

A COMPARATIVE STUDY ON “ENVIRONMENTAL PROTECTION LAW” IN CHINA AND ROMANIA

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ABSTRACT

The government of China and Romania both protect environment through the way of legislation, the related legislations provide a series of environmental protection provisions, in order to find similarities and differences, thus learn from each other, this article will do a comparative study on "Environmental Protection Law" in China and Romania.

Keywords: environment protection; environment problem; legislation.

Introduction

At present, the China and Romania both face serious environmental problems, such as water pollution, air pollution, soil pollution, etc. In order to protect the environment, the governments of China and Romania have taken some measures to control these issues, in those measures, one of important measures is legislation. In 1973, the Romania promulgated the first “Environmental Protection Law”---“*the Law No. 9/1973 on environmental protection*”. In 1989, the China promulgated the first “Environmental Protection Law”-- “*Environmental Protection Law of the People's*

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Republic of China". The two legislations provide a series of environmental protection provisions, such as fundamental legal principles, the basic system of environmental protection, responsibility of environmental protection administration, obligations of units and individuals, legal liabilities, etc.

1. Overall Profile

In 1989, the China promulgated the first "Environmental Protection Law"--*"Environmental Protection Law of the People's Republic of China"*, which adopted at the 11th session of the standing committee of the seventh national people's congress on December 26, 1989. And revised at the 8th session of the standing committee of the twelfth national people's congress on April 24, 2014. It came into force on January 1, 2015. The "Environmental Protection Law" has 7 parts, 70 articles, the first chapter is "*General Provisions*"; the second chapter is "*Supervision and Management*"; the third chapter is "*Protection and Improvement of the Environment*"; the fourth chapter is "*Prevention and Control of Pollution and Other Public Hazards*"; the fifth chapter is "*Information Disclosure and Public Participation*"; the sixth chapter is "*Legal Liability*"; the seventh chapter is "*Supplementary Provisions*".

In 1973, the Romania promulgated the first "Environmental Protection Law"--*"the Law No. 9/1973 on environmental protection"*. In 1995, new "Environmental Protection Law"--*"the Law No. 137 on the environmental protection"* came into force. In 2003, it was modified. In 2013, in order to bring the Romanian environmental regulations in line with EU legislation, it was modified again. The amendments to the environmental protection law came into force on 21 July 2013. The "Environmental Protection Law" has 6 parts, 89 articles, the first chapter is "*general principles and provision*"; the second chapter is "*Regulation of economic and social activities having an environmental impact*", in this part, there are four sections. Section one is "*Permitting procedure*". Section two is "*Regime of dangerous substances, hazardous waste, as well as of other wastes*". Section three is "*Regime of chemical fertilizers and pesticides*". Section four is "*Regime for assuring the protection against ionizing radiation and safety of radiation sources*"; the third chapter is "*Protection of natural resources and conservation of biodiversity*". In this part, there are five sections. Section one is "*Protection of waters and of aquatic ecosystems*". Section two is "*Protection of atmosphere*". Section three is "*Protection of soil, subsoil, and of terrestrial ecosystems*". Section four is "*Regime of protected areas and of natural monuments*". Section five is "*Protection of human settlements*"; the fourth chapter is "*Prerogatives and responsibilities*". In this part, there are three sections. Section one is "*Prerogatives and responsibilities of the environmental protection authorities*". Section two is "*Prerogatives and responsibilities of other central and local authorities*". Section three is "*Obligations of natural and legal*

2. Fundamental Legal Principles of Environmental Protection

Both in China and Romania, the “Environmental Protection Law” formulates the fundamental legal principles of environmental protection.

In China, according to the provisions of Art.5, activities concerning environmental protection shall adhere to the following principles: according priority to protection, emphasis on prevention, integrated governance, public participation and liability assumption of damages.

In Romania, for the purpose of assuring a sustainable development, Art.3 sets out a series of basic principles of environmental protection, including: **a)** principle of precaution in decision-making; **b)** principle of prevention of ecological risks and damage occurrence; **c)** principle of conservation of biodiversity and ecosystems specific to the natural bio-geographical structure; **d)** polluter-pays principle; **e)** the removal on a priority basis of the pollutants that directly and severely jeopardize public health; **f)** setting up of the integrated national environmental monitoring system; **g)** sustainable use; **h)** maintenance, improvement of environmental quality, and reconstruction of damaged areas; **i)** setting up of a framework for the participation of non-governmental organizations and of the population in the decision-making and implementation; **j)** developing international collaboration to ensure the quality of the environment.

3. The Basic Systems of Environmental Protection

In order to protect and improve the environment, the “Environmental Protection Law” in China and Romania both set out a series of basic legal system for environmental protection.

