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Tortious Civil Liability in Environmental Law

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Abstract: Tort liability consists in the obligation of the one who has committed an injury to indemnify the injured party. Tort liability is a legal operation which, according to the Civil Code, when an unlawful act causing damage is committed, the reverse means compensating the injured party.
In the case of the environment, the one who harms is not always sanctioned, so in the case of this issue the legislator has developed a rather broad legislative framework.
The common law has become applicable in the field of the environment based on the provisions of art. 135 para. (2) lit. e) of the Constitution, which stipulates that , which stipulates that , which stipulates that, the environment is an area that must have a legal protection so that the state maintains a permanent ecological balance.
Rehabilitation of the environment is done by applying sanctions to those concerned. So the institution of tort liability is an instrument in the gear of environmental protection.

Keywords: *the existence of a prejudice, the existence of an illicit deed, environmental law, ecological balance.*

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1. Introduction

The notion of liability is found in all branches of law, it was formed as a necessity, concentrating a type of action, by which the subject must not prejudice the interests or legitimate rights of another person. Any deviation from the rules of conduct, followed by the occurrence of an injury or the creation of a state of danger, requires the perpetrator to be held liable (Dogaru & Draghici, 2009, p. 142).

In support of this desideratum, the legal protection of the environment is inseparable from the institution of legal liability, for the person who caused damage or injury (Mangu & Mangu, 2007, pp. 136-143). The recognition and ensuring of the right to a healthy and ecologically balanced environment takes place both at the level of national legislations and at the level of international regulations.

The legal aspects of environmental protection outline complex issues, the problem of repairing the damage caused by pollution being investigated in our legal literature, in the context of the issue of "civil liability". If traditionally the whole system of tort subjective right of the perpetrator to the wrongful act and its consequences, environmental law is an exception to this rule, being relevant the provisions of Framework Law No. 137/1995, which is a very important principle of regulation regarding liability for pollution (Romanian Parliament, 2000). The law stipulates that "Environmental protection is a duty of all natural and legal persons whose reason is to repair the damage and remove the situations caused by them, rearranging the conditions prior to the damage."

2. Aspects of delimitation of tortious civil liability in common law and environmental law

The *Civil Code* (Eliescu, 1972, p. 45) in *Chapter IV. Civil liability* (art. 1349-1395) of Title II (Sources of obligations) of Book V (On obligations), establishes *the principle of liability for the wrongful act causing damage*, which is applied not only in civil matters but also in the case of environmental law.

This provision has a general character and is contained in art. 1349 (Delinquent liability).

The institutional construction of tortious civil liability is made by the Civil Code, which applies two important rules:

- *A moral rule* according to which anyone is punished for committing illegal acts and

- *A rule of conduct*, according to which our conduct is legitimate only if it does not violate the legally protected rights or interests of others (*alterum non laedere*) (Petrescu , 1996, p. 123).

In order to engage in tortious civil liability, the legatee cumulatively proposed the following conditions:

a) Presence of injury;

b) Establishing an illegal act;

c) Identifying the causal relationship between the illegal action and the damage;

d) Confirmation of guilt.

In the case of environmental issues, the guilt is not similar to that of civil law, it must be notified and clearly outlined in order to identify the culprit and his intention.

Some authors also argue that it is mandatory to establish tort capacity as an indispensable element in this report. It should be noted, however, that this is a segment that defines the perpetrator's guilt, because there is no guilt if there is no capacity to exercise (Albu & Ursa , 1979, p. 29; Anghel & Deck, 1970, p. 71).

The Constitutional legislation on environmental law is recorded in art. 135 para. (2) lit. e) of the Constitution, which stipulates that "*the restoration and protection of the environment, as well as the maintenance of the ecological balance must be ensured by the state*". However, as shown in the literature, "environmental restoration and protection" means not only the state's contribution to the management and restoration of the environment, but also the application of sanctions when the institution of tort liability is present.

And in the situation of adopting the first Environmental Law no. 137/1995 - in art. 81 - stopped only at the enunciation of the civil liability for the environmental indicators without foreseeing a special regulation (Romanian Parliament, 2000).

