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Civil Liability for Environmental Damages

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Abstract: We debated in this article the civil liability for environmental damages as stipulated in our legislation with reference to Community law. The theory of legal liability in environmental law is based on the duty of all citizens to respect and protect the environment. Considering the importance of environment in which we live, the liability for environmental damages is treated by the Constitution as a principle and a fundamental obligation. Many human activities cause environmental damages and, in line with the principle of sustainable development, they should be avoided. However, when this is not possible, they must be regulated (by criminal or administrative law) in order to limit their adverse effects and, according to the *polluter pays* principle, to internalize in advance their externalities (through taxes, insurances or other forms of financial security products). Communication aims to analyze these issues and legal regulations dealing with the issue of liability for environmental damage.

Keywords: ecological damage; environmental protection; environmental damage; act of guilt; liability for environmental prejudice

Civil liability for environmental damages is a way to apply the “polluter pays” principle from the Treaty establishing the European Community. Its application is defined by Directive no.35 of 2004.² The directive states that the environmental damages can be covered by the remedy, which in case of damage to water, protected species or natural habitats, consists in reintegration measures aimed at restoring the damaged natural resources, ecological and human public services to initial state (primary remediation) or compensation measures if primary rehabilitation does not lead to a complete restoration (complementary remediation³) and compensation measures for interim losses of natural resources and ecological and human services provided (remedial compensation⁴). In case of damage to soil, the remediation consists in soil decontamination until there is no significant risk of affecting human health.

The environmental degradation is today one of the major problems of mankind. Environmental protection is a matter of national interest, being an obligation of authorities, central and local government, and all the individuals and business organisations.

The operational need to protect the natural environment has lead components of a complex of specific legal rules. Civil liability for ecological damages apply to environmental damages and for risk of damage due to commercial activities, since can be linked between the damage and activity.

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² EC Directive 35/2004 does not propose any material compensation for environmental damage. Can compensate the costs to restore impaired natural resources and public services provided.

³ The goal of complementary remediation is to provide additional repair a global natural resources and / or services, also to an alternative site, similar to those that would have been provided if the site was damaged, aiming to return to state original. Where possible and appropriate alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population. First, will be considered measures providing resources and / or services of the same type, quality and quantity of the damaged and secondly, other resources / services at least equivalent to those damaged.

⁴ Purpose of remedial compensation is to improve natural habitats and species of damaged site.

Environmental damages include direct and indirect damages caused to aquatic environment, species and natural habitats protected by Natura 20001, and direct or indirect contamination of soil, which could pose a risk to human health.

There are created two systems of accountability. The first system, without the proof of fault, applies to harmful or potentially harmful commercial activities, listed in the community legislation. In this case, the carrying out the business can be held responsible even if he did not commit a mistake. The second system requires proof of a fault or negligence applying to all commercial activities, if there are damages or an imminent risk to species and habitats protected by EU legislation. In this case, the activity performer is held responsible only if he committed a fault or negligence.

In the international legal specialized literature, the legal liability is considered as another way to achieve an understanding of environmental protection and development, especially in the harsher legal sanctions applicable in this field.

Legal sanctioning of harmful acts for the environment monitors the polluter education and all the citizens generally to form an ecological consciousness¹ for environment generally, without you can not perform complex tasks of preventing pollution and improve environmental conditions.

According to the theory of liability, the legal constraint contains a plurality of rights and obligations, the substantive and procedural law and appears as a result of having committed illegal acts, leading to legal sanctions.

Any violation of legal norms of environmental law may give rise to a legal constraint established between the state and the author of illegal act.

Governmental Emergency Ordinance no. 68/2007² on environmental liability regarding the prevention and remedying of environmental damages established legal framework on polluter liability for damages caused.

Outlining the legal frame, GEO no. 68/2007 provides that the state recognizes for any person the right to a healthy and ecologically balanced environment, ensuring by art 5: a) access to environmental informations, according to confidentiality requirements provided by the applicable law, b) the right of association for environmental organizations, c) right to be consulted in making decisions on policy development and environmental legislation regulating issuance of documents, plans and programs, d) the right to address, directly or through environmental organizations, to administrative authorities or courts regarding environmental issues, whether injury occurred or not, e) the right to compensation for suffered damage.

