OBJECTIFICATION OF CIVIL LIABILITY FOR ECOLOGICAL DAMAGE. SECTORIAL ASPECTS

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ABSTRACT: *The issue of recognizing the legal liability that is engaged in order to deal with the risk of damage with serious and irreversible consequences was initially raised in the field of environmental protection. This form of preventive liability is contrary to the classical legal liability, the purpose of which is to repair any certain damage, because it seeks to prevent, avoid and reduce potential risks to the environment and to the safety of life and human health. Therefore, this is an objective liability based on the precautionary principle, a liability which is directed towards the future and that makes man the guarantor of the preservation of life and health and of the quality of the environment.*
The objective civil liability in environmental law generates a real legal obligation to reduce ecological risks, risks to ensure a healthy and ecologically balanced environment.
In the present study, starting from the argumentation of the need for objective civil liability and from the analysis of its characteristics, we proceeded to an exhaustive study of the particular or sectorial environmental situations. We were motivated in this sense by the fact that the form of civil liability is particularized in environmental law and sectorial regulations, based on the reason that the multitude and gravity of environmental dangers affecting environmental protection requirements, demand reasonable diligence of all persons engaged in activities with an impact on environmental factors.

KEYWORDS: *ecological damage; polluter; objective liability; ecological risk; nuclear damage.*
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1. CONSIDERATIONS REGARDING THE NECESSITY AND CHARACTERISTICS OF OBJECTIVE CIVIL LIABILITY. ASPECTS OF NATIONAL AND COMMUNITY LAW

The particularities of the complex phenomenon of pollution corroborated with the dangerous and often irreversible consequences on the environment impose specific rules regarding civil legal liability (Anghel, 2010). Ecological damage is not only a quantitative or constant element of civil liability, but above all it is its primary element, as it defeats legal harmony and, in the end, requires reparation according to the law

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(Adam, 2004). As a result, tortious civil liability in environmental law is triggered by the ecological damage[1], from which moment the obligatory relationship is born, which includes the injured party's right and the responsible person's correlative obligation to repair (Jugastru, 2013) (Prieur, 2011).

At a time when we are contemporaneous with the development of human rights, with the enshrinement of new fundamental rights, such as the right to a healthy environment, the imperative to repair ecological damage has become pressing. In such context, the tortious civil liability for reparation is obviously detached and prevails in a criminal liability relationship that seeks to punish the person guilty of causing the damage. Moreover, the tortious civil liability that is involved in the situation of ecological damages is based on the idea of risk and not of fault of the guilty author.

In the field of environmental damage, the system of objective legal liability, of independent fault, which offers the possibility of sanctioning pollutants much easier but also a much more effective implementation of the "polluter pays" (Angelica, 2012) (Duțu, 2014) principle, is currently favored. In addition, it was realized that the burden of proof in civil proceedings is easier, considering that the obligation to prove the guilt of the polluter is removed.

According to our national legislation, objective civil liability for environmental damage is also based on the traditional model of objective civil liability, independent of fault, as it was provided as an exception to the rule of subjective liability, by the provisions of art.1372-1375 of the new Civil Code (Liviu Pop, 2015). We mention the fact that although the classical system regulated by the Romanian Civil Code in the matter of liability for damages has a lower applicability in the field of ecological damages, there are particularities regarding the elements and forms of tortious civil liability. On the other hand, the functions as well as the classical principles of civil liability in common law are incidental to environmental law for all situations in which this form of liability occurs.

The legal basis of civil liability for ecological damage is the framework law on environmental protection[2], which raises to a degree of principle the objective character of civil liability that intervenes to cause ecological damage. The environmental law also establishes an exception in this context, in the sense that "In exceptional cases, liability may also be subjective for damage caused to protected species and natural habitats, according to specific regulations" (Mangu, 2015). It follows that liability for ecological damage to natural habitats and protected species is a subjective liability, in the sense that it occurs only when the perpetrator of the civil wrongful act is proved to be guilty of the situations indicated.

This type of civil liability is particularized in environmental law and sectorial regulations, based on the reason that the multitude and gravity of environmental dangers affecting environmental protection requirements, demand a reasonable diligence of all persons carrying out activities with environmental impact.

