CIVIL LIABILITY IN ENVIRONMENTAL LAW

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Rezumat: *Ocrotirea mediului reprezintă o prioritate la nivel mondial, regional şi naţional, în contextul apariţiei unor probleme universale, cum ar fi: reducerea stratului de ozon, creşterea efectul de seră, deşertificare, distrugerea pădurilor, reducerea biodiversităţii, probleme care privesc toate naţiunile şi toate statele din întreaga lume.*

Statele şi organizaţiile internaţionale au adoptat tratate, convenţii, declaraţii, planuri şi programe de acţiune care conţin principii de bază ale protecţiei mediului, în condiţii de dezvoltare durabilă. O serie de decizii şi hotărâri de importanta capitală precum Declaraţia de la Stockholm (1972), Convenţia de la Rio de Janeiro (1992), Carta Mondială (1982) votată de ONU în 1982, Convenţia de la Aarchus (1998), cu privire la dreptul de a fi informat , de a participa la luarea deciziilor şi de acces la justiţie în caz de prejudicii legate de mediu, se constituie într-un domeniu nou şi dinamic de legiferare. România a semnat şi ratificat aceste convenţii, astfel încât acestea fac parte din dreptul intern.

În general, noţiunea de răspundere, prezentă în toate domeniile de drept, s-a format şi a evoluat împreună cu societatea modernă, care impune o anumită conduită fiecărui subiect, care este obligat să nu încalce interesele generale şi drepturile legitime ale unei persoane şi să nu cauzeze vreun prejudiciu. În contextul existenţei vieţii pe pământ şi în contextul provocărilor permanente în vederea asigurării supravieţuirii omenirii, politica în domeniu are în vedere protecţia, conservarea şi dezvoltarea

mediului. Pentru atingerea acestui obiectiv, protecţia juridică a mediului nu poate fi separată de existenţa responsabilităţii juridice, de persoana care a cauzat o daună sau un prejudiciu. Dreptul la un mediu ecologic, sănătos şi echilibrat este recunoscut şi garantat de legislaţia naţională, precum şi de cea internaţională.

Articolul 35 din Constituţia României aşa cum a fost modificat prin Legea nr. 429/2003, afirmă, printre alte drepturi fundamentale, dreptul la un mediu sănătos, care este parte a unei a treia generaţii de drepturi numite „drepturi de solidaritate", care pot fi respectate, nu numai prin eforturi interne ale statului, dar şi prin cooperare între stat şi cetăţeni. Prin încheierea unui acord de asociere între România şi Uniunea Europeană care a intrat în vigoare în 1995, România şi-a asumat acquis-ul comunitar de mediu, cu cele trei drepturi fundamentale (dreptul de a fi informat cu privire la mediu, dreptul de a participa în procesul de luare a deciziilor privind mediul şi dreptul de a solicita repararea daunelor ecologice, sau anularea actelor administrative ilegale, au jucat un rol important în acest proces).

Cuvinte-cheie: *biodiversitate, protecţia mediului, poluare, repararea daunelor ecologice, răspundere civilă*

Resumé: *La protection de l'environnement représente une priorité à l'échelle mondiale, dans le contexte de l'apparition de certains problèmes universels, comme: la réduction de la couche d'ozone, l'amplification de l'effet de serre, désertification, destruction des forêts, la réduction de la biodiversité, problèmes concernant toutes les nations et tous les Etats du monde.*

Les Etats et les organisations internationales ont adopté traités, conventions, déclarations, plans et programmes d'action contenant des principes de base de la protection de l'environnement, dans des conditions de développement durable.

Une série de décisions et résolutions d'une importance capitale, comme la Déclaration de Stockholm (1972), la Convention de Rio de Janeiro (1990), la Carte Mondiale (1982) votée par l'ONU en 1982, la Convention d'Aarchus (1998) concernant le droit d'être informé, de participer à la prise

des décisions et d'accès à la justice en cas de préjudice relatives à l'environnement, se constituent en un nouveau domaine, dynamique de législation.

La Roumanie a signé et ratifié ces conventions, de sorte que celles-ci font partie du droit interne.

