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**Book Review:
Georgi Penchev.
*The principles of Bulgarian Environmental Law.***

Sofia: Foundation "Citizens of a new era", 2017. – 348 p.

The problem of the principles of law, that is, the initial principles of historically established legal systems characterizing the content, foundations, objectives of law as a regulator of social relations and human behavior, has attracted the attention not only of lawyers, but also of politicians, philosophers, sociologists and other specialists. Literature on the study of the principles of law is extensive. Monographs, articles, and commentaries to legislative acts explore various aspects: the concept of legal principles, their structure, system, inter-branch and intra-branch relations, their influence on the content of other legal regulations, etc. Numerous studies of the principles of Environmental Law were conducted by Russian and foreign lawyers (S.A. Bogolyubov, M.M. Brinchuk, G. Winter, G.A. Volkov, L. Kremer, R. Macrori, etc.).

It is gratifying that the work done by the well-known scientist Professor Georgi Pencev appeared in this series, in which the positions of the legal thought and experience of Bulgaria are accumulated. The book is comprehensive, intersectoral. It deals with general theoretical issues in a balanced manner, describes the principles of Environmental Law formulated in international, European and national law, covers controversial issues and positions developed by legal doctrine. The monograph consists of an introduction, three chapters, a conclusion and a bibliography.

In the introduction, the author points out that the main purpose of the study is to understand the legal nature and specific features of the principles of law, in particular, the ecological one, and additional ones are to evaluate the scientific discussion and fill the gap existing in the Bulgarian doctrine, since no special monographic studies have been conducted up to this time (p. 2).

The first Chapter "Overview of the Principles of law in the legal doctrine" consists of three paragraphs. First, G. Penchev considers the statement of the problem the principles of law in Legal Theory, General Theory of Law and in some legal branches (p. 4 – 27), then moves to a discussion of the scientific concepts of the legal nature of the principles of law (p. 28 – 140), and finally to the problem of principles of law in the legal doctrine of Environmental Law (pp. 141 – 163). The author pays much attention to terminology, its clarification, taking into account the use of such concepts as "basic principles", "principles", "general principles," and analysis of positions developed by various scientific schools of Natural Law, Positivism. He quotes the statements made by D. del Vecchio, G. Kelsen, S.S. Alekseev, R. David, N. Nenovsky, B. Spasov, J. Habermis and many other theoreticians of law, accompanying them with examples of not only Bulgarian Legislation and law enforcement practice, but also Italian, Spanish and other law Systems. G. Penchev out-



lines the following issues on which there are different opinions in analyzing conducted earlier and current discussions on the legal nature of the principles of law: 1) whether the principles of law are a special kind of legal norms; 2) how the principles of law are objectified, whether they are only the provisions established in legal acts or there are also unwritten principles of law; 3) whether the principles of law are its sources; 4) what is the stability of legal principles and what is their list (whether it is opened or closed); 5) whether the basic rights and duties of citizens relate to the principles of law; 6) whether there is competition, conflict or hierarchy between the principles of law. He analyzes the views of dozens of lawyers from different countries, of course, in most detail, stopping at the statements made by scientists in Bulgaria. Widely uses the works not only of theorists of law, but also specialists in the field of Constitutional, Labor, International and other branches of law. A proper place is occupied by assessments of the views of Russian scientists - N.S. Maleina, R.Z. Livshits and many others. In fact, more than 100 pages of typographic text devoted to the debatable aspects, are a kind of encyclopedia on the problem of principles of law. At the same time, G. Penchev does not limit to a simple description, but successfully summarizes and compares the arguments and expresses his own opinion on most of the posed questions.

The second paragraph of this theoretical analysis concludes with the author's definition of the principles of law. This is a special kind of legal norms, which contain the guiding legal ideas formulated in an abstract (most general way) manner, contained in a legal act or data by interpretation of judicial practice, which are important for lawmaking, interpretation and enforcement (pp. 139-140).

In the concluding of the paragraph of the first chapter, G. Penchev, examining the problems of the principles of law in the doctrine of Environmental Law, stresses that they were not given proper attention in Bulgaria, it was considered concisely, mainly in general works on the legal protection of the environment (P. Steinov, S. Naumova, K. Ryanova). He compares the approaches of Bulgarian scientists with the opinions of foreign experts, in particular E. Scotford¹, criticizing her for using the concept of "Environmental Principles", and not the notion of "Principles of Environmental Law"; For the fetishization of legal culture as the main factor determining the formation of the principles of law, rather than placing the environmental interests of the society at the center of the corner; For giving too high a rating to the role of "Doctrinal Comments" as sources of legal principles; For blending legal principles with the law as a whole; For the idea of policy migration to legal instruments; For the definition of the principle as a "legal or political goal", which deprives the principle of the right of its main - normative - attribute (pp.143 - 147).

