

LEGAL LIABILITY IN THE ENVIRONMENTAL LAW

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Abstract: *Environmental protection requires knowledge of the relationships between the organisms and the environment and is dependent on the economic, cultural, social development of a country. Throughout time, the relationship: economic development - environment, has undergone many changes since, almost always, the environment has been regarded as a source of raw materials and energy necessary to ensure the living, a result of human activities, because man has influenced continuously the natural environment. At first, the impact was imperceptible, but as humanity has evolved, the environmental degradation has become obvious, as nature is not an inexhaustible source of unlimited resources and a waste receiver. Therefore, environmental degradation occurs as a consequence of some complex processes found in interaction, such as population growth, economic growth, scientific and technical progress, industrialization, urbanization, changing natural habitats finalized by reducing the availability of the environment to ensure the necessary resources for the society.*

Key words:: *sustainable development, environment, environment protection legal liability, sanctions*

INTRODUCTION

The economic development policy of a country has as its central objectives the rural areas development and the evolutionary sustainability of rural economies sustainable potential. The sustainable development has become an environmental and development policy, that has as main objective, the exploitation of natural resources, the promotion of investments and the organizational changes to be made harmoniously, thus contributing to increasing the current and future economic potential of a country.

MATERIALS AND METHODS

The author of this study applied as a working method: date collection, processing, analyse and formation conclusions.

RESULTS AND DISCUSSIONS

The concept of sustainable development first appeared in 1987 in the Report "Our Common Future" of Brundtland Commission, where it claims that the economic growth depends on the natural resources, that all living systems underpin. Also in 1987, the United Nations defines sustainable development as a "development that meets present needs of solidary humanism, but which leaves future generations the chance of survival and prosperity". This concept has crystallized over time and acquired precise political valences in a globalized world, thus the sustainable development has become a political objective of the European Union, included into the Treaty of Maastricht, and in 2001, it was adopted the Sustainable Development Strategy of the European Union, that has as general objective the continuous improvement of life quality for present and future generations by ensuring prosperity, environmental protection and social cohesion.

Since the implementation of the strategy is the responsibility of the EU and its Member States, Romania as a member state, has developed the National Strategy which aims to restore and maintain a rational balance in the long term, between the economic development and the integrity of the natural environment. One of the priorities for the

sustainable development concerns protecting and improving the environment by improving the living standards on the basis of ensuring public utilities, for example water and waste management, improvement of regional and sectorial systems of the environmental management, biodiversity conservation, ecological restoration, risk prevention and response to natural disasters.

In Romania, the sustainable development is defined by the Emergency Ordinance no. 195/2005 on environmental protection, approved with amendments by Law no. 265/2006, as further amended and supplemented as "development that meets present needs without compromising the ability of future generations to meet their own needs". So, long-term well-being depends on the country economic development, population growth and environmental protection.

According to the specific legal provisions in force "environment means all conditions and natural elements of the Earth: air, water, soil, subsoil, characteristics of the landscape, all atmospheric layers, all organic and inorganic materials, living beings as well, natural systems in interaction, comprising the items listed above, including some material and spiritual values, quality of life and the conditions that can affect human health and welfare". Therefore, environmental protection is a priority of economic, environmental and social interest and plays a decisive role in the sustainable development strategy and the strategic capitalization of natural resources, putting on a principle of balance and continuity of life, of the exploitation of European and global natural resources.

From the foregoing, it can be concluded that sustainable development is a fundamental principle and an essential requirement for the environmental protection.

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Therefore, environmental degradation occurs as a consequence of some complex processes found in interaction, such as population growth, economic growth, scientific and technical progress, industrialization, urbanization, changing natural habitats finalized by reducing the availability of the environment to ensure the necessary resources for the society.

Environmental protection is the duty of all individuals and legal persons and a constant concern on the way of various legal-economic and institutional measures. In this respect, the national legislation provides measures of legal liability for the damage caused to the environment.

From the point of view of the environmental law importance, in the specialty international legal literature, legal liability shall be considered as another way of achieving other incentives in the protection and development of the environment, especially in relation to tighter legal sanctions applicable in this area.

By juridical penalizing of anti-environment facts, in addition to its intended purpose, it aims to educate the sanctioned person and other citizens to form that environmental friendly conscience in general, without which you cannot perform complex tasks of pollution prevention, depollution and improvement of the environmental conditions.

The juridical coercion report that has in its content a plurality of rights and obligations of material law (substantially) and procedural law, appears as a result of committing illegal deeds and leads to legal sanction application. Thus, any violation of

legal norms can give rise to a legal coercion report that is established between the state and the illicit offender.

Situations in which legal liability in environmental law intervenes:

Both the civil servant and the trader, any natural or legal person, in general, may be held judicially liable for breaches of environmental legislation.

So, there are: Legal liability for polluting deeds and legal liability for unpolluting deeds.

Legal liability forms in the environmental law:

Social liability:

This liability involves social sanctioning of the person's attitude inconsistent with the established social norms. This happens due to the fact that this person's attitude may occur under various social relations and the social liability takes different forms and one can also talk about a political, moral, ethical, civil and of course legal liability.

