

## CONSIDERATIONS REGARDING CONTRAVENTIONAL LIABILITY IN ENVIRONMENTAL LAW

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### **Abstract**

*A major problem of mankind is the continuous degradation of the environment. In order to protect the environmental components it was necessary for the competent authorities to adopt specific legal norms, which could sanction the possible behaviors of the people towards the environment. Legal liability for the environmental law was necessarily established, due to the national ecological situation increasingly affected by the consequences of industrialization and automation, by the irrational exploitation of natural resources.*

**Keywords:** *environment, legal norm, resources, responsibility, liability, contravention.*

### **Responsibility and liability in environmental law**

In order to be able to enjoy freedom, we must first of all be responsible.

Responsibility is primarily a social phenomenon. It represents an obligation to do something, to answer for something, to be held accountable for something, it is practically the individual's engagement in the process of social integration.

The individual with responsibility refers to the norms and values of a society actively and consciously [1], the principle of responsibility being a fundamental principle of law.

Social responsibility knows several forms of manifestation: moral, religious, political, cultural and legal responsibility.

Although distinct, responsibility and liability, by nature, content and degree of integration, are nevertheless linked, because both refer to the relationship between the individual and the community.

The concrete reality is that the two terms are not equivalent, the term liability concerns the legal-moral field, while the term of responsibility is an object of concern for sociology.

The phenomenon of social responsibility has come along a path parallel to that of enhancing the natural given of man. [2]

The individual's responsibility has been created around the value of justice.

The notion of liability has undergone an evolution similar to that of responsibility. This evolution of liability can be located in the behavior of man within material life, since the idea of responsibility is specific to normal life.

Most actions generate a form of liability, even within unorganized social relations.

Responsibility is not found exclusively within the law [3], it can be found in any area of social life.

The legal liability / responsibility is complementary to the moral responsibility.

The legal norms of ethical character do not generate legal responsibility, the notion of liability being associated more quickly.

Legal liability is normative, belongs to the domain of public authority and seeks to observe the norm.

The legal liability is based on the illicit conduct of the individual towards society. Since each branch of the law knows a specific form, there are several forms of legal liability: political liability (constitutional liability), civil liability, contravention liability, criminal liability and disciplinary liability.

### **Contraventional liability in environmental law**

This form of liability is attracted when a contravention is committed.

The contravention is a fact that presents a lower social danger than the crime, a fact that is explicitly provided by law or other normative act, and which is committed with guilt [4].

The regulation of legal liability in environmental law is based in GEO no. 195/2005 on the protection of the environment.

In environmental law, it is often resorted to administrative (contraventional) liability for preventing or combating non-compliance with legal requirements, given the advantages of such a form of liability. [5].

Contravention liability occupies an important place in the system of legal liability regulations. Contravention liability has a double role: economic role, but also a preventive role.

Contravention liability is a form of the administrative liability, the contravention being a form of manifestation of the administrative illicit, its most serious form, its legal regime being in general an administrative one. [6]

Natural and legal persons who carry out activities that violate the rules contained in the environmental protection rules, or that do not fulfill the legal obligations arising from the environmental legal reports are liable for contravention. Each is liable according to the degree of pollution caused.

A number of specific obligations are incumbent on legal entities, in order to carry out normal social relations regarding the environment [7].

The local councils of the sectors of Bucharest can establish and sanction in many areas: sanitation, maintenance of parks and green spaces, maintenance of streets and sidewalks, schools and other institutions of education and culture, storage and collection of garbage and household waste.

The finding of contraventions and the application of sanctions (fines) are made by the commissioners and authorized persons within the National Environmental Guard, the authorities of the local public administration and their authorized personnel, the National Commission for Nuclear Activities Control, the Ministry of National Defense and the Ministry of Administration and Interior by the authorized personnel in their fields of activity, in accordance with the duties established by law, as well as the personnel of the administrative structures, etc.

The contravention fine in environmental law is applied by the persons empowered on behalf of the administrative bodies, without investigating the polluting agent's guilt.

Responsibility for pollution has an objective character, being able to intervene whenever the environment has been polluted.

The legal responsibility in the field of environmental protection must also be included among the coordinates that lay out the regulation of the content of a fundamental right to a protected environment. [8]

GEO no. 195/2005 regarding the protection of the environment, establishes a series of contraventions sanctioned with a fine in the amount established by the law (art. 96).

Ecological contravention is the deed committed with guilt, of a lower social danger than the crime, through which the environmental factors are harmed.

The environmental contravention includes: the object, the subject, the unlawful act (it consists of what is not allowed, to act in a way forbidden by the mandatory legal norms of the environmental law), the guilt (the offender can act intentionally or negligently).

The penalties that apply to acts considered contraventions can be: main and complementary.

The main sanctions are: the warning, the fine and the provision of an activity for the benefit of society.

Complementary contraventional sanctions are:

- a. Confiscation of goods intended, used or resulting from contraventions.
- b. Suspension or annulment, as the case may be, of the opinion, agreement or authorization to exercise an activity
- c. Closing the company
- d. Locking of the bank account
- e. Suspension of economic activity
- f. Withdrawal of the license or notice for certain transactions or for foreign, temporary or permanent trade activities.
- g. Cancellation of works and bringing the land back to its original state.

By enforcing environmental sanctions, the aim is to determine the polluting agent to promote technologies and techniques that protect the natural and anthropic environment.

The sanction that is established must be proportionate to the degree of social danger of the act.

For an unlawful environmental offense, a single main contraventional sanction and one or more complementary sanctions may be applied.

