Legal Responsibility in Environmental Law

Niculescu Iuliana[1]

Abstract: The paper aims to make an endeavor in the field of environmental law. It is recognized that the most important role in the field of environmental protection and nature conservation is played by the preventive means of civil or administrative nature, while the criminal law means have a subsidiary role, which is why we have analyzed the civil, contraventional and criminal liability.

Keywords: environment; legal liability; environmental protection; civil liability; criminal liability

The general notion of liability is encountered in all branches of law and emerged and evolved with the dynamics of human society, imposing a certain conduct on any subject, forcing him/her to preserve the general interests or the legitimate rights of a person and do not to cause an injury. Any deviation from the rules of conduct followed by a damage or creating a life-threatening condition, carries the responsibility of the author of the unlawful act. Under the conditions of life on earth, in view of permanent concern to ensure the mankind survival as a species between species, the environmental protection concerns its protection, preservation and development.

The environment is affected both by the underdevelopment and excessive development consequences. In our country, the environmental protection is a matter of national interest, representing the obligation of the authorities, the central and local public administration, as well as of all natural and legal persons.

The need to exploit and to protect the components of the natural environment has prompted the adoption of a set of legal norms specific to each state. The notion of legal liability which is met in all branches of law, suggests the idea of sanction. As a historical category, the legal liability is a living institution which emerged and evolved with the human society.

In the environmental law, under the impact of technical and scientific revolution, the legal liability has become a "hot zone" due to the global environmental situation,

[1] Assistant Professor, PhD, Dunarea De Jos University of Galati, Faculty of Legal, Social and Political Sciences Galati, Romania, Address: 47 Domnească Str., Galați, Romania, Tel.: 0336 130 108, E-mail: liliananiculescu26@yahoo.com.

seriously affected by the consequences of industrialization and automation, the irrational exploitation of natural resources, as well as other factors.

I believe that the legal liability in the environmental law is today one of the most effective means of solving the environmental problem. At present, the environmental protection has become a matter of major importance for human society, given that advanced technologies involving the use of natural resources in huge, even exaggerated quantities. Such a situation determines the establishment of rules meant to protect the environment. In this context, it is increasingly difficult to create a unique and homogeneous framework of social norms.

Therefore, the idea we are starting from is that, in order to solve a problem specific to human society, such as this issue of environmental protection, specific rules are also required, and given that the phenomena of nature are independent of human will and that any human intervention on the environment inevitably leads to changes, we conclude that the procedures used to solve these problems must be both categorical, drastic and exclusive, so that, in the end, to exclude the intervention or to fully eliminate the consequences of this activity.

One of the most effective procedures for solving the major problems has been over the centuries the practice of applying legal liability measures.

The issue of legal liability has found an important place in the field of environmental protection. This is reflected through the prism of specific rules according to which the responsibility in the environmental law relations is applied, and in terms of the effects caused.

The context of addressing this issue arises from the particularity that the legal responsibility in the context of environmental law is today an institution increasingly applied due to the multiplication and diversification of environmental risks, the multiplication of environmental damage and the increase in their severity caused by the deepening of the ecological crisis world-wide, aggravated by the consequences of industrialization and automation, the application of cutting-edge technologies in many areas of human activity, without sufficient and severe means of environmental protection, irrational exploitation of natural resources and other policy-dependent factors in this field of each country.

Engaging in such activities by the states and private individuals leads to intentional or accidental environmental damage with a high degree of risk and danger to natural and anthropic environment, thus leading to the emergence and diversification of repair techniques, the establishment of special rules of accountability and the adoption of measures aimed at ensuring the application of the well-known general principle “the polluter should bear the consequences of its actions with a negative impact on the environment”.

In our country, the regulation of legal liability is based in O.U.G. nr. 195/2005 on environmental protection. Some authors consider that the reference to surrounding environment is a redundant formulation. It is recognized that the most important role in the field of environmental protection and nature conservation, is played by preventive means of civil or administrative nature, while the means of criminal law have a subsidiary role.

The legal liability, as it is known under its "classical" form (civil liability, administrative liability, criminal liability) and which, of course, represents the common law, proves to be inadequate and inadequate in the case of breaches of environmental protection rules and the environmental impact (resulting in environmental damage).

Thus, a legal "fitting" of the liability in this field is necessary, considering its specificity, the categories of liability remaining basically the same. Therefore, the categories of liability applied in case of violation of legal provisions on the environmental protection are as follows: civil liability, contraventional and criminal liability.