G. Penchev analyzes further the environmental and legal views of such authors as A. Kees and D. Shelton², then turns to the works of Soviet-Russian scientists (V.V. Petrov,

¹ See: Scotford E. *Environmental Principles and the Evolution of Environmental Law*. Oxford: Hart Publishing, 2016. – 320 p.

² See: Shelton D., Kiss A. *Judicial Handbook on Environmental Law*. Nairobi: UNEP, 2005. – 131 p.; The same authors. *Manual of European Environmental Law*. Cambridge: Grotius Publications Limited, 1993. – 525 p.



V.N. Yakovlev, V. Yakushev, O.S. Kolbasov, M.M. Brinchuk, I.A. Ignatieva) (pp. 152 - 156), and also to the works of L. Kremer, R. Macroree, M. Heistlinger, and others.

The second chapter of the "Principles of Environmental Law of the European Union and International Environmental Law amid of International Treaties with the Participation of the Republic of Bulgaria" (pp. 164-261) is divided into three paragraphs according to its title. On the principles of European Environmental Law published a number of works in Russian³, but, of course, for us is significant interest in their attitude to the doctrine of Bulgarian Environmental Law.

G. Pentchev characterizes two opposing positions: according to the first - the rules of law of the EU operate throughout the territory of Bulgaria in virtue of Art. 5 part 4 of the Constitution of the Republic of Bulgaria (hereinafter - RB), substantiated in the works of E. Drumeva; On the second - EU norms of law, including constituent agreements on the formation of the EU, operate on the territory of the country not as part of Internal Law, but as part of a separate independent legal order (this opinion is upheld by A. Semov). The author of the reviewed monograph divides the sectoral (specific) principles of European Environmental Law into two main groups: 1) general (industry-wide) principles that apply to the protection of the environment as a whole and to its separate components, that is, to all sub-sectors of European Environmental Law and are fixed in the primary EU Law, namely in the Treaty on the Formation of the European Union; 2) the principles of individual legal institutions that are established by the EU's Secondary Environmental Law, primarily directives, the provisions of which should be included in national law. But in the modern period, a third group is gradually forming - interbranch principles, enshrined in the EU's Primary Law. Further, the author analyzes the principles of foresight, prevention, priority of prevention of environmental pollution from its source; "Polluter pays", detailing both the EU law and the position of the doctrine, primarily L. Kremer.

Speaking about the essence and significance of the Polluter Pays Principle, G. Penchev points out quite rightly that this principle is not related only to the costs of "cleaning" an excessively polluted component of the environment, but also to the imposition of property sanctions on legal entities and individual entrepreneurs for inflicting Excessive pollution and compensation for damage caused by harm. In addition, regardless of the difficulty in establishing a particular causer, there are reliable legal tracking tools, for example, a Monitoring System, especially for stationary sources of pollution of the relevant components of the environment. The Polluter Pays Principle by its nature is not economic, but legal one, it is addressed to the subjects of law, and if the economic principle is fixed in the legal norm, then it becomes the legal principle. G. Penchev also notes the fact that subsidizing resto-

³ See: Kremer L. in kN.: Dubovik O.L., Kremer L., Lubbe-Wolff G. Environmental law / ed. by O.L. Dubovik, 2nd ed. Moscow: Eksmo, 2007. P. 132 – 140; Kremer, L., Winter G. Environmental law of the European Union. Moscow: Gorodets, 2007. P. 25 – 37; Winter G. Current problems of environmental law in the era of globalization / Ed. edited by O.L. Dubovik. Moscow: Nota Bene, 2012; O.L. Dubovik, A.L. Ivanova. Implementation of the Principles of European Environmental Law (book Review: "Principles of European Environmental Law. Practice (court work) group Avosetta environmental lawyers in Europe" / ed. by R. Macrcory // Politics and society. 2004. No. 5. Pp. 68 – 73; Dubovik O.L., Ivanov A.L., Kalinichenko, V.T., T.V. Rednikova Reriht, A.A. General Questions of European Environmental Law: Principles and Regularities of its Development and Formation // Environmental law. 2007. No. 5. P. 27 – 35, etc.



