

PARTICULARITIES ON THE SUBJECTS OF LIABILITY FOR THE ACTS THAT HARM THE ENVIRONMENT¹

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ABSTRACT:

THE LIABILITY FOR THE ACTS THAT HARM THE ENVIRONMENT INVOLVES THE APPLICATION OF SANCTIONS ON THE GUILTY NATURAL OR LEGAL PERSONS AND THE OBLIGATION OF REINSTATING THE PREVIOUS SITUATION, FROM THE AUTHORS, SO THAT ENVIRONMENTAL LAW TO FULFIL A SPECIFIC REPARATIVE FUNCTION, AS THE BASIS OF LIABILITY FOR ENVIRONMENTAL DAMAGE, THEREFORE CONSTITUTING THE PRINCIPLE THE "POLLUTER PAYS".

KEY WORDS: ENVIRONMENT, DAMAGE, REGULATIONS, LIABILITY, PARTICULARITIES

INTRODUCTION

The right to a *healthy environment* is of particular importance for the development of life under proper conditions so that, in recent decades a broad social movement has been carrying out on awareness for environmental protection, which has trained civil society and specialized institutions nationally and internationally³, international, European and national institutions, organizations, bodies and having a more pronounced role in terms of instituting measures for preventing and sanctioning irreversible facts or with long-term consequences that can affect people's living conditions.

Based on current realities, states must cooperate to establish, at international and national levels, the best measures aimed at protecting and improving the natural environment, requiring not only the material and organizational efforts, but also to educate people adopt a new attitude towards the environment, based on the reconciliation of man with nature⁴.

Following the breach of a legal environmental rule, natural order is disturbed, so that it triggers a legal relationship of responsibility, which ends with the punishment of the guilty

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³ Dumitra Popescu, Mircea Popescu, *Environmental law - International documents and treaties* (Bucharest: Artprint Publishing House, 2002) 16 and next; Ramona-Gabriela Paraschiv, *International mechanisms of human rights protection* (Bucharest: Pro Universitaria Publishing House, 2014) 225.

⁴ N. N. Constantinescu, *Natural Environment Protection - intrinsic requirement of a modern economic development*, in „The Economist” no. 180 (3-6 April 1992) 5.

of committing the illegal act, which ensures the effectiveness of law, maintaining social order and directing behaviour under the law⁵.

LIABILITY CHARACTERISTICS OF THOSE RESPONSIBLE FOR ENVIRONMENTAL DAMAGE

Formed in the context of affirming environmental law and the need for an adequate response to the need to prevent and repair environmental damage, the liability for environmental damage has a particular nature, borrowing from other forms of legal liability, but also with particular traits, which imply its own content⁶.

- Specific to environmental legal liability is *the principle the “polluter pays”*, inspired by economic theory, according to which the external social costs accompanying industrial production must be internalized, that is taken into account by businesses to establish production costs⁷.

More broadly, this principle establishes the obligation of the manufacturer to bear the social costs for the pollution he generates, which triggers a mechanism of accountability for environmental damage, covering all the effects of pollution not only on goods and people, but also on the nature itself⁸.

Therefore, the manufacturer must allocate pollution costs for the damage brought to the environment, supported by public authorities⁹.

Initially, the principle the “polluter pays” took into consideration the assumption, by the manufacturer, of the costs for environmental protection preventive measures, without reference to the costs of *ex post facto* measures.

As a result, pollution generators directly incurred lower costs, namely only the expenses for preventing pollution (providing devices and filters, adapting technologies etc.), while society, as a whole, supported - immediately or in time – the costs on combating the negative effects of economic and social activities generated on human health.

Subsequently, the principle has been developed, considering that the polluter should bear the costs not only for the preventive measures but also for remedial measures¹⁰.

- Defining the ecological damage is seen from the perspective of identifying its “victim”: “man” or the “environment” or, which requires the analysis of the legal status of environmental components (water, air, fauna, flora, etc.) to determine whether these environmental values can be legally protected or not¹¹.

When the specific regulations of environmental law were reduced, it was considered that the ecological damage affected people or things in “the environment in which they live”¹², so that nature would be the source of the damage and not its victim.

⁵ Sofia Popescu, *General Theory of Law* (Bucharest: Lumina Lex Publishing House, 2000), 299.

⁶ Mircea Duțu, *Introduction to Environmental Criminal Law* (Bucharest: Hamangiu Publishing House, 2013) 101.

⁷ Michel Prieur, *Droit de l’environnement* (Paris: Dalloz Publishing House, 1991) 170-181; Patrick Girod, *La réparation du dommage écologique* (Paris: LGDJ, 1974) 84-91.

⁸ Mircea Duțu, *Environmental Law Treaty*, Third edition (Bucharest: C.H. Beck Publishing House, 2007) 271 and next.

