Dny práva – 2010 – Days of Law, 1. ed. Brno : Masaryk University, 2010
http://www.law.muni.cz/content/cs/proceedings/

TYPES OF LIABILITY IN ROMANIAN ENVIRONMENTAL LAW

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Abstract in original language
Environmental protection activities include six courses of action, namely: legislative, administrative - institutional, educational - informational, economic - technological, social and international cooperation. Among them, the most important seems to be the legislative component.

Key words in original language
Environment liability.

Environmental protection activities include six courses of action, namely: legislative, administrative - institutional, educational - informational, economic - technological, social and international cooperation. Among them, the most important seems to be the legislative component.

Juridical responsibility in the field of environmental protection should be registered also among coordinates setting out the settlement of the main right's content at a protected environment [1]. Still, it should be observed that primary in this matter is prevention for some ecological damages and not establishing responsibility to recover the ones already produced (due to the character sometimes irreversible of the ecological damage). Continuing the idea of the preventive character of this type of responsibility, the quoted author shows that "juridical responsibility for damages to the environment can be used for result actions as well as for dangerous actions".

Due to breakage of the existent fragile equilibrium between human and environment it is imposed a new approach in the field of environmental law. In the far away past of human kind it was considered that everything surrounding us should be exploited up to exhaustion. If until the nineteenth century, the importance granted to environmental protection was minor or even inexistent (and there are enough arguments in this sense) today can be observed an optics reassessment at national and at global level,

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1 Gheorghe Iancu "Main rights and environmental protection", Publishing House of the Autonomous Direction Official Gazette, Bucharest, 1998, page 267

environment's protection and preservation problems achieving universal valences[2].

As a general rule, any person (physical or juridical) is responsible in case of defying environment's legislation. This responsibility should be circumstantiated as sometimes, the action though which law is transgressed has as result environment's effective pollution (the author being "polluting agent"); some other times, the action (lack of action) taken does not lead to environment pollution, but, is an action that can be sanctioned according to the norms of this law branch (the author is not anymore a "polluting agent" but he is responsible from juridical point of view).

The introduction of the juridical responsibility regime in the environmental field announces a series of difficulties, connected especially by the fact that not all prejudice forms can be repaired by applying juridical responsibility in the environmental law. Supplementary should be fulfilled the following conditions:

- the existence of one or more pollutants that can be identified;

- the prejudice should be established and quantifiable;

- be established a cause connection between prejudice and the identified pollutant or pollutants.

The activities of environmental protection contain six auctioning directions, namely: legislative, administrative – institutional, educative – informative, economical – technological, social and of international cooperation. From these, it is separated, as importance, the legislative component containing: frame laws and specific laws (adopted by Parliament), the Decisions or Emergency Ordinances (issued by Government), Orders, Decisions and Normative – issued by ministries, Instructions – realized by specialty institutes, Standards – issued by standardization institutes.

Juridical responsibility for the transgression of the environmental protection requirements and usage of natural resources is, in the system of environmental protection and rational use of resources, only one of the aspects of this group of rapports; alongside juridical responsibility, an

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2 Ioana Cleopatra Drimer "Penal responsibility in the field of environmental protection", doctoral dissertation, Bucharest, 2004, page 19

important role being the one of measures with preventive and educational character, that should ensure the activities' efficiency in this field[3].

The purpose for which has been established juridical responsibility in the environmental law is that of institutionalizing a juridical regime, through which, to the one causing an ecological prejudice (damage) to the environment, should be applied a sanction and, more than this, to be obliged to pay for the remedy of the ecological damage that has been produced.

The necessity of introducing a specific regime of juridical responsibility in the environmental law is determined by a group of norms and procedures having as purpose the enactment of environmental protection[4]. The failure of being in conformity with the norms and procedures in force, leads only to civil, administrative or penal type sanctions. In exchange, juridical responsibility in the environmental law introduces, supplementary, in comparison with the settlements in force in that field, also the compulsoriness as a potential pollutant to pay to remedy (up to a satisfying status) or balance out the damages produced to the environment. There can be imagined a series of cases in which solving the prejudice produced cannot be any longer realised. For example, in case of a grave pollution having as result the total extinguishment of a species of birds living only in the habitat submitted to pollution, the polluting agent is not able to remedy the prejudice produced to the environment, but should bear juridical consequences of that action.

