The impact of the economic crisis on the environmental legislation: Analyzing the Case of Greece

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Annual Avosetta Conference

Krakow, 26-27.05.17

Introductory Remarks

1. Economic crisis has in general a significant impact on the environmental legislation (re-definition of priorities)

2. Greece is an interesting case-study concerning the impact of the economic crisis on the environmental legislation, as the responses to the crisis exerted significant influence on the regulative context of the environmental legislation in certain fields

The environmental legislation before the emergence of the economic crisis-1

1. **The catalytic role of the EU:** The EU Membership has played a very critical role for the development of the environmental legislation, the creation of the necessary institutional arrangements also through EU funding opportunities (LIFE-Programme) and the promotion of participatory forms of governance

2. The relevant jurisprudence of the Council of State (CoS) has also played a critical role in ensuring compliance with the EU Environmental legislation and in setting limits to unsustainable projects. It was also the driving force for relevant legislative developments in the field of planning legislation by pointing out the need for the introduction of rational planning rules.

The environmental legislation before the emergence of the economic crisis-2

- **The Greek environmental legislation was though characterized by the lack of coherent and systematic approach (significant overlaps and inconsistencies).**
- A significant reason thereof was the legislative techniques used for the transposition of the EU Directives which aimed mainly to a formal compliance with the EU requirements.
- Significant implementation problems were also observed which can be attributed **to the endemic characteristics of the political and administrative system** (insufficient monitoring and compliance mechanisms), **the "poor" quality of the environmental legislation and the late emergence of the civil society**

The emergence of the economic crisis as a turning point

- The emergence of the deep economic crisis in the late 2008 can be mainly characterized as a sovereign public debt crisis
- Certain structural and long-lasting problems of the economy (lack of competitiveness) and the organization of the State (dysfunctional administration) came also to the fore
- The economic crisis constitutes a turning point for the evolution of the environmental legislation, as it is underpinned by the regulatory direction which characterizes the three MoUs signed between the Greek State and the international lenders and the legislation adopted thereof.
- The simplification of the relevant authorization procedures for granting environmental, building and operation licenses, the reform of the land-use law and the utilization of the public property were categorized as “growth-enhancing” reforms that had to be implemented

A. The simplification of the environmental authorization-1

- A. Problems of the previous EIA legislation :
- a) the length of the authorization procedures especially for projects of significant environmental impacts
- b) the wide scope of application of the EIA procedure
- c) the emphasis placed on the preventive control in relation to the efforts for ensuring compliance with the environmental terms and
- d) the existence of various environmental-related permits (permit for waste-water treatment)
- B. A new Law (4014/2011) for the environmental authorization is introduced which aims at the simplification and acceleration of the environmental authorization procedures viewed also as a means to attract investments

A. Simplification of the environmental authorization-2

- **Positive elements of the legislative framework : a**) the integration of the various environmental permits into one single permit (except for the water permit) b) the publication of the environmental permits on the website of the Ministry c) the digitalization of the authorization procedure
- **Issues of concern: a**) the need for the issuance of a large number of Regulatory Administrative Acts for its implementation
- b) the reduction of the categories of projects subject to environmental authorization (e.g.only the projects of Category A are subject to an EIA) and the use of the criterion of the "local environmental effects" for the classification of Category B projects- Is this criterion compatible with the EIA Directive?
- c) the shortening of deadlines for the expression of the opinions by the authorities involved, for public consultation procedures and the issuance of the relevant permits –specific issues can arise in case of complex projects

A. Simplification of the environmental authorization-3

d) the extension of the validity of the existing environmental permits up to ten years from the time-point of their issuance

e)the procedure which is foreseen for the projects of category B (declaration of compliance with Standard Environmental Commitments and issuance of an administrative act)- The critical issue is that projects are subject to this simplified procedure through a legislative provision and not by an individual examination of their environmental impacts

f) the significant simplification of the procedure for the renewal of the environmental permits-compatibility issues with Article 21 of the IED Directive requiring the periodic review of the permits for the installations falling into the scope of application of the Directive (high polluting installations) may arise

g) Extension of the validity of the environmental permits of concrete projects by law