In China, the basic legal system stipulated in “Environmental Protection Law” including:

a) Environmental Planning System. According to the provision of Art.13, the competent environmental protection administration under the State Council shall develop national environmental protection plan in accordance with national economy and social development plan. The competent environmental protection administrations of local people's governments at or above the county level shall, in conjunction with other relevant departments, develop the environmental protection plans applicable for their respective jurisdictions in accordance with the national environmental protection plan.

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b) Environmental Standards System. According to the provision of Art.15, the competent department of environmental protection administration under the State Council shall establish national standards for environment quality. The people's governments of provinces, autonomous regions and municipalities directly under the Central Government may establish their local environment quality standards for items not specified in the national standards for environment quality, and develop more stringent standards with regard to items already specified in the national standards. Local environmental quality standards shall be reported to the competent department of environmental protection administration under the State Council for the record.

c) Environmental Monitoring System. According to the provision of Art.17, the State shall establish and improve the environmental monitoring system. The competent departments of environmental protection administration under the State Council shall formulate monitoring standards, and shall, in conjunction with relevant departments, organize a monitoring network, unify the planning of national environmental quality monitoring stations (posts), set up information sharing system for monitoring data, and strengthen the management of environmental monitoring.

d) Environmental Impact Assessment System. According to the provision of Art.19, compilation of draft development plans and construction of projects with environmental impacts shall be subject to environmental impact assessment in accordance with the law.

e) Environmental Protection Target Responsibility System and Evaluation System. According to the provision of Art.26, the State adopts environmental protection target accountability and performance evaluation system. People's governments at or above the county level shall incorporate the fulfillment of environmental protection target as an appraisal criteria into the performance evaluation system for the departments with environmental supervision responsibilities at the same level government and their responsible persons, as well as performance evaluation for the lower level governments and their responsible persons. The evaluation results shall be made public.

f) Ecological Protection Compensation System. According to the provision of Art.31, the State shall establish and improve ecological protection compensation mechanism.” “The State will increase fiscal transfer to areas of ecological protection. Relevant local people’s governments shall secure compensation funds for ecological protection, and ensure its use on ecological compensation. The State provides guidance to the local people’s governments of beneficiary areas and ecological protected areas on ecological compensation through consultation or market rules.

g) Environmental and Health Monitoring, Investigation and Risk Assessment System. According to the provision of Art.39, the State shall establish and improve environment and health monitoring, investigation and risk assessment systems; encourage and organize researches on environmental quality impacts to

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public health, and adopt measures to prevent and control diseases related to environmental pollution.

h) “Three Simultaneous” System. According to the provision of Art.41, installations for the prevention and control of pollution at a construction project must be designed, built and commissioned together with the principal part of the project. Installations of the pollution prevention and control facility shall comply with the requirements of the approved environmental impact assessment report, and shall not be dismantled or left idle without authorization.

i) Sewage Fee System. According to the provision of Art.43, enterprises, public institutions and other producers and business operators that discharge pollutants shall pay pollution fees in accordance with relevant state provisions.

j) Total Emission Control System for Key Pollutants. According to the provision of Art.44, the State shall adopt total emission control system for key pollutants. The total discharge quota of key pollutants is assigned by the State Council, and allocated to provincial, autonomous region and provincial-level municipality governments for implementation.

k) Pollution Administrative Permit System. According to the provision of Art.45, the State shall adopt pollution administrative permit system in accordance with the law. Enterprises, public institutions and other producers and business operators pursuant to pollution permit system shall discharge pollutants in accordance with the requirements of their permits; No pollutant discharge is allowed without a pollutant discharge permit.

l) Elimination System. According to the provision of Art.46, the State shall implement elimination system for pollution-intensive techniques, equipment and products. No entities or individuals shall produce, sell, transfer or use techniques, equipment and products that seriously pollute the environment.

m) Emergency Mechanism. According to the provision of Art.47, the people's governments at various levels, their relevant departments, enterprises and public institutions shall, in accordance with the *Emergency Response Law of the People's Republic of China*, conduct proper risk control, emergency preparation, emergency response and post-emergency restoration for environmental accidents.

n) Hazardous Substances Management System. According to the provision of Art. 48, the production, storage, transportation, sale and use of toxic chemicals and materials containing radioactive substances shall comply with the relevant state provisions so as to prevent environmental pollution.