Legal liability:

This may be the case of failure to comply with rules of conduct contained in law norms, i.e. for violating the law, established in three forms of legal liability: civil, contravention or penal, as appropriate .

The liability for environmental law violations, still belongs to this branch of law, precisely because it presents numerous specific traits –its legal regulation specific character.

The duties and responsibilities of the factors involved in environmental work are set out in a specific legislation, **Government Emergency Ordinance**. no. 195/2005, as amended and supplemented.

Contravention liability:

The contravention liability represents that form of legal liability, which consists in applying contravention sanctions to the guilty persons violating the laws, that provide and sanction contraventions. It is often used the contravention liability to prevent and combat the failure to comply with legal relating requirements.

This form of liability has some advantages, meaning that the establishment and contravention sanction application procedure is much faster compared to other legal proceedings and the imposed measures are enforceable, allowing an urgent intervention. The essential element of this liability is represented by the contravention.

From the legal point of view (article 1 of Law no. 32/1968), the contravention designates an act committed with guilt, showing a lower social danger than the offense which is stipulated and sanctioned as such by normative acts.

It's about legal violation of regulations, aiming protecting the environment with guilt, the liability without fault being excluded.

The offense object is represented by social values, goods and legitimate interests defended by rules of law, to which they bring prejudice or they are jeopardized by the committed deeds. The traits characterizing the committed contravention in relation to environmental law are:

a) the contravention is an unlawful act. The contravention may be committed:

- intentionally, if the perpetrator foresees his action consequences and he pursues producing them (direct intention), or he foresees his act result and although he does not intend to produce it, he accepts the possibility of producing it (indirect intention).

- culpably, if the perpetrator foresees the result of his act, but he does not accept it, believing without any reason that it will not occur (easily, Culpa with foresight) or when he does not foresee the outcome of his act, though he should have and could have foreseen it (negligence, culpa without foresight).

- without fault, when you cannot speak neither about intention nor culpa, the act being the result of the risk, the person has assumed the risk within the socio- economic activity.

b) the contravention is regulated and sanctioned by the rules of the environmental law

A natural or legal person may be penalized for a particular ecological deed, only if it is expressly stipulated and sanctioned by the rules of the environmental law. The ecological contravention has in its content, as constitutive elements, the object, the subject and the deed.

- The deed (action / inaction of the active subject) constitutes a violation of a prohibition or obligation prescribed by the environmental legislation, within some imperative norms.

An unlawful action may be the pollution of the inland marine waters and the territorial sea, as well as the atmosphere above them, by the discharge, dumping, sinking or from ship or other floating or fixed establishments emissions, harmful or dangerous for the human health or for the fleet and sea fauna, collection, possession and / or sale of plants, declared as natural monuments and many other violations of the law.

Another constituent element of the contravention is represented by the guilt (the subjective side).

- the guilt designates, that mental attitude towards the fact of the contravention and its aftermath.

-the legal relation subject of liability contraventions , from the environmental law: The rule disposes as subject of the contravention liability, the natural person responsible for committing the sanction, under the law, any natural person no matter his/her nationality or residence could be (Article 5 para 2 of the Law no.32 / 1968).

The person committing the contravention is the active subject (any natural or legal person) and the passive subject is the state authority, the Romanian State.

Within the contravention liability report , the situation is as follows: the active subject is the state authority, which holds liable the persons having committed the contraventions, applying them contraventional sanctions and the passive subject is the contravener, the polluting agent (polluter).

Penal Liability:

The penal liability for violating rules on environmental protection is part of the criminal liability principles, its specificity being determined by the nature of the object protected by law and by the social relations peculiarities in this field.

The criminal nature is given by the high degree of social danger that the deed presents, it must portray a serious threat to the environment, to human health and life and all forms of life.

For criminal liability, the deeds established as criminal offenses must be committed with guilt. The Romanian Criminal Code contains only few provisions on criminalization of certain dangerous deeds from the protection field, many crimes are regulated by special laws adopted to the extent that sectorial environmental protection regulations were adopted. In this respect we could quote: protection and water quality insurance - Law no.107 /1996, O.U.G. no. 23/2008 fishing and aquaculture, Law 645/2002 on prevention, reduction and the integrated control of pollution, Law 103/1996 on the hunting fund and hunting protection, Law 46/2008 - forest Code, Law no. 407/2006 hunting and protection hunting, etc. the examples, of course, could continue.

These dispersed regulations, are not the result of a unitary concept regarding the crimes specific for the field that we deal with. Both here, as in other countries, the penalties have followed, step by step, the process of drawing up policy rules in the environmental field, lacking a holistic approach that would have found its place in the legislation.

CONCLUSIONS

Environmental protection is the duty of all individuals and legal persons and a constant concern on the way of various legal-economic and institutional measures. In this respect, the national legislation provides measures of legal liability for the damage caused to the environment.

By juridical penalizing of anti-environment facts, in addition to its intended purpose, it aims to educate the sanctioned person and other citizens to form that environmental friendly conscience in general, without which you cannot perform complex tasks of pollution prevention, depollution and improvement of the environmental conditions.

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