

Responsibility on Environmental Damage with a View in the Republic Of Macedonia

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Abstract-The rapid technical and technological development in this century has created many environment harming sources. By hazarding the environment, to a great extent there is an encroachment of human lives, their corporal integrity, their wealth, etc. All of this can result in progeniture of perils for the existence of mankind itself, having in mind that a human being can't develop with a polluted air and water, with waste and hazardous materials all around, etc.

That is why different measures are envisaged, measures whose aim is to interdict or restraint of the environment endangering sources. Since it is a comprehensive global concern, the international community (as well as states in individual order) is undertaking measures in order to preventively affect the swerving of all the dangers and the elimination of the consequences afflicted by the dangers caused previously. In the corpus of undertaken measures are included many international convents whose subject of regulation is the environment. With these Convents above all there is foreseen the possibility of taking responsibility for the damage caused to the environment as well as the criminal-legal responsibility.

Index Terms- civil responsibility, corporate integrity, criminal responsibility, damage, environment responsibility, liability base.

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1. THE MEANING OF RESPONSIBILITY (LIABILITY) FOR DAMAGE CAUSED TO ENVIRONMENT

In the environment, the damage can be caused by the activity as well as the negligence of certain people. The damage can be caused by dangerous things or acts. In some cases the damage can be caused also by different people for whom other people take responsibility. The defector may take responsibility for causing the damage, for the dangerous acts or for another person's acts. Depending on the scale of dangerousness and the loftiness of the caused damage, the responsibility for the damage caused may be of civilian and criminal nature. For the criminal responsibility the most important thing is to prove the guiltiness of the defector because without guilt there can't be a penal offence. For the civilian responsibility besides the accountability based on fault, there are cases where the guilt doesn't have to be confirmed as in the case of responsibility for dangerous acts and things. It is the case where the damage is caused by hazardous substances. Hazardous substance is regarded every substance or proprietary that by its traits can be harmful for humans, the environment or property, such are the oxidative and corrosive substances, explosives, etc. The environment can be endangered or damaged from the impact of these substances, hence causing certain detriments.

In cases of damaging the environment, the defector may not be regarded responsible but another person, a person that is in a specific relation to the defector can vouch for him. If an offense has been evoked by the engagement or negligence over the environment then we always bear the individual responsibility of the defector.

2. JURISTIC SOURCES ON RESPONSIBILITY FOR THE DAMAGE CAUSED TO ENVIRONMENT

The prime juristic source of the EU in the scope of responsibility for damaging the environment is the Directive on environmental liability with regard to the prevention and remedying of environmental damage¹. But, even before this Directive was adopted, many issues regarding the environmental liability where included in the so called "White Paper on environmental liability"². The aim of composing such a directive was to ensure preventive measures in regard to environmental damage as well as providing the conditions for remedying the environmental damaging according to the unified rules of environmental liability based on the 'polluter pays' principle. Another important source on this field can be considered the Rio Declaration (1992) which contains many rules, so creating obligations for states to develop their national rights with regards to liability and remedying of environmental damage³.

Besides the Rio Directive there are many more international agreements in the sphere of environment, which as sources of international jurisdiction are imposed to the EU members. Such are the agreements whose objective is the regulation of responsibility for damage

¹ No.2004/35/EC, year 2004.

² White Paper of 9 February 2000 on environmental liability COM (2000) 66 - Not published in the Official Journal]. Commission of the European Communities, Brussels, 9.2.2000, COM (2000) 66 final.

