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The legislative framework of environmental impact assessments for establishment of ski resorts in mountainous areas

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Abstract. A strategy for the sustainable development of mountainous areas necessarily involves the development of the natural environment. Any intervention in the natural environment has to comply with the basic established principles of forestry and environmental law (sustainable management of forests). The absence of a comprehensive legal framework in Greece, which would describe with clarity, sufficient detail and accuracy the technical specifications for developing environmental impact assessments (EIA) lead researchers to form general conclusions according to the environmental compatibility of projects. Therefore, the improvement of legislation with objective, scientific criteria to be taken into account by researchers carrying out environmental impact assessments is essential. The aim of the present study is the examination and evaluation of the objectivity, coherence and completeness of the legal framework of developing environmental impact assessments for establishment of ski resorts in mountain grasslands in comparison with European standards.

Keywords. Environmental impact assessments (EIA) – Ski resorts – Mountain grasslands.

Le cadre juridique de l'évaluation d'impact environnemental (EIE) à propos de l'installation de centres de ski dans des régions montagneuses

Résumé. Le développement durable généralisé/total des zones forestières montagneuses et semi-montagneuses présuppose additionnellement l'exploitation simultanée de leur environnement naturel. Cependant, n'importe quelle intervention sur l'environnement naturel devrait être conduite sur la base des principes institués fondamentaux de la Sylviculture et de la Loi de l'environnement (gestion durable des forêts). Le manque d'un cadre juridique décrivant avec clarté, exactitude et en détail les spécifications techniques de la réalisation de l'évaluation d'impact environnemental (EIE) conduisent les chercheurs à la formulation de conclusions accumulées et généralisées à propos de la compatibilité environnementale d'un projet de construction/d'un chantier. L'enrichissement de la législation avec des critères objectifs et scientifiques sur la réalisation de l'évaluation d'impact environnemental devient nécessaire. Le but de l'étude est la recherche et l'évaluation de l'objectivité - plénitude du cadre juridique de la réalisation de l'évaluation d'impact environnemental à propos de l'installation de centres de ski sur des pâturages montagneux en comparaison avec les normes européennes.

Mots-clés. Évaluation d'impact environnemental (EIE) - Centres de ski - Pâturages montagneux

I – Introduction

The subject of this study is the presentation of the current legislative framework in Greece regarding the development of environmental impact studies for establishment of ski resorts in mountain grasslands, the identification of its deficiencies and the determination of the scientific environmental criteria, which need to be taken into consideration by researchers. A comparative overview of the Swiss model was considered essential for the determination of specific and not general environmental criteria. The Swiss model was specifically chosen, because Switzerland, as a country out of the European Union, is not bound by the legislative framework of EIA regulated by the Council Directive 2011/92, which is common for all Member States.

II – Materials and methods

The protection against the alterations caused to the natural environment by the establishment of ski resorts in mountain grasslands is regulated by a) land planning legislation, b) environmental law and c) forest protection law.

1. Land planning legislation

Spatial planning necessarily precedes any development of a significant work/activity, in order to avoid uncoordinated development which would lead to environmental degradation, destruction and to undermining of rational land planning (Ste, Full court, 3396/2010 NOMOS Legal Database). Therefore, spatial plans must delimit a priori the areas where ski runs and all essential facilities for the operation of ski centers may be constructed (Papapetropoulos, 2002).

The establishment of ski resorts and the construction of accompanying facilities take place in an area called Area of Integrated Touristic Development. These specific areas are described precisely by the art. 29 of Law 2545/1997 on industrial and investment areas (as amended and supplemented by Law 4179/2013) and they are mandatorily subject to spatial planning (Ste, Full court, 3396/2010 and 3397/2010 NOMOS Legal Database). The Areas of Integrated Touristic Development are now incorporated in the specific spatial plan for tourism (art. 8 of Law 4269/2014). This particularly means that they are now subject to the primary land planning, they are parts of the overall comprehensive spatial planning of the country and that the important lack of the previous legislation has been covered (Giannakourou, 2015). However, the new specific spatial plan for tourism foresees many exceptions in its environmentally friendly regulations and this means that the protection of the environment is again being sacrificed on the altar of economic development (Mathioudakis, 2013).

2. Environmental law

According to the Greek environmental law, certain types of projects have significant effects on the environment and, as a rule, they should be subject to systematic assessment. Projects followed by significant environmental implications, such as the establishment of ski resorts, belong to the first category of projects and they are mandatorily subject to an environmental impact assessment, which imposes specific conditions and limitations aimed at the protection of the environment (art. 3 part. 1 of Law 1650/1986 on environmental protection, as amended by the Law 4014/2011). The EIA needs furthermore to be approved by the Minister of Environment, Energy and Climate Change (art. 4 of Law 1650/1986, as amended by the provisions 2 – 10 of the Law 4014/2011).

