

THE LEGAL REGIME OF WASTE MANAGEMENT

PhD Thesis summary

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The PhD thesis „*The legal regime of waste management*” is structured in eight chapters, preceded by an introduction and followed by conclusions and bibliography.

The present work aims to research the relevant legislative documents from the waste management field, on national, union and international plan, so that it would produce an overview analysis on the legal regime of waste management.

The idea of analyzing the legal regime of waste management appeared in the context of the sensitivity and complexity of this domain within the environment protection and public health, taking into consideration several analyzed trajectories.

The waste management topic gained a special attention due to the growth in its quantity and diversity, but also due to the awareness of its increasingly negative and in most cases irreversible impact on the environment and public health.

Thus, the Romanian legislator paid attention to this problem by issuing a series of normative acts that would ensure a thorough regulation of the waste

The first normative act issued with this respect was the Emergency Ordinance no. 78/2000 from 16 June 2000 regarding the waste regime, currently repealed through Law no. 211/2011 regarding the waste regime and republished in 2014, which will be modified in the near future.

Besides, the first framework law from the domain of environment protection, Law no. 137/1995 from 29 December 1995 regarding the environment protection, dedicated a section to the regime of dangerous substances and waste, as well as other waste. This law was also repealed through the Emergency Ordinance no. 195 from 22 December 2005 regarding the environment protection, which limits itself to establishing several aspects regarding the interdiction to bring waste on the Romanian territory and to valorize it in installations or to facilitate an internal or external transit, as well as exporting waste.

In parallel, in order to be compatible with the union legislation, the internal law incorporated a series of community directives which regulate certain specific categories of waste or certain waste-related activities.

Presently, there are numerous normative acts that establish the legal regime of waste management, legislation found in a continuous transformation – mostly determined by the changes in the union environment policies, which aim to ensure an appropriate level of environment protection and public health, in accordance with the strategic principles and elements that lead to a sustainable development of the society.

In spite of all these, the legal regime of waste management raises important issues, taking into account that this topic has a real legislative abundance, flawed or contradictory under certain aspects, maybe much too flexible, poorly or inadequately written and of course, the maladjustment of certain normative acts to the legislative novelties in the domain, but also the failure or softness of the sanctions regime makes the good waste management harder, under the environment protection conditions.

The work is of interest through the novelty of information combined with jurisprudential aspects, resulting in an overview analysis of the juridical levers

specific to the environment protection, in order to manage, in good conditions, the activities that involve waste, but also the sanction regime and subsequently contribute to the improvement of the prevention and waste reduction, recycling, reuse and final waste elimination measures, the final purpose being the elimination or reduction of their harmful impact on the environment.

The thesis includes eight chapters, introduction, conclusions and law ferenda proposals as well as a bibliography which includes the domain literature.

Chapter I called „**General framework of waste regulation**” is structured in two sections. In the first section, I have analyzed the terms of „waste”, „dangerous waste”, „by-product” and „termination of waste status”, concepts which are fundamentally important because depending on the category certain substances or objects are included in, they will be subject to a certain regulation regime, aspect that is still controversial up until today.

Within the same chapter, I have identified the objectives, main principles and specific tools to achieve the waste management, as well as the special procedure to have these activities authorized. I have continued this initiative by presenting the institutional structures with attributions and responsibilities in this matter, the obligations and costs linked to the waste-specific activities, the record of waste management and the way of controlling these activities.

The second chapter „Waste transport” brings a presentation of this activity, making the clear distinction between dangerous and non-dangerous waste.

According to the regulations in effect, it is forbidden to transport waste of any nature from the place it is produced to the location of collection / temporary

storage / treatment / valorization / elimination without abiding by the legal provisions.

In order to carry on this operations, it is mandatory to follow a special procedure obtain some prior approvals.

Chapter III called „**Waste valorization**” analyses the procedure for the performance of waste valorization activities, so that the „hierarchy of waste” is respected – its purpose being to encourage the action in the domain of waste generation prevention and effective and efficient waste management, that would reduce its negative effects on the environment.

At the same time, I have identified the obligations in the domain of waste valorization activities depending on the status of the holders, as well as the waste generation prevention measures provided by the internal law in order to eliminate the link between the economic growth and the impact on the environment associated with the waste generation.

Chapter IV „**Waste elimination**” treats this issue by researching the two regulated elimination methods: incineration and storage. Regarding the incineration as a waste elimination method, I have created a presentation concerning the authorization and emissions control procedures, waste delivery and reception, as well as the public information regarding the waste incineration installations and waste co-incineration installations.

