E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

European Journal of Law and Public Administration

2019, Volume 6, Issue 2, pp. 268-277

<https://doi.org/10.18662/eljpa/104>

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Published by:
Lumen Publishing House
on behalf of:
**Stefan cel Mare University from Suceava,
Faculty of Law and Administrative Sciences,
Department of Law and Administrative Sciences**

GENERAL CONSIDERATIONS ON THE ELEMENTS OF CIVIL LIABILITY IN THE ENVIRONMENTAL LAW

Ciprian Gabriel UNGUREANU¹

Abstract

In the field of environmental protection, for the breaches brought to it by committing illegal acts, but also for the produced ecological damages, it was necessary to establish the legal responsibility. Environmental awareness is considered in the doctrine to be one of the most important ways of achieving the co-interest of the protection and development of the environment.

The typology of engaging the criminal responsibility regarding the protection of the environment is determined by the nature of the object protected by the law, whose infringement is brought by the crime committed. In this sense, the contribution to the protection of the environment includes forms of penal invoice sanction that sanction within the limit of the equivalent, the possible ecological damage, to institute specific repressive measures, not to be confused with the repression of contraventions and to supplement the civil or administrative provisions of the special regulations, in order to achieve the goals of sustainable development, elements that are aimed at the public interest and which constitute extraordinary emergencies.

The reality, however, confirms that this ecological awareness is either only in formation for many people, or is missing, and the negative consequences on the environment are obvious. For these reasons, we call for legislation to fill the lack of this consciousness and to educate people, even coercively. The law establishes the rules of conduct in the field of the environment, but also the sanctions that can intervene in situations where these rules are violated by committing acts harmful to the environment.

Keywords

Environment; environmental protection; environmental damage; ecological criminality; ecological offenses; liability of the natural person; liability of the legal person; sanctioning treatment.

Jel Classification: K10

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I. INTRODUCTION

Using legal constraint, sanctioning anti-environmental facts is a necessary mean, along with the means of raising awareness, stimulating and amplifying the interest of the population, in order to protect and develop the environment. The behaviour of people can be directed towards observing the rules of conduct imposed by environmental law, by instituting some forms of severe legal responsibility, the consequence of the facts must be made aware in the social environment spectrum.

In the foreign literature it is appreciated that for the current state of the environment there would be a collective responsibility that belongs: to the scientific communities, to the scientists, to all the people who want the progress although they are aware that it carries risks to the level of the advantages made just from the progress made.

The appearance and the legal recognition of the ecological damage, however, forced the widening of the scope of application and the adaptation of the liability regime to the new realities of the classical conception of civil liability. The first element constituted, in this sense, is the emergence and consecration of the notion of ecological damage (prejudice), followed relatively quickly by the establishment of a special regime of liability adapted to its particularities.

Civil liability appears in environmental law as a means to be resorted to in the last instance, the priority being given to the other techniques and instruments, especially those of economic-fiscal nature.

Civil liability appears rather as a repair, and less as a liability in the classical sense. Where the activity of the pollutant is exercised according to the established administrative rules, civil liability is not prevented, insofar as the administrative authorizations are issued subject to the rights of third parties. The illicit activity is no less harmful and in this situation a repair is also required. The pollutant can never hide his responsibility behind the administrative requirements, even if he fully respects them. The multiplication and amplification of the seriousness of the damages caused to the environment raised in the plane of the law the major problem of the liability and, first of all, of the civil liability for ecological damages.

In conclusion, we can say that the liability that is immune in the case of ecological damage is essential because depending on the awareness of this action, the planet will have life.

Considered from a criminal, misdemeanour point of view, the objective is to nominate the crim and sanction them.

The phenomenon of crime acquires a new type of crime, ecological criminality, a new sector of socially dangerous facts, called ecological crimes,

which are required for analysis from a sectoral perspective, but with a global vision when the serious or particularly serious danger of these crimes, or when strategies for preventing and combating them are proposed. [1: 237].

II. DEFINITION OF THE SCOPE OF COMMON LAW IN THE ENVIRONMENTAL LAW

A relatively new branch of law, environmental law has imposed itself with the economic development that in order not to get out of control certain degenerate factual situations in which the essential element is given by nature, soil, biosphere or atmosphere, has developed institutions and segments of legislation that controls the exploitation of this spectrum.

