

## *Synopsis*

### ***Legal Regime of the Actions of the Control Authorities in Relation to Environmental Protection of the Population of the Health Act of the Republic of Bulgaria***

***Antonia G. Ilieva\****

University of Plovdiv "Paisii Hilendarski", Faculty of Law, Department of Public Law,  
24 Tzar Assen Str., Plovdiv 4000, BULGARIA  
Corresponding author: an\_il@abv.bg

**Abstract.** As of legal point of view, the issues pertaining to environmental protection of the population cause legal discussions among legal practitioners in the last decade. This problematic affects number of aspects of the state management - regulatory framework, control authorities, level of effectiveness of the control exercised, European standards and directives, etc. The purpose of the current systematic review is to check the degree of practical utility of the present regulatory framework in the field of environmental legislation, to analyze the good European practices and to review in detail the control activities of the specialized administrative authorities, to point the gaps within the environmental legislation and to make relevant suggestions for optimization. The Problematics reviewed in this article is topical in relation of the current European trends in the field of environmental protection and their impact on human health.

**Key words:** ecology, environmental protection, health.

When discussing the issues of environmental protection of the population, they should be viewed in two aspects. First, the prevention as a main element of the environmental protection. The trend in the recent years shows that more and more often financial funds are being voted on and more specialized authorities are being created with the main goal - environmental protection and health of the population

Etymologically, the term prevention comes from the Latin word „praeventio“ which means get ahead of, warn. In this sense, when we talk about preventive measures taken by environmental control authorities, we should understand actions aimed at preventing the emergence of

negative consequences affecting the health of the population. Practically, such preventive measures are expressed through the implementation of information campaigns by the Ministry of Environment and Water and the Ministry of Health, educational talks of non-governmental organizations, outside classroom school events, environmental and water protection campaigns, etc. Prevention, in this sense, is a major means of limiting the possibility of adverse effects that would have a direct impact on human health.

Subsequently, the environmental protection of the population can be considered as an objectively necessary need for control by the competent authorities in relation to existing or emerging

circumstances directly threatening the life and health of a person as well as the ecological balance and diversity of the species.

From a practical point of view, it is far less effective to exercise a controlling sanctioning activity once there have been indications of the realization of the damaging result, their development is not blocked in a timely manner, and as a result, the adverse consequences themselves are allowed to occur.

In this line of thought, in order to limit the possibilities to form prerequisites and circumstances that would directly affect the environmental protection of the population, there should be a working normative regulation on the basis of which the control bodies exercise their regulatory powers.

Undoubtedly, the timely exercise of control activity is the most accurate quality measure of the effectiveness of the administrative control body. The existence of such a causal link with the control activity exercised and its reported results also affects the level of public confidence registered at national level.

*Short review of the applicable normative regulation under The Health Act of the Republic of Bulgaria.*

By its nature, the Health Act (2004) regulates both the issues related to the implementation of the overall health policy on the territory of the country and those related to the activity of specialized control bodies exercising powers related to the environmental protection of the population and the living environment.

The Health Act has identified the following issues relevant to the environmental protection of the population: Chapter II - "Health Protection Activities", Section IV "Activities to Impact Health Risk Factors", Section VI "Protection against Impact of ionizing radiation", Section VII - "Protecting the health of citizens in carrying out activities with asbestos and asbestos-containing materials".

Particular attention should be paid to Art. 31 of the that law, which states that "the State, the municipalities, the legal entities and the individuals carry out their activities, ensuring the protection of the living environment from the biological, chemical, physical and social factors that are harmful to human health".

The legislator, assessing the significance of the issues under consideration, obliges all entities carrying out activities on the territory of the Republic of Bulgaria to take the necessary care to preserve the living environment. The deliberate or unintentional breach of this statutory requirement results in the imposition of a penalty proportionate to the deed.