The civil liability in the field of the environment: in situations where it is found that damage has been caused by various behaviors, it is necessary obtain the recovery of losses through civil liability. In general, the civil liability penalizes a reprehensible, anti-social conduct of the subjects of law which, through their illicit deeds, cause damage to the environment as a whole. In the field of environmental protection, there are two classical civil law institutions, namely: rules on neighborhood relations and rules governing the reparative civil liability. It was assessed that the civil law cannot serve the interests of recovering the environmental damage because it protects the private interests, while the environmental damage affects the public interest. In the same vein, it is stated that the recourse currently being made to the use of civil law means for environmental protection is an alternative and not a solution. In order to ensure the civil liability in the field of environmental law, it is necessary to fulfill several conditions, namely: to commit an act with illegal intent, to cause ecological prejudice/damage, to have the author's fault and the author's tortious capacity at the time of the act. And, in the field of environmental law, the prejudice must be certain.

As the legal literature states, if the full extent of the damage is not known, the court will confine itself to requiring the reparation of the damage to be established with certainty, and then it may return to grant the entire reparation for the damages incurred after the judgment, on the sole condition of proving that they come from the same deed. In the law of the environment, the term "environmental damage" also applies to damage, which includes both damage caused to the natural environment by pollution as well as those incurred by man or goods. As we can see, and as it should, there are also a number of peculiarities of civil liability for environmental deeds in relation to the accountability enshrined in the civil law. Thus, the definition of the notion of ecological damage is a very important matter. This definition has led

to a series of discussions in the literature, discussions that have not been finalized with the identification of a unanimously accepted definition, this failure being due to the fact that it was assumed that the environmental damage is a civil one, when, in fact, there are fundamental differences between the two institutions. The legal definition of the concept of damage is given by Article 2 of the Government Emergency Ordinance no. 195/2005 as a quantifiable adverse change of a natural resource or a quantifiable deterioration of the functions performed by a natural resource for the benefit of other natural resources or to the public, which may occur directly or indirectly.

In a doctrinal formulation, it was considered that "the environmental damage" is any harm with (patrimonial or non-patrimonial) negative effects on an environmental factor, whether or not close to it, produced as a result of the environmental pollution. As has been shown in the legal literature, the environmental damage affects all the elements of a system and, due to its indirect and diffuse character, does not allow the creation of a reparation right. The ecological damages are irreversible, distorted in their manifestation and in establishing the causal link.

The extent of the damage caused is difficult to be established because of a significant number of unknowns, as an economic value cannot be attributed to many of the environment elements. Certain damage to the environment or its components may not be caused by the illicit act of a single person, but by a causal relationship between the damage and the unlawful behavior of more than one person.

In this case, in order for a result to be considered as jointly caused, it is not necessary for persons to act by simultaneous action, of the same intensity, or that the facts are linked for a single purpose, or that the person causing the result together with others, to know the facts of others. It is only necessary that the illicit acts of persons constitute an indivisible whole, i.e. the cause of the prejudice. A particular feature of the civil liability for the environmental damage is that it is no longer guided by the provisions of Article 988 et seq. of the Civil Code, under which the victim cannot obtain compensation for environmental damage unless the victim proves the fault of the perpetrator.

The subjective element of civil liability is the fault. The Government Emergency Ordinance no. 195/2005 enshrines in Article 95, paragraph 1, two principles governing the civil liability for the environmental deeds: the objective liability independent of fault and joint liability in case of plurality of offenders. A special mention should be made in relation to the civil action in the field of environmental protection. Article 95 of the Government Emergency Ordinance no. 195/2005 enshrines a special procedural rule, conferring to non-governmental organizations the right of legal action in order to preserve the environment, no matter who suffered the damage. The situation is not only specific to the environmental law in Romania. There are other legal systems that recognize the right of organizations to take legal action in order to protect the environment. If in civil law, the fault is the main basis

of common law regarding the tort liability, it is not the only one. Thus, there is a special regulation in the field of nuclear damage and the tort liability is no longer based on the idea of fault, but on risk. The contraventional liability occupies an important place in the regulatory system regarding the legal liability, having an economic role and constituting a serious means of prevention. Natural and legal persons performing activities contrary to the rules contained in the environmental protection norms or failing to comply with the legal obligations deriving from legal environmental reports are liable to a contravention whose extent is proportional to the pollution caused, the consequences and social danger of that deed. The fact that the legal persons are contraventionally liable is explained by the fact that they have a number of specific obligations in order to ensure the normal development of the social relations regarding the environment. The civil fine shall be applied by the persons empowered on behalf of the bodies of the administrative authority, without the investigation of the polluter agent's guilt. The liability for pollution has an objective character, intervening whenever the environment has been polluted; the degree of pollution, the negative consequences for the environment and the economy, the social danger of the deed are taken into account only when establishing the civil fine. The Government Emergency Ordinance no. 195/2005 also establishes a series of offenses punishable by a fine in the amounts set by law. The offender may pay half of the minimum amount of the fine provided in the normative act immediately or no later than within 48 hours from the date of the minute conclusion or, as the case may be, from the date of communication, and the agent shall mention this possibility in the report of findings and sanctioning contravention.