³ For more; P. Sands, Principles of international environmental law, Cambridge University Press, 2003. pp.869-939.

caused by petroleum, dangerous substance transportation as well as the responsibility throughout the utilization of nuclear energy. These kinds of agreements are signed by the Republic of Macedonia with the Republic of Albania for the protection of the Ohrid Lake and the Agreement of cooperation in the field of environment protection with the Federal Republic of Yugoslavia⁴. There are two other Conventions that are of a great importance in the sphere of environmental liability: the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment-1993 and the Convention on the Protection of the Environment through Criminal Law-1998

National sources in Macedonia are: the Constitution, the Law on Protection of the Environment, the Law on Mandatory Relations, the Law on ownership rights in to environmental protection, the Forest Protection Law, the Water Law, the Law on Hunting, the Fishery Law, the Criminal Law, etc. Surely there are many more sub-law acts and other regulation policies which operationalize many issues on the scope of environmental liability.

3. THE TERMS ON DAMAGE CAUSED TO THE ENVIRONMENT

To beget the responsibility on the environmental harm certain conditions ought to exist. Without the fulfillment of certain conditions it cannot be talked about the caused damage. For the environmental liability to arise these conditions are demanded: the caused damage, the capability of liability (offender capability), anti-law action, causal link and the liability base.

3.1. The meaning of environmental damage

The damage is an important term on causing the environmental damage because without damage we can't talk about liability. The damage can induce consequences to properties as well as human life. The damage to property can cause its reduction or block its expansion. The damage on the human individuality can be manifested as in inflicting physical, psychic distress or fear (also known as immaterial damage). So, an environmental damage is considered: the loss of a human life or personal encroachment, the loss or violation of property, the outlay of preventive measures as well as any damage caused through the implementation of these measures.

The environmental damage is defined as damage caused to protected species, water or soil⁵. Damage on protected species is considered if their conservation status

is not fully enforced. Exemptions are indicated, as in the cases where the operator has a delegated permit over the protected species, then the possible negative effects caused to their status won't be classified a damage⁶. Damage caused to water⁷ is considered each harming act caused by different chemical substances. The damage caused to soil implies to the damage caused by various contaminations which can arouse substantial harm to human lives, as a result of direct or indirect effect of different substances on organisms and microorganisms⁸. In general, the damage caused to environment is regarded as a negative alteration of natural resources which directly or indirectly affect the shift of the functions of natural resources. Based on the available data, in Macedonia the damage in most of the cases is caused due to the unsuccessful waste management whose aftereffects reflect on the pollution of water, air as well as the endangerment of human lives. The greatest number of applications for caused damage during the 2009-2011 stretch is made during 2009. While during the year 2009 have been submitted 451 requests for initiating legal process for damage caused to the environment due to poor environment managing, in 2010 are submitted 89 and in 2011 only 26 requests. Analyzed by their content, most of the applications deal with the issue of environment pollution due to bad management of waste. Thus, in a three year period (2009-2011) the total number of requests submitted on account of the mentioned issue reaches approximately 4000 such⁹.

3.2. Criminal liability

For an individual to be held responsible for environmental damage it needs to possess the ability of liability. Liability means legal responsibility for one's acts or omissions. To natural persons it is dependent on age¹⁰. Legal entities have criminal capability so they are legally responsible for the caused environmental damage. They are liable for damage caused by their organs because the organs of a legal entity act on its account.

The principal responsible for the environmental damage are: operators, competent organs as well as the natural persons or legal entities that have been damaged or have a certain interest related to the damage caused to environment.

Operator means the person (natural or legal) who exercises the control of a professional activity¹¹, based on the national provisions, providing that it possesses a permit

⁶ Article 6 and article 16 of the Directive.

⁷ This damage is envisaged in Directive 2000/60/EC.

⁸ D. Wilinon, Environment Law (first edition), New York, 2002, pp. 47

⁹ The data have been secured from the Commission for environmental protection of the Republic of Macedonia.

¹⁰ The Law of obligations, article 160.

¹¹ Professional activities are defined by the Regulation for professional activities, whose practice can induce liability for caused damage "Official Gazette of the Republic of Macedonia" no.31/11.

