

Convergence of legal instruments within the model regulation for financing functions of environmental protection law

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Abstract

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The description of the regulatory framework for the financing model of the functions of environmental protection law, together with the principles governing the resolution of conflicts between legal instruments applied within this model, deserves extensive analysis and detailed examination. Conducting an analysis and study of the regulations governing this model is important due to the lack of a precise identification of the model and the principles of its operation in the context of the growing allocation of public and private funds for environmental protection purposes. The study of this model is particularly interesting from the perspective of legal science in light of the broad catalogue of legal instruments and the coexistence within this model of administrative law, civil law, and criminal law methods of regulation.

The aim of this dissertation is to describe the regulatory framework for the financing model of the functions of environmental protection law by identifying certain characteristics that make it possible to include or exclude a given legal instrument as part of this model. The instruments classified within the model form its legal framework, as a logical sequence of elements constituting the described model.

The purpose of this dissertation is also to describe the types of and principles for resolving conflicts between legal instruments within the discussed model, which should facilitate the resolution of practical problems arising in the process of legal interpretation. From the perspective of legal practice, this aspect may prove useful in the legal and financial structuring of environmental protection projects.

The scientific method adopted in this dissertation, in the context of logical reasoning, has a mixed deductive and inductive character through the use of the hypothetical syllogism structure, as well as incomplete and eliminative induction. On the one hand, this approach enables the identification of certain general assumptions underlying the model, while on the other hand it allows for the analysis of a catalogue of specific legal instruments, jointly leading to a description of the entire regulatory model for financing the functions of environmental protection law. For the research methodology adopted in this dissertation, a particularly important practical aspect is the



social perception of values related to environmental protection and environmental economics, which influences the coexistence of public interest and investment related objectives within the legal instruments of the model in question.

The description of the framework of this model is important due to the interpretative problems that may arise in the course of legal interpretation as a result of the coexistence within the model of private-law and public-law instruments regulated through different methods, as well as the dispersion throughout the legal system of norms defining the structure of the model. The consequence of such a structure is also the convergence of instruments of an inter-branch nature. From this perspective, the structure of the dissertation is based on the primary division into public and private law, as well as on the defined concepts of the functions of environmental protection law, legal instruments, and methods of regulation, supplemented by a historical outline and an analysis of regulatory models adopted in other states.

Chapter one concerns the definition of concepts that constitute the foundations for the further argument. It defines such concepts as the functions of environmental protection law, legal instruments, the general assumptions of the regulatory model for financing the functions of environmental protection law, and the types of regulatory methods. In particular, the concept of a legal instrument functions autonomously as a set of norms that may be subject to different methods of regulation. The concept of the functions of environmental protection law focuses, in terms of the effects of applying the model, on the stimulation of economic and social relations towards achieving the objectives of environmentally sustainable development. These definitions serve as conceptual axioms for adopting the thesis concerning the existence of the discussed regulatory model.

Chapter two regards description of public law regulations and selected instruments of public law within the discussed regulatory model. In its second part, the chapter focuses on instruments within private law, including material civil law. Chapter two also discusses, as the foundations of regulation, the issues of public intervention and sustainable development. The sequence of instruments within the regulatory model includes, among others, grants, donations, loans, credits, securities, and other financial instruments, including derivatives. An important issue concerns the form of contracts within the discussed model, including contracts of a public nature. From the institutional perspective, the dissertation describes the system of public authorities as well as institutional and corporate entities operating under private law. In particular, within public law environmental protection and water management funds are operating, while within private law there are green investment funds acting on capital markets. Chapter three concerns the issue of convergence between legal instruments within the discussed regulatory model, the principles



for resolving such conflicts, and specific examples of converging instruments applied in the financing of the functions of environmental protection law. The identification of conflicts between instruments within this model is possible on the assumption that numerous interferences occur in the application of specific instruments belonging to the catalogue of instruments constituting the model. Chapter four provides a comparative legal analysis of selected legal systems of other states. The selection of these legal systems is based on their connection with specific economic systems, assuming a relationship between the legal regulation of financing the functions of environmental protection law and the stimulation of economic development, while taking into account the specific features of a given economic system. For this reason, the analysis includes the system of the social market economy, the freemarket economy, and a system based on the role of corporations in economic transactions.

The discussed regulation of financing the functions of environmental protection law unites private and public objectives and functions within a single model serving the particularly protected value of the environment. The process of unifying the objectives and functions of environmental protection law has the character of a positive fusion, it is not merely a process of privatization of public law or deprivatization of regulation in favour of public law. The accumulation of instruments focused on the function of stimulating sustainable development is not a failure in the legal system, but rather a positive phenomenon aimed at ensuring broad financing for environmental protection objectives. Therefore, this issue should not be eliminated in the process of legal interpretation.

The issue of convergence between legal instruments within the regulation of the financing model for the functions of environmental protection law should be regarded as a dynamic process subject to continuous development. It is a phenomenon of a cumulative nature, concentrating the legal instruments available within the system for the purposes of environmental protection, while taking into account the specific subject of protection and the public interest. Original public law instruments are gradually stepping back and giving space to advanced financial instruments of private capital markets. Therefore, together with the development of environmental protection regulation, there is a gradual process of privatization of the regulatory model for financing the functions of environmental protection law in the direction of private law instruments development.



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