

GENERAL ASPECTS REGARDING ENVIRONMENTAL LAW RESPONSIBILITY

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ABSTRACT

If legal liability in all its forms has been regulated since the publication of the legislation, environmental liability is relatively new and, from the point of view of the authors, still not sufficiently and coherently regulated.

We continue to apply the rules and the legal regime of the “classical” common law liability, although the environmental damage (ecological damage) presents an extreme degree of danger and although in terms of environmental law the principle of restoring the parties to the previous situation and repairing in the nature of the damage often becomes impossible to apply.

KEY WORDS: *ecological damage, irreversibility, special legal liability, prevention*

INTRODUCTION

It is undeniable that the development of modern technology specific to recent years has brought with it a number of major advantages in almost all areas of daily life.

If until recently notions such as hydraulic fracturing, shale gas, greenhouse gases, nuclear energy, heat engines, synthetic oils, genetically modified plants, aviation, were not even known, now exists even the necessary technique for their implementation.

Unfortunately, it is equally undisputed that the same modern technology has an important negative effect consisting in the exponential growth of pollutants and thus in environmental degradation.

MATERIAL AND METHOD

The materials used in writing this paper consist of normative acts, web pages, treatises, specialized courses, ECHR jurisprudence. The methods used are legal, namely the formal method, the historical method, the comparative method, the logical and sociological method, the analytical method. The use of these methods had the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSION

In the contemporary society, influenced also by the technical-scientific revolutions, the social responsibility of the man receives a special significance.

Control by man of the machines, mechanisms and conducting scientific and technical research is gaining both national and global importance. [1]

Environmental law is a relatively new branch of law that appeared only later and as an effect of the great industrial developer specific to the last decades. For lack of industry, there are no pollutants and implicitly no real danger of environmental damage.

The technological momentum has boosted the industry and its development has brought with it beside undeniable benefits a series of challenges that humanity must face. [2]

Hydraulic fracturing, nuclear energy, greenhouse gases are everyday realities that cannot be ignored because their widespread use is proven to have a strong polluting effect on the environment generating climate change that risks becoming irreversible.

Environmental issues have a certain specificity that requires a different approach and cannot be regulated in terms of common law institutions.

1. If in the common law, works the rule of putting in the situation prior to the occurrence of the damage, in the matter of pollution the ecological damages are most of the times irreversible, which generates an objective impossibility to apply the previously stated principle.
2. If in common law, the identification of responsible persons is quite easy, at the occurrence of ecological damage can compete a number of factors even without a direct link (technical or legal) between them, which generates the problem of identifying responsible persons and their responsibility limits.

Who is responsible for the deterioration of the ozone layer? - industrial economic agents, civil or military aviation, a certain state for not adopting an adequate legislative framework or the entire international community to which the same omission could be imputed.

3. If in the common law, the training of liability has in most situations the basis of commissive deeds, in the material of environmental law the ecological damages are susceptible to be generated also by omissive deeds.
4. Another specificity of environmental pollution is given by the fact that the passive subject of illicit activities are not only individuals but even the state and sometimes even the international community.

The cuts in the Amazon forest affect not only the locals but, through the effect of changing climatic conditions, the entire world.

Specific environmental issues require a special regulation in which a primary role should be played by prevention, the sanctioning component, although important, must be put into the secondary plan.

The special regulation must recognize the right of persons or non-governmental bodies to be actively involved in the decision-making procedure with potential impact on the environment.

Obviously, active involvement necessarily requires guaranteeing access to relevant environmental information, information in the absence of which the consultation of the population can be appreciated as being only formal.

Active involvement also implies the right of any person to express a point of view regarding an environmental issue and the correlative obligation of the authorities to analyze it.

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The right of third parties to notify the courts must be expressly recognized whenever they have information / evidence / simple suspicions regarding a potential ecological danger or about an inappropriate normative act.

In this context, should be noted the Decision no. 1195 pronounced by the Cluj Court of Appeal on 26.09.2019, which ruled that there is no relevant jurisprudence of the Strasbourg Court declaring inconsistent the Convention with judicial practice or legislation of a State party to the Convention by which the acceptance of the formulation of some actions in public interest was sanctioned.

In the considerations of the same judgment, it is also judiciously noted that the Aarhus Convention has the value of a minimum standard and that the signatory states can at any time ensure a wider access to justice according to their own legal norms.

The Court also noted that if at the last moment the Aarhus Convention could be invoked as a basis for restrictions regarding the right of access to the court in environmental matters,

GENERAL ASPECTS REGARDING ENVIRONMENTAL LAW RESPONSIBILITY

this restriction cannot be opposed to Romanian courts because it is incident art.20 par. 2 of the Constitution which imposes in such a situation the prevalence of domestic law [7].

There is a need for a complete transparency of the legislative procedures in the field with the correct, complete, concrete and effective consultation of all the persons interested in the subject to be regulated.

The special regulations of the environmental law must absolutely forbid the secrecy of the content of some contracts for the valorization of the public property goods whose exploitation can generate ecological risks.

Special environmental law cannot be addressed without mentioning at least the international environmental context.

In 1972 in Stockholm under the auspices of the UNO, all countries present expressed concern about how human activity influences the environment and it was accepted for the first time that there was an indissoluble link between quality of life and quality of the environment.

The foundation of global climate protection is considered the United Nations Convention on Environment and Development from 1992 in Rio de Janeiro, where was discussed for the first time about the establishment of a new economic and industrial development strategy to ensure sustainable development [8].

Because the European Convention on Human Rights was signed long before industrialization and implicitly environmental issues, it does not contain express provisions regarding the right to a healthy environment.

This aspect was not enough to prevent the Strasbourg court from sanctioning the signatory states for not actively assuming the obligations to ensure an adequate legislative framework for environmental protection.

There are already two known cases of sanctioning Romania generated by the non-establishment of a legislative and administrative framework regarding the effective prevention of environmental damage [9].

And because, as I mentioned earlier, the right to a healthy environment was not expressly regulated in the Convention, the Strasbourg Court opted to find violations in terms of art. 8 of the Convention on the right to privacy, stipulating that the quality of life and well-being of the person generated by environmental issues may be considered as infringing privacy [10].

The procedure used by the ECHR is already known in the specialized doctrine as *protection par ricochet*.

CONCLUSIONS

- it is necessary to adopt a legislation that expressly and unequivocally regulates the objectification of liability and its foundation in all cases not on the idea of guilt as in common law but on the idea of risk. The change would generate an enormous benefit by being able to reverse the burden of proof and thus facilitate liability.
- express recognition of the possibility of introducing a preventive action before the occurrence of the damage
- unification of legislation on environmental law, the protection of forests and air being currently made by separate normative acts and which does not enjoy the establishment of the unitary principle.

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