SECTION: EUROPEAN LAW AND PUBLIC POLICIES

CIVIL LIABILITY FOR ENVIRONMENTAL DAMAGE IN ROMANIAN LAW

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Abstract

In a world of interdependence relationships, civil liability represents the legal relationship of civil liabilities in the environmental law in respect of its basis, functions and peculiarities.

In as far as the entire corpus of legal provisions in our country is concerned, they have undergone modifications in alignment with the regulations in the European Comunity.

Civil liability for environmental harm is regarded through the perspective of the new law provisions with updates up to 2017, such as the Government Emergency Order No. 1985/2005, updated up until 6th of April 2016, such as in view of the obligations of legal persons to cover the costs of the necessary measures meant to prevent and/or diminish the consequences of pollution. In the same direction, the Emergency Order No. 68/2007 regarding environmental responsibility, prevention and compensation for environmental harm, establishes a special regime for non-contractual liability of the economic operator which pivots around the event which causes the harm and around the nature itself of the occured environmental damage.

Therefore, the work has a special significance for the understanding of the legal frame of environmental law and of the legal provisions which define and describe civil liability for pollution-caused damage in respect of the legal rule.

Section I: Civil liability for environmental damage under the conditions of Government Emergency Order No. 195/2005 on environmental protection

The foundation of civil liability for environmental damage differs from one legal system to another. Thus, in the countries governed by continental law, founded on the Napoleonic Civil Code (France, Belgium, Germany, the Netherlands, Romania), the actions are most often brought about by the infringement of specific rules, irrespective of whether the injurious act is considered a crime or a 'quasi-delict'.

Legal liability as a form of social responsibility is a legal category specific to all branches of law, suggesting the idea of legal sanction because it intervenes in case of breaches of legal provisions and has the effect of enforcing legal sanctions.

In Romanian law, environmental liability originated in the Government Emergency Order No. 195/2005 on environmental protection and G.P.O. No. 68/2007 transposing Directive 2004/35/EC and Directive 2008/99/EC transposed into Romanian law by Law No. 101/2001. Legal liability for environmental damage takes the form of criminal civil liability, contravention liability and penal liability.

In many countries in Europe and the world, the fine for the environment does not have a maximum limit and sometimes it is regulated as a special form of liability "payment for pollution", the fine being proportionate, for example, with the volume of waste water, with the degree of pollution from the heated rules and its harmfulness. One can also note the remedy purpose of the fine, which does not preclude the full remedy within the framework of civil liability.

An issue which also arises in the current regulation of the framework law in contravention matters is related to the limitation, as a case which removes contravention liability, with its two aspects, namely: limitation of the application of the sanction (article 13) and the limitation of the execution of the sanction (article 14). This way, art. 13 of the Government Order No. 2/2001 provides that the imposition of the penalty of the fine shall be

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limited to 6 months from the date of the offence or 'in the case of continuous contravention ', from the date of the finding of the offence.

When the deed was pursued as a criminal offence and subsequently established that it constitutes contravention, the limitation of the application of the sanction does not flow at all times in which the case was before the investigation or prosecution bodies or before the Court of law, if the referral was made within the six-month period provided for above.

The execution of the penalty of the fine shall be limited within 2 years from the date of application or within one year from the date of the irrevocable termination of the judgment, if the infringer has not opted to provide community service.

In the field of the environment law it is to be noted that, if limitation periods are provided for in relation to the execution of the fine, in relation to the limitation of the application of the sanction, neither the law on environmental protection nor the special laws which complement it do not provide any term in relation to the facts considered to be the infringements of various components of the environment or the environment as a whole.

We consider that, in the environment law, the contravention character of the offence may be dismissed by the court if there are cases of self-defense, state of necessity, physical or moral constraints, unforeseeable circumstances, irresponsibility, complete involuntary inebriation, the error of fact, as well as the infirmity, if related to the deed committed.

The spectacular evolution of environmental law under the pressure of the generalised ecological crisis, on the one hand, and the concerns of all the countries in the world to protect the environment, on the other hand, have highlighted the lack and ineffectiveness of the recommendation rules in this field, as well as civil and contravention forms of liability. In this situation, it was resorted to the implementation of pollution actions, developing regulations on protected sectors, in which numerous offences are foreseen. At the same time, in more and more countries, criminal codes comprise a distinct chapter of ecological crime.