In Romania, the “Environmental Protection Law” also set out some basic systems of environmental protection, including:

a) Environmental Permit System. According to Art.8, the environmental protection authorities shall conduct the permitting procedure and shall issue environmental agreements and permits, the validity period of environmental permits

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shall generally be granted for 5 years, the validity period for integrated environmental permits is 10 years.

b) Environmental Impact Assessment System. In Romania, the environmental impact assessment consists of three stages, the preliminary stage, the main stage, and the analysis and validation stage. According to Art.11, the environmental protection authority shall organize and decide on the application of the stages of the procedure.

c) Waste Manage Regimes. In Romania, the “Environmental Protection Law” formulates some regimes to protect environment, including the regime of dangerous substances, hazardous waste, as well as of other wastes; the regime of chemical fertilizers and pesticides; the regime for assuring the protection against ionizing radiation and safety of radiation sources.

d) Systems of Protection of Natural Resources and Conservation of Biodiversity. In order to protect the waters and aquatic ecosystems, the “Environmental Protection Law” mandates the central environmental protection authority to elaborate some regulations on technical norms regarding the protection of waters and of aquatic ecosystems; permitting procedure for water sources and aquatic ecosystem exploitation; emission standards; water quality standards; requirements for waste water discharge, treatment, and for the restriction of effluent discharge in waters.

In order to protect the atmosphere, the “Environmental Protection Law” mandates the central environmental protection authority to promote some policies. Including introduction of adequate techniques and technologies for the holding back of the pollutants at the source; management of the air resource in the sense of reducing pollutant emission to the lowest levels which shall not exceed the regeneration capacity of the atmosphere; management of the air resource in the sense of assuring the appropriate quality for human health safety; modernization and improvement of the air quality national integrated monitoring system.

In order to protect the soil, subsoil, and the terrestrial ecosystems, the “Environmental Protection Law” mandates the central environmental protection authority to establish: the system for monitoring the soil quality for the purpose of ascertaining its present state and evolution tendencies; the regulations regarding the protection of soil, subsoil, terrestrial ecosystem quality, and the conservation of biodiversity; the permitting procedure regarding the environmental protection issues comprised in the territorial arrangement plans, torrent planning for forest planning preparation, soil erosion control, study drillings and geologic and hydro-geologic prospections, as well as for extraction mining activities; the regulations on natural environmental rehabilitation in areas in which the soil, subsoil, and terrestrial ecosystems were affected by natural phenomena or by activities with a negative impact on the environment.

4. Responsibility of Environmental Protection Administration

Both in China and Romania, the “Environmental Protection Law” formulates the responsibility of environmental protection administration.

In China, according to related provisions of “Environmental Protection Law”, the environmental protection administration in national and local level have a series of responsibilities. Art.10 provides that “the competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country.” “The competent departments of environmental protection administration of the local people's governments at or above the county level shall conduct unified supervision and management of the environmental protection work within areas under their jurisdiction.” “Other relevant administrative departments of the people's governments at or above the county level and the environmental protection departments of military units shall conduct supervision and administration over resources conservation and environmental pollution prevention and control in accordance with applicable laws.”

The “Environmental Protection Law” in Romania also formulates the responsibilities of the environmental protection administration to protect the environment. Compared with China, the relevant provisions of “Environmental Protection Law” in Romania is more detail. According to the provision of the Art.64, the Romania central environmental protection authority has the following prerogatives and responsibilities: **a)** to elaborate and promote the environmental national strategy for sustainable development; **b)** to elaborate the recommendations for the environmental sector strategies and policy, as well as the environmental planning; **c)** to create the functioning framework ; **d)** to initiate draft laws, technical norms, regulations, procedures and directives in accordance with the international standards; to endorse the norms and other regulations set forth by other ministries and departments regarding activities with a negative impact on the environment or by environmental protection organizations, and to check for the enforcement thereof; **e)** to organize the national integrated background and impact monitoring system for all environmental factors, and the environmental inspection system; **f)** to create the institutional-administrative framework for identifying and promoting research programs, for educating and training qualified personnel for the surveillance, analysis, assessment, and control of the environment, and to certify such personnel; **g)** to assign expert commissions, when applicable, for revising the environmental audit; to certify its own laboratories for the control of the quality of the environment, of dangerous substances and hazardous waste, pesticides, and to indicate the types of the analyses required and the standard laboratories; **h)** to elaborate and implement programs; to elaborate educational material regarding the importance of the environmental protection; **i)** to follow the implementation of the program and measures for the

