

The Topicality of Asbestos from the Perspective of the Administrative Law

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Abstract. Nowadays, people place increasing emphasis on the quality of life. This is why the environment in which we live and work must be safe and comply with legal requirements to ensure that life is not endangered. There is public concern that asbestos—a material found in buildings built up many years ago—is still present in the walls of those buildings, making it dangerous during renovations or even demolitions. Asbestos is one of the dangerous substances from a double perspective: it not only affects the environment but also poses a major risk to human health. International studies show that asbestos exposure can cause serious diseases such as cancer and even death. Given this background, the aim of this paper is to analyze the legal regime of asbestos from an interdisciplinary perspective, starting from administrative law, in order to know how the legislator relates to this substance. The subject is highly relevant for the scientific community as well as for the general public and has practical applicability, as it provides crucial information to raise awareness of the dangers posed by asbestos. The research methodology of the paper proposes a structure consisting of several parts: Part I analyzes the national regulatory framework on asbestos; Part II presents the international normative acts on the protection of workers against the risks related to asbestos exposure at work; and Part III brings to the forefront several case studies settled by the European Court of Human Rights, highlighting the danger asbestos poses to human health.

Keywords: Public Authorities, Asbestos, Decent Standard Living, Directive, European Court, Human Rights

1 Introduction

The quality of people’s lives must be on the agenda of all governments worldwide. While in the early days of human civilization, people lived in the open air, modern aspirations for the comfort of daily life have led people to seek contemporary materials for building their homes. Nowadays, we are talking about buildings from the simplest structures to the most sophisticated. While not so long ago, the right to the pursuit of happiness was enshrined in law [1], nowadays, the right to a decent standard of living [2] is becoming a social imperative.

Public authorities on all continents are obliged to provide their citizens with the best possible conditions for a decent and safe life. In relation to climate change, all the

more so are states obliged to protect the public interest in such a way that the protection of the environment is balanced with the protection of their citizens. In this respect, the Administrative Code expressly regulates the principle of satisfying public interest (art. 10) and “administrative law is dominated by the principle of legality, in the sense that the work of the public administration is carried out on the basis of and in accordance with the law, with the main aim of implementing it” [3]. As the doctrine stated, “as humanity, we are going through a period of unprecedented and unpredictable change, but at the same time beautiful because it challenges us to relate to our environment not as a ‘given’ but as a ‘constructed’ - through the contribution of all of us” [4]. At the international level, human rights are enshrined and protected in law. The Universal Declaration of Human Rights of December 10, 1948 [5] provides the following in art. 25 para. (1): “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family (...)”.

A review of the literature shows that specialists from all over the world are concerned with this topic, analyzing, on the one hand, the influence of asbestos on the environment and, on the other hand, the impact of asbestos on human health. Many studies are dedicated to cancer caused by long-term exposure to asbestos fibers. For example, some authors consider that “exposure to asbestos fibers causes mesothelioma (cancer of the mesothelial cells which cover most internal organs), asbestosis (fibrosis of the lung because of exposure to asbestos dust), cancers of the lung, ovary and larynx, and benign pleural diseases such as pleural plaques” [6]. There are other authors who note, “the use of asbestos was banned because of the carcinogenic properties of its fibers, but asbestos-containing wastes are still present in great amounts” [7]. In what concerns the use of asbestos, it is stated that “Asbestos has been used by automobile, construction, manufacturing, power, and chemical industries for many years due to its particular properties, i.e. high tensile strength, non-flammable, thermal and electrical resistance and stability, and chemical resistance. However, this mineral causes harmful effects to human health, including different types of cancer” [8]. A recent study on asbestos estimates that “of the 13 million tonnes of asbestos products installed in earlier decades, an estimated 50% remain in situ today” [9].