Given the particular importance of conservation, development and protection of environmental factors in particular, where a serious deterioration in the environment is also discovered in our country, on the one hand, and provided that pollution sources are extremely different and each protected environmental component has its own legal regime, on the other hand, we believe that, depending on the specifics of this protection and the general purpose of the rules in this field, it should be expressly provided, on a case-by-case basis, and specific situations that may sometimes lead to the exemption from liability of the polluting carrier that bears the damage.

Field of application of the special liability regime

The main criterion, determining the nature of the injury, is in this regard. Thus, in art. 95 para. (1) of the Emergency Ordinance No. 195/2005 the expression ' environmental damage ' shall be used more accurately than the term 'ecological damage ' used by Law No. 137/1995, and the meaning conferred is not identical.

As such, whenever it comes to such an 'environmental harm ', the specific principles (of objective liability and of the solid liability, depending on the case), derogating from the common law are to be applied and the rules compatible with the ecological specificities of ordinary civil law apply.

In this perspective, it can be observed that if under the conditions of Law No. 137/1995 three categories of damage were subject to the special liability regime: the first represented by the damage caused to human health, the second one, the damage caused to the goods (material, tangible or intangible, etc.) and the third, the environmental damage, in all cases caused by pollutants, harmful activities, ecological accidents or dangerous natural phenomena, the Order No. 195/2005 using the expression ' environmental damage ' concerns only the latter category. Within the meaning of the same framework regulation, the pollutant constitutes any substance, prepared in solid, liquid, gaseous or vapor or energy form,

electromagnetic, ionizing, thermal, sound or vibration radiation which, introduced into the environment, modifies the balance of its constituents and living organisms and damages material goods. As to the effect it is noted that the requirement of the cumulative meeting of the two requirements (both affecting the balance of the constituents of the environment, living organisms and damage to material goods) is excessive, contravenes the first element of the definition and cancels many defining meanings of the notion.

The term "harmful activities " is not defined, but from its corroboration with the "environmental deterioration" (indicated by the law) It would be about altering the physic-chemical and structural characteristics of natural components of the environment, reducing the diversity and biological productivity of natural and man-made ecosystems, affecting ecological balance and quality of life by overexploitation of resources, their management and their deficient exploitation, as well as through spatial planning.

Through the environment, they are thus affected by collective interests and indirectly, for which the repair could not be adequately ensured under the conditions of classical law, which implied the damage of individual, clearly identified interests.

The second category constitutes damage caused to the environment, irrespective of direct injury of a human interest. In this situation, the natural environment is no longer only the "vector" of damage, but even their object. Under the current regulation, only they are subject to the special repair procedure.

Objective liability, independent of guilt

Taking into account the increasing risks for the environment posed by human activities, the law establishes a liability for the damage, which is 'objective and independent of guilt'.

Consequently, the victim will only have to prove the existence of the damage and the causal relation between the deed and the damage. Thus, the obstacle to the sample is eliminated, particularly difficult in ecological matters, because of the investigations which the discovery and identification of the precise source of damage, including a certain cooperation of the pollutant, are to be identified.

Joint liability in case of multiple authors

Through art. 95 para. (1) of the Emergency Ordinance No. 195/2005 the fifth case of legal passive solidarity in relation to obligations is introduced in the Romanian legislative system.

According to art. 1382 and 1443 of the new Civil Code, if the injurious deed was committed by several persons, which were held jointly and severally to repair the damage, any of the co-authors could be obliged to fully repair the damage, the obligation to compensate being thus extinguished and the one who paid will then recover their proportional contribution from the co-authors.

Precautionary principle and objective liability

Solving this complicated problem must depart from the fact that the precautionary principle was not built as a principle of responsibility. It aims at guiding the decision-making process, constituting a procedural principle, which requires compliance with the precautionary requirements in the presence of an uncertain risk, a legitimate doubt on a potential risk. These precautions require, for example, the adoption of procedures for the confrontation of competing interests or the production of knowledge on risk in parallel with the development of the activity likely to be creative of such risks. From here, the risk of slipping to liability is obvious. As such, even if the precautionary principle is not a principle of responsibility, the judge will naturally be inclined to assess the liability of the operator by reference to the precautionary measures he has undertaken or has waived to adopt. In this context, the acceptance of the thesis of liability for guilt may be observed, as the judge will not be able to ignore in assessing the responsibility of the positive prescriptions of preventive measures. Only that such a position would contradict rules already stated by the case-law and even

positive law. Traditionally, it was considered that the administrative authorisations and the prescriptions accompanying them are given subject to the right of third parties; Compliance with them does not constitute a cause of disclaimer. The operator shall therefore act under a double constraint: on the one hand, that of the general interest expressed by the administrative decision and the prescriptions which it imposes and which are sanctioned by criminal or administrative law; On the other hand, that of private interests, which, in turn, are defended by the employment of liability, the regime of which may be subject to a logic independent from that of preventive measures. This traditional construction presents a number of advantages, leading to the failure of the victim, to obtain the repair, to sample the culpa of the one he pursues. The conclusion that is required is that the precautionary principle must apply solely to the process of adopting the decision and, consequently, not to have any implications for the liability regime.