Thus the liability for the unlawful act causing damages is established, which is a form of legal liability, the latter being, in its turn, a component part of the social responsibility.

In a concise expression, the criminal civil liability represents the obligation of reparation of the person guilty of causing an extra-contractual damage by an unlawful act [2:237]. Another definition states that "Criminal liability is the sanction provided by the Civil Code, for committing a crime, that is, an unlawful act causing damages, which consists in the obligation to repair the damage caused"[3: 136-143].

The immediate purpose of the criminal liability is, therefore, to repair the property of the injured party by removing all the harmful effects that the wrongful act has had on the active elements of the victim's estate.

The *Civil Code* [4], [5], [6], in Chapter IV. The civil liability (art. 1349-1395) of Title II (Sources of obligations) of Book V (About obligations), establishes *the principle of liability for the unlawful act causing damages*.

More precisely the general disposition² contained in art. 1349 (Criminal Liability): "(1) Every person has the duty to respect the rules of conduct that the law or the custom of the place imposes and not prejudice, through his actions or inactions, the legitimate rights or interests of other persons. (2) The person who, having discernment, violates this duty is responsible for all the damages caused, being obliged to repair them completely. (3) In certain cases provided by law, a person is obliged to repair the damage caused by the deed of another, by the things or animals under his guard, as well as by the ruin of the edifice. (4) The liability for the damages caused by the defective products is established by special law".

² Art. 1349 opens Section 1. General provisions, Chapter IV. Civil liability.

GENERAL CONSIDERATIONS ON THE ELEMENTS ...

By consecrating the principle of criminal liability, by the provisions of the Civil Code, the following situations can be emphasized:

- A moral rule, according to which no person is allowed to harm another, through his illicit acts or deeds, and
- A rule of behaviour, according to which our facts (actions or inactions) are legitimate as long as they do not harm the rights or the legally protected interests of others (*alterum non laedere*) [7:123].

In order to be engaged in criminal liability, it is necessary to cumulatively meet the following conditions:

- a) The existence of an injury;
- b) The existence of an unlawful act;
- c) The existence of a causal relationship between the wrongful act and the injury;
- d) The existence of the guilt of the person who caused the injury.

The form in which this guilt is presented has no relevance in the field of civil law, it may consist in the intention or the easiest guilt, the consequence being the same in any situation, namely the obligation of the guilty party to fully repair the damage caused. This is also stated by art. 1357 para. (2) Civ. C. where it is expected that *the perpetrator of the injury will be held liable for the slightest guilt*.

Some authors [5: 71], [8: 29] also argue the need for the existence of criminal capacity as a distinct condition of criminal liability. It should be noted, however, that this constitutes only one element of the condition of the guilty of the perpetrator of the wrongful act, because there can be no guilt unless there is the discernment of the committed crime.

The common law has become applicable in the matter of the environment according to the provisions of art. 135 para. (2) let. e) of the *Constitution*, which provides that "the restoration and protection of the environment, as well as maintaining the ecological balance must be ensured by the state".

According to the legal texts in the specialized literature, which by "restoring and protecting the environment" emphasizes not only the state's contribution to ecological rebalancing, but also the application of the civil institution of criminal liability, it is understandable that this requires the existence of the elements of criminal liability.

This situation was also preserved after the adoption of *the first Environmental Law no. 137/1995* - in art. 81 - but it was limited only to the statement of civil liability for environmental factors without specifically regulating it.

However, Law no. 137/1995, republished, by art. 81 established two general principles of liability for ecological damage:

- Objective responsibility independent of guilt;
- Solidarity liability in the case of the plurality of authors.

Basically, through this text of law, which aims to give expression to the fundamental principle "the polluter pays", instituted by the same normative act [art. 3 let. d) of Law no. 137/1995, republished] whereby it would seem that environmental liability has definitively distanced itself from the common law, by providing for an objective responsibility an increased protection for the victims, who absolve them of the burden of proof of the perpetrator's fault and more than that, increasing their possibility to cover their damage by consecrating joint and several liability in the case of the plurality of the authors of the damage.

In fact, art. 81 of Law no. 137/1995, republished to limit the objective liability only to "the quantifiable effect in cost of the damages on the health of people, goods or the environment caused by pollutants, harmful activities or disasters" (Annex no. I of the Law no. 137/1995, republished)³.

