LEGAL SYSTEM OF FAUNA AND FLORA PROTECTION IN FRANCE

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The legal protection of fauna, flora and animal species poses serious problems. In our technical civilization, the reconciliation of economic and ecological objectives has become difficult. Legal texts must try to prevent damage to the environment connected with ungoverned growth. Often it is not easy to know the exact effects of pollutants on living organisms. Some regulations were enacted recently in France for national parks instituted in 1960. A choice is offered to the jurist between combining prevention and repression.In this context, France seems to be characterized by the gradual establishment of protective provisions which led to the adoption of a more ambitious legal system. We intend to give some predictions about this judicial progress towards a general status for life protection, before considering the implemented methods.

The protection of nature and wildlife inspired several attempts in the French legal system before a general principle could be reached in 1976. We would like to show what was first proposed for the safeguarding of the natural balance in limited areas, before our legislation tried to master the technological impact of our civilization.

First, natural reserves were instituted. An Act of 1930 had been artificially modified in 1957 in order to be adapted to new objectives. These provisions were finally included in the Protection of Nature Act, July 10, 1976. Parts of the territory, relatively large, may be classified as natural reserves, by decree, in order to preserve endangered or outstanding animal or plant species. The act of classification may forbid all action on the reserve territory likely to be injurious to the fauna's and flora's natural development.

The institution of national parks (1960) and of natural regional parks (1967) similarly aims at the protection of the natural environment. Some provisions tend to ensure a graded and original protection. In a national park, the law distinguishes several concentric zones; complete reserves in the heart of the park, the park zone which is strictly regulated, and the peripheral zone, a transition area where economic and protection purposes have to be combined.

The forest was subject to tests inspired by economic and hunting interests. Nowadays, following various improvements, it is regulated by provisions which avoid excessive clear-cutting and fires, preserve forests to prevent soil erosion, or for other ecological reasons (Acts of December 4, 1984, January 23, 1990, and January 3, 1991).

Finally, we can mention provisions relating to biotopes safeguards. These were decided by local authorities in order to avoid breaking the biological balance of the environment, as well as the possibility of setting up biological reserves in public forests.

It is necessary, nowadays, to master the impact of the technological factor. To this end, French law has adopted provisions of great importance. It aimed at the control of the installations causing pollution, especially industrial ones. Classified installations which endangered life were first regulated by a law of 1917 – later revised in 1976.

These installations are ranked into two categories: the first concerns the most dangerous installations, which are subject to prefectoral authorization, granted after a public inquiry and an impact assessment; the second, less disturbing and dangerous, are only subject to a declaration process. The type of prescriptions related to the kind and receivers of the pollution are enforced. We must, however, underline that this regulation gives a lot of power to the administration and to the judges.

Strong pressure can compel the enforcer in his duties: public authorities can interrupt, temporarily, the work of the firm or even decide to stop polluting activities; the judge may also issue an order to hold equipment, to put a stop to pollution when those which have been planned by the authorization prove inadequate. In addition, repressive provisions connected with this regulation have been increased by the Act of July 3, 1985.

Undoubtedly, however varied and dissimilar, these provisions were useful for the protection of fauna and flora. The general system of protection instituted in 1976 is even more interesting. The protection of Nature Act, July 10, 1976 – its provisions have been included in the rural code – adopted, for the first time, a general principle relating to nature. Henceforth, the safeguard of nature and wildlife becomes a purpose of general interest.

In the hierarchy of values, economic need is now at the same level as ecological need. This means a significant improvement with regard to the past when nature, considered valueless, was always subordinated to economic and social interests. More precisely, the Act of 1976, article

1, ensures that everybody is in charge of protecting the natural inheritance in which he lives, and the Act underlines that fauna and flora are part of a national biological inheritance.

Thus we can assert that a general duty has been enforced to the benefit of the common patrimony. All public and private activities are subject to respecting the environment. It is a legal duty and, in spite of the absence of a general legal offense to the environment, it is covered by many special rules.

Parallel to the institution of this general principle, it is not by accident that the law has created the `impact assessment process'. As a matter of fact, this procedure may be of great influence in the protection of wildlife.

It is henceforth provided for that plans and works which, because of their size or effect on the natural environment, can cause harm to the latter, must be preceded by an impact assessment. The file must include an analysis of the initial state of the site and its environment, an analysis of the impact of the project on the environment, the justifications for the project and the proposed measures to prevent, reduce and, if possible, compensate for damage resulting from the works.

We can expect from this method an improved respect for nature and the flora and fauna. In this context we must also mention the concern of French legislation about pesticides. Pesticide products for agricultural use can be toxic for fish and birds, for useful insects, and disrupt the natural balance. Therefore, the law imposes restrictions on manufacturers in order to avoid the distribution of environmentally dangerous products, and an authorization of the Minister of Agriculture is necessary. A rigorous control applies to the sale of agricultural pesticides, with regard to advertising, packaging and labeling. As for the use of pesticides, standards aim at imposing precautions concerning the zones and periods of treatment.

It appears that the French law provides many interesting means of protecting the environment. The question now is as for the existence of satisfactory conditions for their implementation.

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