Asbestos is also found in the roofs of buildings. Experts point out that “Building roofing produced with asbestos-containing materials is a significant concern due to its detrimental health hazard implications” [10]. At the same time, the doctrine draws the attention of public authorities, stating that: “While the primary motivation for governments in shaping asbestos policy tends to be the avoidance of economic costs, it’s important to note that neglecting asbestos issues in the early stages can lead to significant economic losses” [11].

Therefore, although there are many more documented studies than those presented, the topic of asbestos has not been found in the doctrine in the scientific research modality that we propose. The novelty of the study lies in the interdisciplinary approach to the topic from the perspective of several disciplines: administrative law, environmental law and EU law. The proposed scope of this study is to provide additional information on the incidence of asbestos on human health, from a threefold perspective: regulatory acts, doctrine and relevant case law at European level. The third part of the paper will be focused on the practical component, by presenting two case stud-

ies on asbestos, decided by the European Court of Human Rights. By means of scientific research methods such as the documentary method, the comparative method, the computer method and the logical method, the study will also answer questions such as: “How dangerous is asbestos to human health?” “What are the main pieces of legislation regulating asbestos issues?” and “When was asbestos banned in the European Union?”

2 The national legal framework on asbestos - several highlights

At the national level, legislation includes the Constitution as well as other specific normative acts: laws, ordinances and government decrees, ministerial orders. According to Art. 1 para. (3) of the revised Constitution: “Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values (...) and shall be guaranteed”. Given that “the legal norm requires acceptance and compliance with the prescribed conduct” [12] asbestos legislation, on the one hand, covers the environmental protection component and, on the other hand, the protection of the health and safety of workers from the risks related to exposure to asbestos.

The first normative act under review, GEO no. 78/2000 on waste regime [13], includes asbestos (dusts and fibers) in the List in Annex 1D which refers to those wastes which, when they have certain properties, become hazardous (explosive, flammable, carcinogenic etc.). Further on, G.O. no 124/2003 on the prevention, control and reduction of environmental pollution by asbestos [14] defines asbestos as “fibrous silicate” (annex 1 item 1). Furthermore, the act provides that “asbestos use means the handling of more than 100 kg of raw asbestos per year and refers to: production of raw asbestos ore excluding any process directly associated with the extraction of the ore; manufacture and industrial finishing of the following products using raw asbestos: asbestos-cement or asbestos-cement products; friction products, filters, textiles, paper and paperboard, gaskets, packing and reinforcing materials, floor coverings, sealants” (annex 1 item 3). The legislator provides that “In order to protect the health of the population and the environment, the marketing and use of asbestos and asbestos-containing products will be banned from January 1, 2007. Products containing asbestos that were installed or in service before January 1, 2005 can be used until the end of their life cycle” [art. 12 para. (1)]. Furthermore, “To prevent asbestos contamination of the general public and the environment, asbestos and asbestos-containing products shall be labeled. The responsibility for the labeling of asbestos and asbestos-containing products shall lie with those who produce and/or market asbestos and asbestos-containing products” [art. 14 para. (1)].

G.O. no. 210/2007 amending and supplementing certain normative acts transposing the *acquis communautaire* in the field of environmental protection [15] transposes Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos. This new normative act introduces in G.O. no 124/2003 art. 18[^]1 paragraph (1), which requires Romania to observe: “the obligation to notify the European Commission on the methods of sampling and determination of the quantities of asbestos in

the environment, together with the relevant information necessary for a proper evaluation of such methods.”

Another normative act is G.O. no. 1875/2005 on the protection of the health and safety of workers from the risks related to exposure to asbestos [16]. It applies to activities in which workers are exposed, or are likely to be exposed, in the course of their work to dust arising from asbestos or asbestos-containing materials. According to art. 5 “employers must take measures to ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0.1 fibers/cm³, measured in relation to an 8-hour time-weighted average (TWA)”.

