

MEPDEV 2nd: 2016
Central & Eastern European LUMEN International
Conference - Multidimensional Education & Professional
Development. Ethical Values

THE OBJECTIVE CIVIL LIABILITY FOR THE
ENVIRONMENTAL DAMAGE

Florin Octavian Barbu (a)*

*Corresponding author

(a) Attorney, Dambovita Bar, Union of Bars in Romania, Romania, Doctoral Student, Juridical Research Institute
“Acad. Andrei Radulescu”, Romanian Academy, florin_octavian2000@yahoo.com, 0723815697

Abstract

The issue of civil liability under tort law must be analysed in a dynamic, evolutionary context, regarding everything that means social actuality. Initially seen through the prism of its sanctioning function, torts complained and advertised new trends in terms of finality. For practical purposes was discussed repositioning torts, not in relation to the illegal fact, but prejudiced person from the civil illicit fact. Thus, the centre of gravity of torts is the victim of the illegal act, the main person interested in settling the civil. Also in this respect, there is the restructuring of hierarchical functions torts. Assuming the premise that the central pillar of tort liability is the person injured by the wrongful act, we appreciate that reparative function of the liability acquired as a corollary ground at the expense of its sanctioning function. Furthermore, the increased industrialization of different fields, found on the integral country territory, had new activity risks which, in turn, generated a plurality of hypotheses that can fit to the tort. In this context, the liability of tort requires a thorough knowledge needed to resolve possible disputes that may arise in practice. Industrialization that marked the beginning of the twentieth century and was perpetuated to this day added diverse new forms of accountability based on theories centred on the compensation and not-sanctioning the culpable conduct. Also as a novelty aspect in legislature removed the actual subjective concept which governed the law of torts, being concerned to regulate targets assumptions of no-fault liability..

© 2017 Published by Future Academy www.FutureAcademy.org.UK

Keywords: Ecological damage, civil liability, primary repair, damage, environmental protection.



1. Introduction

Tortious civil liability engagement presupposes the fulfilment of specific conditions: prejudicial, illegal deed, guilt and causal link between the fact and the damage. Considering that the provisions of the civil code (Art. 1349 para. 2 C.c.) refers only to the existence of the requirement judgment, it must be filled with the principle disposition of the same code (Art. 1349 para. 2 C.c.), thus, if the law does not stipulate otherwise, the person is liable for deeds committed with intent or fault. To the rule of tortious liability, which is based on guilt, by way of exception, if the law does not provide, there is objective liability, “independently of any contributory negligence” under the Civil Code which regulates in this form the liability for damage caused by animals (Art. 16 para 1 C.c.), and the liability for damage caused by things (Art. 1375 C.c.).

2. Problem Statement

Ecological Damage. The notion of injury has a definitive role, and in this respect, the regulation-setting of the specific environment protection (Art. 1376 C.c.) defines expressly the prejudicial as “measurable effect in cost of health damage to people, property or the environment, caused by pollutants, harmful activities or disasters” (GEO, no. 195/2005 on the protection of the environment).

Interesting for liability remain the “cost measurable effects” of damages on human health and property of “pollutants” (Art. 2 item 52 of the GEO no. 195/2005), activities harmful to natural disasters times¹. The phrase “any injury entitlement to repair” used in the civil code (Dutu & Dutu, 2015, p. 127) indicate that the area of the individual environmental damage is unlimited, repairing them holding the exclusive fulfilling conditions demanded by the civil law.

To repair the damage there, it must meet the following conditions: to be sure, both in terms of its existence, present or future, and the concrete possibilities of evaluation (Art. 1381 para. 1 C.c.) that is, to be sure existing, non-ambiguous, even if it occurs later, and the extent is not known (Barbu, 2016a).

Regarding the economic contents, the ecological damage can be patrimonial, which concerns goods or non-patrimonial which concerns human health, according to the nature of the juridical injured heritage, caused to public or private property, according to the prevision, this possibility can be predictable or unpredictable, depending on committing, we have instantly or successively damage, material or moral, etc. (Barbu, 2016b, p. 103).