The normative text cited, makes clear the element of prevention that the legislator has pledged. Regardless of the activity carried out, all subjects should take care to preserve the living environment and not endanger the life and health of the population in any way.

Section VI "Protection against the impact of ionizing radiation" by the that law provides for a special regime for carrying out activities related to ionizing radiation, this Section adduces to competent authorities the power to control the special regime implementation as well. Similarly, the Sections VII - "Protecting the health of citizens in carrying out activities with asbestos and asbestos-containing materials" has been settled. This Section regulates the activity of control bodies and their normative powers.

*Short review of the powers of the administrative control bodies exercising activity under the Health Act.*

When discussing issues related to the exercise of administrative control, we should first clarify its essence.

Recording/registering of weaknesses and deviations must not be the only element of the control activity carried out by the government authorities.

Passive registration does not meet today's requirements and expectations for control. It must have an active, creative, and powerful character.

The transformation of the control into not only a finding, but also an operative component of the power of the corresponding competent authorities, is the main objective to which the legislator aims (KOSTOV, 1985).

The original assertion in the literary theory that control is predominantly settled in nature is inaccurate and not lawful in the context of sophisticated social relationships in which a control activity, ending only with establishment, is rarely found.

The control function is multifaceted and affects the disclosure and analysis of the actual situation of the problem, comparison of the factual situation with the objectives set, assessment of the control activity and taking measures to eliminate the identified shortcomings.

In this sense, we could assume the existence of three main functions of control - finding, evaluating and efficacious (KOSTOV, 1988). The essence of the control is associated primarily with its punitive nature.

When discussing the control activities of the administrative authorities, it should be noted that by its nature the legal norm establishes the state body and determines its competence.

In so doing, the legal norm recognizes the ability of the body to be constituted as a legal entity which is the holder of rights and obligations (KUNDEVA, 1999). In our legal theory, competence is considered to consist of a combination of two legal categories - the "right" and "duty" of the administrative body. In other words, the authority has the right to carry out a specific action, but it also has the obligation under certain conditions to exercise its right (ZINOVIEVA, 2018).

Therefore, when discussing issues related to the exercise of administrative control, attention should be directed to the administrative bodies that practice it and their hierarchy in the governance structure.

Its existence is entirely normative, in view of the legality of the issued acts.

According to the Bulgarian legal doctrine the breach of jurisdiction leads to the most severe sanction for the illegality of the act - nullity

That is why in the administrative law theory it is assumed that compliance with the competence in the issuing of administrative acts is one of the five indications of the lawfulness of the individual administrative acts, 146, para 1 of APC (ZINOVIEVA, 2018).

Article 5 (1) (1) of the Health Act states that "The Minister of Health manages the national health care system and exercises control over the activities related to: protection of citizens' health and state health control".

The State Health Control carried out by the Minister is directed at healthcare providers - individuals and legal entities ; at compliance with the work of sub-ministerial bodies as well as those acting in the field of healthcare.

The Minister directs and exercises control over emergency medical care, transfusion hematology, stationary psychiatric care, and medical and social care for children up to the age of three.

The Minister of Health manages the national system for noise analysis, assessment and control in urban areas and public buildings, pollutants in drinking water. He analyzes and assesses the factors of the living environment at national level and proposes measures to limit their harmful impact on the health of the citizens.

He directs the national system for analysis, assessment and control of non-ionizing radiation in urban territories and public buildings

The control powers of the Minister are also conducting epidemiological studies to establish a relation between environmental pollution and the health status of the population.

In Art. 63, para 1 of the Health Act also provides that "In the event of an

extraordinary epidemic situation, the Minister of Health shall introduce anti-epidemic measures on the territory of the country or in a separate region".

The stated regulatory powers available to the Minister of Health are a peculiar expression of the level of modernization of the healthcare structure against the backdrop of years of reform.

Undoubtedly, such a trend is also observed in Europe. Such a policy facilitates the easier personalization of the public authority when it should assume responsibility for a major public issue relating to the life and health of the population.