Furthermore, Romania adopted National Waste Management Strategy 2014-2020 [17] and waste categories contemplated by NWMS also include asbestos-containing waste. According to the National Waste Management Plan [18] “there are no data available at national level on the amount of asbestos placed on the market until 2007, nor are there any regulations on the obligation to identify, report and monitor asbestos-containing materials”.

3 International normative acts on the protection of workers from the risks related to exposure to asbestos at work

In the European area, asbestos protection legislation is made up of several normative acts which have been successively amended over the years. We will present selectively in this section the most representative of them. From a decision-making point of view “over the past 40 years, the EU has taken action to limit and then ban all use of asbestos”, according to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on working towards an asbestos-free future: an European approach to addressing the health risks of asbestos [19]. It is stated that “Further protecting the population from exposure to asbestos is particularly important as the EU rolls out the European Green Deal, which includes the ambition to increase the rate of building renovations” [19].

One of the most important EU laws is Directive 1999/77/EC of July 26, 1999 adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos) [20], which was in force until May 31 2009. Directive 1999/77/EC banned the use of asbestos as described in the Annex to the Directive (item 6.1. and 6.2), as of January 1, 2005.

Currently, the legal framework consists of Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work [21], a normative act which still has an impact nowadays. Directive 2009/148/EC was amended by Regulation EU 2019/1243 of the European Parliament and of the Council of June 20, 2019 (published in OJ L 198 of 25.7.2019) and Directive EU 2023/2668 of the European Parliament and of the Council of 22 November 2023 amending Directive 2009/148/EC (...) [22].

For the purpose of Directive 2009/148/EC [21], consolidated version, “asbestos” means the following fibrous silicates, which are classified as carcinogens “1A under Part IV of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council” (art. 2). The European normative act applies to activities in which workers are or may be exposed to dust arising from asbestos or asbestos-containing materials during their work. Article 5 of the Directive prohibits the application of asbestos: “The application of asbestos by means of the spraying process and working procedures that involve using low-density (less than 1 g/cm³) insulating or sound-proofing materials which contain asbestos shall be prohibited”. Furthermore, “without prejudice to the application of other Community provisions on the marketing and use of asbestos, activities which expose workers to asbestos fibres during the extraction of asbestos or the manufacture and processing of asbestos products (...) shall be prohibited, with the exception of the treatment and disposal of products resulting from demolition and asbestos removal” [art. 5 para. (2)].

The legally permissible limits for the concentrations of asbestos fibers to which workers may be exposed are imperative. First of all, “until December 20, 2029, employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0,1 fibres per cm³ as an 8-hour time-weighted average (TWA)” [art. 8 para. (1)]. Second of all, according to art. 8 para. (2), “from December 21, 2029, employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of:

- a) 0,01 fibres per cm³ as an 8-hour TWA in accordance with art. 7 para. (7): (For the purpose of measuring asbestos fibres in the air, as referred to in paragraph 1, only fibres with a length of more than 5 micrometres, a breadth of less than 3 micrometres and a length/breadth ratio greater than 3:1 shall be taken into consideration);
- b) 0,002 fibres per cm³ as an 8-hour TWA”.

4 Asbestos in the case law of the European Court of Human Rights

Several litigations on asbestos exposure have been referred to the European Court of Human Rights. Therefore, in this section, several cases have been selected which concerned the sanctioning of public authorities for failure to comply with their obligations.

The first case under review is *Brincat and Others v. Malta*, settled on July 24, 2014 [23]. The case concerned five applicants, “workers at a Government-run ship repair yard between 1968-2003. The workers or their relatives have constantly and intensively been exposed to asbestos during their employment repairing ship machinery insulated with asbestos. This resulted in damage to their health and, in one case, the death of one of the workers (Mr. A) from asbestos-related cancer. In May 2009, the applicants brought constitutional redress proceedings, in which they sought compensation, alleging that the State had failed to protect them (or their relatives) from unnecessary risks to their health. Their applications were ultimately dismissed in April

2011 for non-exhaustion of domestic remedies, the Constitutional Court considering that constitutional redress proceedings could only be brought after the applicants had brought civil proceedings for damages arising out of tort or contractual liability” [24].