The 'polluter pays' principle and the matter of liability for environmental damage

In its essence, the principle implies that pollution is attributable to an economic operator who must this way be designated as a payer. Thus, the establishment of a causal link becomes one of the conditions for the 'polluter pays' principle to be applied in practice. As is known, at its origin, this principle was based on a negative idea, that the national budget must not bear the cost of environmental damage through private activities, and consequently the burden of compensation must be shifted and imputed to a polluter in order to compel it to take over external charges, which implies the designation of one or more identifiable polluters, which sends us to establish a causal link. In view of the specificities of the field, there cannot be a causation of certainty and it is appropriate to accept the existence of a probable eminence. There is also the question of the measure, which must take into account all the elements in the present, so that it does not come to the denial of its necessity, but also to a maximum certainty! A significant contribution to the achievement of the effects of the principle is contravention liability; Thus constitutes contravention and is punishable accordingly, the breach of the obligations of natural and legal persons to bear the cost of repairing an injury and to remove the consequences produced by it, restoring the conditions prior to the occurrence of injury, according to the principle of ' polluter pays ' [Article 96 para. (3) Point 14 of G.P.O. No. 195/2005] or the obligations of legal persons to cover the costs of the measures necessary to prevent and/or reduce the consequences of adverse effects of activities as genetic organisms [art. 96 para. (3) point 10).

Section II: Emergency Ordinance No. 68/2007 on environmental liability regarding the prevention and repair of environmental damage

Through the adoption of this normative act was the transposition into Romanian legislation of the directive on environmental liability No. 2004/35/EC[1] was accomplished. The objective of the directive is to establish a common framework at European level for the prevention and remediation of environmental damage and the minimum conditions to be respected so that the operator whose activity caused an environmental damage or a threat of such damage be financially liable. The directive is based on the application of the 'polluter pays' principle entered in the Treaty of the European Communities. Consequently, on the basis of the philosophy of the operators directive should adopt measures and implement practices to minimize the risks of environmental damage, so that their exposure to financial liability is reduced.

[1] Doina Anghel, Raspunderea juridical privitoare la protectia mediului (*Civil liability in the field of environment protection*), Ed. Universul Juridic, Bucharest, 2010, p 143

The legal instrument chosen by the EU was a directive which leaves a wide discretion for Member States with regard to important issues such as those relating to the optional field of application and exemptions.[1]

Government Emergency Ordinance No. 68/2007[2] establishes a special employment and liability regime for the operator which revolves around the event at the origin of the damage (risk activities, installations subject to integrated authorization, transport of hazardous substances, etc.) and the nature of the damage to the environment itself.

The Romanian state has been able to regulate the liability regime taking into account the provisions laid down in the implemented directive by imposing a stricter protection regime either by broadening the scope of the order or by reducing the exceptional circumstances laid down in the directive, namely the general application of the environmental objective liability regime. Unfortunately, this did not happen.

For the delimitation of the field of application of this normative act, it is useful to establish the relationship between environmental damages and professional activities that can generate them. Any environmental damage to protected species and natural habitats, water or soil, caused by one of the professional activities set out in annex No. 3 The order is subject to the special scheme laid down therein.

In addition, in the case of biodiversity are targeted under art. 3 para. 2 and damage caused by any professional activity other than those referred to in Annex No. 3 Whenever the operator acts intentionally or in fault, which has the effect of considerably extending the rational regulatory scope of the Emergency Ordinance.

For this reason, annex No. 3 has an important effect because it delimits two distinct liability regimes: 1) Objective liability without fault applying to operators carrying out hazardous or risk-potential activities; and 2) The subjective liability based on the cult applicable to the other professional activities.

In regards to the field of application of the Order, the Internal Normative Act also regulates environmental damage which is excluded from its application[3]. At the same time, one must give proper attention to para.3 align.4 which specifies that natural or legal persons governed by private law are not entitled to compensation as a consequence of harm to the environment or imminent threat of such injury. In these cases, the provisions of the common law shall apply.