The need to objectify environmental civil liability was argued prior to its legislation by doctrine, which is based on the idea of risk (Marinescu & Petre, 2014) (risk means the

[1] According to the article 1381 alin.(2) Romanian Civil Code (Law No. 287 from 17 July 2009) published in Romania's Official Gazette No. 505 from 15 July 2011, republished.
[2] OUG No. 195 from 2005, modified and republished in 2018, article 95.

possibility of causing material damage or injury both to persons and to their property as well as the possibility of occuring other similar events), after which any activity carried out by one person that creates a risk for another person makes its perpetrator liable for potential damage, independent of fault. An essential aspect is that, regardless of the form of civil liability, objective or subjective, the rule is that the liability of those who caused an action on the environment, modifying and adversely affecting its qualities, is trained in the form of their obligation to fully repair the ecological damages thus caused[3] (Dogaru, 2018).

Of course, a number of controversial issues were generated in the literature regarding the liability insurance for major risk activities (Phelps, Jones, Pendergrass, & Gomez, 2015) (Duțu, 2014), some of which even allege that there is no clear definition and proper identification of such activities. However, the rule established in the matter is that the regime of civil liability for risk, imposes the indemnity of the victim, which is its compensation, regardless of the fault of the perpetrator, except for the exonerating causes of legal liability that are legally provided (Duțu & Duțu, 2015).

Inevitably and fully justified, constant concerns for the repair of ecological damage exist both in the legislation and in the doctrine of other states. For example, in French judicial practice and doctrine (Baudoin, 1991), there is an emphasis on the need for special regulation of environmental liability to be conceived as a liability independent of the fault of the polluter, which is an objective liability. Along with the special principle of objective civil liability independent of fault, the environmental framework law in force in our country establishes in matters of liability for ecological damage and solidary liability (joint and several liability), in the case of the plurality of polluters. The Romanian Civil Code also establishes the solidary liability, ruling on article 1382, in the sense that those who are responsible for a prejudicial harm will be held in solidary liable way for reparation to the injured party. According to the principle of authors' solidarity, in the case of ecological damage, the co-authors will be liable proportionately, in relation to the contribution made to the cause of that damage (Octavian, 2017).

As far as we are concerned, we consider that in an absolutely justified way, by establishing these complementary principles for ecological damages, the aim is to satisfy the requirements of the fundamental principle of the environment "the polluter pays".

By expressly enshrining the form of objective civil liability, independent of fault, the victim is given the opportunity to prove only the existence of the damage and the causal relationship established between the wrongful act and damage, thus eliminating the evidence of fault, which is presumed. Also, by establishing the form of solidary liability, in case of multiple authors, the obligation for the co-authors of the ecological damage to be held liable is established solidary and independently of their fault or guilt.

The liability of the perpetrator of the ecological damage without the requirement to establish his guilt is also based on the priority objective of international environmental legal instruments, that of repairing the damage caused by pollution, regardless of whether or not the perpetrator can be held liable. At community level, the adoption of Directive 2004/35/EC on environmental liability in relation to the prevention and remedying of

[3] In this regard, article 1385 alin. (1) from Romanian Civil Code provides: „The damage is fully repaired, unless otherwise provided by law".

environmental damage[4] is based on innovative legislation establishing, for the first time in the European Union, a comprehensive liability regime for environmental damage, based on the "polluter pays" principle. This legislative document assigns those who cause damage to the environment as those responsible for repairing the damage, thus providing a strong incentive to avoid harming the environment. At the same time, the Framework Directive makes those whose activities pose an imminent risk (defined as sufficient likelihood of harm in the near future) to the environment responsible for taking preventive measures[5].

2. THE CHARACTERISTICS OF OBJECTIVE CIVIL LIABILITY

The objective nature of civil legal liability for causing ecological damage, as it is established by law and enshrined in doctrine and jurisprudence, has several features or characteristics. These are found in the literature and mainly concern the rules of liability of the polluter, the rights of the victim, the relationship between the wrongful act of pollution and environmental damage (Ong, 2008), how to establish compensation, how to repair environmental damage, exonerating causes of legal liability, the importance of this special responsibility and other aspects.