⁴ Published in the "Official Gazette of the Republic of Macedonia". Nr.46/05. and "Official Gazette of the Republic of Macedonia". nr. 13/03

⁵ J.Mallor, J.Barnes, Th.Bowers, Business law and the Regulatory Environment (tenth edition), Irwin Mc.Graw-Hill, 1995, pp. 1133;

or authorization for such an activity or registered subjects for an activity of that type¹². Liable for the damage caused to the environment is regarded an operator who exercises professional activities and with exercising these activities has caused damage, respectively, potential risk for causing the damage. The operator is liable, if:

- a) Has not undertaken the required preventive measures;
- b) Has not undertaken the remedying measures;
- c) Has not informed the proper organs about the risk of ecological damage that can be caused although the measures have been undertaken¹³.

The cases of the operators that aren't considered liable are defined by specific legal provisions. These are the cases when the operator can testify that the environmental damage is caused by third parties and it has been caused even though all the required security measures have been undertaken. Also, exemptions of operators off the liability are emphasized when the damage is or will be caused in near future as a result of respecting the instructions by the public institutions. The operator is discharged of liability also if the damage is a result of applying the sources (the Directive) and he testifies that he is innocent and that the damage is generated as a result of emitting or various other actions fully permitted by the law. There are such cases in Macedonia also. From a total of 22 cases, 5 cases of discharge are as a result of fully permitted actions made by the defector.

An identical situation (exemption from liability) is applied when the damage is caused by military conflict, civil war as well as circumstances of inevitable natural disasters.

3.3. Anti –legal action

Anti legal action exists when with acts or negligence a juristic regulation is offended. With these acts the material and the non-material interests of certain persons can be offended. Each act or omission which offends the juristic regulations incorporated into the national or international resources is considered an anti-legal act. So, in the Republic of Macedonia, during the three year period (2009-2011) in most of the cases the regulatory provisions of the Law on environment protection, the Law on waste management, the Law on air quality as well as other laws have been offended. From 546 cases of law infringement, most of them are regarding the Law on waste management. In three years (2009-2011) have been found out 451 cases of law infringement regarding the Law on waste management.

3.4. Causal link

The causal link as a stipulation should exist as the liability for the damage caused by their own actions and also the responsibility for the dangerous things or actions. This link exists between acts or omissions and the caused consequence. This link needs to be verified by the endangered. The causal link is an objective category because there doesn't have to be the guilt of the person that is or is not undertaking action.

3.5. Basis of liability

The basis of liability explains the reasons of why a person is responsible for the caused damage. The reason of liability for the caused damage can be the guiltiness or even there are cases when the guilt isn't taken in regard as in the case of causing damage to the environment by dangerous matters or acts. At the liability on environmental damage, the guilt is assumed. This means that if the defector proves that he was not guilty for the caused damage he is not liable. Responsibility without guilt (objective) is emphasized when the environmental damage is caused by harmful acts which at any time can be the reason for the damage on the environment. The industrial and nuclear energy progress are facts which prove that humans and their environment are surrounded by many menaces capable of causing damage to them or their property. The reasonable thing in this case is the one who is initiating and organizing dangerous activities to take the responsibility. These activities are the reason for the environmental damage, where the level of reward depends on the caused damage and not on the fault of the owner, holder or the user of the dangerous matter.

In the Republic of Macedonia, during the period of 2009-2011, the guilt of the defector is considered the base upon which the pronouncement of sanctions is made.

In this direction, the total number of pronounced sentences for damage caused to the environment in this period (three years) is 54614.

4. THE AIM OF LIABILITY FOR ENVIRONMENTAL DAMAGE

The aim of the environmental liability is:

- a) prevention and full remedying of the caused environmental damage,
- b) restitution of the environment, and
- c) providing the measures for minimizing of the risk from environmental damage¹⁵.

Based on the Directive, there are certain types of measures, as: measures dealing with the preventive

¹² See; article 2 of the Directive.

¹³ The law on environmental protection, article 157.