It is accepted that the application of environmental sanctions is aimed at achieving certain goals: determining the polluter agent to promote technologies and techniques that protect the natural environment, creating an economic equilibrium factor, so that the polluters do not get higher profits than the units complying with the legal requirements in the field, and obtaining funds to be used for financing the anti-pollution investments. In procedural terms, the Article 97 paragraph 1 of the Government Emergency Ordinance no. 195/2005 on environmental protection establishes certain special rules. Thus, the finding of contraventions shall be carried out by commissioners and empowered persons from the National Environmental Guard, National Commission for Nuclear Activities Control, police, gendarmes and personnel of the Ministry of National Defense, empowered for this field of activity, according to the powers established by law. Moreover, the finding of contraventions can also be carried out by the personnel of the management structures and custodians of the protected natural areas, only on the territory of the protected natural area under management. The criminal liability in the field of environmental protection: It is recognized that the most important role in the field of environmental protection and nature conservation belongs to the civil or administrative preventive means which are governed by the principle of minimal intervention, while the means of criminal law have a subsidiary role.

The spectacular evolution of the environmental law under the pressure of the generalized ecological crisis, on the one hand, and the concerns of strongly industrialized states regarding the protection of the environment, on the other hand, have highlighted the insufficiency and ineffectiveness of environmental protection guidelines as well as the lack of forms of civil liability and contravention. The criminal liability for the violation of environmental protection rules is part of the principles of criminal liability, the specific nature of its engagement in the environmental protection being established by the nature of the object protected by law, and which infringement is determined by the offense with guilt. Environmental offenses can be defined as those dangerous acts committed against the social relations, the protection of which is conditioned by the protection of the natural and artificial factors of the environment and their consequences are represented by the damages to natural and legal persons administering them, endangering the health of humans, animals and plants, or damaging the national economy.

The Government Emergency Ordinance no. 195/2005 on environmental protection provides for and sanctions a series of offenses, if they were likely to endanger life or human, animal or plant health for which the punishment is the fine or the prison. The legal sanctioning of anti-environmental facts, in addition to the natural purpose, aims at educating the persons sanctioned and other citizens to acquire an ecological, environmental consciousness in general, without which the complex tasks of preventing pollution, depollution and the improvement of environmental conditions cannot be achieved .

However, in the context of this profound global ecological crisis, the failure and ineffectiveness of the norms of recommendation for environmental protection and other forms of legal liability has been established. In these circumstances, the criminal liability, the most severe of the forms of legal liability, was also called upon to contribute to the observance of the norms in the field of environmental protection. In order to contribute effectively to the environmental protection, the criminal law must not only adapt and proportion the penalties for the environmental damage, but also establish a repression of pollution that cannot be confused with the repression of contraventions, in which case a simple violation is sanctioned as some simple breach of administrative prescriptions.

In most cases of pollution, the environmental damage cannot be quantified and its costs cannot be estimated, most of the times this process being irreversible. Penalizing the culprit does not always solve the problems encountered and, in this respect, a joint effort of authorities, industry, non-governmental environmental protection organizations, schools, families and civil society in general is needed in order to respect the environment, for us and for the future generations.

The legal liability will fall both on the polluter, guilty of damages to environmental factors, as well as on the public servants or any natural or legal persons who, despite

the fact that they do not pollute the environment, violate the environmental legislation.

The legal liability in this area is aimed not only at sanctioning those guilty of environmental pollution, or those who violate the environmental legislation, although they do not damage the environment, but also imply actions by the state or local authorities, public or private institutions meant to ensure optimal conditions in which all economic and social activities take place so as to minimize the risk of pollution.

Bibliography

Duțu, M., *Treaty.* Volume I, pp. 50-51.

*** O.U.G.195/2005 Official Gazette no.1196 of 30 December 2005.

Lupan, E. (2003). On the legal concept of environmental damage. In *The Law*, no. 3, p. 84.

Statescu, C. & Barsan, C. (1993). *Civil Law, Theory of obligations*. Bucharest: All Beck, p. 134.

Lupan, E. (2002). Right to compensation for the victim of pollution. In *The law*, no. 9, pp. 79-80.

Guihal, D. (1997). *Droit répressif de l'environnement*. Paris: Ed. Economica.

Marinescu, D. (1996). *Environmental Law.* Edition III revised and added. Bucharest: Sansa.

Anghel, I.M.; Deak, Fr. & Popa, M.F. (1970). *Civil liability.* Bucharest: Ed. Stiintifica, pp. 10, 84.

Priesur, M. (1991). *Droit environnemental*. Dalloz, pp. 1034-1401.

Voicu, C. & Boroi, A. (2006). *Criminal law of business*. 3rd Edition. Bucharest: CH Beck.