A. The simplification of the environmental authorization-4

- **Jurisprudence of the CoS**: a)The Court ruled that the renewal of an environmental permit in a simplified procedure (e.g submission of the declaration that no substantial changes have taken place and issuance of an administrative act) is constitutionally acceptable **only if the administration after an examination certifies that no substantial change of the initial facts and regulations took plac**e. The administrative decision must be sufficiently justified on the basis of certain criteria relating to the characteristics of the project (Decisions 3562/2014, 424/2015)
- B) The Court ruled that the renewal of the environmental permit in a simplified notification procedure cannot be applied to the case that the project was initially exempted from this procedure and at this time point is subject to the EIA procedure due to its significant extension. (3760/2015)
- C) The Court granted interim relief to a relevant administrative act which certified the compliance of a project for the installation of a mobile phone station with the relevant "Standard Environmental Commitments" (exemption from the EIA due to categorization), as it was not based on a scientific study concerning its impacts on the environment and public health. (Decision 277/2014-Injunction Committee)-**Issues of compatibility of the procedure with the precautionary principle arise**

B. The Fast-track legislation-1

- Fast track legislation is an instrument aiming at creating a business-friendly environment for large-scale investments.
- It was introduced by Law 3894/2010, which was modified 4 subsequent times (4072/2012, 4146/2013, 4242/2014 and 4262/2014)
- As “strategic projects” can be characterized only large scale private or public projects that relate to the construction, reconstruction, expansion or upgrading of infrastructure or networks in certain key sectors of the economy and meet certain **mainly quantitative** requirements. The decision for the characterization of an investment proposal as “strategic project” is taken by the **Inter-ministerial Committee for Strategic Investments, composed by 5 Ministers** .

B. The Fast-track legislation-2

- **Basic Characteristics of the fast-track procedure**
- **a)** the development of **Special Planning Regimes in the form of a Presidential Decree** that set specific location sites for the reception of Strategic Investments and introduce land use regulations and building conditions for these specific areas. Guarantees : **SEA and preventive control of the CoS**
- b)the deviation from the existing legislative framework concerning the issuance of the installation and operation licenses for strategic investments, as they are issued at central level (the Minister for Development)
- c) The significant simplification of the environmental authorization procedure through the shortening of the deadlines for the expression of opinions of authorities involved and for the public consultation procedures
- d) The introduction of simplified procedures for the concession of the use of certain natural resources, such as the coast and the shore.

B. The Fast-track legislation-3

- **16 projects mainly from the touristic and energy sector (predominantly RES projects) have been characterized as "Strategic Investments"**
- **Jurisprudence of the Council of State: a)**The Court ruled that the relevant decision for the classification of a project as "Strategic Investment" constitutes a first assessment concerning the viability of the project and its capacity to contribute to the development of the national economy. The relevant aspects concerning the compatibility of the project with the planning and environmental legislation are reviewed at later stages of the project implementation, (e.g. in the elaboration of a special planning regime and in the environmental authorization procedure).[Decisions 528/2015, 529/2015, 530/2015] b) The Court ruled that the "fast-track" legislation does not violate SEA Directive on the grounds that "Strategic Investments" are correctly classified as projects under the EIA Directive and not as "Plans" or Programmes' under the SEA Directive.

Utilization of the Public Property and Environmental Protection-1

- Law 3896/2011 is the main Law for the utilization of the public property- Different forms of Utilization are foreseen :**privatization through property transfer, concession of use, long-term renting**
- **Basic features**: a) The establishment of the Hellenic Republic Asset Development Fund (HRADF) in the form of Societe Generelle which is the entity responsible for the utilization procedures
- b) The vast majority of state-owned assets have been transferred to HRADF. To those assets belongs state-owned land and other assets (touristic ports and marines), which are classified as **private property of the State**
- c)The requirement that all state-owned properties under utilization should be equipped with a Special Public Property Development Plan **(ESXADA)**
- d) ESXADA, which is issued in the form of a Presidential Decree contains the **specific land-uses** allowable in the area and the specific building terms and restrictions which can deviate from those foreseen in the approved land-use plans and regulations –Guarantees: SEA and preventive control of the CoS