It was stated in the doctrine[4] that, given that the applicable common law is the framework law on environment protection which provides that civil liability is objective, this law must be applied. Let us recall the definition that this law gives to the harm "*the quantifiable effect on the cost of damage*[5] *to human, property or environmental health, caused by pollutants, harmful activities or disasters*".

The competent authority for the application of these legal provisions is the county Environmental Protection Agency which consults with the national Environmental Guard when determining the necessary measures and on the case, with the scientific councils organised at the level of protected natural areas, with the county offices for pedological and agrochemical studies, the Territorial Inspectorate of Forestry and Hunting. The National

[1] Anna Karamat, *La directive 2004/35/CE sur la responsabilite' environnementale: defis principaux de la transposition et de la mise en ceuvre,* în lucrarea *La responsabilite environnementale, prevention, imputation, reparation,(The 2004/35/CE Directive regarding environmental liability : main challenges of the application*, in the work *Environmental liability, prevention, attribution, compensation)* Ed. Dalloz, Paris, 2009

[2] Transposes into Romanian legislation the 2004/35/CE Directive regarding the liability for environmental harm in respect to the prevention and compensation of the damage caused to the environment.

[3] Art.4 and 5 from Government Emergency Ordinance No. 68/2007

[4] Marilena Uliescu, *Les responsabilites environnementales dans les sites Natura 2000 en Roumanie (Environmental liability aspects in the sites Natura 200 in Romania),* R.R.D.M. nr. 2/2009, p. 12

[5] Art.2 pct.52 from the Framework law

Agency for Environment Protection shall be consulted for assessing the significance of environmental harm and determining the necessary remedies[1].

As we have shown, there are also exceptions to the liability; therefore the application of the order becomes limited. Article 28 is one of the most important exceptions, essentially representing a loss of the precautionary principles and the full repair of the damage caused. This article provides that:

By exception to the provisions of art. 26, the operator does not bear the cost of the remedies taken, if he proves that he did not act intentionally or from the fault or the environmental damage was caused by:

(a) An emission or an event specifically authorised in full accordance with the conditions laid down in the Regulatory Act issued in accordance with the rules implementing the measures set out in Annex No. 3, in force on the date of the emission or event;

(b) An emission, activity or any way of using a product during an activity, for which the operator demonstrates that it was not possible to cause damage to the environment, according to the stage of scientific technical knowledge existing on the date when the emission was issued or when the activity took place.

The article quoted was taken as such from the directive although the Romanian state was able to remove this article from national law. By this regulation, the polluter is able to defend himself by relying on those provisions which lead to the exemption of payment of the costs of remedies if it proves that it has not acted intentionally or from fault and is found in one of the predetermined situations specified in the norm referred to in points A or B of art. 28.

Section III: Special regulations on civil liability in the law of the Environment

A) *Civil liability in the area of nuclear damage*. In accordance with the provisions of the Paris Convention on Liability in the field of nuclear energy, 1960, of the Convention on Liability for Nuclear Damage in Vienna, 1963 and the common protocol on the application of those conventions, adopted in Paris in 1988, documents which Romania has ratified by Law No, 106/1992, Law No. 703/2001 on civil liability for Nuclear damage.

According to the law [Article 3 (d)] *nuclear damage* is understood as:

1. Any death or injury;
2. Any loss or damage to the goods;
3. Any economic loss resulting from a damage referred to in points 1 and 2, not included in those provisions, but is suffered by a person entitled to claim compensation in respect of such loss;
4. Cost of recovery measures for the environment damaged following a nuclear accident, if such deterioration is significant and if such measures are taken or are to be taken and are not included in point 2;
5. Any loss of income deriving from an economic death from any use of the environment due to significant deterioration of the environment and if it is not included in point 2;
6. The cost of preventive measures and any losses or damages caused by such measures;
7. Any other economic damage other than caused by environment degradation, if permitted by the law on civil liability of the competent court of law.

The losses or damages indicated above, with the exception of the cost of preventive measures and any loss or damage caused by such measures, shall be considered as nuclear damage to the extent that such loss or damage:

[1] Art.6 alin 3 of the above mentioned law

- arises as a result of ionizing radiation emitted by any source of radiation which is located in a nuclear plant or nuclear fuel rods, radioactive products or radioactive waste from a nuclear plant or nuclear material originating in, coming from or sent to a nuclear plant;

- is the result of the radioactive properties of such material or a combination of radioactive property with toxic, explosive properties or other hazardous properties of such material.