Law no. 137/1995, republished, by art. 81 published the general principles of tortious liability caused to the environment:

- Objective liability independent of fault;

- Joint and several liability in case of plurality of authors (Romanian Parliament, 2000).

Basically, the text of the law aims to emphasize a clear principle, namely "*the polluter pays*", built by the same normative act [art. 3 lit. d) of Law no. 137/1995, republished].

In this case, it would seem that environmental liability (Romanian Gouvernament, 2001) has definitively distanced itself from common law, ensuring by the establishment of an objective liability an increased protection of victims, which it relieves of the burden of proving the perpetrator's guilt.

In reality, art. 81 of Law no. 137/1995, republished, limited the objective liability only to "the quantifiable cost effect of damages on human health, goods or the environment caused by pollutants, harmful activities or disasters" (Annex no. I of Law no. 137/1995, republished) (Lupan, 2001, p. 367). In this situation we can speak of a special liability regime established by the law in question, which means that for the resolution of other situations - except liability for nuclear damage and liability for damage caused by aircraft, where also by special laws, an objective liability has been established - common law applies.

Another legal framework is the G.E.O. no. 195/2005, with the subsequent amendments, which keep the provisions of the old law, specifying at art. 95 that: that the responsibility for damages will be borne by the perpetrator (Petrescu, 1996, p. 128).

In conclusion, the definition of *damage*, as presented in art. 2 § 52 of the G.E.O. no. 195/2005 establishes the limits of the objective liability in environmental law.

Therefore, through our approach we can see the problems related to the manner and foundations under which tortious civil liability regulated by the Civil Code finds its application in environmental law, which involves the analysis of their conditions, listed above.

3. Civil liability applications and foundations in environmental law

As a first condition for prejudice in the case of common law, it is limited to the compensatory aspect obtained at the moment of committing the illicit deed. The legal framework

in terms of the environment the damage is ecological damage, *lato sensu*, ie in the broadest sense of the term, consists in the damage to natural factors, which means the deterioration of the natural environment and also the health, life and property of people, caused by pollutants, activities damage, disasters or environmental accidents. "Damage - the quantifiable cost effect of damage on the health of the population, on the ecosystem, caused by pollutants, through dangerous actions of the degrading phenomena of the environment".

Stricto sensu, ecological damage, also called "pure ecological damage" or "ecological damage", are the aspects that concern the degradation of the natural environment, ie the alteration of the natural and anthropic physico-chemical components of the environment, the reduction of diversity and biological construction of ecosystems, species. and protected natural habitats, altering the natural environment with disastrous effects on quality of life, mainly caused by water pollution, air pollution and soil pollution, overexploitation of resources, inconsistent management and development of resources; and inadequate land use planning [art. 2 para. (1) § 22 of the G.E.O. no. 195/2005].

Illegal conduct is the circumstance that constitutes the birth of the legal relationship establishing the sanction, ie the relationship of coercion. From a legal point of view, illicit conduct is an unlawful act contrary to the law when it contravenes the rule of law. (Costin , 1970, p. 68).

Violation of the norm of conduct *(alterum non laedere),* according to which no one is allowed to infringe, by his deed, the subjective right or the legitimate interest of a person, leads to the employment of the tortious civil liability of the perpetrator.

The texts of the Civil Code provide the wording:

- Art. 1357 para. (1): "He who causes harm to another *by an unlawful act*, committed intentionally or through fault, is obliged to repair it" and

- Art. 1349 para. (1), disseminates the context of the tort institution

in the Civil Code

Environmental action exercised contrary to the law attracts the responsibility of the one who exercises it (Cosmovici, 1960, p. 67; Costin, 1970, p. 67; Statescu & Birsan, 2008, p. 176).

The inclusion of licit facts in the category of facts for which the compensation is due, results from the specifics of environmental damage where, due to the unity and interdependence of ecological phenomena, damage to a natural element, spreads and influences other environmental components.

Legitimate activities through their content can, by interfering with other factors (which add up), have an irreversible harmful effect on the environment.