We will recall in this context, the fact that the polluter, as part of the legal relationship of civil liability, is liable whether or not he is guilty of the polluting act committed voluntarily or involuntarily, by action or omission. The analysis of the relevant legal texts in the matter shows that the obligation to repair the ecological damage arises from the quality that a person has, namely, that of carrying out risky activities or activities dangerous for the state and quality of the environment. The victim of the ecological damage, also a party in the legal relationship of responsibility, has the right to claim and obtain the reparation of the damage suffered through the proof of the damage suffered, regardless of the subjective attitude shown by the polluter. In such a context in which the guilt of the perpetrator does not have to be proved, this being presumed, it results that the only causal relationship between the illicit act and its harmful result on the environment is the sufficient basis for engaging reparative liability (Tamba, 2009). In this way it is removed the obstacle of proof of fault, which is very difficult in environmental matters, where wrongdoing and its consequences have specific features. Since the proof of the existence of fault is useless, it results that the assurance of the quality and the protection of the environment constitutes an obligation of result.

As mentioned above, objective civil liability under environmental law is an exception to the rule according to which one is liable dependent on fault, unlike civil liability in civil law where the general rule is liability based on fault. This type of liability is considered to be in full accordance with the dangerous, varied and diffuse nature of the means and ways of polluting the environment. That is why the polluter is held responsible even for the fortuitous case, being exonerated from legal liability only in the

[4] Directive of the European Parliament and Consilium from 21 April 2004, published in J.O. L/143, from 30 April 2004, pp. 56, modified by: Directive 2006/21/CE from 15 March 2006, published in J. O. L/102, from 11 April 2006, pp. 15; Directive 2009/31/CE din 23 aprilie 2009, published in J.O. L/140, from 5 June 2009, pp. 114; Directive 2013/30/UE from 12 June 2013, published in L/178, from 28 June 2013, pp. 66.

[5] *Environmental Liability Directive. Protecting Europe's Natural Resources,* European Commission, Luxembourg: Publications Office of the European Union, 2013.

case of an exceptional natural cataclysm and when the ecological damage was caused by the seriously guilty act of the victim.

We mention that, in environmental law, the causes or situations that justify the exoneration of civil liability have a lower applicability compared to the legal regime established by the Civil Code, as common law. These exonerating causes are also stipulated in the International Environmental Conventions and are expressly regulated by Directive 2004/35/EC. Mainly, these legal instruments group the causes or situations that exclude legal liability into three broad categories, thus: Major force, which includes the following events: exceptional natural phenomena, which is inevitable, unpredictable and irresistible; serious military events (civil wars, armed conflicts, insurrections or hostilities) and acts of public authorities that are assimilated to major force by some international legal instruments (for example, failure to maintain some auxiliary means of navigation); The act of a third party, committed with the intention of creating damage through pollution. In order to be considered an exonerating cause, it must be proved by the operator of the activity as the only cause that generated the damage. Where the damage is the result of both the act of the operator and the intentional act of the third party, their liability is solidary (joint and several); The act of the victim, if it is caused by intent or negligence and only if this is the only cause of the ecological damage. Whenever the act of the victim comes into competition with the act of the operator or a fortuitous case, it is only a cause of partial exoneration from legal liability for the operator. The Lugano Convention stipulates, in addition to these two other causes or situations which exclude legal liability, in view of the activity carried out, thus: the damage caused by pollution of an acceptable level in relation to the relevant local circumstances and the damage caused by the dangerous activity lawfully carried out in the victim's interest, if it was exposed to the risks of such activity.

3. OTHER CASES OF OBJECTIVE CIVIL LIABILITY ESTABLISHED IN SPECIAL LEGISLATION

Objective tortious civil liability is expressly regulated by the framework law on environmental protection as well as other normative acts, the special national legislation expressly stipulating, for certain cases of degradation or pollution of environmental factors, the rule of civil liability independent of the author's fault[6].