3. Research Questions

The illicit deed. Regarding the illicit deed as a fact generator, can also be in terms of the environment, extra-contractual, its own deed, the deed to another person or things that we have under guard.

Considering that there is not an accurate and relevant provision regarding “illicitly”, and even more so to the ecological, it appreciates the general criteria deposited in jurisprudence and the doctrine, taking into consideration the peculiarities of the ecologic domain (Dutu & Dutu, 2015, p. 128).

¹ Pollutant - any substance, preparation in the form of solid, liquid or gaseous or vapour form or energy, electromagnetic radiation, ionising, thermal, noise or vibrations which, inserted into the medium alter the balance of living organisms and provide valuable material property damage; According to article 2 point 50 of the GEO no. 195/2005.

The illicit of the wrongdoer's behaviour is another legal condition for engaging, the liability being established through legal or moral rules, inclusive criminal ones (Dutu & Dutu, 2015, p. 128).

The General obligation not to harm and injure the other person is provided in the Constitution (Barbu, 2016b, p. 102), but also in the GEO no. 195/2005 (Art. 35 para 3 of the Constitution) which lays down expressly the legal obligation to protect the environment in the task of local public and central administration authorities, as well as to all natural or legal persons.

4. Purpose of the Study

Causal connection. Another prerequisite for engaging the causal connection is between illicit deed and injury, the objective nature, which requires a report from cause to effect between the operative and the damage in question, in its absence being unable to discuss the existing of a civil liability.

Its attempt returns to the victim, but because of the difficulties arising in the burden of proof, it is used the presumption of causality in certain situations.

In the environmental field, the causal connection is, in most cases more difficult because of the fact that the damage is in the chronic or diffuse form, originating in countless causes.

In French jurisprudence (Art. 6 of GEO No. 195/2005) there was the idea "of creating a risk", which is close to the idea of losing a chance, which facilitates causal attempt link between a dangerous activity and damage in the vicinity of the contrary reasoning from the finding of the absence to any other circumstances of nature to explain the production of injury.

A similar perspective is obvious and the Lugano Convention of 21 June 1993, which requires a causal connection between the presumption between achieving the environment and the dangerous activity (Van Lang, 2011, p. 286), given that the latter accepted a broader scope (Art. 105 of the Lugano Convention of 21 June 1993). Another representative interpretation regarding the existing of bindings for a causal pollution with diffuse and expanded character, as provided by the Directive 2004/35/EC (Art. 2. para 1 of the Lugano Convention) in the Court of Justice jurisprudence in the E.U. (Art. 4 para 5 of Directive 2004/35/EC), the Court considering that Luxembourg, to the extent that the directive does not determine how this causal link must be established in a member States of the EU to do so. Therefore, the claims of victims which supports health or property in response to an environmental damage are facing serious problems in terms of causal connection attempt. In the environment law, the demonstration to establish injury is almost impossible, either for lack of sufficient information, either from lack of scientific knowledge.

In order to overcome these shortcomings, the most efficient solution is to establish a unique legal bases to support the victims of environmental damage (Decision of 9 March 2010).

5. Research Methods

Another distinct condition of liability under tort law is the mental attitude of the author of the offence, since the time of committing it.

Considering that in the environment there is an assembly of the administrative regulations and prescriptions, the mere breach of them lead to the existing guilt (fault).

The subjective element can result only from the pollution man behaviour that respects the administrative regulations, this not being a voucher case in civil matters.

In the French jurisdiction (Merveille, 2014), it was showed that a guilty negligence or imprudence draws a due obligation to repair the damage caused (Prieur, 2011, p. 1057).

The basic method used in our approach, in order to achieve the desired results, will be the **descriptive method**. This involves research, systematization and classification of the material gathered. The **method of analysis and synthesis**, and the inference method, taken from the formal logic, there are other methods used by us.

6. Findings

The environmental liability is established in the EU in the White Book and establishes a specific concept of guilt, providing that damage caused in areas protected by Wild Birds and Habitats directives will not engage the liability of the holder of the activities considered to be hazardous in accordance to these directives, objectives than in the case of the attempt of a fault (Livre blanc, 4.3).

Multiplication of regulations that promote environmental protection, the obligations increasingly tighter, especially for professional or the development of technical norms favouring the expansion of the liability based on the contributory negligence.