En général, la notion de responsabilité, présente dans tous les domaines du droit, s'est formée et a évolué avec la société moderne, qui impose une certaine conduite à chaque sujet, qui est obligé de ne violer les intérêts généraux et les droits légitimes d'une personne et ne pas lui provoquer un quelconque préjudice. Dans le contexte de l'existence de la vie sur terre et dans le contexte des provocations permanente en vue d'assurer la survie de l'humanité, la politique de ce domaine a en vue la protection, la conservation et le développement de l'environnement. Pour atteindre cet objectif, la protection juridique de l'environnement ne saurait être séparée de l'existence de la responsabilité juridique, de la personne qui a causé un dommage ou un préjudice. Le droit à un environnement écologique, sain et équilibré, est reconnu et garanti par la législation nationale, ainsi que par celle internationale.

L'article 35 de la Constitution de la Roumanie, tel qu'il a été modifié par la Loi no. 429/2003, affirme, entre autres droits fondamentaux, le droit à un environnement sain, qui est une partie d'une troisième génération de droits, appelés droits de solidarité, qui peuvent être respectés non seulement par des efforts internes de l'Etat, mais aussi par la coopération entre l'Etat et les citoyens. Par la conclusion d'un accord d'association entre la Roumanie et l'Union Européenne, entré en vigueur en 1995, la Roumanie a assumé l'acquis communautaire de l'environnement, avec ses trois droits fondamentaux (le droit d'être informé au sujet de l'environnement, le droit de participer au processus de prise de décision concernant l'environnement et le droit de solliciter la réparation des dommages écologiques, ou l'annulation d'actes administratifs illégaux a joué un rôle important dans ce processus).

Mots-clé: *biodiversité, la protection de l'environnement, pollution, la réparation des dommages écologiques, responsabilité civile*

Liability for the ecological prejudice as presented in OUG no. 195/2005

In the absence of special regulations regarding civil liability for ecologic prejudice, article 44 paragraph 7 of the Romanian Constitution introduced two possible fundaments for this kind of liability: the violation of the duties regarding the environment protection and breaking the obligation to ensure a good neighborhood.

Law no. 137/1995 regarding the protection of the environment resolved this problem and brought important notions in the area of liability for ecologic prejudice. This law abandoned the classic regime of civil liability based on illicit acts, as established by article 998 and the following of the Civil Code and it introduced three general and complementary rules that apply in case of liability for prejudice: the objective liability, regardless the person's fault, the solidarity liability in case there are more persons liable for prejudice and the obligation to ensure against the risk of ecologic damage.

The new frame-law regarding the protection of the environment – OUG no. 195/2005 abandoned the obligation of ensuring against the ecologic damage, obligation that, among others, is specific for liability for ecologic damage.

Article 95 paragraph 1 of OUG no. 195/2005 states that the liability for environmental prejudice has an objective character, regardless of fault; in case there are more persons responsible for the prejudice, the liability is solidary. The next paragraph of the same article states that "Exceptionally, there can be a subjective liability for the prejudice cause to protected species and natural habitats, in accordance with special regulations". These provisions are useless because the exceptions are governed by special regulations and they must be interpreted strictly. The provision that the prevention and the reparation of environmental prejudice will be made according to OUG no. 195/2005 tries to replace the elimination of the obligation of ensuring, by mentioning a future special law.

OUG no. 195/2005 adapts the civil liability to the environmental protection, so that the fundamental principles of precaution and "the polluter pays" are being respected. It also offers a higher protection to the victim of ecological prejudice, by not forcing it to prove the author's fault and by raising the possibility to have the damage repaired by introducing the solidarity liability in case there are more authors of the prejudice.

The liability for environmental prejudice represent more a way of reparation of the damages that a classic responsibility due to the fact that its essence, the subjective attitude of the author is suppressed from the conditions to engage liability.

Article 95 paragraph 1 of OUG 195/2005 uses the notion "prejudice caused to the environment which is more exact than the notion "ecologic prejudice" that is used by Law no. 137/1995.