A National Center for Radiobiological and Radiation Protection (NCRRP) is established within the Ministry of Health. As a specialized control body, its activities are directed towards sources of ionizing radiation and protection of the health of the population and of individual groups of the population.

NCRRP investigates biological effects and assesses the risk of irradiation, diagnosis, consultation and treatment of professionally exposed to radiation persons, conducts training and raising of qualifications in the field of radiation protection, issues information materials.

NCRRP monitors the population under normal and increased natural radiation level, takes measures to optimize the exposure to medical evidence, ensures quality control in medical radiology, conducts biological dosimetry.

The medical surveillance of persons who work with sources of ionizing radiation, including the assessment of their medical fitness to perform specific professional duties, is performed by doctors from the NCRRP and from the medical establishments that meet specific regulatory requirements. The medical fitness of these persons is determined by the conclusion of doctors with acquired specialty "Radiobiology" or "Radiation hygiene".

The conclusion may be appealed within 14 days of its receipt to the Medical

Appropriation Committee of the NCRRP. The Commission shall rule on appeals within 14 days of their receipt by a decision which is final.

The decision determines the medical fitness of individuals to perform specific professional duties in an environment of ionizing radiation.

State Health Control under the Health Act, directly related to the protection of the population, is also exercised by the Chief Public Health Inspector. Art. Article 14, paragraph 1, item 5 of the Health Act states that "the Chief Public Health Inspector organizes and manages preventive and anti-epidemic activities in case of disasters, accidents and catastrophes". He performs methodological management and control of the departments of institutional health control at the Ministry of Justice, the Ministry of Transport, Information Technology and Communications, the Ministry of Defense and the Ministry of Interior. In its activity, the Chief Public Health Inspector exercises control over the activities of Regional Health Inspectorates (RHI), assisted by a Deputy Minister from the structures of the Ministry of Health (ZINOVIEVA, 2016).

In the event of a breach or non-compliance with the health requirements, the state health inspectors issue mandatory prescriptions and set a time limit for the removal of the violations.

In order to prevent and guarantee the health safety of citizens, the state health inspector has the right to take samples for laboratory analysis and expertise. The action shall be carried out in the presence of the person concerned - in accordance with Art. 40, para. 1 of The Administrative violations and sanctions Act (AVSA), in order to minimize the possibility of doubt about the samples taken. The authority of the State Health Inspector, when there is doubt about the safety of products and goods of importance to human health, provides for the possibility of issuing a prescription for the suspension of the particular goods from sale.

Attention should also be paid to the provision of Art. 44 of the Health Act. The norm is imperative in relation to the subjects within its legal scope.

It states that both physical and legal persons are obliged to fulfill the prescriptions and orders of the state health control. Provided that the prescriptions are not executed on time and the activity is not stopped, acts are drawn up for the existence of administrative violations. These coercive administrative measures are subject to prior enforcement (Art. 45, para. 1 of the Health Act) When it is established that the offender has committed the offense guiltily, Art. 53, para. 1 AVSA allows the sanctioning authority to issue a penalty decree imposing the offender the appropriate administrative penalty. The acts drawn up are appealed through administrative procedure.

A major place in the healthcare structure, and in particular in the exercise of state health control under the Health Act, occupy the Regional Health Inspectorates. They are created, transformed and closed by the Council of Ministers and are spatially located in each districts.

As an administrative body, RHIs have the status of a legal entity on state budget support. They are relatively autonomous structures subordinated to the Minister of Health. Their main function is to coordinate the interests of the Ministry of Health in each district of the state, to exercise systemic control on a regional level consistent with the established health policy.

