ECOLOGICAL PREJUDICE - ELEMENT OF DELICTUAL CIVIL LIABILITY

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Abstract
In this study, we want to analyze the occurrence and legal recognition of environmental damage.
The numerous environmental influences have led to the characterization and consecration of the notion of ecological damage in the legal doctrine.
The environment – as a victim – is considered to be independent from the right of ownership and of persons, and has to make the subject of specific protection. [1]
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Under the impact of economic development, environmental law has become an important institution of environmental law due to the global environmental situation.
In the view of the European Community, the environment is defined as the set of elements that, in the complexity of their relationships, constitute the framework, medium and condition of human life.

The environment is seen as a set of factors that act upon the existence and the living conditions of people.

According to the legislation in force, in the case of committing an illicit, offensive and guilty act, the subject will have liability, be it contraventional or criminal, as the case may be. Criminal or contraventional liability may be accompanied by civil liability, this form of liability may also be applied if there is a lack of guilt or unlawfulness of the offense, however only provided that there is damage.

The notion of ecological damage has been first used by [2], in order to emphasize the particularity of the indirect damages caused due to the actions done in the detriment of the surrounding environment.

According to a definition accepted by both national legislation and international regulations, ecological prejudice is defined as the prejudice done to the inappropriable wildlife, res nullius, or to the interests of the collective though the receiving environment – air, water, earth, independent of the damages brought to a human interest

According to GEO 195/2005 ecological prejudice means the quantifiable effect in cost of the damages done the health of the people, to goods or to the environment, caused by pollutants, damaging activities, or disasters. [3]

In 2007, along with the adoption of GEO no. 68 which transposes Directive 2004/35/CE regarding environmental liability, prejudice was defined as being a measurable negative change of a natural resource, which can occur directly or indirectly.

We consider that there is a need to distinguish between the notion of ecological prejudice and the environmental damage, since ecological prejudice is a direct damage to its people and property through the pollutant environment, and environmental damage is a direct damage to environmental factors.

Ecological prejudice is understood in broad terms, because it allows for the consequences an attack upon the environment has on the health of the people, as well as their property to be taken into account.

The concept of ecological prejudice was initially perceived with the person as the victim in what damages brought to the health and property of the individual are concerned, but also their activities and well-being. [4]

A definition of ecological prejudice was also given by R. Drago and that is that: ecological prejudice is that caused to persons and their goods by the environment in which they live. [5]

Pure ecological prejudice has yet to be defined by the legal doctrine, however in order to be able to characterize it, the following definition was proposed: the maintenance of the essential ecological processes, the maintenance of genetic diversity and the maintenance of a sustainable exploitation of the species and of the ecosystems; the damages brought to these objectives would constitute a pure ecological prejudice [6].

The pure ecological damage or the ecological prejudice is strictly understood, covering only the presumption of the damages brought to the environment in itself, regardless of its impact on the people and/or property.

Romanian law tends to indirectly take into consideration the notion of pure ecological prejudice, in the sense that in order to gain legal recognition of the ecological damages one must start from the definition of the environment and then continue with the legal determination of the deterioration of the environment.

Thus, the directive regarding the civil liability for the prejudices caused by waste makes distinction between the damages brought to the persons and their goods, and the damages (damage or degradation) brought to the environment, underlining, while stating the reasons, the necessity of isolating these damages as a new category in reference to those preceding. [7]

In order to see if we can talk about a derivative of ecological prejudice, three conditions must be fulfilled: the prejudice must be direct (which refers to the causality link between the generating event and the prejudice), personal (the damages must be claimed by the person who suffered it), and it must have a great probability.

For example, ecological damages occurred when more victims fell ill and the causality link between the illicit gas spills from an ICPE [8] and their illness [9].

Gh. Durac, when he referred to the victim of the ecological damage, considered that the man was not only a victim of ecological damages, he himself also being at the same time the author the the degradation of the environment, being thus a victim of his own actions [17].

This recognition was also made by a decision of the Constitutional Council in 2011, which admitted an obligation to be vigilant in what what concerns the damages brought to the environment, whose breach involves civil liability of its employee. [10]

The certainty of the current or future existence of an injury must take into account its reality and its actuality, leading to the destruction of a species, the massive pollution of the seas, contributing to the constant destruction of fish and birds.

The reality of ecological injury can pose the problem of future damage, so there must be possibilities for evaluation, even if it occurs later.

An example in this sense is the famous Zoe Colocontroni case [11] – the judge noting that the loss caused by an oil spill in a plantation is not only that of the loss of a certain number of plants and animals, but a much more important one, which concerns

the capacity of the polluted elements of the environment to regenerate and to permit the same thing to the respective life forms [12].

In order to be admitted, future ecological damage must not be hypothetical or eventual, but only be a safe and straightforward extension of current damage.

In the legal legal doctrine, illicit acts are known that produce their harmful effect at a time after their being committed.

For example, the effects of the substance called Freon in the gaseous state are known. These substances come into the stratosphere, decompose under the influence of ultraviolet rays and release chlorine atoms. A single molecule of chlorine can destroy several hundred ozone molecules, forming so-called ozone strips. The consequences of these gases in the stratosphere will only be perceived after 50-100 years.[16]

In the specialized doctrine it was posed to know from what degree of negative environmental effects we can talk about repairing the damage.

In this respect, French jurisprudence consecrated the notion of probable and credible cause when no cause other than pollution or damage to the environment can reasonably be considered as the main cause of the damage.

Until now, an effective method of assessing environmental damage has not been found.

In the American jurisprudence four methods of assessing damage to the marine environment have been retained: calculating the value of replacement of destroyed marine organisms, assessing the cost of restoration to the previous state; using a flat rate assessment; evaluating the cost of compensation by restoring an equivalent size area in the vicinity of the polluted area [13].

Several ways have been considered to determine the extent of damages [14] .

Only certain damages can benefit from a pecuniary assessment and those are the ones that bring damages to the integrity of the person, goods, or commercial activities. In other situations what must also be taken into account is the damages done to the goods outside of the civil sphere.

Particularities of environmental damage have led to the consideration and assertion of new types of damage and the recognition of original repair methods.

There appear to be new types of prejudice: non-financial prejudice, safeguard measures, developmental prejudice and prejudice to the natural environment. [15]

There have been difficulties in repairing and recovering environmental damage, as there is a problem with the fact that damage can sometimes not be repaired in nature, or repair is unpredictable, or it is not known who should be held liable for the damage.

Since reparation of damage in nature is not always possible, repair is made by an equivalent, for example by paying an amount to make the ecological reconstruction of the affected environment.

Conclusions

We appreciate the need to establish a special legal regime of legal tort civil liability in the field of environmental law, requiring a harmonization between man and nature, at the level of all states, to prevent and eliminate environmental damage.

The legal regulation of new types of damage, as well as original ways of evaluating, will make it possible to determine precisely the extent of the reparation and the compensation that is due to the victim of the ecological prejudice.

At present, although we have regulations in the field of environmental law, the chance to benefit from a clean environment and guarantee that we will no longer be subjected to harmful activities to the environment done by our peers is minimal.

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