By analyzing the case, the Court noted that “the Maltese Government had known or ought to have known of the dangers arising from exposure to asbestos at least from the early 1970s, given the domestic context as well as scientific and medical opinion accessible to the Government at the time. The Court reiterated that the State had a positive duty to take reasonable and appropriate measures to secure applicants’ rights under Articles 2 and 8 of the Convention” [24]. The Court held that “there has been a violation of Article 2 (right to life) of the Convention in respect of Mr. A and a violation of Article 8 of the Convention in respect of the remaining applicants” [24]. The Court concluded that, “in view of the seriousness of the threat posed by asbestos, and despite the State’s margin of appreciation as to the choice of means, the Government had failed to satisfy their positive obligations, to legislate or take other practical measures under Articles 2 and 8” [24].

The second case is *Howald Moor and Others v. Switzerland*, settled on March 11, 2014. Briefly, the applicants are: “the widow and two daughters of a mechanic who died in 2005 from a disease caused by the asbestos to which he had been exposed in the course of his work (para. 7-11). The deceased’s daughters continued the proceedings brought by their father against his employer. They and their mother also claimed compensation in respect of non-pecuniary damage. All the applicants’ claims were held to be time-barred, as the ten-year limitation period began to run as soon as the claim became enforceable, irrespective of whether the claimant was aware of the effects of the damage. Finally, the applicants complained to the Court for infringement of their right of access to a court” [24]. “This case concerned the fixing of the starting point for the limitation period applicable under Swiss law to victims of asbestos exposure” (para. 74). The Court noted that “any claims for damages would be bound from the outset to fail, as they would lapse before the victims could be objectively said to be aware of their rights” (para. 77). “Taking into account the legislation existing in Switzerland to deal with comparable situations and without wishing to prejudge other solutions that might be considered, the Court took the view that where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into consideration in calculating the limitation period” (para. 78). In conclusion, “having regard to the exceptional circumstances of the case, the Court found that the application of the limitation periods had restricted the applicants’ access to a court to the point of impairing the very essence of their right, under the violation of art. 6§1 of the Convention” (para. 79).

5 Conclusions

Asbestos is one of the dangerous substances that affect both the environment and human health, even leading to serious diseases such as cancer. From the research carried out, information has been obtained to achieve the set research scope, which was to know as much as possible about the legal regime of asbestos, so that several

conclusions can be drawn. The literature review has revealed that the topic of asbestos has been addressed in recent years, not only by experts, regarding its impact on the environment but also on human health, making the issue extremely up-to-date. Furthermore, the topic of asbestos is regulated at both the national and European Union levels, and Romania has transposed the European legislation in this area.

The most important current European normative act is Directive 2009/148/EC of the European Parliament and of the Council of November 30, 2009 [25] on the protection of workers from the risks related to exposure to asbestos at work. The latest amendment to the European act by Directive EU 2023 of the European Parliament and of the Council of November 22, 2023 amending Directive 2009/148/EC (...) lays down new rules further clarifying the legal treatment of asbestos. Furthermore, an analysis of the legislation shows that asbestos has been banned in the European Union since January 1, 2005. The two selected case studies settled by the European Court of Human Rights reveal that asbestos is a dangerous substance, so long-term exposure to asbestos fibers gives a right to compensation by entailing legal liability.

The analysis concludes that public authorities must be constantly concerned to find new solutions to the asbestos issue, whether it involves asbestos-containing materials from industry or old buildings constructed before the legislation was amended, as it irreversibly affects the environment and people, leading to serious health consequences. The topic analyzed is far from being exhausted, therefore, we propose new research directions that take into account not only the documentation of the legislation in comparative law and knowledge of the asbestos consumption at the state level but also the presentation of the European Green Pact.

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