3.1. Objective civil liability for damage caused to the environment by aircraft

At national level, art. 47 of the Romanian Air Code of 1997, republished in 2001, regulates the objective legal liability of the air operator for any damage that caused the death or injury of passengers' health or damage or loss of luggage, cargo and/or mail[7]. From the interpretation of this text of law can be outlined the following ideas: the responsibility for the damages caused rests with the operator of the aircraft (air operator); the legal liability that is engaged is the contractual civil liability, which intervenes only in the situation of causing damages for passengers; the liability is independent of the fault of the operator of the aircraft or of the fault of a third party; the operator of the aircraft is

[6] In the aeronautical field, in the nuclear field etc.

[7] Published in Romania's Official Gazette No. 208/1997, updated and republished in Romania's Official Gazette No. 222 from 19 March 2020 (Law No.21/2020), in force from 19 June 2020.

exonerated from liability if he proves that the damage caused is due to the intent or serious fault of the victim. Currently, the 2020 Air Code, in art. 13 paragraph 2, which will come into force in June, states that the operator of an aircraft has an obligation to ensure its operation so as to ensure the safety of passengers and not endanger the life or property of others.

The realization of the internal test market for air transport over the last three decades has required the adoption of common rules designed to ensure a high level of safety and uniform application. As aviation and safety are two inseparable phenomena, the establishment of strict rules to ensure a higher level of safety is a major imperative. Aviation security and international cooperation are complementary in the context of cross-border air transport. Globally, the International Civil Aviation Organization (ICAO) is the one that establishes the minimum safety standards but whose compliance depends largely on the availability of the contracting states. In Europe, the implementation of the internal market in air transport has required that passengers be guaranteed a uniform and increased level of safety wherever they fly within the Union. In such a context, national rules have been replaced by common rules with binding applicability[8], based on the rules and recommendations adopted by ICAO. Their overall purpose is to prevent accidents and repair the damage caused by the operators of these activities.

The establishment of tortious legal liability (for causing damage to persons on the ground and their property), is right in the fact that aeronautics has introduced into social life not only a great facility but also a great danger, the third party on the ground being unable to defend himself, to determine the cause of a plane crash and to prove the fault of the aircraft operator. Damage caused to the life and health of persons and their property on the ground gives rise to a right to compensation for damage if the victim proves the damage suffered and the causal relationship with the action of the aircraft, without proof of fault of the operator, because it is presumed.

3.2. Objective civil liability for damage caused by nuclear activities (Anghel I. , 1971) (Duţu, 1993)

The increasing use of nuclear energy worldwide has also raised the issue of security in the conduct of nuclear activities, as well as the issue of liability for damage caused by such activities.

Both nationally and internationally, regulations have been adopted over time, including strict safety rules regarding the nuclear industry, the gravity of the damage and consequences that may occur through the development of activities in the nuclear field but also to the difficulty and complexity of repairing the damage caused as a result of these activities.

The cross-border nature and disastrous consequences of nuclear accidents have led to the regulation of the legal regime in nuclear matters, initially at international level (Faure

[8] Communication from the Commission to the European Parliament and the Council, COM/2008/0216 final - Insurance requirements for aircraft operators in the EU - A Report on the Operation of Regulation No. 785/2004; Regulation (EC) No. 785/2004/CE of 21 April 2004 on insurance requirements for air carriers and aircraft operators; Commision Regulation (EU) No. 285/2010 of 6 April 2010 amending Regulation (EC) No. 785/2004/CE on insurance requirements for air carriers and aircraft operators; Commision Regulation (EU) No 285/2010 of 6 April 2010 amending Regulation (EC) No. 785/2004/CE on insurance requirements for air carriers and aircraft operators.

& Kindji, 2019). We recall important international documents such as the Paris Convention of 1960 on Nuclear Energy Liability and the Vienna Convention of 1963 on Civil Liability for Nuclear Damage, followed by the Joint Protocol on the Application of the Vienna Convention, determining the particular regime of civil liability for nuclear damage. Council Directive 2014/87/Euratom of 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations is currently relevant at Community level (Handrlica, 2012).

Mainly, the provisions of these international and European documents have established rules with principle value in relation to civil liability for nuclear damage[9] (Katherine Salès & collective, 2014), in which sense we recall that liability for nuclear damage is an objective and exclusive tortious civil liability; the person responsible for damage is the operator; all subjects carrying out activities in the nuclear field have the obligation of insurance or other financial guarantee; the principle of non-discrimination and unity of jurisdiction; the principle of informing the public and the principle of developing nuclear policies and programs aimed at limiting risks and fully repairing damage (Bellamy, 2019).