Concerning the waste storage regime, the research targeted the analysis of the provisions mentioned in the national Strategy regarding the reduction of the stored biodegradable waste quantity, the definition and classification of the waste storage units, the identification of the general requirements for all the waste storage units classes and the specific requirements within the environment authorization procedure for the waste storage units. Also, in this chapter the

study targeted the waste acceptance procedure in the storage units, the control and follow-up procedures for the waste storage units and the storage units closure procedures.

Chapter V called „**Legal liability in the waste management domain**” researched the regime of legal liability, by analyzing the civil, contravention and criminal liability forms that can intervene in the situation when the waste management takes place by breaking the legal disposition in effect, drawing conclusions which would support a more efficient sanctions system for the deeds that have a negative impact on the environment.

Chapter VI called „**Legal regulation of certain specific waste categories**” is dedicated to a wide research of the legal regime of certain specific waste categories: radioactive waste, electrical and electronic equipment waste, packaging waste, medical waste, used oils and out of use vehicles. This initiative implied a research on numerous normative acts, jurisprudence and doctrine, taking into account the fact that each of these categories is subject to distinct regulations, not at all less numerous and found in a continuous change.

It is to be noted that recently, the Romanian law incorporated 3 European directives referring to the following categories: electrical and electronic equipment waste, packaging waste as well as out of use vehicles, initiative materialized through the Emergency Ordinance no. 5 from 2 April 2015, regarding the electrical and electronic equipment waste, Law no. 249 from 28 October 2015 regarding the packaging and packaging waste management and Law no. 212 from 21 July 2015 regarding the vehicles and out of use vehicles management.

This implied the research of the new regulations compared to the old ones, in order to be able to catch the novelty elements referring to these types of waste.

Concerning **Chapter VII** called „**The legal regime of waste in the European Union**”, the study targeted the analysis of the most important Union tools that regulate the researched domain, as well as the creation of a synthetic framework of the liability triggered for harm brought to the environment by breaking the Union regulations regarding waste.

The **last chapter** analyses the legal regime of waste management in the international context, highlighting the importance of international cooperation in the attempt to battle pollution and environmental criminality concerning the waste, concern materialized through the conclusion of conventions that target especially its elimination and transboundary movement.

At the end of the work, I have summarized a series of law ferenda proposals regarding the following:

- achieving a unified regulation of the waste management regime, including the waste specific categories, taking into account several points: the difficulty of fully knowing the very abundant and continuously changing legislation, the existence of gaps as well as contradictions between different acts, which eventually create the possibility for the guilty ones to remain unpunished for breaking the domain specific legislation, the lack of legal adaptation of certain regulations that point out to repealed acts, the inflexibility of the legislative texts;

- the adaptation of the domain specific regulations according to the recently adopted legislation in effect, taking into account that there are numerous normative acts that point out, in their body, to normative acts which had been repealed for a very long time;

- the transposition, in due time, of the European documents in the national legislation;

- the creation of a unitary sanctions regime, that would establish very clearly the liability forms (civil liability for the ecological harm, infractions and contraventions) triggered by breaking the legal provisions, the applicable sanctions, and that should be focused on protecting the environment and the population through the absolute interdiction to pollute and not the absence or failure to comply with the necessary authorization;

- in the field of contravention liability, it is necessary to eliminate the ablation system that can encourage the attitude of the possible law breakers in not respecting the legal prescriptions referring to waste;

- providing additional sanctions that would accompany the fine (for instance, confiscate the vehicle or cancelling the transport authorization) for all the deeds that enter the field of contravention; the modification of Decision no. 1061 from 10 September 2008 regarding the dangerous and non-dangerous waste transport on the Romanian territory, namely applying the sanction of confiscation of the vehicle for all the contravention deeds provided by this document, taking into account that each of these represents an increased danger and may bring serious harm to the environment;

- taking the following deeds out of the contravention field and incriminating them as criminal offense: abandoning or eliminating the waste outside the authorized spaces, taking into account the major implications on the environment and people's health brought by these deeds;

- encouraging the public to take place in the decision making process regarding the environment in general and the waste management in particular, through periodical informational campaigns;

- establishing an obligations for the authorities to promote and co-finance, under the conditions of the law and within the annual approved budget limit,

information and education campaigns that would encourage the population to take part in the electrical and electronic equipment waste collection and would encourage them to facilitate the process of reuse, treatment and valorization. The mere recognition of a possibility that the authorities may or may not use is not enough;

- managing a serious informational campaign for the population regarding the necessity of preventing the environment damages through activities that imply the waste management;

- forming the environmental specialists and judges, as well as environment-specialized committees within the courts;

- establishing a specialized department at the level of the county environmental agencies that would support the citizens, taking into account the law abundance in this matter, its inflexibility and technicity, as well as the often occurring law modifications, which make it almost impossible for the citizens to fully know the waste management legislation, so that they could abide by it.

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