The limits of the fine are relatively small, given that those who violate the rules imposed can sometimes be multinational companies with very high turnover and can

afford without problems a payment of money that is often symbolic for them. This fact makes the fine a relatively inefficient sanction, which allows some to pay relatively lightly, thus acquiring a true "right to pollute". [9]

The application of the sanction of the contraventional fine is prescribed within 6 months from the date of committing the deed. The provisions of art. 13 of the GO no. 2/2001.

Regarding the contravention procedure, art. 97 paragraph 1 of GEO no. 195/2005 on environmental protection establishes certain special rules.

The provisions of art. 97 paragraph 3 of the GEO no. 195/2005 specifies that the provisions regarding the contraventions are supplemented with the provisions of the GO no. 2/2001 regarding the legal regime of contraventions, approved and modified.

The contraventions are ascertained by commissioners and authorized representatives of the National Environmental Guard, police officers, gendarmes and the personnel of the Ministry of National Defense, empowered in their fields of activity, according to the tasks established by law.

The contraventions can be ascertained by the personnel of the administration structures and the custodians of the protected natural areas, only in the territory of the administered natural area.

The contraventional sanctions represent measures of coercion and re-education that are applied to the offender in order to rectify and prevent the commission of other crimes [10].

### **Categories of contraventions**

The categories of contraventions are provided in different normative acts regarding the environmental protection. These normative acts are aimed at protecting the different environmental factors: air, soil, water, forest vegetation, fauna, human settlements, protecting and preserving the landscape and maintaining the ecological balance.

The protection of the environment is regulated by a legislative package that requires a series of monitoring regarding the impact that the activity carried out by the companies has on the environment.

Thus, the Government Decision no. 127/1994 regarding the establishment and sanctioning of some contraventions to the norms for the protection of the environment, three categories of contraventions have been established, depending on the amount of the fine applied as a sanction. For example, the failure to fulfill the obligations established by various normative acts for the protection of the environment (the failure of the landowners to take measures for the sanitation and management of the unoccupied land productively or functionally in the urban area) or the execution of acts that prejudice the quality of the natural factors (disposal or storage of household waste outside authorized sites, exceeding the emission norms of pollutants).

The environmental protection packages require a series of monitoring regarding the impact of the activity carried out by the legal entities on the environment.

Thus, Law no. 211/2011 and GD no. 856/2002 regarding waste management, Ministerial Order no. 794/2012 regarding the procedure for reporting data on packaging, GEO no. 195/2005 on environmental protection, obliges all economic agents to report monthly/annually, to the National Agency for Environmental Protection (ANPM) or the County Environmental Agencies, a series of situations regarding waste management, packaging, management of waste mineral oils, management of dangerous substances, etc.

The economic agents that do not submit these reports within the deadlines established in the legislation can endure a series of financial sanctions, and in some cases they may end up suspending the activity for non-observance of the environmental protection norms.

Among the sanctions that the control bodies can issue we mention:

- The lack of strict records of dangerous substances and preparations and the lack of providing information and data required by the competent authority for environmental protection constitutes a contravention and is sanctioned with a fine from 25,000 to 50,000 lei, for legal persons,.

- The lack of record concerning the results and the lack of reporting to the competent authority for environmental protection of the results of the self-monitoring of polluting emissions, according to the provisions of the regulatory acts, constitutes a contravention and is sanctioned with a fine of 50,000 lei to 100,000 lei, for legal persons,.

- The lack of records of the generated waste constitutes a contravention and is sanctioned with the fine from 15,000 lei to 30,000 lei. Etc

GEO 196/2005 on the environmental fund, with the subsequent additions and modifications, establishes a contribution of 2 lei / kg to the economic agents who put packaged goods on the market, those who distribute packaging for the first time on market etc.

The European directive on packaging and packaging waste is transposed into Romanian legislation by Law 249/2015 on the management of packaging and packaging waste.

In conclusion, we cannot fail to remember the fundamental principle of environmental law: "the polluter pays".

As an expression of the principle the polluter pays, Law no. 24/2007 regarding the regulation and administration of green spaces in urban areas, provides that, in addition to applying the fine, the offenders must repair the damages brought to the environment through committing the offense.

The means available to the public authorities in the member countries of the European Union, in order to enable the polluters to ensure an adequate depollution are: pollution taxation, the establishment of anti-pollution technical norms and the application of various compensation mechanisms.

GEO 195/2005 retains the old conception on contraventions, but with some adjustments regarding their object and especially of the financial penalties applicable. The amount of fines increases considerably, the difference between the fines applied to individuals and legal entities being also 6-8 times higher.

In art. 96 of the ordinance, three categories of contraventions are foreseen: contraventions consisting of violations of the legal provisions, contraventions consisting of violations of some legal provisions such as, the obligation of the natural persons to request and obtain the regulatory acts, as well as contraventions to the environmental protection regime, considered the most serious, at least from the perspective of the fines applicable (the obligation of natural and legal persons to diminish, modify or cease the activities generating pollution at the motivated request of the competent authorities, to

apply the required measures in full and on time, in accordance with the regulatory acts and the legal provisions, following the environmental inspections, etc.)

## Conclusions

We cannot deny the usefulness of the contraventional liability, but it also has a great shortcoming, in the sense that it allows the contraventional “recidivism”, so that by repeating the illegal acts a state with negative impact on the environment is perpetuated, with the price of repeated payment of fines, which in certain cases may be convenient for the offender.

As the jurisprudence also shows, the punishment of legal persons is much more effective by applying complementary sanctions because, according to statistical data, the courts have shown leniency when the question of applying deprivation of liberty penalties for the representatives of the legal person was raised, even in the case of serious acts that resulted in major environmental pollution.

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