The Government's Emergency Ordinance no. 195/2005 regarding environmental protection established as objective "settlements of environmental protection based on strategic principles and elements leading to durable development of the society". These are specified in article 3:

a) the principle of integration of environmental requirements in the other sectorial politics;

b) the decision talking caution the principle;

c) the preventive action principle;

d) the principle of stopping pollutants at source;

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3 Daniela Marinescu „Environment law" , Press House and Publishing House "Şansa" Bucharest,1996, page 296

4 Cristina Ionescu "Law and legislation in energy and environment", Bucharest, 2003-2004- unpublished course

e) the principle "pollutant pays";

f) the principle of preserving biodiversity and ecosystems that are specific to the biogeographically natural frame;

g) substantial use of natural resources;

h) informing and audience's participation at taking decision, as well as access to justice in environmental problems;

i) development of international collaboration for environmental protection.

The principle "polluter pays" is a basic principle in environmental law and indicates the liability of the polluter to bear consequences of the lack of respect of obligations foreseen by legislation in force regarding the introduction and usage of non-polluting technologies, limitation of pollution at parameters established in eco-standards, not respecting the procedure of authorization as well as specific liabilities in this sense.

The principle of precaution is a main principle of environmental law according to which the absence of certitude should not hinder the adoption of measures to prevent production of a risk with important and irreversible damages for environment[5]. By applying this principle are taken into account, first of all, grave and/or irreversible damages. The assessment of damage gravity takes into account its measure; the irreversibility refers to involvements brought to different environmental factors- which sometimes can be definitive. Despite appointing juridical responsibility in case of irreversible damages apparition, the use of responsibility might lead to pecuniary reparation for the victim of the prejudice.

Irreversibility expresses more than a characteristic of damage gravity. This notion is in tight connection with the so-called "degeneracy" process. For example if the disappearance of a species of animals as a result of ecological catastrophe is irreversible to the extent in which is impossible to re-establish an elements that disappeared, it should be relativized in the ensemble of the process to which it belongs, given the fact that a dynamic process might continue, substituting another elements to the one that disappeared. To give an example, I would return to the previous specification; so, the disappearance of that species does not necessarily lead to the derangement of the trophic chain (so to the extinction of some species situated in direct connection with the victim of the ecological catastrophe),

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5 Ciprian Raul Romiţan "Environmental law Dictionary", All Beck Publishing House, Bucharest, 2004, page 135

as it is possible that another group should be specialized on "attributions" possessed by the disappeared ones. Sometimes nature has unsuspected resources. What we can do in this case is only helping them to be more rational exploited.

Regarding the relative establishment of juridical responsibility, the objectives was realized for the first time, in express manner, by Law number 9 from 20th June 1973[6] regarding protection of the environment, which in article 73, decides that "Transgression of legal disposals regarding environmental protection attracts disciplinary, material, civil, contravention or penal responsibility, depending on case"; it should be noted that the first two forms of responsibility have been applied as part of work relations, between employer and employee.

Otherwise, this has been the first settlement with general character aiming environmental protection, adopted especially as a reflex at the decisions of the first conference of the United Nations Organization regarding human environment (Stockholm, June 1972). Unfortunately, the normative text did not contain an express or implicit reference to the main right of a person to a healthy environment, in a social – political context in which the institution of human's main rights had a precarious existence[7].

Once with profound modifications through which Romanian society passed after 1989, it was imposed a new environmental law. This was realised later enough (in the years 1994-1995) and has been modified almost each year, at present moment being replaced through a new settlement (Government's Emergency Ordinance number 195/2005 regarding environmental protection). It should be observed the fact that, in the field of juridical responsibility regarding the transgression of environmental protection norms, a great part of the disposals of Law number 137/1995 have been assumed also in the new settlement.

The environment responsibility problem achieved new valences once with the publication of the Government's Emergency Ordinance number 68/2007 regarding environmental responsibility for prevention and

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6 Published in the Official Gazette, number 91 from 23rd June 1973

7 Mircea Duţu "Recognition and warrantee of the main right to environment in Romania" article published in the Revue "Dreptul", number 6/2004, page 98

reparation of the prejudice produced upon environment[8], representing the transposing in internal law of the Directive number 2004/35/CE regarding environmental responsibility[9]. The normative document had been adopted as there is no legal frame through which operators be obliged to adopt measures and apply practices to minimize damage risks and take measures for necessary reparation in case of producing the prejudice.

Each person has the right to a healthy environment, in its ensemble, as well as of the component elements. As a result, each contamination comprising the transgression of this right would be punished by a legislator.