ration work from the EU budget, which does not violate this principle, but aims to support the relevant EU member state in its efforts to restore contaminated environmental components in the case when the specific causer is not identified, but even if established, it is not possible to implement measures to restore the environment. Further, he disputes the position of L. Kremer: "the fact that the public authorities (central and local) have the legal duty to implement measures to restore the polluted environment does not at all mean that this violates the Polluter Pays Principle, which, in my opinion, is required to apply independently of this duty" (p. 180). G. Penchev believes also that the opinion that the Polluter Pays Principle is incompatible with the constituent agreements on the formation of the EU is erroneous for the sake of creating a "legal opportunity" for EU bodies to determine measures for restoring the environment, since this is not a "legal opportunity, but a legal obligation of EU bodies" to regulate such measures in the legal acts of secondary European law ". He lists many of the EU directives that implement this principle and at the same time proposes changes to Art. 191 § 2 of the Treaty on the Formation of the European Union by including two more fundamental principles - a system approach to environmental protection that takes into account the links between ecosystems and natural resources in making managerial decisions and the scientific basis for the implementation of environmental protection activities (pp. 178-184) . This proposal echoes closely the positions formulated by the Russian legislator and justified in the doctrine of Russian Environmental Law. Of course, in one form or another it is reflected in European Environmental Law, but, apparently, still needs a direct, immediate indication.

G.Penchev considers also the content of the inter-branch principles of the EU primary law, which are relevant in the field of Environmental Law (subsidiarity, integration), as well as the principles of individual legal institutions established in secondary European law (waste management and waste management, radioactive waste management and spent nuclear fuel, the management of operators manual activities treatment facilities and control of emissions from industrial pollution la environmental components; Implementation of all necessary preventive measures against pollution; Use of the best available technologies; Inadmissibility of significant pollution; Prevention of waste accumulation; Efficient use of energy; Implementation of necessary measures to prevent accidents and limit their consequences, etc.) (pp. 190 - 202).

The author of the monograph proceeds from the premise that "the principles of International Environmental Law are a special kind of international legal norms containing guiding international legal ideas on the development of international relations in the field of environmental protection" (pp. 207-208). They form two groups: industry-specific and specific. He calls multilateral international treaties with the participation of Bulgaria, which establish principles for the protection of atmospheric air from pollution (the Convention on Long-range Transboundary Air Pollution, the United Nations Framework Convention on Climate Change); Protection of transboundary rivers and lakes, biodiversity protection and many others, assessing their role in the development of both international and national Environmental Law.

It seems that the material on the principles of European and international Environmental Law, stated by the author, would benefit from the inclusion of a fragment on the principles of combating environmental crime and its prevention. Perhaps G.Penchev will pay atten-



tion to this important area of activity of the EU member states and the international community in future studies.

The third chapter "Principles of Environmental Law as a branch of the legal system of the Republic of Bulgaria" is divided into three paragraphs, which consistently consider the principles of Environmental Law as a tools of implementing of State Environmental Policy, the concept and features of the principles of Environmental Law, their classification (pp. 262 - 277); General principles of Bulgarian Environmental Law (pp. 277 - 292); Special (sub-sectoral) principles and principles of some legal institutions of Bulgarian Environmental Law (pp. 293 - 312). And the methodological approach chosen by the author is successfully maintained, which allows the reader to compare the ecological principles of international, European and national law according to a single scheme in this chapter.

Considering the correlation of Environmental Law and state environmental policy, G. Penchev gives its definition. This is "a set of goals, principles and practical approaches to solving environmental problems of modern society, which are enshrined in normative acts, policy documents adopted by the highest organs of the central administration" (p. 262). Definitions of this concept are offered a lot in the literature and any of them deserves an objective assessment and accounting. In my opinion, in the above, we should pay attention to such an element as "practical approaches", which in concise form designates all kinds of diverse activities, measures, measures, etc. The advantage of the proposed definition is the reference to the sources of state environmental policy. The author considers rightly that this right is the most important means of implementation of state environmental policy, therefore, principles of Environmental Law are also the principles of this policy.

The characteristic features of Environmental Law are determined by the specificity of the object of legal protection and the subject of regulation of this branch of law. As the first G. Penchev calls integrated object of legal protection, i.e. the environment, consisting of: a) nature as an objective reality that exists outside of man and the uncreated man, and b) anthropogenization environment created in the course of evolution of human civilization (p. 265). He emphasizes further that the specificity of the object of legal protection requires the use of systemic (integrated) approach to the legal regulation of public relations connected with the protection of the environment, and the principles of Environmental Law should reflect the science-based approach should take into account the modern achievements of ecology as an interdisciplinary science, and other areas of scientific knowledge. The presence of specific principles also serves as a "solid argument in the conceptual justification of the allocation of Environmental Law as an independent branch in the legal system of the Republic of Bulgaria" (p. 267). Finally, the principles of Environmental Law are an important legal tool and one of the guarantees for the protection of the fundamental right of Bulgarian citizens to a healthy and favorable environment, proclaimed in Art. 55 of the Constitution of the Republic of Bulgaria and specified in many legislative acts (pp. 268 - 269).