Utilization of the Public Property and Environmental Protection-2

- e) The utilization of public land is not permissible in the following categories of areas : aa) the areas of absolute nature protection bb) areas of nature protection (“nature reserves”) cc) monuments of nature protection dd) national parks ee) wetlands of international importance (Article 11 para. 2). The utilization of public land within the limits of SPAs faces also significant limitations (Article 11 para.4)
- f)The utilization of state-owned properties, which are subject to the protective regimes of the environmental legislation and the legislation for the protection of the cultural heritage is permissible under the specific limitations set in the relevant legislation. (Article 11 para.3)
- g) After the issuance of ESXADA, the second phase includes the so -called reception of the concrete investment plan in the property after the choice of an economic operator in an open tendering procedure. In an integrated procedure, the environmental authorization for the project and the auxiliary works and any other authorization relevant for its implementation is granted (Article 13).

Utilization of the Public Property and Environmental Protection-3

- General Conclusion: **The relevant provisions are underpinned by the emphasis placed on the property rights of the State and the relevant forms of utilization, without taking sufficient consideration on whether certain elements of public property are common goods (for example forests).**
- Jurisprudence of the CoS: In a series of Decisions, the Council of State ruled that the Greek State transferred to the HRADF the property rights of state-owned land belonging to its private property with all the restrictions and limitations arising from the existing legislation, such as those arising from the environmental and forest legislation (Decisions 1902-03/2014-Plenary, 4883/2014, 878/2016). It ruled therefore that the transfer of private property of the State to HRADF does not violate **per se** Article 24 of the Constitution (protection of the environment)

Utilization of the Public Property and Environmental Protection-4

- **Critical Issues: a)** The CoS reviews the whole procedure of the utilization of the state-owned property on the grounds that all the relevant acts (e.g. from the decision for the transfer of public properties to HRADF to the adoption of the Special Planning Regimes and the issuance of the relevant licenses) **are administrative acts and are thus subject to judicial control.**
- **b)** The CoS did not shed light **on what constitutes public property which cannot be subject to utilization due to its classification as "public good" (forests, foreshore) and on what is classified as private property of the State, which can be subject to utilization.**
- **c) Contradictions can be observed between the jurisprudence classifying forests as private property of the State and the jurisprudence of the Environmental Section of the Court ("Forests are natural capital and are subject to a strict protective regime. Forests are common goods which belong to the public property of the State") [Decisions 805-808/2016).**

Other legislative and institutional developments

- 1. Series of Laws (3843/2010, 4014/2011, 4178/2013) for the so-called "legalization" of the illegal buildings in the sense of suspending the relevant sanctions for 30 years by paying a fine were introduced.
- 2. **Decisions 1118-9/2014 of the CoS** : The Court ruled that Law 4014/2011 was unconstitutional on the grounds that the increase of public revenues cannot be regarded as a reason of overriding public interest which could justify the introduction of legislative provisions which can have broad consequences at the expense of the environment
- **3. Decision 1858/2015:** Departing from the "de facto'' situation of the illegal buildings and the fact that the measure of "bringing them down" cannot be implemented for all illegal buildings in the Greek territory, the Court ruled that Law 4178/2013 is constitutionally acceptable only as regards the "legalization" of the existing buildings.
- 4. The Weakening of the institutions responsible for the environmental protection is observed, which can be attributed to the lack of financing.

Conclusions

- **1. Dealing with the economic crisis is the first and most urgent priority of the current political agenda in Greece which underpins all the relevant legislative initiatives.**
- **2. The current Reforms focus mainly on the simplification of the procedures or on the "relaxation of the protection standards" (Forest Law adopted in 2014)**
- **3. Issues of incompatibility of the environmental legislation adopted after the crisis with the EU Environmental Law may arise**
- **4. The recent initiatives for the utilization of public property contradicts the notion of the environment as "public good" in spite of the fact that State has not protected and managed effectively the public property so far**
- **5. The Jurisprudence of the CoS is also influenced to certain extent by the current situation, but it is still the "last resort" for the protection of the environment in Greece**