The framework law in nuclear matters is Law no. 111/1996 on the safe conduct of nuclear activities, consolidated in 2018, which includes regulations regarding the issue of authorization in the nuclear field, the obligations of authorization holders and natural and legal persons carrying out such activities, monitoring the health of personnel, population and the environment, civil liability for nuclear damage, etc. Based on the international documents that include special regulations in environmental law regarding tortious civil liability, Law no. 703/2001 was adopted nationally, regarding the civil liability for nuclear damages[10], which defines the nuclear damage, the nuclear accident, as well as the situations of joint and several liability and the compensation system. As the holder of the authorization issued according to the law, the operator of a nuclear installation is objectively and exclusively responsible for all nuclear damage caused to the respective installation. The provisions of this law establish rules of principle in matters of civil liability for nuclear damage and the right to reparation:

- The principle according to which the operator is objectively and exclusively liable for any nuclear damage, the victim being exempted from the obligation to prove guilt, will only have to identify the person responsible for the nuclear accident who is usually the holder of prior authorization. The exception to the principle of objective and exclusive liability of the nuclear operator is the solidary liability of several operators and the serious fault of the victim;

- The principle of directing the liability to the operator, according to which, he is the one required to repair exclusively the damages caused by a nuclear accident, the victim not being able to act against a third party. We specify that the operator has no right of recourse against other persons, unless there is an express contractual clause;

[9] See, Department of Energy & Climate Change, Implementation of changes to the Paris and Brussels Conventions on nuclear third party liability; A Public Consultation, 2011, pp. 24.

[10] Published in Romania's Official Gazette No. 818 from 19 December 2001, in force from 2002, modified by Law No. 470 from 13 November 2004.

- The principle of limiting in time the right to file a claim for compensation[11]. In this regard, the law provides that the right to compensation is prescribed, depending on the gravity of the nuclear damage, thus: within 30 years from the date of the nuclear accident if the action is related to death or injury and, within 10 years if the action is related to the occurrence of the other nuclear damages provided by law. Within these limitation periods, the right to compensation shall be extinguished if the action has not been brought within 3 years from the date on which the claimant knew or should have known the damage and the identity of the person responsible (according to Article 12 of the law).

- The principle of limiting the maximum amount of damage coverage, for each nuclear accident, according to which the maximum ceiling established by law (Article 8), the exceptions being strictly established by law;

- The principle of obligation of the operator's insurance or financial guarantee to cover civil liability for potential nuclear damage (Hankin, 2003).

A natural question that arises is whether and under what conditions the illicit nature of the damage caused by nuclear activities can be removed. Taking into account the particularly serious danger of contamination presumed by nuclear activities, the Vienna Convention and the national framework law establishing the exclusive and objective liability for any nuclear damage to the operator also indicate the reasons why he will be exempted from liability. These exonerating causes of objective civil liability for nuclear damage are expressly provided by law and are restrictive and limiting, regarding the following hypotheses: when nuclear damage is the direct result of internal political unrest such as acts of armed conflict, armed insurrection, civil war, hostilities[12]; when nuclear damage is due to international political unrest in the form of armed conflict, terrorist attacks; when in case of exceptional natural cataclysm, catastrophic calamities; when the nuclear damage is due, in whole or in part, to the serious negligence of the person who suffered it or to his action or omission, committed with intent to cause damage.

3.3. Objective civil liability for damage caused by wild animals

In this context, we note that hunting is declared by law as a "renewable natural resource, a public good of national and international interest". As neither the manager nor the administrator of the hunting fund are its owners and do not serve themselves with hunting, it is considered that the civil liability that is established is an objective civil liability, as a legal liability that springs directly from the normative text.

