# GROUNDS FOUNDING LIABILITY FOR ENVIRONMENTAL DAMAGES, ACCORDING TO THE NEW ROMANIAN CIVIL CODE

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***Abstract***
*In the absence of an Environmental Code - strongly requested and upheld by the entire specialized literature – liability for environmental damages is regulated by other legal texts, among which article 1000 alignment (1) of the Romanian Civil Code in force. The legal provisions of the latter are nevertheless applied only if the prejudice caused to environment by pollution does not enter in the legal area of the Government Emergency Ordinance No. 195/2005 on Environmental Protection, in the form completed and modified on several occasions, including the year 2008.*
*But at the same time, all the issues regarding liability for environmental damages should also be analyzed by referring to the provisions of article 1376 alignment (1) of the new Civil Code, given the fact that, according to specialized literature, these legal regulations constitute, just like those of current Civil Code, the common law within the field debated. As a consequence, the present work shall be analyzing in a synthetic comparative manner the provisions of the normative acts mentioned above, with strict reference to the grounds on which liability for environmental damages is based. In our opinion, after such an analysis, there will be possible to make a relevant assessment of the advanced character evinced by the provisions of the new Civil Code, even if their connection with the field of liability for environmental damages is purely incidental.*

Keywords: liability, damages, environment.

## 1. GENERAL ASPECTS

Liability for environmental damages is required by any circumstance involving a human activity which affects environment, by modifying the latter and damaging its natural properties above natural limits.
Nevertheless, liability for damages caused to environment represents only a last resort measure, as a result of the fact that, when it comes to liability for environmental damages, other methods and instruments have priority, particularly the economic and fiscal ones [2,3].

## 2. GROUNDS FOUNDING LIABILITY FOR ENVIRONMENTAL DAMAGES, ACCORDING TO THE CURRENT ROMANIAN CIVIL CODE

In order to regulate liability for environmental damages, specialized literature [2,3,4,6,7,8] and judicial practice resorted to the provisions of the current Civil Code (art. 998 and the following), before Law No. 137/1995 on Environmental Protection came into force (law currently abrogated with the G.E.O. No. 195/2005 on Environmental Protection, and amended by the Official Gazette No. 88/31 January 2006).
Taking into account the provisions of the current Civil Code, specialized literature identified several grounds on which liability for environmental damages is based, such as: fault, employer’s liability for his employees’ deeds, law abuse, illicit disturbance of neighborhood and, most of all, faultless liability for a damage caused by a thing [2,3,6,7].
*a) fault;*
Subjective liability (triggered by fault) is rarely applied in the law field, since the victim must prove the existence altogether of

the conditions of tort liability, which are: illicit deed, prejudice, author's fault and the cause-effect relation between deed and prejudice.

When it comes to environmental law, is extremely difficult to prove the author's fault, as a result of the various types of pollutants, of the way they are spread and remain in the environment, of the contamination type and so on. For that reason, specialized literature pleads for the enforcement of objective liability in relation to environmental damages.

b) *employer's liability for his employees' deeds;*

This form of tort liability is regulated by the provisions of art. 1000 align. (3) of the current valid Civil Code. According to the same provisions, the employer is responsible for the damages caused to environment by his employees. At the same time, specialized literature argues that this type of liability is founded:

- either on the idea of fault, since it is the only way in which the employer could get back from his employees the amounts of money which he paid as damages to the victims of pollution;
- either on the idea of guarantee;

Provisions of art. 1000 align. (3) institute a guarantee by means of which the victim of pollution can benefit from the real effective opportunity of receiving compensations either from the employer or from the employee.

- or on the idea of risk.

Given the fact that the employer is the one who benefits from the work done by his employees, it is natural the he should also deal with the negative consequences generated by his employees' activity.

*c) law abuse*

In most of the cases, deeds causing environmental damages are not committed deliberately, representing an application of subjective rights in inadequate conditions of discipline and prudence. Thus, law abuse may also cause environmental damages. Within environmental law field, one can speak about a law abuse in the following circumstances: landowners exploit their lands intensively, not taking into account the natural and potential resources of soil, so that the latter's quality and productive potential are diminished; lands are sprayed for too long with pesticides and other chemical substances; irrigations are carried out irrationally and so on.

As a consequence, when speaking about law abuse, environmental pollution is the result of the author's negligence and not of his fault.

*d) illicit disturbance of neighborhood;*

International law was to the first to refer to good relations of neighborhood as a ground founding liability for environmental damages. Such a ground was invoked for making amends for the damages caused by some ecological crimes taking place inside the territory of a state which unfortunately generated cross-border effects and thus affected other states as well.