The new environmental law, G.E.O. no. 195/2005, with the subsequent modifications, keep the provisions of the old law, specifying at art. 95 that: "The responsibility for the damage done to the environment is objective, independent of the fault. In the case of the plurality of authors, the responsibility is solidary. Exceptionally, the liability may also be subjective for the damages caused to the protected species and to the natural habitats, according to the specific regulations. The prevention and repair of the damage to the environment is carried out according to the provisions of the present emergency ordinance and the specific regulations" [7].

A normative act of special character, G.E.O. no. 68/2007 also refers to the prevention and repair of environmental prejudice. Establishing the regulatory framework for environmental liability, based on the principle polluter pays", in order to prevent and repair the environmental prejudice [9], G.E.O. no. 68/2007 "does not give to the natural or legal persons of private law the right to compensation as a consequence of the damage to the environment or of the imminent threat with such damage, in these situations the provisions of the common law apply [10].

From this aspect we conclude that the definition of prejudice, as presented in art. 2 point 52 of the G.E.O. no. 195/2005 establishes the limits of objective liability in environmental law to the "*quantifiable cost effect of*

³ The scope of the concepts of harmful activities, disasters and pollutants will be analysed in the next chapter when presenting the meaning of the concept of ecological damage.

the damage on the health of people, goods or the environment, caused by pollutants, harmful activities or disasters”.

III. Civil liability in the Romanian civil code system with applications in environmental law

In order to discuss civil liability, in the civil law system we must talk about the existence of the elements of civil liability.

a. Illicit act

In the broadest sense, illicit conduct can be defined as the circumstance that determines the birth of the legal report for the application of the sanction, that is, the constraint report. *From a legal point of view*, illicit conduct is a legal fact, more precisely an illicit legal fact, and about a fact it is said to be illicit when it contravenes the legal order [11: 67].

Consequently, the first of the conditions of criminal civil liability, the unlawful act of the environment, being in the sphere of guilt, commits liability on the risk basis can be defined as any fact (action or inaction) by which, in violation of the norms of objective law, they are the subjective rights (or legitimate interests) of another person are harmed, causing them prejudice [12: 67], [13:176], [11].

The facts that cause the damage are increasingly anonymous, due to the fact that they are, as a rule, the product of the activity of things or machines, taken in their acceptance with a general framework, behind which it becomes increasingly difficult discerning the personal activity of man. Cosmic or nuclear experiences, the use of atomic energy, of chemicals in the most varied forms of production, of genetically modified organisms, the electromagnetic fields of the different polluting industries represent the modern potential of the facts causing damages by affecting, sometimes irreversibly, the ecological balance.

The functional complexity of these causes makes it difficult to identify the guilty contribution of the person in causing prejudices. Facts that cause prejudice, especially in environmental law, lose their character of personal facts becoming in a way, anonymous and objective facts in their materiality.

As can be seen, art. 95 of G.E.O. no. 195/2005, in accordance with the modern regulations in the field of environmental protection, bases environmental responsibility on an objective basis.

In EU law, as well as in other states, this responsibility is based on both the idea of risk and the idea of guarantee. Adhering to the objective guarantees thesis - as the basis of the responsibility of the client for the deed

of the foresight - we agree with those authors who, within this thesis, support the assertion that the guarantee is justified and based *on the principle of equity and not on the idea of risk of activity or of profit*.

b. The prejudice

We should point out that the scope of the notion of prejudice, as used in common law, corresponds only in part to the newly created legal situations created by the legal reports specific to environmental law. A comparison should be made of the prejudice under the common law and the damage to the environmental law.

In the common law, if the prejudice is indirect, a causal link cannot be established between it and the wrongful act, which is why all that can be connected with the phrase "indirect prejudice" is outside the scope of the civil criminal liability.

In environmental law, the question of employing responsibility also arises in those situations when the fact from the perspective of common law cannot be considered illicit, so that the idea of environmental harm intersects with that of common law, but it also has a specific specificity. Moreover, the prejudice (damage) caused to the environment can also affect the health of the people, so that the situation of indirect or ricocheting damage is of much greater importance.

The definition of the ecological damage is related to the efforts that define the environment as a whole, and which is subject to law and can be included in the category of victims of the harmful act, which implies the need to reconsider the concept of the holder of the subjective law.