⁹ Patricia W. Birnie, Alan E. Boyle, *International law and the environment*, Second edition (New York: Oxford University Press Inc., 2002) 92.

¹⁰ Monica-Elena Oțel, *International environmental liability*, Volume 3 (Bucharest: Legal Universe Publishing House, 2009) 27 and next.

¹¹ Mircea Duțu, *Considerations about the delineation and correlation of legal systems (regimes) for the prevention and repair of ecological damage in Romanian law*, in the Law Journal, no. 3 (2013) 241 and next.

¹² R. Drago, *La protection du voisinage et de l’environnement*, PPS, 1979, quote by Michel Prieur, *Droit de l’environnement*, 6-e édition (Paris, 2011) 1052 and next.

It was further found that pollution primarily affects the environment, the ecological damage covering all the damages that degrade natural elements: water, air, soil, noise level, etc.¹³; so that victims are not only those directly harmed, by affecting their property or person, but the whole society, which has interests to protect ecological heritage.

Starting from the idea that *individual rights* cannot solve environmental liability - because pollution, even when it harms a particular heritage, most often affects, at the same time, the collective natural heritage of all living beings – it was recognized a direct *environmental damage (actual victim)*, independent of the repercussions of pollution on people or goods¹⁴.

Moreover, it is considered that there is a distinction between pollution damages (which are suffered by *identifiable and private patrimonies*) and the actual environmental damages suffered by the natural environment by affecting the ecological balance, as *collective heritage*¹⁵.

It is true that, most often, the same act triggers both types of damages, but such a situation raises the question of identifying the *representatives of the damaged natural elements* belonging to the common heritage, in order to recognize their interest and right to act for the defence of the environment. These would be, for example, environmental protection associations, but even more, it is expected to confer the right of every person to protect environmental assets, recognizing a subjective right to the environment, enabling an effective protection of natural elements, so far neglected in their capacity of *res communes*¹⁶.

The identification of the *active subject* of responsibility for the harmful consequences on the environment, involves the identification of the owner of prevention and management obligations of polluting activities.

For criminal acts which affect the environment, the responsibility lies, in principle, with guilty *natural persons*, but increasingly more accepted is the liability of guilty *legal entities*.

The magnitude and severity of environmental damage, the massive involvement of businesses in their challenge and the need for appropriate and effective criminal reactions that contribute to environmental protection, has led to the conclusion that the criminal liability of legal entities must be a priority issue in the field, motivated also by the fact that many crimes are committed by the negligence or omission of several persons, with the risk of not identifying and punishing perpetrators, which may cause the system strict individual criminal repressions that lead to impunity¹⁷.

In international environmental law, the liability is based on the principle of *state responsibility* for transboundary ecological damages, which has been enshrined in the *Declaration of Principles of Rio 1992*, states having the obligation to act so that the entities under their jurisdiction to not prejudice the rights of other states, including environmental rights.

According to international regulations on environmental protection, the liability for the damages caused by a legal activity *per se* is often channelled to the person who has decisive economic power over the activity that caused the transboundary environmental damage.

¹³ Patrick Girod, *La réparation du dommage écologique*, 29-31.

¹⁴ Francis Caballero, *Essai sur la notion juridique de nuisance* (Paris: LGDJ, 1981), 293.

¹⁵ Michel Prieur, *Droit de l'environnement*, 1052.

¹⁶ Gilles Martin, *La responsabilité civile pour les dommages à l'environnement et la Convention de Lugano*, in *Revue juridique de l'environnement*, no. 2-3 (1994) 121.

¹⁷ Francis Van Remoortere, *La question de la responsabilité pénale des personnes morale sen droit de l'environnement*, in *Revue de droit penal et de criminologie*, no. 4 (avril 1991) 313.

CONCLUSIONS

Environmental degradation has a harmful effect on the development of life in suitable conditions, so that, in the future, it is necessary to act more effectively for its protection, instituting penalties for those who commit acts that affect people's health or even life.

Regarding the *entities responsible* for acts affecting or harming the environment, in principle, polluters are those who bear the costs of preventive and remedial actions, namely natural or legal persons guilty of altering the ecological balance.

The acceptance of criminal liability of legal persons - except the state and certain public authorities - for crimes committed in their name or by their representatives, has led to the gradual widening of the sanctions for environmental protection, so that, currently, in many countries, the convictions of legal entities for environmental offenses have a significant share.

The Council of Europe has made an important contribution to the development of regulations targeting the criminal liability of legal entities and the creation of a uniform system in this regard, within Europe, through Resolution 77 (28) of the Committee of Ministers recommending that Member States review the principles of criminal liability for the implementation, in certain cases, of criminal liability of those entities. Moreover, Recommendation no. 18 of October 20th, 1988 on the liability of legal entities for the offenses committed in their enterprises, has brought a number of important elements that regulate the respective legal institution.

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