In the tort liability in environmental law is sanctioned (Marinescu, 2010, p. 438) a reprehensible conduct, antisocial for the subject of law (individuals or organizations) who by their illegal acts (commission or omission) cause damages to both environmental factors and the environment as a whole

Defining the concept of pollution, art 2 pct 51 of GEO 195/2005³ on environmental protection, as amended, shows that pollution is a direct or indirect introduction of pollutants (substance, prepared as a solid, liquid, gas or vapor, or energy, electromagnetic radiation, ionizing, thermal, sound or vibrations introduced into the environment change the balance of its components and harm living organism and material goods) that can harm human health and/or environmental quality, materials or cause damage, prevent the use of environment for recreation and other legitimate purposes.

¹ Ecological consciousness involves developing a responsible attitude on the environment, advocating for respect for nature, a protective attitude towards the environment of the people. Preservation of natural heritage protection is present, biodiversity conservation and development of public commitment to environmental protection and conservation.

² Emergency Ordinance no. 68/2007 of 28.06.2007 on environmental liability with regard to the prevention and remedying of environmental damage was published in Official Monitor no. 446 / 06.29.2007 and was approved by Law no. 19/2008 of 29.2.2008 published in Official Monitor no. 170 - 05/03/2008.

³ GEO no. 195/2005 was published in Official Monitor no. 1196 / 30th of December 2005.

The damage is defined in mentioned GEO in the same art.52, pct 52, in sense that the injury suffered is “a measurable change of a natural resource or a measurable impairment of function of a resource for the benefit of other natural resources”, quantifiable effect on cost of damage to human health, property or environment caused by pollutants, harmful activities or disasters.

The constitution provides explicitly the duty for all individuals and organizations to protect and improve the environment. The constitution creates general legal framework for protection of victims of actions that caused environmental damage¹.

The term “recovery environment” used in the constitutional text can be interpreted in terms of contribution to tackling sectors ecological degraded, also for the interventions of civil institutions in resolving civil tort which have caused damages to the environment.

The Constitution regulates the right to a healthy environment in art 35² in Chapter II on fundamental rights and freedoms. In the Title IV of fundamental law concerning “Economy and public finances”, provided in art 135 paragraph 2 letter e) that the state must ensure “environmental protection and restoration and maintaining ecological balance”.

The Constitution imposed specific obligation to owners for environmental protection in art 44 paragraph (7): “The right of property compels the observance of duties relating to environmental protection and ensure good neighborliness and other duties which the law or custom charged to the owner.

In the absence of special regulations, will recall the classic principles of civil liability (in cases where damages occur to failure to comply with laws relating to conservation, protection and development environment) as follows:

- rules on neighborly relations (essence of rules concerning balancing the interests of the victim of pollution to polluter, establishing the acceptable limits of pollution, and the requirement that damages be paid by the pollutant);
- Rules governing the civil liability remedy. Who is responsible? (Liability subjects). By definition, the natural environment is not subject to claim repair, but a fundamental value that is protected by law, domestically and internationally.

Under national law, the subject may be State, a territorial administrative unit or person or entity, public or private who suffered an injury produced by an unlawful act, failure to comply with environmental rules.

Subject in international law is in principle entitled to repair environmental holder, that State.

How can tort liability in environmental law? (Elements of attracting liability).

For civil liability must be met the following conditions:

- to have committed an unlawful act;
- to have an injury;
- to be a causal link between the illegal act and injury;
- to be guilty of illicit offender;
- at the time of the offense, authorities have been able tort.

The right of responsible environmental events includes:

- fault which produces environmental damage - acts which entail subjective (on the basis of fault);

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² According to Article 35 of the Constitution:

"(1) The State recognizes the right of everyone to a healthy and ecologically balanced environment.

(2) The State shall provide the legal framework for exercising that right.

(3) Individuals and legal duty to protect and improve the environment.

- ordinary activities, normal, legitimate, but sometimes can be causes of injuries to the environment - entail objective facts (on the basis of risk), without any fault.

In environmental law covers injury suffered damage to the natural environment through pollution and damages incurred by the person or property.