There is a clear tendency to autonomy the legal responsibility in environmental law to the legal responsibility of the common law, a tendency that is reached due to the bivalent position that man has in his relation with the environment, namely that of creation and creator of the environment.

In this case, in environmental law, the origin of the prejudice can be removed (and to find, for example, in the accumulation of chronic or diffuse pollution), and the law can recognize the indirect prejudice, which requires the classification of the different pollution damages into several categories, namely:

- Isolated ecological damage;
- Collective ecological damage;
- Ecological damage caused to the planet.

In the case of the first two categories of ecological damage, there could be a definite damage. Ecological damage, referred to in the doctrine as

"pure ecological damage" or "harm to the environment" consists in **the deterioration of the natural environment**, that is, the alteration of the physical-chemical and structural characteristics of the natural and atrophic components of the environment, the reduction of the biological diversity and productivity of the natural ecosystems, of the species and protected natural habitats, affecting the natural environment with harmful effects on the quality of life, caused mainly by water pollution, atmosphere and soil contamination, over-exploitation of resources, poor management and utilization, as well as inadequate spatial planning [art. 2 point 22 of the O.U.G. no. 195/2005].

c. The causal relationship between the wrongful act and the prejudice

In order to commit the civil liability of offenses, it is required that there be a causal relationship between the wrongful act (the cause) and the prejudice (the effect), in the sense that that fact caused that prejudice.

The causal relationship between the harmful event and the ecological damage is difficult to establish. Thus, in the case of atmospheric pollution, the meteorological conditions accompanying the action of the causes have a great importance, influencing it in a favourable or unfavourable sense.

The environmental factors are added, the causes can be diffused, difficult to identify and, implicitly, to be put in relation to the ecological damage, which has led to the need to socialize the damage compensation.

The causal report is conclusive evidence regarding the existence of the injury. Its existence allows the application of techniques of decay, repair of the environment.

It is necessary that the insurances involvement for insolvency be made only when it is not possible to establish the causal link between the deed and the ecological damage.

Establishing a causal link is difficult for the victim, because, to date, scientific knowledge does not always allow for the true identification of the sources of pollution, seeing itself in the situation of resorting to a series of costly expertise, which is why - in doctrine - the idea of the presumption of the probability of the causal link was established.

d. Fault or guilt

The fault is quite difficult, so that the identification of the pollutants in the environment does not always allow the identification of the culprit. The placement of the culprit from the civil point of view in the guilty space is a rather troublesome technique, which requires that the guilty

responsibility be assigned to the state from which the pollution leaves and much more difficult to the one who is really guilty.

However, in relation to the culprit who committed the action of environmental intoxication, measures of severe financial sanction can be applied or even compensation can be requested at his expense.

IV CONCLUSIONS

Environmental awareness is considered in the doctrine as one of the most important ways of achieving the protection and development of the environment. The reality, however, confirms that this ecological consciousness is either only in formation for many people, or is missing, and the negative consequences on the environment are obvious. For these reasons, we call for legislation to fill the lack of this consciousness and to educate people, even coercively.

The law establishes the rules of conduct in the field of the environment, but also the sanctions that can intervene in situations where these rules are violated by committing acts harmful to the environment.

Along with the path of co-interest based on environmental awareness, on owner awareness, legal responsibility is one of the important and efficient ways of achieving co-interest in the field of environmental protection and development.

The use of the legal constraint, the sanctioning of the anti-environmental facts is a necessary mean, together with the means of raising awareness, stimulating and amplifying the interest of the population, in order to protect and develop the environment.

The behaviour of the people can be guided in the direction of observing the rules of conduct imposed by the environmental law, by establishing some forms of severe legal responsibility.

In the foreign specialty literature it is appreciated that for the current state of the environment there would be a collective responsibility that belongs: to the scientific communities, to the scientists, to all the people who want the progress although they are aware that it carries risks to the level of the advantages made just from the progress made.

Any natural or legal persons who do not comply with the environmental law may be subject to legal liability. Persons who are legally liable can be in situations of *polluting agents* (when by their facts they actually pollute the environment) or by *non-polluting agents* (when by their illicit acts they do not pollute the environment itself but they are punishable according to environmental law).

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