G. Penchev notes that the classification of the principles of Bulgarian Environmental Law can be built on various criteria. To begin with, he singles out the constitutional ones (the Constitution of the Republic of Bulgaria fixes them in Article 15, Article 18 part 1, Article 21, Article 22 and Article 55) and interbranch. He calls the principles of sustainable devel-



opment among the general (industry-wide) principles; Prevention and reduction of risk to human health; Priority of pollution prevention before liquidation of the caused ecological damage; Public participation and transparency of decision-making processes in the field of environmental protection; Awareness of citizens about the state of the environment; "The polluter pays for the harm done"; Conservation, development and conservation of ecosystems and their inherent biological diversity; Restoration and improvement of the quality of the environment, contaminated and damaged areas; Prevention of pollution and damage to the cleanliness of territories and other negative impacts on them; Integration of environmental policy into sectoral and regional policies for the development of economic and social relations; Access to justice in matters relating to the environment. The author discloses the contents of the listed principles with references to the norms of legislation and judicial practice. With regard to the special (sub-sectoral) principles of Bulgarian Environmental Law, G. Penchev characterizes such as: waste management, sustainability, technical feasibility and economic opportunity, unity of impact on the environment, human health, the economy and society (pp. 293-296). At the same time, he notes which of the above principles have been adequately reflected in the law, and which are nevertheless vaguely formulated and cause problems in their interpretation and application. Further G. Penchev goes on to analyze the principles of Water, Land, Mountain, Faunistic Law (pp. 296 - 312).

I must say that the content of the third chapter gives an opportunity to get acquainted not only with the system of principles of Bulgarian Environmental Law, but also thanks to the erudition of the author to get an idea of the ecological law of Bulgaria, the features of its formation and development, the positions of the doctrine, legislator and law enforcement. This is very important, because of the common interests of environmental protection in our countries and long-standing scientific ties, traditions, similarities of cultures and other circumstances.

In conclusion (pp. 313 - 316) G. Penchev summarizes the conclusions of his research: 1) a list of industry-wide principles in Art. 3 of the Law on Environmental Protection is not precise enough; 2) the main controversial theoretical question concerns the legal nature of legal principles; 3) the principles of environmental policy and EU law, from the methodological and legal and technical points of view, are not always well formulated, which requires *de lege ferenda* to introduce changes to the Treaty on the Formation of the European Union; 4) the transfer of the legal principles of secondary European Environmental Law to the law of the Member States of the EU is their duty, which is not always can be met due to differences in legal techniques and other circumstances; 5) shortcomings in the establishment of principles in international multilateral environmental agreements with the participation of the Republic of Bulgaria weaken the possibilities for international cooperation; 6) the difficulties of comparing the principles of Environmental Law at the international, European and national levels are generated by the vastness of information on the problems of ecology, the general theory of law, Environmental Law and other sciences and the need to master relevant knowledge; 7) the principles of Environmental Law have not only legal, but also moral significance.

Of course, most of these conclusions should be accepted.



Evaluating the monograph as a whole, it should be said that, of course, it will take a worthy place in the series of studies on this problem. This is a work of a comparatively legal nature, performed at a high professional level, as evidenced not only by its content (from theoretical and methodological points of view), but also by a huge scientific apparatus, competently and carefully used by the author. For Russian users, primarily are interesting not only the information about the Bulgarian Environmental Legislation, the doctrine of Environmental Law in Bulgaria, but also the analysis of International and European approaches to Environmental Law conducted by G. Penchev. It undoubtedly broadens our understanding of this problem, the ways of solving it, the possibility of using the accumulated experience. Of course, it would be worthwhile to translate this book into Russian and publish it in at least a small print run in our country.

Of particular note is the author's use of works published in our country: many pages of the book cite and analyze the positions expressed by our Environmental Lawyers, specialists in the field of general theory of law.

Keywords: principle, law, law, ecology, environment, nature, Polluter Pays, sustainable development, directive, ecosystem.

Abstract: The reviews characterize the positions developed by the doctrine of Bulgarian Environmental Law with respect to the concept, content, classification of principles that are the initial principles of legal protection of the environment. A comparison is made between the provisions establishing the principles of Environmental Law in Bulgaria with the norms contained in international law and European Union Law. The analysis of views and arguments of lawyers from different countries is given, the practice of European courts is taken into account.