In Romanian law, tort liability operates in the framework of the corresponding criminal process civil action towards those responsible according to the civil law for damages caused by committing the crime (Livre blanc, 4.3).

7. Conclusion

The new regulation of the civil code (Barbu & Petrea, 2016, p. 88) gives a more appropriate legal regime of repairing the damage, as the effect of tort liability, with proper application and in relation to the environment.

In environmental law, compensation of damages is not a sanction, but rather the Middle through which legal victim may pursue and achieve reinstatement in the previous situation to committing the injurious act.

Repairing environmental damage, raise a number of issues, not only from the technical point of view, but also in terms of the method of repairing that it is necessary to be done. The damage mentioned in the legal provisions on the protection of the environment is not sufficient to meet the specific ecological requirements of the effect of quantifiable in cost.

The time of establishing the right day to fix the casual injury (even though it may not be exploited immediately) and are applicable to all legal provisions related to the transmission, transformation, running and extinguishing obligations (Art. 1381, s.u. C.c.).

We believe that in order to improve the efficiency of tort liability in the environment it should be taken into account the Japanese system, in terms of air pollution victims with reference to the nature of the disease, the place of residence and the duration of this residence (Art. 1381 para 2 and para 3 C.c.).

Given that incidental cases have multiplied, these are independent of any wrongful behaviour, civil liability institution knows a directive becoming more obvious towards the objectification of decreasing

the existence of fault. This trend is expressed through a shift from a liability not attributable to one based on without guilt to a presumed guilt, concerns and promotes damage (Galand–Carval, 2006, p. 84), such as liability for the nuclear damage (Dutu & Dutu, 2015, p. 137), the liability for the damage caused by defective products (Law 703/2001), or the liability of the ship owner times for any pollution damage resulted from the discharge of hydrocarbons (Law 240/2004).

References

- Art. 105 of the Lugano Convention of 21 June 1993.
Art. 1349 para. 2 C.c.
Art. 1375 C.c.
Art. 1376 C.c.
Art. 1381 para 2 and para 3 C.c.
Art. 1381 para. 1 C.c.
Art. 1381, s.u. C.c.
Art. 16 para 1 C.c.
Art. 2 item 52 of the GEO no. 195/2005.
Art. 2. para 1 of the Lugano Convention.
Art. 35 para 3 of the Constitution.
Art. 4 para 5 of Directive 2004/35/EC.
Art. 6 of GEO No. 195/2005.
Barbu, D. (2016a). Some Aspects Concerning The Civil Action In The Criminal Proceedings. In Sandu, A., Frunza, A., Ciulei, T., Gorhiu, G., Petrovici, A. (eds.), *Rethinking Social Action. Core Values. 8th International Conference LUMEN 2016, April 16-19* (pp. 105-110). Bologna, Italy: Medimond- Monduzzi Editore International Proceedings Division.
Barbu, D. (2016b). *Drept procesual penal. Partea generala*. Iasi: Ed. Lumen, p.103.
Barbu, D., Petrea, A. (2016). *Drept procesual penal. Partea generala. Caiet de seminar*. Iasi: Ed. Lumen.
Decision of 9 March 2010, The Cause of the Mediterranean Refinery-ERG.
Dutu, M., Dutu, A. (2015). *Raspunderea in dreptul mediului*. Bucuresti: Ed. Academiei Romane.
Galand–Carval, S. (2006). La relation causale. In G. Viney, B. Dubuisson (dir), *Les responsabilités environnementales dans l'espace européen. Point de vue franco-belge*, Bruxelles: Ed. Bruylant.
GEO, no. 195/2005 on the protection of the environment.
Law 240/2004.
Law 703/2001.
Livre blanc, 4.3.
Merveille, M. (2014). La prevue du lien et le prejudice environnemental individual. "*Aménagement et Environnement, Kluwer, 1/2014*, p. 25.
Prieur, M. (2011). *Droit de l'environnement*, 6 é edition. Paris: Ed. Dalloz. p.1057.
Van Lang, A. (2011). *Droit de l'environnement, 3é edition misé a jour*. Paris: PUF.