The principle of objective civil liability is also found in the Law on hunting and protection of the hunting fund no. 407/2006, amended and supplemented successively[13]. This normative act establishes that, for all the damages produced by the fauna species of hunting interest, compensations are granted (according to art.13 paragraph 1). For the damages caused to agricultural, forestry and domestic animals, by the hunting of strictly

[11] Vienna Convention on Civil Liability for Nuclear Damage, from 1963 gives to the states the right to fix by national laws the terms of prescription for compensation right. Romania has ratified these documents by Law No. 106/1992.

[12] According article 5 alin. 2 from Law No. 703/2001.

[13] Published in Romania's Official Gazette No. 944 from 22 November 2006, consolidated in 2017 by: OUG No. 20 from 8 March 2017; Law No. 184 from 24 Luly 2017; Law No. 256 from 19 December 2017 and OUG No. 105 from 20 December 2017.

protected species, the compensations will be paid by the manager of the hunting fund, through the method of granting established by Government Decision. The civil liability for the damages caused by the hunting of the strictly protected species (included in annex no. 2 to Law no. 407/2006), belongs to the central public authority responsible for the environmental protection. Likewise, the procedure for establishing civil liability is regulated by a Government decision (according to art. 13 of Law no. 407/2006). The situations in which, the damage is represented by the decrease of the qualitative and/or quantitative level of the hunting fauna due to the fault of the hunting fund's manager, are regulated in the same manner, in which case he is obliged to repair. The basis is that the managers of the hunting fund are delegated to ensure the management of wildlife of hunting interest, in compliance with the principle of sustainability, based on evaluation studies and management plans.

The establishment of liability in an objective manner is also regulated in the Romanian Civil Code, in art. 1375, which provides that "The owner of an animal or the one who uses it is liable, independently of any fault, for the damage caused by the animal, even if it has escaped from its guard." Regarding the civil liability for damages caused by wild animals in the wild, it will be engaged only under the conditions provided by art. 1357-1371 of the Civil Code, which regulates the liability for one's own action, corroborated with the provisions of art. 13 of Law no. 407/2006 on hunting and protection of the hunting fund.

In conclusion, we can say that the liability for damages caused by wild animals is objective, it is without guilt, being based on the obligation to guarantee the behavior of the animal, which is supported by the risk introduced by their behavior. This liability is by excellence, a liability for fortuitous event, the animal causing the damage, in the most common cases.

3.4. Civil liability for damage caused by defective products

The issue of liability for damage caused by defective products is raised in the context of the adoption and promotion of European and national consumer protection legislation. The consequence of these regulations is that, at present, there is a real consumer law, a complex legal institution, made up of civil, commercial, administrative, criminal legal norms etc. This legislative environment regulates the obligation of consumer safety, which is incumbent on all persons who, as professionals, put products into circulation, as well as on service providers. The obligation of security represents the duty of economic agents to market products and to provide services that do not endanger the life, health and bodily integrity of consumers as well as their goods[14].

This obligation was first enshrined in Community law and then transposed into the national law of the Member States of the European Union. In this regard, we invoke the Directive 92/59 EEC of 29 June 1992 on general product safety, the rules of which ceased to apply in 2004, once the time-limit for transposition into national law of the Member States of Directive 2001/95 EC of 3 December 2001 has expired, having the same regulatory object. The regulations of this Directive are limited to ensuring consumer safety.

[14] The European Justice Court has recognized in its practice the consumers right for repairing non-pecuniary damage, in European Court Reports 2002, pp. I-02631; CJUE, Simone Leitner versus TUI Deutschland GmbH & Co. KG, C168, paragraph 23-24; CJUE, Axel Walz versus Clickair SA, C-63/09, paragraph 39.

The mechanism of civil liability for damages caused by defective products is regulated at national level, by Law no. 240/2004 on the producer's liability for damages caused by defective products[15], republished in 2008. National law transposes European Directives 85/374/EEC[16] (Teleagă, 2004) (Teleagă, Armonizarea legislativă cu dreptul comunitar în domeniul dreptului civil. Cazul răspunderii pentru produsele defectuoase, 2004) and 1999/34/EC on the liability of the producer for defects in his product. According to Community law, the product is defective when it does not provide the security that can be legitimately expected when it is put into service and used. These legal regulations provide protection against the risk of purchasing products that may endanger human life and health but also legitimate interests.