Juridical responsibility differs depending on the degree of specific social danger of the action, the last one constituting, according to this criterion, infraction or contravention, resulting two possible forms of juridical responsibility: contraventional and penal. In case the action is not part of one of these categories, but still produced a patrimony prejudice, this should be repaired through the agency of civil responsibility. As part of this doctrine there existed attempts to argument and impose (including on legislative plan) a new form of juridical responsibility, called "environmental damage responsibility"; this new form of responsibility represents, in essence, a particularity at the aspect of environmental law, of general responsibility forms. There is a tendency (especially regarding famous authors like Mircea Duţu – speaking about the existence of some infractions and contraventions at the environmental protection regime -) to make autonomous certain institution of environmental law, to create a series of mechanisms and institutions specific to this law branch. We consider that this attempt is fated to failure, the "classical" juridical institution and mechanisms being sufficient.

Environmental prejudices responsibility problem is interesting under the aspect of civil law especially due to the fact that, in this field, most of times, environmental pollution has cross- border effects. For example, rain (together with sun rays, wild flora and fauna) represents the so-called "res nullius" (nobody's goods) while being in the atmosphere, but, once fallen on the ground, enters the area of the property right of the titular of that field surface (according to civil law principles). In these conditions it is asked the question if there can be found a person responsible in case acid

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8 Published in the Official Gazette, number 446 from 29 June 2007, approved by Law number 19/2008, published in the Official Gazette, part I, number 170 from 5 march 2008

9 Published in the Official Gazette of the European Union (JOUE) number L 143 from 30 April 2004

rain (caused by a cross – border pollution) affects the property of a person? The response to this difficult problem supposes the corroboration of some "classical" principles of civil law but also of some special principles in the field of responsibility for prejudices to the environment, to apply unanimous principles accepted in the doctrine and in legislation according to which "polluter pays".

Most of time, the instauration of juridical responsibility supposes the existence of prejudice (prejudice, damage) brought to the environment. One of definitions given to that notion would be that of[10] "prejudice harming the group of elements from a system which, due to its indirect and diffuse character, does not allow constituting a right to reparation" (Government's Emergency Ordinance number195/2005 regarding environmental protection). According to another normative document, prejudice is defined[11] as being "a negative measurable change of a natural resource or a measurable damage of a service in connection with natural resources, appearing in a direct or indirect manner" (special norm).

The main problem appearing in this case is to establish who the victim of the damage is:

• human or

• his environment.

Depending on the given response it is shaped the conception on ecological damage nature. This supposes the previous establishment of the juridical stature of natural or antrophic elements founding environment, to establish if there are of there are not goods protected from juridical point of view.

International juridical responsibility in the field of environment law became, especially in the past century, a conflict area between different interests of the states, especially in fields like excessive industrialization, irrational exploitation of resources, cross-border pollution, accentuated urbanization, using nuclear energy, research of the cosmic space, etc. Practice showed that using some ancient technologies might lead to great dimensions intentional or accidental ecological damages, destructions produced by states as well as by individuals. Production of these elements

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10 Article 2, paragraph 1, point 52 from Government's Emergency Ordinance, number 195/2005 regarding environmental protection

11 Article 2, paragraph 1, point 12 from Government's Emergency Ordinance, number 68/2007 regarding environmental protection

determined the apparition in the international law of some new conventions, treaties, agreements which, based especially on the preventive component, have the purpose of further tragedies production.

Considering how important environmental protection actions are, prompt intervention (which is also necessary) of public authorities endowed with control attribution in this field, to apply specific juridical norms, represents not only a legal but also a civic liability. This underlying is justified by the fact that, nowadays, it is necessary as has never been to be aware of the danger of increasing pollution of the environmental factors, as a result of unstoppable industrial development, whose harmful effects could not be counter-balanced, but in a smaller part, by measures of environmental protection. That is why it is imperatively necessary that possible and attainable initiatives should be applied in useful and efficient period of time, considering their implementation as not only a liability, but also as a necessity, an essential condition of our possible surviving as species on this planet

The observance of environmental protection rules is ensured by a series of public institutions with attributions in that field (National Environmental Guard Institution, Community Police), nongovernmental organization (ONG) as well as by a series of "volunteer ecological agents"[12].

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12 This formulation is used in the article 2 from Order number 439/2002 of the Minister of Waters and environmental protection for the approval of organization of the voluntaries action in the field of environment protection published in the Official Gazette, number 517 from 17 July 2002, modified and supplemented by Order number 963/13th September 2006 of the Minister of Waters and environmental protection, published in the Official Gazette no. 812/2006.