for offenses in this field, including liability contravention.

In addition, it should be noted that the entire policy of the European Union on liability measures for water resources offenses is defined at the level of individual articles in a significant number of international decisions and directives.

Thus, the EU pays close attention to the responsibility for marine water pollution, in connection with which Decision № 2850/2000 / EC of the European Parliament and of the Council of 20 December 2000 on the implementation of the Framework Agreement on cooperation in accidental cases was adopted. or intentional pollution of water resources (high).

This agreement aims to: improve the capacity of EU Member States in emergency situations, including the discharge of dangerous substances into the sea; strengthening the level of cooperation and mutual assistance between Member States in compensating for damages, in accordance with the ‘polluter pays’ principle; make further efforts by Member States at national, regional and local level to protect the marine environment, the coast and human health from the risks associated with accidental or intentional marine pollution.
Legal liability under Directive 2004/35 / EC requires the polluter to take measures to prevent environmental damage, including the elimination of the negative effects of environmental damage, in order to restore a natural component, such as water, to that pre-existing state. to cause such damage, including the coverage of costs for activities carried out for this purpose. Restoration of water resources to restore natural resources is usually carried out by the operator, who caused such damage, as part of a specific plan to eliminate the negative consequences of such damage [6].

With regard to liability for infringements in the European Union, there is always a practice, which is in the form of a «polluter pays» system, depending on the forms of pollution in their states. The application of this principle (rule) is defined at the level of a significant number of secondary regulations, especially those that refer to certain components of the environment, in this case - water resources. Thus, for example, such a principle is enshrined in both the above-mentioned Water Framework Directive and Council Directive 96/61 on integrated pollution prevention and control [7].

At the same time, the ‘polluter pays’ principle in the European Union is taken into account in the context of the application of any measure of liability for infringements, offenses in the field of protection and use of water resources. Therefore, on 9 February 2019, the European Commission adopted a White Paper on legal liability, where the main purpose was to define this principle, regarding its application in bringing any liability, including contravention, for environmental crimes, in this case such a crime can be understood as a crime in the field of protection and use of water resources [2].

It is therefore possible to conclude that liability for offenses relating to the use and protection of water resources under European Union law has the same degree of liability as any other liability. However, it is important to remember that, in any case, the need to apply the «polluter pays» principle is a priority measure applied to each type of liability.

Regarding the current legislation of the Republic of Moldova, which regulates criminal liability, it should be noted that the acts of environmental protection, which
include a special type - water resources are contained in Chapter IX - environmental protection in the Code contravention of the Republic of Moldova (CC RM). This chapter establishes the contravention liability in the field of environmental protection (of all the elements of nature: water, soil, subsoil, forest fund, animal kingdom, etc.), but in case of attack on water resources, for the following types of crimes:

1. Violation of the water protection regime (Article 109 of the CC of the Republic of Moldova);
2. Violation of the rules of water use (Article 110 of the CC of the Republic of Moldova);
3. Failure to comply with the rules and instructions regarding the operation of constructions, installations and hydrotechnical measuring, management and water protection devices (article 111 of the CC of the Republic of Moldova);
4. Deterioration of hydrotechnical, management and water protection constructions and installations (article 112 of the CC of the Republic of Moldova);
5. Violation of the rules for carrying out economic activity in water protection areas (Article 113 of the CC of the Republic of Moldova);
6. Non-use of installations for the purification of pollutants and the control of emissions into the atmosphere, for wastewater treatment (Article 146 of the CC of the Republic of Moldova) and others [4].

Regarding criminal acts in the field of environmental protection, which include a special type - water resources are contained in Chapter IX - ecological crimes of the Criminal Code of the Republic of Moldova (CP RM). This chapter establishes the criminal liability in the field of environmental protection (of all elements of nature: water, soil, subsoil, air, forest fund, animal kingdom, etc.), but in case of attack on water resources, for the following types of crimes:

1. Violation of the requirements for the protection of the subsoil (Article 228, letter b of the Criminal Code of the Republic of Moldova);
2. Water pollution (Article 229 of the Criminal Code of the Republic of Moldova);
3. Illegal occupation of fishing, hunting or other water exploitation (Article 234 of the Criminal Code of the Republic of Moldova) [3].

In addition, there is a special codified normative act in the legislation of the Republic of Moldova on the protection and defense of such a natural resource as water - the Moldovan Water Law, which, among other things, one of the purposes of the law is to create a normative framework for monitoring, assessment, management, protection and efficient use of surface water and groundwater based on public participation in evaluation, planning and decision making. Thus, article 58 of the above-mentioned law specifies that the violation or non-execution of water legislation entails civil, contraventional or criminal liability, under the law [9].

Analyzing the compliance of Moldova’s legislation defining liability for the protection and use of water resources with European Union law, scientists note that the provisions of the Water Framework Directive, namely liability for infringements of water legislation are reflected in -some extent, not fully, in the content of the Water Law, the contravention code of the Republic of Moldova. In particular, the legislator provides a list of actions recognized as a breach of water legislation and also finds that water users guilty of such breaches are released from liability if the latter have arisen as a result of extreme necessity, well-founded risk or fortuitous event. An important provision in covering liability for breach of water legislation is the provision of the obligation of the guilty person to compensate for the damages caused by such a breach.