The framework law establishes a special, objective civil liability for the producers of qualitatively defective products, based on which the injured party will have to prove only the damage, the defect and the causal relationship between them. The subjects between which this civil liability may intervene are, on the one hand, the producers and the other participants in the production-distribution and consumption circuit, and on the other hand, the producers and consumers. In this sense, the law establishes the following rules with a special character in the matter of tortious civil liability: the producer shall be independently liable for both current and future damage caused by the defect of his product; the producer is also liable when the damage is the cumulative result of the defect of his product with an action-inaction of a third party; the harmful results can be the consequence of any product (dangerous or non-dangerous) that the consumer has trusted and thus bought; the responsibility is solidary for all responsible persons; the producer's liability for the damage caused by his products is based on the presumption of liability; the victim of the damage must not prove the fault of the producer but only the damage suffered, the product defect and the causal relationship between the damage and the product defect; the right to action for damages can be exercised directly by the injured person or consumer protection bodies.

The causes of exoneration of legal liability of the producer are provided in the European Directive and they are expressly specified in the national law (by art. 7). We mention the novelty element introduced by the Romanian legislator, in the sense of regulating the development risk. There is an exemption from legal liability, according to the law if the producer proves that he did not put the product into circulation; if he proves that the defect is attributable to incorrect design; if it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards for reasons not attributable to the producer; if the defect is due to compliance of the product with mandatory regulations issued by the public authorities; if he proves that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; if the defect is due to non-

[15] Published in Romania's Official Gazette No. 552 from 22 June 2004, republished in 2008, by Law No. 363/2007 on combating unfair practices of traders in relation with consumers and harmonizing regulations with European consumer protecting legislation.

[16] The European Directive was transposed in Romanian Law through Law No. 240/2004 on the producers' liability for the damages caused by defective products.

compliance by the consumer with the technical instructions for use; if the damage is caused by the fault of the injured or harmed person or of another person for whom he is held liable.

The person injured or harmed by a defective product may also claim compensation under contractual or non-contractual civil liability, as well as under any other special liability regime. Another aspect that we present is the one regarding the capitalization of the rights with the observance of the prescription term of the reparation action; this term is 3 years from the date on which the injured person had or should have been aware of the existence of the damage or defect, but no later than 10 years from the date of putting the product into circulation. It should also be noted that any contractual clauses limiting or exonerating the producer from legal liability are in accordance with the law, subject to the sanction of absolute nullity.

We can say that the legislative and institutional system in our country, regarding consumer protection, by transposing European directives at the national level, aims to carry out civilized commercial activities, in full accordance with the law and with respect for consumers.

4. FINAL CONCLUSIONS

In the current conditions of increasing and diversifying forms of pollution with degrading and often irreversible consequences on the quality of the environment and life, the requirements of environmental protection require a reasonable diligence that is intense and acquires new valences, in the exercise of environmental law. In the realization of any subjective right in relation to the environment, we must start from anticipating the possible consequences of each action on the natural state of the environment, from substituting the insecure limits of the right to act according to our own interests, with safe limits of rational and sustainable use of environmental factors. All this, in order to ensure the imperatives of the existence of a clean, unpolluted and ecologically balanced environment and of a sustainable development of the environment.

In accordance with the "polluter pays" principle of environmental law, any operator who causes environmental damage or poses an imminent threat to the environment must bear the costs of the necessary preventive and remedial measures. The bearing of these costs is based on the fact that they have been established in order to comply with the legislative, regulatory and administrative provisions regarding the activities carried out, in correlation with the obligations provided in the environmental regulatory acts.

Starting from the natural characteristics of the environment, the damages brought to it are serious and often irreversible and diffused both in their manifestation and in establishing the causal link.

This justifies the current general regulation of liability for damage caused to the environment, based on the principle of objective civil liability but also a liability *in solidum* of the co-authors of the damage. In this context, adapting to the provisions of the Romanian Civil Code but also to those belonging to international environmental law and considering that an ecological damage has particular characteristics that exclude civil liability based on fault, the form of objective civil liability, independent of fault, was substantiated. The rule for tortious civil liability that is involved in the situation of ecological damages is based on the idea of risk and not on the fault of the polluter.

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