Regional Health Inspectorates monitor, analyze and assess the factors of the living environment on the territory of the district and propose measures to limit their harmful impact on the health of the citizens. The Health Act provides that activities for the destruction or removal of asbestos and / or asbestos-containing materials from buildings, structures, plants, installations or ships shall be carried out after obtaining the authorization of the Director of the Regional Health Inspectorate on whose territory they are carried out. Given the specificity of asbestos-containing materials, the legislator

has provided for the authorization procedure to be carried out in conjunction with the Regional Inspectorate for Environment and Water, which gives its opinion within 14 days of the date of receipt of the documents to the RHI. If the RHI does not receive an opinion within the prescribed time limit, it is considered that the Regional Inspectorate for Environment and Water agrees to such authorization - with non-objection. The permission to dismantle or remove asbestos or asbestos-containing materials shall be issued by the Director of the Regional Health Inspection within 5 days of receiving a favorable opinion from the Regional Inspectorate for Environment and Water or from receiving the corrected work plan. In this sense, from a legislative point of view, the legislator has foreseen the degree of public danger in this type of activity, therefore a joint procedure between two institutions is envisaged, which is the guarantee for the protection of the life and health of the workers and of the population.

*Short review of the European practices in the field of environmental law and the related control activities*

The current brief review of the authorities' control competences is focused mainly on the Health Act and here the general hypotheses under the Environmental Protection Act will not be considered, but for completeness of the report we should point some of the main European principles of environmental law, which undoubtedly give their imprint also in the Bulgarian rulemaking in the field of environmental protection of the population.

In Art. 191, para 2 of the Treaty on the Functioning of the European Union (TFEU) four principles of the environmental policy of the European Union are stated:

- Precautionary principle. Taking precautionary measures to protect the environment in the case of insufficient scientific data on the harmful effects of anthropogenic impact on the state of the environment.

- Preventive action principle. It refers to the prioritization of preventive legal means. To wit, to take action at an early stage in the development of an activity to protect the environment (PENCHEV, 2017). For example, the elaboration of environmental impact assessment, environmental assessment, limit values for harmful concentrations of harmful substances in environmental compartments, etc.

- Environmental damage rectified at source principle. It focuses on mobile and stationary sources of over-pollution of environmental compartments by prioritizing measures to minimize their harmful impact - for example through emission standards for the disposal of harmful substances in the environment from a particular source of pollution. Here, reference is made to the regulatory requirements for issuing specific authorizations for certain types of activities by the competent authorities.

- „Polluter should pay“ principle“. The polluter pays all expenses for removal of the consequences of the pollution caused, and bears the burden of the corresponding sanction imposed. The focus is directly on the non-observance of the statutory regime for protection of the individual components of the environment (PENCHEV, 2017).

Undoubtedly, the European principles are also applicable in Bulgarian law. The examined control functions of the specialized bodies under the Health Act are an example of the good implication of the established European practices. Bulgaria is also a party to a number of international treaties whose main object is the protection of the environment and direct protection of the life and health of the population. For example, the [Geneva Convention on Long-Range Transboundary Air Pollution \(Geneva, 1979\)](#), the [United Nations Framework Convention on Climate Change \(New York, 1992\)](#), the [Convention on the protection and use of transboundary watercourses and international lakes \(Helsinki, 1992\)](#).

The Bulgarian State is actively involved as a party to the contractual relations in defining the international environmental norms and standards related to the

protection of the environment and human life and health. Every year, our legislation evolves in this direction, including in its content also international norms. The high degree of significance of the issues under consideration is also evident from the degree of development of the activity of the control bodies at the national level.

### **Conclusions**

From the brief review of the control competences of the specialized administrative bodies exercising activity under the Health Act, it is concluded that at present in the Republic of Bulgaria a satisfactory level of administrative and controlling provision in the sphere of ecological protection of the population has been achieved. Undoubtedly from a normative point of view, there are imperfections of the regulation, but to this moment it continues its improvement, according to the needs of the dynamically developing social relations in this sphere. The legislator's strive to modernize and adapt the national norms according to the European standards for environmental protection is evident also by the participation of our country in a number of international treaties, the content of which is in most cases obligatory for the parties.

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