It is to be noted that in the definition of nuclear damage not only the damage suffered by man of his belongings is taken into account, but also those incurred by the environment, by including the costs of recovery measures, if its deterioration is significant, as well as economic damage other than that resulting from environmental degradation if they are admitted by the legislation on civil liability of the competent court and the loss of revenues resulting from an economic death from any use of the environment caused by its damage.

At the same time, nuclear damage also includes the cost of preventive measures and any loss or damage caused by taking such measures.

The operator of a nuclear plant shall be held responsible objectively and exclusively for any nuclear damage, if it has proved to be *caused by a nuclear accident occurring at its installation, or involving a nuclear material originating from that installation or sent to it*.

In connection with the damage produced by *the nuclear material originating in the installation*, the operator shall be responsible for the nuclear Damage: (a) before that liability has been assumed, on the basis of a written contract; (b) in the absence of an express provision of such a contract, before an operator has taken over the nuclear material; c) even if the material was sent to a person on the territory of another state, as long as it was not discharged from the means of transport.

For damage produced by *the material sent to the nuclear installation*, the operator shall be held accountable: a) under a written contract, after that liability has been transferred to the operator by the controller of another nuclear installation; (b) after taking over the nuclear material by the operator, in the absence of any express provisions of a written contract; (c) where the nuclear material has been sent with the written consent of the operator by a person in the territory of another state only after the nuclear material has been loaded in the middle of transport with which he must leave the territory of that state.

In the event of an accident occurred during the transport of nuclear material, civil liability for damages shall return entirely to the transporter - considered as operator, within the meaning of the law - upon the request and with the consent of the installation operator.

The nuclear accident is defined as any fact or succession of facts having the same origin, which causes a nuclear damage, and with regard to the preventive, it creates a serious and imminent threat of such damage (art. 3 (it. a)).

Where a nuclear damage entails the responsibility of several operators and cannot reliably determine the part of the damage attributable to each, they shall be fully jointly and severally liable, the liability of each of which may not be higher than the amount applicable, according to the law.

If several nuclear installations belonging to the same operator are involved in a nuclear accident, the operator shall be responsible for each nuclear plant involved, up to the amount applicable to it under the conditions laid down by law.

In the event that a nuclear and a non-nuclear damage are caused by a nuclear accident or, jointly, by a nuclear accident and by one or more different events and the non-nuclear damage cannot be separated with certainty from the nuclear one, it is considered as a nuclear damage caused by the nuclear accident.

The objective liability in the case of nuclear damage differs from the classic objective liability, since the operator cannot escape from it by invoking the causes of exemption from common law (force majeure, unforeseeable circumstances etc.). The operator shall be exempt

from liability only if he proves that: the nuclear damage is the direct result of acts of armed conflict, civil war, insurrection or hostility; The damage is entirely or partly due to the serious neglect of the person who suffered it or when that person acted wrongly or failed to act, with the intention of causing a damage. In such cases, the competent court may exempt the economic operators, in whole or in part, from the obligation to repair the damage suffered by that person. When it turns out that the natural person acted or failed to act with the intention of producing a nuclear damage and for which the operator was freed of liability, the natural person is obliged to respond.

In as far as the compensation scheme is concerned, the Law No. 703/2001 limits the operator's liability for each nuclear accident to a maximum maximum amount which cannot be inferior to the equivalent in RON to 300 million DST [art. 8 para. (1)].

From this rule, there are a few exceptions, namely:

With the approval of the competent national authority, the operator's liability may be limited for each nuclear accident to less than the equivalent in RON of 300 million DST, but not less than the equivalent in RON of 150 million DST, provided that the remaining difference up to the minimum equivalent of 300 million DST be allocated by the state from public funds in order to cover nuclear damage under the conditions laid down by law.

For a period of 10 years from the date of entry into force of the law, with the approval of the competent authority, the operator's liability may be limited to each nuclear accident produced during this period under the equivalent in RON of 150 million DST as well, but not less than the equivalent in RON of 75 million DST, provided that the difference to the equivalent in RON of 150 million DST is allocated by the state from public funds.

Under the same conditions provided by the law, the operator's liability may also be limited to some smaller amounts in the case of research reactors, radioactive waste deposits and burnt nuclear fuel (minimum equivalent in RON of 30 million DST may be reduced to the equivalent in MDL 10 million DST), as well as in the case of transportation of nuclear materials (the equivalent in RON of 5 million DST) and the transportation of fuel that was used in a nuclear reactor (equivalent in RON of 25 million DST).