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compliance with the international conventions in which Romania is a party, as far as the environment is concerned; **j**) to follow and analyze the enforcement of the present law and to prepare annually reports on the state of the environment, which are submitted to the Government; the reports shall be published; **k**) to collaborate with similar organizations and authorities in other countries and to represent the Government in the international environmental protection relationships; **l**) to propose to the Government reductions of or exemptions from fees, taxes, as well as other fiscal facilities for title holders of activities which replace dangerous substances in the manufacture process, or who invest in technological processes and products which diminish the impact or the risk of a negative impact on the environment, as well as for those who implement the special ecological protection, preservation, and reconstruction measures set forth by the central environmental protection authority; **m**) to apply penalties to the title holders of activities for non-compliance; **n**) to publish directives and guide the other ministries and departments, economic agents, natural and legal persons; **o**) to provide the interested parties with centralized data on the state of the environment, the central environmental protection policy and programs; **p**) to consult periodically with non-governmental organization representatives and with other representatives of the civil society to set up the general environmental strategy and to take decision in cases which might affect the environment; **r**) to prepare, in collaboration with the Ministry of Finance, the implementation of new financial instruments assisting the protection and improvement of the environmental media quality, in accordance with those applied internationally; **s**) to organize, within two years from the date the present law is promulgated, the ecological control body; **t**) in special situations, ascertained on the basis of the data obtained from the supervision of the environment, the central environmental authority shall be entitled to declare, with notification to the Government, high pollution risk zones in certain regions of the country, and shall have the obligation to elaborate together with other central institutions and local authorities special programs for the removal of risk occurred in these zones. After the high pollution risk is eliminated, based on the new data resulted from the supervision of the environmental status development, the respective zone is declared as re-entering normality.

5. Obligations of Units and Individuals

Both in China and Romania, the “Environmental Protection Law” formulates that every person, no matter the natural or legal person, has the obligation to protect the environment.

In China, Art.6 of the “Environmental Protection Law” formulates that “all units and individuals shall have the obligation to protect the environment.” “Local people’s governments at various levels shall be responsible for the environment quality within areas under their jurisdiction.” “Enterprises, public institutions and any

other producers/business operators shall prevent and reduce environmental pollution and ecological destruction, and shall bear the liability for their damage caused by them in accordance with the law.” “Citizens shall enhance environmental protection awareness, adopt low-carbon and energy-saving lifestyle, and conscientiously fulfill the obligation of environmental protection.”

Compared with China, the relevant provisions about the obligation of all natural and legal person in Romania “Environmental Protection Law” is more detail. According to Art. 79, all natural and legal persons have the following obligation: **a)** request the environmental protection authorities for environmental agreement and/or permit, as the case may be, pursuant to the present law; **b)** assist the persons empowered to do the inspections by providing them records of their own measurements, all relevant documents, and shall facilitate the inspecting of activities and taking of samples; **c)** obey the temporary or permanent activity cessation order; **d)** bear the costs for the remedy of the prejudice and shall remove the consequences thereof by reconstructing the conditions existing prior to the occurrence of the prejudice; **e)** assure their own supervision systems for technological installations and processes, and for the analysis and control of pollutants within the scope of the performed activities, and the recording of the results, for the purpose of preventing and avoiding technological risks and accidental pollutant discharges into the environment, and shall report the environmental supervision results to the competent environmental protection authority, on a monthly basis; **f)** inform the competent authorities and the population in the case of accidental pollutant discharges into the environment or major accident; **g)** modify their structure for the existing activities and, upon application for permit, shall propose compliance programs within six months from the date the present law comes into force; **h)** adopt adequate environmental solutions when proposing new projects or activities, as well as for the modification of the existent ones; **i)** not impair the natural or created environment by uncontrolled disposals of wastes of any kind.

6. Legal Liabilities

Both in China and Romania, the “Environmental Protection Law” formulates that any subject, who cause damages due to environmental pollution and ecological destruction shall bear some legal responsibility.

In China, the legal liability including civil liability, administrative liability and criminal liability. The main methods of civil liability including cessation of the infringement, the removal of obstacles, eliminate the hazard, restitution, etc. The administrative liability includes administrative penalties and administrative sanctions. The main methods of administrative penalties include fine, restrict production or emission or to suspend production for rectification, suspend operation, etc. The main methods of administrative sanctions include warnings, demerits, demerits, demotion,

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dismissal, etc. According to Article 69, “Those who violate this Law and constitutes a criminal offense shall be investigated for criminal liabilities in accordance with the law.”

In Romania, the “Environmental Protection Law” dedicated “Penalties” chapter, according to the provisions of Art.81, “The violation of the provisions of the present law shall involve civil, contraventional, or criminal responsibility.”

Conclusion

The “Environmental Protection Law” in both countries are the basic framework of environment protection, but by means of comparison, the “Environmental Protection Law” in Romania is more detail than China’s, it not only pay attention to the problem of environmental pollution, but also focus on the ecological environment, the protection of natural resources. In China, the “Environmental Protection Law” major concerns the problems of environmental pollution, it didn’t start from the overall perspective. In order to better protect the environment, the China should make some improvements and put forward the legislative suggestions.

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