¹⁴ The data have been secured from the Commission for environmental protection of the Republic of Macedonia.

¹⁵ The law on environmental protection, article 157.

activities, measures dealing with environmental damage and the remedying measures¹⁶. The preventive measures are the measures undertaken as a response to the occurrence, activity or incurrance by the procedure and as a result of it a possible risk for causing damage to the environment is created and they are dealing with the preventive or minimization of the damage. The measures of remedying¹⁷ are dealing with measures dedicated to the rehabilitation or replacement of the damaged natural resources.

Within these goals, natural persons or legal entities as well as the civil associations established for the aim of protecting the environment have the legal right to request from the operator in the court:

a) to make the restitution of the environment to its previous state, or

b) to compensate the damage caused to the environment, if the restitution to its previous state is impossible.

If the damage is caused to the public goods, the restitution or compensation can be requested by the Republic of Macedonia. In such case in the name of the Republic of Macedonia the demand to the competent court of law is delivered by the competent national organ for environmental protection.

The carrier of the right can request from the court to order the respondent to secure information or to enable gathering the information from the source of pollution, information needed to determine the responsibility for the ecological damage and the volume of the responsibility¹⁸. Determining the value of the goods and the effect on the environment is made based on the Assessment Methodology¹⁹. Assessing the value of the goods and their effect on the environment is made according to these methods:

a) the Method of assessment based on the market prices, naming the preventive expenses, the expenses of dislocating and repairing the goods, etc.

b) the Method of assessment based on the productive functions, according to which the effects of damage on production, human being, etc, is determined.

c) the Method based on assumed assessment on the caused damage and also the assessment of conclusive expenditure.

No matter which of the methods is used, during the assessment, always the assessment of the goods and the effect on environment is needed, thus, they need to be identified, quantified and assessed correctly. In the Republic of Macedonia, during the period of 2010-2011 have been sentenced 62 cases, with amounts from 30 up to

3000 Euros. Based on the circumstances presented by the respondents, after the scrutiny of the facts 22 persons have been set free of the charge²⁰.

5. REASONS FOR PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

Most of the activities by which human beings harm, destroy, pollute or endanger the environment are the result of man's conscious omission or failure to abide by the rules, technical guidelines and standards in managing many dangerous sources of energy and raw materials or in handling hazardous appliances and technologies properly.

Suchlike illegal activities that can be conducted by individuals, groups, trans-national corporations or even entire countries are illegal and punishable as criminal offence and misdemeanors (delicts). With the term "environment offence" we indicate activities and demeanor of people and other subjects that damage the human being and risk general social values. These acts (delicts) are only one of many types of delicts caused in the society. The feature that distinguishes this kind of delict from other types of delicts is the protected object. In this specific case, the protected object is man and one of the fundamental human rights to live in healthy living conditions. This means that the consequences may not be only expressed as physical damage (destruction, smaller or larger magnitude of harm, or activities that make the living and working environment impossible to use). These are the reasons why protection of the environment is also performed by the regulations of criminal law²¹. The intent is that by the pronounced penalties to assist the elimination of conducts that endanger the environment and at the same time enormous revenues are achieved by the perpetrators. These actions are also treated as environmental crimes. In order to secure a quality environment and to secure timely and more effective protection in Macedonia has been created a processed system of environmental misdemeanors. The classifying is made by taking into account their nature, importance and character. Juristic basis for these acts is the Criminal Code. These offenses are classified in two groups: criminal offenses against the environment; and criminal offenses against the environment and public security and property. Nevertheless, the State Assembly has approved some more regulations that ensure environmental protection, as: protection of medical plants, genetically modified organisms. These actions are also included in the Criminal Code. The protected object in all the environmental criminal offences (real, secondary or unreal) is either the environment as a whole or some of its parts:

¹⁶ Article 5 and 7 of the Directive.

¹⁷ These measures are envisaged in the Regulation on remedying measures for ecological damage "Official Gazette of the Republic of Macedonia" no.31/11.