Coverage of a part of the nuclear damage by the state from public funds also implies liability from its side, by ensuring payment of allowances to the extent that the insurance or financial guarantee provided by the operator is not sufficient; at the same time, this constitutes an incentive in the severe enforcement of legal rules in order to prevent such accidents and limit their consequences when they occur.

Within the limit of the amount paid as compensation, the operator shall have *a right of action for recovery* only in the following situations: (a) Where such a right has been expressly provided for in a written contract; (b) If the nuclear accident arises from an action or omission committed with the intention of causing a nuclear damage to the natural person who acted or failed to act with that same intention.

The law provides for the right to action for recovery for the state to the extent that it has allocated public funds, according to the law.

In accordance with the provisions of the Vienna Convention, which gives states the right of setting limitation periods for the entitlement to compensation to less than 10 years by means of national laws, if the liability of the holding is covered by insurance or any other financial guarantee, or by public funds according to the law of the state on whose territory the plant is located. Law No. 703/2001, provides in art. 12, depending on the seriousness of the nuclear damage produced, that the right to compensation is prescribed, if the action has not been introduced within:

-30 years from the date of occurrence of the nuclear accident, if the action is related to death or injury;

-10 years from the date of occurrence of the nuclear accident, if the action relates to the production of the other nuclear damage provided for by law (except for the costs of preventive measures and any loss or damage caused by such measures).

Within those deadlines and without them being exceeded, the victim's right to compensation shall be extinguished if the action has not been filed within 3 years from the date when he or she should have known the damage and the identity of the responsible operator.

The law provides [art. 12 para. (3)] that the person who has suffered the damage and brought the action within the time limits laid down by law (30 and 10 years respectively), may amend his application if the damage has worsened, even after the expiry of those deadlines, provided that no definitive and irrevocable judgment has occurred by the competent court of law.

We consider this text to be subject to critics on the ground that it takes into account only the 'worsening of current damage', not the production of new damage. But nuclear accidents have effects in a long time and may cause new damage, which should lead to the recognition of the victim's right to amend their application in such situations as well.

b) *Producer's liability*[1] for damage caused by faulty products. The invasion of faulty products the market and the alarming increase in the number of cases of sickness, as well as the production of other damage, resulted in the distinct regulation of the legal relationships between producers and injured persons or harmed by faulty products put into circulation, the determination of liability for the damage caused by these products, as well as the procedure for repairing the damage.

According to government Ordinance No. 87/2000 on the liability of producers for the damage caused by faulty products, this special objective liability has a number of derogatory rules from common law, of which we mention:

According to that normative act, the manufacturer, as defined by that notion, responds both for the current and the future damage caused by the fault of his product;

It shall be held accountable in the situation where the damage is the cumulative result of both the fault of the product and an action or omission from a third person's side (article 4);

The law provides for the joint and several liability of all liable persons;

It is irrelevant if those products are hazardous or not, because it has been found that products considered to be non-hazardous may, under certain conditions, produce damaging results. It is therefore about any product which the consumer had bought with confidence.

The basis of the manufacturer's liability is the presumption of liability. The victim must not prove the manufacturer's fault.

For the incurrence of manufacturer's civil liability, the injured person must only prove the damage suffered, the fault of the product and the cause - effect relationship between the fault and the damage.

The manufacturer's disclaimers are specific to the domain, namely: a) the manufacturer proves that he is not the one who put the product in circulation; (b) The fault which generated the damage did not exist on the date on which the product was put into circulation or arose after the release into circulation of the product from causes that can not be attributed to the manufacturer; c) The product has not been manufactured to be marketed or for any other form of distribution for economic purposes: D) The fault is caused by complying with mandatory

[1] According to the Government Order No. 87 from August 29th 2000 regarding the liability of producers for the damage generated by faulty products (published in the Official Monitor No. 421 from 01.09.2000) it is understood: a) the manufacturer of a finite product, of raw material or of a component of the product; b) any person which presents herself as a producer by applying her name, trademark or any distinctive sign on prodcts; c)any person which imports products in view of a posterior sale, rental, leasing or any other form of distribution specific to the business activity; d) the distributer of the product, shall the producer be unidentifiable and fail to inform the damaged party within 30 days from her request regarding the identity of the producer or supplier; e) the distributer of the imported product, shall the importer remain unknown, even if the manufacturer is mentioned.

conditions imposed by the regulations issued by the public authorities; e) The level of scientific and technical knowledge at the time the product was put into circulation did not allow the manufacturer to detect the existence of the fault (art. 7)

The manufacturer of components shall be exempt from liability if he proves that the fault is attributable to the wrong design of the assembly in which it was mounted or the instructions given afterwards by the manufacturer of the final product.