3. Forest protection law

Grasslands with specific features can be characterized as forest areas and they may also benefit from the protective provisions of Law 998/1979 on forest protection. According to art. 3 par. 3 of Law 998/1979, as amended by the Law 4280/2014, grasslands enclosed by forests or forest areas are considered as forest and forest areas respectively.

4. Evaluation of the Greek legal framework of EIA in comparison to the Swiss model

The aforesaid decisions of the Minister of Environment, Energy and Climate Change which grant or refuse development consent, are subject to judicial review. The Greek Council of State is required to examine if EIAs review and evaluate on the basis of environmental criteria all alternative solutions of the establishment of the project (involving the zero solution) and if they ultimately select the low-environmental - cost solution (Ste 551/2015 and Ste 1492/2013 NOMOS Legal Database). It is noteworthy that the Greek Council of State (STE) appears in the

last years very hesitant about the annulment of those decisions. Straight evaluation of EIAs as well as their opposition to the principle of sustainable development, as pointed out by the Greek Council of State, are excluded from the Court's limits of control (Ste 4491/2009, Ste 613/2002, Ste 3478/2000 NOMOS Legal Database). This is a usual manoeuvre of Greek Council of State anchored in its inviolable limits of control. The judge of the Council of State is not competent to examine if the facts presented in an EIA respond to reality. The evaluation of facts is only exhausted at an administrative level. In particular, if the environmental compatibility of a project/activity is concluded from an EIA or from opinions of the competent authorities, Greek Council of State dismisses applications for annulment of approval decisions of development consents, even if they foresee complementary measures aimed at the restoration of the provoked environmental damage (Ste 1492/2013, notes Mathioudakis).

The attitude of the Greek Council of State is undoubtedly encouraged by the absence of precise, analytical, identified and concrete environmental criteria, which should be taken into consideration by the EIA developer. From a scientific perspective, the EIAs are developed on the basis of descriptive criteria and therefore they involve the risk of presentation of environmental criteria without objectivity. The primary, immediately noticeable and measurable effects are detected by the EIA developer. However, there are also negative spill-over effects, which are not easily noticeable or measurable and as a result not assessed (Doukas, 2004).

For these particular reasons, practicable and objective assessment methods of environmental impacts have to be established, in order to define the accurate position of the construction of the project, which ensures its environmental compatibility (Becker, 1995; Giannoulas *et.al.*, 2004). At this point, the contribution of a forest expert is crucial. A forest expert, who is responsible for the natural environment, has to examine before the construction of the foreseen project if there is an environmentally compatible area available and provide the relevant instructions. (Drosos *et.al.*, 2014). Moreover, the implications of the implementation not only of an individual, but of a whole development project have to be assessed by the EIA as an environmental cost (Giannoulas *et.al.*, 2007).

The proper evaluation of the environmental impacts of the establishment of ski resorts in mountain areas prerequisites the objective answer to a number of specific questions by the researcher. Common questions, proposed by the canton of Berne (Koordinationsstelle für Umweltschutz des Kantons Bern, Hilfsmittel für Untersuchungen zur Umweltverträglichkeit von Anlagen, 1991) refer to the following issues: a) purpose of the project, b) features of the installation and geological conformation, c) operational concept and number of visitors foreseen and d) works during construction phase. From this point of view and according to the Swiss model, the establishment of ski resorts in mountain areas, often arises conflicts regarding a) soil and green cover, b) corrosion, snowslides, c) landscape and recreation, d) fauna, e) agriculture and forestry and f) traffic.

III – Results and conclusions

Due to the fact that the legislative framework of the development of touristic ski resorts in mountainous areas is governed by three different pillars (land planning law, environment law and forest law), it is not integrated, coherent and complete and as a result the protection of the environment turns out to be insufficient. A prerequisite for the sustainable tourist development of mountain areas is to take into account the carrying capacity of mountain areas as sensitive ecosystems. For this reason, a rational spatial planning based on sustainable development appears to be determinative (Papapetropoulos, 2002).

As far as environmental law is concerned, the terms “environmental criteria” and “low environmental cost” have to be redefined and specified. Ministerial decisions should therefore target more safe, analytical and accurate environmental criteria, similar to those implemented in Switzerland. In this context, it is noteworthy that the new Council Directive 2014/52 amends the

provisions regarding the criteria of environmental licensing of Council Directive 2011/92. The criteria become more specific, precise, qualitative - instead of descriptive -, objective and resistant to violations (Schmidt *et al.*, 2014). Moreover, the decisions which grant or refuse development consent should not be issued by the Minister of Environment, Energy and Climate Change, who serves the political interests of the government in force, but by an independent expert authority, which guarantees objectivity and impartiality.

It follows from the above that the establishment of ski resorts is connected with two conflicting interests: economical growth and protection of the environment. The balance of these interests involves the examination of alternative solutions. If any project changes can't avoid important and disproportionate damage to the environment, the project must inevitably not be implemented (Bütler, 2010).

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