If Law no. 137/1995 referred to three kinds of damage: damage caused to human health, damage of goods and prejudice caused to the environment, OUG. 195/2005 only refers to prejudice caused to the environment.

The objective liability, regardless of fault

Due to the risks that human activities represent for the environment, the law instituted an objective liability for the prejudice caused, regardless of the author's fault.

The victim will only have to prove the existence of the prejudice and the causality report between the fact and the damage. The victim will not have to prove the author's fault that is very difficult to be proved. The final result will be the one that matters, the protection and quality of the environment and not the efforts that a person made to avoid the pollution of the environment.

The solidary liability in case of more authors

In case of ecologic prejudice, the persons that caused the prejudice are all liable, so that the victim can ask any of the authors to repair the whole damage and the person who pays will ask the others to pay for their damages, because, between the authors, the liability is divided.

"The polluter pays" principle

One of the conditions for this principle to be applied is that the victim must prove that that the act of a person caused the prejudice. This person will be forced to pay for the damage caused. The contravention liability has an important role in applying this principle, because, it is a contravention and sanctioned in consequence breaking the natural or legal persons' obligations to pay for the reparation of the prejudice.

The precaution principle

The precaution principle was first used by Economic Organization for Cooperation and Development in 1987 and in the second International Conference on the protection of North Sea – London, 1987, but it is also found in The Declaration of the Conference for Environment from Rio – 1992 and in Maastricht Treaty of the E.U.

The precaution principle appeared in environmental law and expresses a liability based on insecurity. It is an anticipation principle that applies when the prejudice was not caused and the probability for the prejudice to occur is not demonstrated.

The civil classic liability and the payment that it implies remains has no object when the prejudice is uncertain and when the risk occurs and the reparation can not be made because the prejudice lasts for generations, having unpredictable consequences. The person that performs a activity with impact on the environment must inform the local public authorities for the environmental protection about the accidents or danger of accidents, making sure that the public is informed and can take part on the decisions regarding specific activities, in accordance with the Convention from Aarhus - 25 of June 198, ratified by law no. 86/2000 – The Convention regarding the access to information, the public's participation to the process of taking decisions and the access to justice regarding environmental issues.

The transposition of Directive no.2004/35/CE in national law

In the domain of environment protection, the European legislation contains over 200 normative documents (directives, settlements and dispositions) that settle many sectors, as the water pollution and air,

biotechnology, wastes and chemical products administration, the nuclear safety and nature protection, having as a start the adopted decisions from the ONU Conference regarding the Human Environment that took place in October 1972 in Stockholm, where it was decided the institution of a common politics in the environment domain.

Directive no.2004/35/CE is one of the international documents and was transposed in national law by OUG 68/2007 regarding the environmental liability regarding the prevention and reparation of the environmental prejudice.

OUG 68/2007 takes over the provisions of the directive, but also establishes some national measures that are meant to apply the international provisions in the internal law system. OUG 68/2007 is applicable, without interfering with the national and communitarian legislation that: a) establishes a stricter regime for the activities it regulates; b) establishes rules that are useful to resolve the conflict of jurisdiction; c) regulates the use of waters, the protection of species, natural habitats and soil; d) regulates the reparation of the prejudice caused to property or person.

The National Environmental Guard, through its county divisions is the competent authority to ascertain the environmental prejudice, an imminent risk of such prejudice and the identification of the responsible persons.

Any natural or legal person who is affected or may be affected by an environmental prejudice or who considers that one of her rights or a legitimate interest was violated has the right to:

a) send to the National Environmental Guard any observations regarding the possibility for an environmental prejudice to occur or an imminent threat with such a prejudice;

b) to ask the county division for environmental protection to take the appropriate measures provided by OUG 68/2007.

The county division for environmental protection analyses the request and informs the legal or natural persons that sent the request on its decision to act or not to act in any way. This decision must be motivated, because the regime provided in Law no. 554/2004 is applicable to it, so that the persons that are not satisfied with the authority's decision may file a complaint before the Court.

The transposition of the directive implies the creation of new subsequent laws that must define the forms for financial guarantees and the measures for developing the offer for financial instruments regarding the liability in environmental law.

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