Unless expressly provided for by law, any contractual clauses limiting or disclaiming the manufacturer shall be deemed as void.

The competent court may limit the manufacturer‘s liability if the damage is caused together by the fault of the product and the guilt of the injured or damaged person or other person for whom he is bound to respond.

The application of the provisions of the Government Ordinance No. 87/2000 does not exclude the possibility of the injured person from claiming compensation and under contractual or extra-contractual liability or other special liability regime existing on the date of entry into force of the order.

For amounts paid to injured persons, social security has a right to an action for recovery against the manufacturer, according to the law.

The right to action for compensation of damages can be exercised either directly, by the damaged person or by specialised consumer protection bodies, which may resolve by administrative and/or consumer protection associations-non-patrimonial legal persons who have been recognised as entitled to enter into legal proceedings for the protection of the rights of the laws-time interests of their members and shall be prescribed within 3 years flowing from the date of lactation the complainant had or should have Be aware of the existence of the damage, defect and identity of the manufacturer, but no later than 10 years after the date on which the manufacturer placed the product in circulation, provided that the damages occurred within the 10-year period[1].

This provision introduces the general limitation period of three years from the date on which the applicant had or should have been aware of the existence of the damage, fault and legal person of the manufacturer and a special limitation period of 10 year beginning to run from the date on which the manufacturer put the product into circulation, provided that the damages occurred within that period.

The action to repair the damage produced shall be under the jurisdiction of the court competent for the territory where the damages have occurred, or, where appropriate, for the place of residence of the defendant.

c) *Civil liability governed by art. 13 Para, (3) of the law of the Hunting Fund and the protection of the game 407/2006. The art. 41, 42 of the law 407/2006, updated in March 2017 regulate legislative issues concerning civil or criminal liability, depending on the case*[2].

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[1] Daniela Marinescu – *Tratat de dreptul mediului* (*Treatise on environmental law*), Editura All Beck,2003, pg 459

[2] Law No 407/2006

Art.13– (1) In the case of damage to agricultural crops, forestry and domestic animals by specimens of the species of fauna of kinegetic interest, compensation shall be granted.

(2) The method of granting compensation shall be determined by decision of the government within 60 days from the date of entry into force of this law.

(3) Civil liability for damage caused by the hunting of strictly protected species listed in annex No. 2 It rests with the Central public authority responsible for the protection of the environment. The procedure for establishing civil liability shall be governed by decision of the government within 60 days from the date of entry into force of this law.

Art. 41. – The breach of the provisions of this law entails contravention, civil or criminal liability, as appropriate

Art. 42. – (1) The following represent poaching offence and are punishable by imprisonment from 3 to 7 years or with a fine from 5,000 lei to 25,000 lei:

a) Hunting without a permit and without legal hunting authorization;

Also, art. 135 Para, (1) of the Constitution, according to which the state protects the property, involves 'the fair repair of the damage caused by the destruction or deterioration of the goods forming the object of the property '.

The president of the Senate, in his memorandum, considered that the complaint is unjustified, because the provisions of art. 15 para. (2) of Law No. 103/1966 are constitutional and the conditioning the preventive measures necessary for the security of the goods upon compensation are 'in accordance with the general rules and substantiated on criminal civil liability'.

The conclusion was based on the principle of social solidarity, on the 'contribution of all to compliance with the law', on the coercive and reciprocal nature of reflecting social relations under a legal aspect, on the fact that both the owner of the game fund and the holder of the goods must contribute to the prevention of damage production.

It has also been shown that the liability concerns 'both the owner and the holder of the goods that could be degraded, which corresponds to a modern guideline in matters of tort liability'.

In the note presented by the Chamber of Deputies, starting from the idea that it is about a legal liability, it was argued that, according to art. 41 para. the noncompliance of this task makes the owner unable to benefit from any compensations.