¹⁸ The law on environmental protection, article 159.

¹⁹"Official Gazette of the Republic of Macedonia" no.115/10

²⁰ The data have been secured from the Commission for environmental protection of the Republic of Macedonia.

²¹ These regulations are envisaged in the Directive 99/08/EZ, on Environmental Protection.

air, water or soil, flora and fauna, which are violated or harmed either by the commission of an activity or an omission to act. Yet, the most recent conceptions in the legal theory often point out that the object of protection in these criminal offences is the human right to live in a healthy environment, as one of the fundamental human and universal rights of man and the citizen.

Based on the systematization made to the Criminal Code of Macedonia, it can be noticed that distinctions between different types of environmental criminal offense are made:

1) real environmental criminal offences (i.e. environmental offences in a narrow sense) which are systematized in the Criminal Code of Macedonia within the group of criminal offences against the environment; the immediate object of protection in these offences is the environment as a whole or some of its integral parts that constitute a healthy and natural environment;

2) unreal environmental criminal offences (i.e. environmental offences in a broader sense) which are systematized in the Criminal Code of Macedonia within some other groups of criminal offences; in these offences, the environment comes under attack only indirectly whereas the primary or prevalent object of attack are some other social , and

3) criminal offences envisaged with other legislative acts that regulate the environment as a whole or some of its integral parts.

With the objective of reinforcing the responsibility of offenders (natural persons, legal entities, trans-national corporations or the state), in the scope of environment protection in international level is adopted the Convent which is considered the foundation of criminal liability for environmental damage. In the Republic of Macedonia there is not initiated any process of criminal nature.

6. THE PERSPECTIVE OF ENVIRONMENTAL PROTECTION IN THE REPUBLIC OF MACEDONIA

Given the importance of environment to the development of society and other living beings, especially when knowing that there is a continuous tendency of environment pollution, as a prominent issue is raised the necessity of generating mechanisms for environmental protection with higher efficiency, moreover, for a more rapid and efficient compensation for damage caused to the environment. All this is determined by the fact that nowadays the number of people that are carrying out dangerous actions whose perpetration can at any time cause damage to the environment is in rise. On the other hand, knowing that the procedures of compensation are evolved to a certain degree so there always exists the

possibility of attacking the primary verdicts with appeal as well as utilizing extraordinary legal means for whose application time and expenses are inalienable.

We are assessing the importance of mechanisms in the scope of environmental protection as:

a) firstly, ensuring the liability, is a very good and effective mechanism in protecting the environment. This ensuring must have an obligatory nature, and in this regard any operator should not be handed a permit if he/she previously has not contracted an insurance covenant with a certain insurance company. Provided the assurance of environmental liability regulations the operator is also protected from possible financial consequence in case of causing damage and at the same time the process of damage compensation is fulfilled efficiently and avoiding financial expenditure and long procedures;

b) secondly, the scale of dangerousness defined by juristic provisions in Macedonia for a environmental delict to be rated a criminal offence needs to be as low as possible. This is indicated through the current situations in Macedonia where from all the acts and omissions that have caused damage to the environment; none of them has been regarded as a criminal offence. This fact shows that damagers of the environment nevertheless fear the prescribed sanctions.

CONCLUSION

The process of industrialization has caused many positive as well as negative consequences to mankind. As a negative consequence is regarded the possibility of continuous increase in pollution of environment caused by industrial development.

Therefore the pollution of environment is a very serious problem facing society nowadays. All of this has influenced the international as well as the national institutions to take measures aiming to detain or reduce the impact of industries on environment. Among the most important measures provided for the protection of environment are regarded the juristic measures adopted by the international and national institutions. Based on these legal acts (national and international) a good juristic range on environmental protection in the criminal-juristic and in the civil-juristic scheme as well as in other spheres with administrative-juristic nature has been created.

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