Thus, according to Article 57 of the Water Law of the Republic of Moldova, if certain pollutants or certain wastes have been discharged or are likely to be discharged into a body of water or land, there is a risk of pollution, the Inspectorate for the Protection of the Environment issues a prescription, requesting that, within a reasonable time, specific measures be taken to protect water against pollution, minimize or remedy the effects of pollution. If the specific measures mentioned above are not taken within the prescribed time limits, the Inspectorate for Environmental Protection shall carry them out, having the right to recover the costs incurred.

However, it should be noted that the Water Framework Directive obliges EU Member States to define another type of liability to be applied as a result of breaches
of the Directive, namely financial sanctions, which must be appropriate, relevant and effective in the conditions of the directive.

A. Crețu in his doctoral dissertation highlights the importance of the issue of liability for environmental damage. Especially since today, more and more frequently, the doctrine speaks about the existence of a specific responsibility for environmental law, different from the civil one. Indeed, for victims of environmental damage, the fact that the person who caused the damage was subject to criminal or misdemeanor liability will be a moral consolation, but for the most part the victim will want reparation for the damage. This repair proves to be, as a rule, a main purpose, and sometimes exclusive. Therefore, we could say that for the situation in which an ecological damage has been caused, the criminal and contraventional liability is subsidiary, and the patrimonial one, which is expressed by the obligation to repair the damage, is a main one [1, p.11].

In addition, as mentioned above, the list of offenses enshrined in the Contravention Code is not exhaustive, and the law of the Republic of Moldova establishes other offenses in the field of use and protection of water resources, for which the contravention liability is established. Thus, in accordance with Article 17 of the Law of the Republic of Moldova on «On areas and strips of water protection of rivers and water basins», persons guilty of violating the regime of use of the territory of areas and strips of water protection of rivers and basins water, provided for in Articles 13 to 15, shall be liable in accordance with the Code on Administrative Offenses [10].

Comparing the legislation of the European Union and the Republic of Moldova, it should be noted that in the Republic of Moldova a rather acute problem is the amount of fines for violating water legislation, because currently the price for violating water protection rules is about 1300 lei (65 euro), which is extremely low, unlike EU countries. At the same time, it is important to note that the Parliament of the Republic of Moldova proposed amendments to the provisions of the CC of the Republic of Moldova (changes took place in 2016 and entered into force in 2017) to strengthen the protection of water bodies. water protection rules and strengthening the liability for contraventions for such contraventions.
CP RM also underwent amendments to the sanctions provided in the criminal acts that threaten water resources (the changes took place in 2016 and came into force in 2016), in order to strengthen the protection of water bodies, which aim to increase fines for violations water protection rules and strengthening criminal liability for such offenses.

At the same time, after conducting a generalized comparative analysis of the conformity of the current legislation of the Republic of Moldova for its compliance with European Union rules on administrative liability, criminal liability for contraventions, crimes in the field of use and protection of water resources, it is possible to draw the following conclusions.

By approving the Environmental Strategy for 2014-2023 and the Action Plan approved by Government Decision no. 301 of 24.04.2014, the Republic of Moldova has undertaken to comply with the principles set out in EU water legislation. The elaboration of the Environmental Strategy was also dictated by the political vector of European integration of our country, by the current requirements of aligning the national legislation with the provisions of the European Union directives and of ensuring a sustainable development of the country by promoting the green economy.

It should be noted that the importance of liability for offenses related to the use and protection of water resources in the European Union belongs to the «polluter pays» principle and therefore the main feature of this liability is that in any case, the state, the offender, regardless of the application to a certain degree of responsibility, must pay financial resources or take certain remedial measures. At the same time, it should be noted that European law does not define the characteristics of liability for infringements in the form of establishing in a single piece of legislation the offenses in the field of water resources for which the liability under investigation arises. However, the existence of a significant number of European Union directives and decisions proves the importance of enforcing liability measures for infringers, including liability for infringements.

Regarding the legislation of the Republic of Moldova, and, considering the course, the evolution of the Republic of Moldova on European integration, it is
necessary, in the current conditions, to review the existing institution of criminal liability for contraventions and offenses in the field of use and protection of water resources. Namely, it is necessary to increase the existing system of fines, the amount of the fine as well as the introduction of the «polluter pays» principle, in connection with which the Republic of Moldova will be able to get even closer and meet the requirements of the European Union.

References:

2. Cartea albă privind viitorul Europei: prezentarea scenariilor ale modului în care Europa ar putea evolua până în anul 2025, aprobată de Comisia europeană la 01 martie 2017 (whitpaper_en.pdf (europa.eu)).
10. Legea cu privire la zonele și fișiile de protecție a apelor, râurilor și bazinelor de apă a Republicii Moldova. În: Monitorul Oficial al Republicii Moldova, 1995, nr. 43.