It was also considered that, even if the provisions of art. 1001 Civil Code, the holder of the injured property, who has not taken the necessary measures to secure his property, cannot claim to be compensated, because the damage is the consequence of the deed of the 'victim itself ', and in art. 135 para. (1) of the Constitution it is stipulated that the state protects the

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b) Hunting by the use of greyhounds or greyhound mixes;

c) Issuance of hunting authorisations exceeding the approved hunting rate for each manager of hunting ground;

d) Hunting of game species strictly protected outside the conditions provided by the law;

e) Hunting in special conservation areas of natural parks;

f) Hunting in fauna reservation of species subject to protection in the protected natural area;

g) Hunting in special fauna protection areas and in special areas of conservation established under the directives of the European Union, as well as in other natural areas protected by national interest, other than those in the categories on areas not constituting hunting funds, without complying with all the provisions relating to hunting, contained in the management plans and/or their regulations;

h) Pursuit of the injured game on another hunting ground without the consent of its manager, or the passage on such a ground, with the hunting weapon, outside the communication pathways;

i) Hunting on another hunting ground than the one the hunter is authorized to hunt;

j) Hunting outside the periods in which hunting is permitted for that species, according to annexes 1 and 2;

k) Hunting by night use of motor vehicles or devices allowing the aiming and shooting in the dark;

l) Hunting from the helicopter as well as from moving motorboats;

m) Hunting through the use of toxic chemicals used in the fight against vegetal and animal pests of agricultural and/or forestry crops and which cause intoxication or death of fauna of kinegetic interest;

n) Hunting bears to the nade and/or the lair without the approval of the Administrator and the Central public authority responsible for the protection of the environment;

o) Hunting of non-flying chickens of birds of hunting interest;

p) Hunting with specimens of hawks, otherwise than the special Law provides;

q) Hunting by using electric current, explosives, poisons, narcotics, electronic apparatus capable of killing, noose, and any other unauthorized traps, weapons, othes than handheld and any other weapons authorised or approved for hunting in Romania.

(2) The facts provided for in para. (1) are punishable by imprisonment from 3 to 10 years if they were comitted:

a) by two or more persons together;

b) By a person with service duties or public powers in the field of hunting, as well as by representatives of legal persons who have in their object of activity the protection of game or hunting;

c) In cinegetic reservations;

property, but only with the consideration of the circumstances of art. 41 para. (1) and (6) of the fundamental law.

It has been also laid out[1] that the object of the complain does not infringe the provisions of art. 41 of the Constitution, 'establishing a general measure which is not discriminatory, based on the obligation of the land holder for the material security of the goods destroyed or damaged by the game, which, depending on the purpose of the game's protection, constitutes an obligation *proptem rem*.

The basis of liability is a presumption of guilt which can be overturned by the damaged party.

In its decision[2], the Constitutional Court retained in respect to the first ground of unconstitutionality invoked that the provisions of art were not infringed. 41 para. (1) of the Constitution, according to which the content and limits of the right of ownership are to be established by law, they correspond to the provisions of art. 480 Civil Code, and according to para. (6) of the same text (art. 41), the right to property obliges to respect the environmental protection tasks and ensure good neighbourhoods. And to respect the other tasks which, according to the law, are incumbent upon the owner.

The game is a public good of national interest [art. 2 para. (2) of Law No. 103/1996] , therefore it does not constitute the property of the land-holders on which it finds itself nor of the managers of the hunting funds nor of the state.

According to art. 15 para. (1) of Law No. 103/1996 in conjunction with art. 8 lit. i), in order to prevent the damage caused by the game, the central public authority responsible for forestry, together with the competent ministry, is authorised to lay down rules on the protection of agricultural and forestry crops and domestic animals. Compliance with those rules rests with the land-holders by virtue of their right over the land they hold and the material security which this right entails, as well as their tasks, for the purpose of protecting the game, according to art. 16 of the law. Therefore, the failure to take those measures by land holders has the significance of infringing a legal obligation established under art. 8 lit. i) and art. 15 para. (1) of the law, which makes the land owner suffer the damage, being the consequence of its guilt.

In relation to the second ground of lack of constitutionality, this is deducted from the provisions of art. 135 para. (1) of the Constitution, 'the assertion that the ownership of the property by the state implies compensation to the owner for the damage caused is justified only if, a different person than the owner is to be held liable for damages produced. In the contrary case, the owner's failure to take necessary measures of protection against damage that might be caused by the game has the significance of the owner taking the risk of damage.'

The establishment of the guilt of the owner incurring the damage and, where applicable, establishment of the guilt of the manager of the hunting fund or of the central public authority responsible for the forestry lies with the court of law in the event of potential litigation.

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