Referring even to the subject of environmental law, we note that contemporary society struggles between the need to respect the classical principle of justification of *an interest by the holder of the subjective right* to promote an action for damages and the need to maintain a way to sue of the right to a healthy environment, where *the interest is general*, but there is no concrete holder of this right. The difference between common law and environmental law that emphasizes the general interest is eloquent.

Moreover, even in the approach of the legal institution of environmental law, it is necessary to use the notion of ecological damage and not that of damage, which has a sphere circumscribed by its characters, immediate (direct) consequences of the wrongful act.

The common law explains the situation that if the damage is done through intermediaries the causal relationship is not eloquent and in this case the perpetrator is not identified as guilty. (Oneţ, 2017, p. 365*)*. According to this conception, it would not be in accordance with justice for someone to bear all the distant echoes of an illicit deed, because the position he would have had, even the victim, could not be known if the illicit deed did not intervene. By way of example, it has been decided that the payment of the debts of the victim, killed by the perpetrator, cannot be charged to him, because it is not known whether the surviving victim would have wanted, or could have honoured the debts that he owed them to his creditors (Supreme Court, Civil Section, 1965, p. 217; 1988, p. 75).

In environmental law, as we have already shown, there is the issue of liability and we have situations in which the act from the point of view of civil law is not considered illegal, so the idea of environmental damage intersects with that of common law. Moreover, the damage or injury caused to the environment can also affect human health, so that the situation of indirect or ricochet damage occupies an important place.

The definition of environmental damage refers to the efforts to answer the question of whether the environment as a whole is subject to legal norms and can be established as a victim of the harmful act, which means the need to reconsider the concept of subjective right holder or this approach is still too innovative to be taken into account for the legislative change?

In the right environment a bivalent aspect has been created, man is the one who harms but also the one who repairs the environment . Legal liability in environmental law must find solutions to monitor compliance with ethical imperatives in human relations with the environment in which he lives, but this requires a review of the classical dimensions of legal relations and even the fundamental idea that the holder of any legal relationship is only the man.

The causal relationship - from a logical-philosophical point of view "is a relationship of subordination and expresses a relationship of generating the effect by its cause, the succession in time and the mutual interaction between cause and effect".

In the social plan, the causal relationship is characterized by the fact that the causal action is presented as a manifestation of the human will, oriented in the direction of achieving consciously proposed goals.

In legal terms point of view, the phenomenon will always be a social fact, so an act or a human fact that falls under the incidence of regulating legal norms, thus acquiring the character of legal fact. These legal facts are acts of social conduct that produce negative consequences for the individual or society, ie they are illegal acts.

The causal relationship between *the harmful act and the ecological damage* is often difficult to establish in environmental law. An example is air pollution it will not be realized only if there are direct factors in it other factors will

participate.

Obviously, this socialization of compensation for damages has the disadvantage, on the one hand, that it does not care about identifying the sources of damage in order to remove them, and on the other hand, in the end, the repair is done at the expense of the community.

In order to establish the causal relationship and, therefore, of the illicit facts that constitute causes or causal conditions in the occurrence of the damage, in practice, in most cases, recourse is made to expertise (medical, technical, accounting, etc.) following this to establish, according to the existing scientific knowledge at a given time, "the objective correlations between the facts and events that preceded the damage itself" (Statescu & Birsan , 1996, p. 166).

4. Conclusions

Being a state-of-the-art right, the right to a healthy and ecologically balanced environment has proven to be the fastest evolving of its generation, in terms of its guarantee and effectiveness through justice. In this sense, one can also observe its constitutionalization at the state level in only a few decades, favouring appropriate regional and international developments. At the same time, the emergence of global ecological problems (greenhouse effect, climate change, ozone depletion, etc.) has contributed to strengthening its status as a fundamental right and human right to survival (Dutu, 2008, p. 154). Regarding the jurisprudential consecration, the right to a healthy environment was affirmed through the interpretation of art. 8.1 of the European Convention on Human Rights, as it does not have an express consecration in the matter, as a component part of the right to private and family life, offering it protection.

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