METHODS OF PROTECTION

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The general principle of wildlife protection adopted by French law can only take its full meaning through varied and accurate implementing provisions. These give the measure of its efficiency. This efficiency depends on the determination of the species concerned and on the legal techniques applied. It appears that it can be affected by weaknesses in regulation.

Following the adoption of the Act of 1976, the animal and plant species affected by protection or less strict protection had to be specified, which inevitably led to problems. The fauna and flora protection under French law since 1976 does not extend to all species. The legal system deals with wild species belonging to the national biological patrimony. More precisely, protection has in view non-domestic animals and non-cultivated plants.

Thus it was necessary to set up lists of protected species. Varied lists have been laid down by governmental orders for the whole national territory: for insects (1979); mammals and birds (1981 and 1987); fish (1988); plant species (1982); and marine plant species (1988). Special orders relating to certain parts of the territory could be adopted to complement national lists.

This process, apparently simple, has however, raised some difficulties. First, the hasty establishment of certain lists, neglecting compulsory consultations, was cancelled by the Conseil d'Etat and had to be reviewed with respect to the procedures. Then it proved necessary to soften provisions and allow for some exceptions. So the capture and sampling of species for scientific purposes are subject to control. An authorization from the Minister in charge of the protection of nature is requested.

We are now faced with the problem of reconciling between protection and the necessity to allow, to some degree, destruction and sampling. The proliferation of certain species endangers farming. They should at the same time be protected and classified as harmful animals which can be destroyed.

Regarding this subject, the Conseil d'Etat considered as legal, the prohibition of taxidermy, transport and trade of animals likely to be hunted or trapped. In this way, one can avoid the excessive capture of animals, to a certain extent harmful, but which take part in the biological balances (C.E. 14.11.1984, Syndicat des naturalistes de France, R.J.E. 1984, p. 336).

Secondly, in the face of hunting traditions, it proved difficult to win acceptance for protecting rules, especially rules issued by European directives. The Directive 79-409 of the Council of the E.C., April 2, 1979, prohibits hunting of wild birds during reproduction and dependence periods. The Minister of Environment, under pressure from hunters, authorized turtledove and wildfowl hunting during these periods. The Conseil d'Etat has cancelled these kinds of decisions several times (C.E. 8.03.85, Sepanso et FFSPN, R.J.E. 1986, p. 264; 7.10.1988, FFSPN et ligue franÂaise de protection des oiseaux, A.J.D.A. 1989, p. 34).

Beyond those basic difficulties, the implementation of protection implies the use of varied legal techniques. Three different legal techniques may be applied. For certain species and activities, a complete protection is based on prohibitions laid down by the Act of July 10, 1976 (now included in the rural code, art. L. 211.1): all kinds of injuries are banned when a special scientific interest or the needs of protection of the national biological patrimony is involved: destruction or taking eggs and nests, capture, taxidermy, transport, trade of animal species; cutting, picking, destruction, selling or buying of plant species; degradation of the surroundings and sites. We know that lists of these protected species are set up by governmental orders.

Secondly, the method of authorization is used, either to allow the capture or collection for scientific purposes of animals and plants belonging to protected species, or to allow production or activities relating to these species. In particular a person responsible for an establishment holding animals of non-domestic species must have special permission by the Minister of Environment. The opening of an establishment of this kind is also subject to authorization.

Finally, the legal technique of monitoring is used. For example, the previously mentioned establishments must complete registers and administrative documents allowing them to be monitored by responsible authorities. Detailed provisions on this subject are provided in the rural code. Harsh administrative and penal sanctions, such as fines and imprisonment, apply to infringements of this regulation.

After the statement of the data relating to the French legal system of fauna and flora protection, it appears that, as a whole, significant improvements have been made and that the Act of 1976 had the merit to provide for a general principle of protection to which we gradually

strive to give its full extent.

However, certain weaknesses remain and must be addressed. Globally, it is obvious that the technological impact of economic activities is not easily mastered. Important projects are subject to impact assessment, but this study, being made by the owner or the beneficiary of the works, tends to give a biased view of reality. In addition, it is subject to delayed publicity, sometimes coinciding with the date of the beginning of the works – when the project does not necessitate a public inquiry – and thus, the observations of interested persons will probably be without any positive influence.

As for the administration, it is endowed with important powers, especially relating to classified installations. However they use this power reluctantly, because of economic reasons. Worries about employment and the financial responsibilities of firms may impede the administration demands on polluting activities.

Besides, when protection has been ordained to benefit some parts of the land, the main problem is to assure continuity in spite of economic pressures for development. It happens that changes might be contemplated in the legal condition of parks and reserves. The most desirable solution in this case would be to render the procedure leading to cancelling protection more difficult than the procedure initiating it.

Finally, certain rules are open to criticism: one has been mentioned in two texts (19.07/1976 Act, art. 16 and art. L. 112.16, construction and habitation code) and provides that legal action in the administrative or judicial court may be brought only by those whose settlement is adjacent to polluting activities. This means that a kind of right to pollute is instituted in favor of the first occupant.

In spite of these weaknesses, we can be convinced that French law has been much improved during these last years in mastering the drawbacks and dangers of modern society and the threats of our technical civilization. But the jury must remain aware that the safeguarding of the environment demands a continuous effort and improvement in order to install the protection of bios as a fundamental human right.

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