Damage will be assessed by estimating the costs necessary for recovery. Regarding the extent of damage caused, it is hard to do there is a large number of unknowns. Some elements of the environmental components cannot have economic value. Some damage to the environment or its components may not be caused by wrongful act of one person, but to be a causal link between injury and wrongful conduct of several persons. It is necessary to constitute infringements of the people as a whole, an indivisible whole, because of injury. To consider a joint appeared to be caused not need people to act through simultaneous actions, the same intensity or that the facts are linked by a common purpose or that the person who caused the result, together with others, others to know the facts.

In connection with the causal link between the illegal act and injury, must take into account the fact that any action takes place in an infinite number of relationships with other action or a series of external factors.

Tort liability forms, particularly in the area of environment.

- subjective liability for environmental damage is rarely applied, the plaintiff (victim) must prove that actual injury was caused directly and personally, and the offender's guilt, the amount of damage and the causal link between facts and injury. The proof is difficult for damage caused by pollution (due to different nature of pollutants). Subjective element of liability is negligence. Wrongful and unlawful nature of the tort is distinct conditions without which there is no liability. For illegal act become guilty must have produced some echo the psychological (especially in intellect and volitional aspect), that is to get a subjective contour.

- Responsibility objectives apply to the regulation of liability for damage caused to the environment. Objective liability is based on the idea of risk in the sense that the activity that creates a risk for another, without fault, is the author or responsible for the damage it can cause

A feature of civil liability for environmental damage is that it no longer guided by the Civil Code relating to tort, under which victims can obtain compensation for environmental damages unless the defendant proves guilt.

Government Emergency Ordinance no 195/2005 establishes in article 95 paragraph 1, two principles governing civil liability for environmental offenses objective liability independent of fault and several liability in cases of multiple offenders.

Civil liability for environmental damage is a special, different from the tort liability regulated in civil codes, environmental law aiming repressive social values attached to nature protection and environmental responsibility that aims to balance economic and social needs and preserving the environment need protection. So far, we can say that for the protection and conservation of environment operate civil, contravention or criminal liability, which add a number of specific environmental law sanctions.

Social responsibility involves social sanctioning of individual attitudes inconsistent with established social norms. Because this attitude a person can be held in the various social relations and social responsibility take different forms, being able to speak of political responsibility, moral, ethical, civil, and of course, legal.

Legal liability can arise if the non-observance of the rules of right conduct, i.e. for violating the law. In Chapters XIV-XV of Ordinance nr.195/2005 are three forms of liability established in the following formula: "violation of this law involve civil or criminal, as appropriate". Since disputes arising from the issuance, revision or suspension agreement/ environmental authorization shall be settled on Administrative law, according to GEO no. 190/21.11.2005, where justified and to prevent an imminent

damage, the applicant may ask the court to order the administrative act be suspended pending the outcome of applications.

Liability offenses consist in applying sanctions to persons guilty of violating the laws which provide for offenses and sanctions. This form of liability has advantages in the sense that the procedure of finding and sanctions offenses more quickly than other legal proceedings and enforcement measures are required, allowing for emergency intervention.

The contravention designates the offense committed by guilt, which presents a lower danger to society than the criminal offense and is provided for and sanctioned as such by laws.

It's about violating legal regulations to protect the environment with guilt, being excluded liability without fault. By applying sanctions to environmental offenses pursue certain goals: determine the pollutants to promote technologies and techniques that protect the natural and human environment, creating an economic balance factor, so that those who pollute do not obtain higher returns than units comply with legal requirements on, getting funds to be used to finance investments pollution, etc.

Contravention liability system plays important liability regulations with an economic role and is also a means of preventing serious. Individuals and organizations operating rules hostile for environment, or which do not meet the legal obligations arising from the mutual relations of the legal liability environment are likely contravention whose surface is proportional to the pollution caused, consequences and social danger of that fact. Offences and individuals that meet legal reason is that it is for them a series of specific obligations, to ensure normal development of social relations on the environment.

Contraventional penalty shall apply to persons authorized on behalf of administrative power bodies, without research polluter's guilt. Government Emergency Ordinance no. 195/2005 establishes a series of cotraventions punishable by fine amounts established by law.

Liability for pollution is an objective, it can occur whenever the environment was polluted.

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***The Constitution of Romania.