The Report of the World Commission on Environment and Development mentions the states' duty of putting an end to those activities which violate international commitments on environment and of making amends for the damages caused.

It can be therefore asserted that laws regarding neighborhood relations are aimed at harmonizing the polluter and the victim's interests, by establishing both the "possibility" to pollute and the limits under which pollution shall be borne.

*c) faultless liability for a damage caused by a thing.*

According to the theory of objective liability (liability without fault), any activity creating a risk for others determines its author's liability for the prejudice it may be caused, without being necessary to prove any faulty behavior.

In the field of environmental law, civil liability for environmental damages is triggered by the risks created in relation to environment and ecological balance. Ecological risks are characterized by specific features, since pollution is, in most of the cases, the result of slow accumulations with further lengthy effects, going over natural limits and generating extremely serious effects for the existence and good functioning of the natural system. Moreover, ecological risks may

damage several environmental components at the same time.
Throughout time, specialized literature has considered that liability for the prejudice caused by things and regulated by the current Civil Code at art. 1000 align. (1) constituted, in the absence of any special regulation on environmental protection, the common law within the field.
Consequently, any time there has been acknowledged an occurrence of environmental pollution having a cause not regulated by special laws (represented before 1995 by Law No. 9/1973 and Law No. 61/1974), the juridical ground for the liability in question has been sought among the provisions of art. 1000 align. (1) of the Civil Code.
In fact, liability for environmental damages has been rarely based on the already mentioned provisions of the Civil Code, mostly as a result of the fact that, by applying those provisions, there would have been created a juridical regime too advantageous for victims. The provisions of the Civil Code have been applied rather for damages accidentally produced, since most of specialized literature upholds the point of view according to which liability provided by art. 1000 align. (1) of the same code evince an objective character, being based on risks [7].
In principal, the liability in question has a preventive-corrective role in relation to the negative effects on the quality of environment, and has the main advantage (in comparison with liability based on fault) of indemnifying victims without exception, even when is impossible to establish the author of the ecological prejudice. The only case exempting from liability is represented by force majeure.

## 3. GROUNDS FOUNDING LIABILITY FOR ENVIRONMENTAL DAMAGES, ACCORDING TO PROVISIONS OF THE G.E.O. No. 195/2005

Given that the provisions of the current valid Civil Code do not offer a complete liability system for environmental damages, it has been necessary to adopt a specialized set of laws, capable to insure the full compensation – possibly in kind – of any ecological prejudice. This objective was accomplished between 1995-2005 along with the provisions of Law No. 137/1995, while currently is being accomplished along with the provisions of G.E.O. No. 195/2005.
Law No. 137/1995 gave up at the tort liability system consecrated by the provisions of art. 998 and the following of the Civil Code and established the following three rules applying to liability for environmental damages: objective liability, joint liability in case of several authors, the duty to insure the risk of an ecological damage.
Yet, G.E.O. No. 195/2005 left aside the duty to insure the risk of an ecological damage, reminding only objective liability at art. 95 align. (1), independently from fault and joint accountability in case of several authors. By exception, according to art. 95 align (2) of the same G.E.O., liability may be subjective in case of a prejudice caused to protected species and natural habitats.
Undoubtedly evincing a modern character, in the opinion of specialized literature the G.E.O. No. 195/2005 has the following advantages:
a) it adapts tort liability to the specific field of environmental protection, by being respected the fundamental principles of caution and "the polluter pays";
b) it significantly protects the victims of ecological prejudices, given the fact that these victims do not have to prove the author's fault;
Thus, the conditions applying to objective liability are the following: the existence of an environmental prejudice, the existence of a deed generating an environmental prejudice, the relation cause-effect between the deed and prejudice. At the same time, by excluding the author's fault, the duty to insure the quality of environment becomes a resulting one.
Since the author's fault has not been included by the new regulations among the conditions applying to liability for environmental damages, specialized literature argues that, within the field of liability for environmental prejudices, one can speak rather about a compensation with a modern form than a liability with a classical meaning.

c) in case of several authors committing the prejudice, it offers more opportunities of compensation for the damage caused, by means of joint liability. As a consequence, the victim may address any of the authors in order to receive compensations for the whole prejudice incurred, whereas the author in question may make amends by resorting to a regress action against the others.

Objective liability shall therefore be triggered by any circumstance involving an environmental prejudice. The above mentioned G.E.O. defines "environmental prejudice" as any prejudice caused to environment by polluters, harmful activities, ecological accidents or dangerous natural phenomena.

Yet, it must be stated that, in addition to the specific principles of environmental law (the principle of objective liability and the principle of joint liability), there shall also be applied the rules of civil law on liability matters, depending on how compatible will be with the ecological issue in question. As a result, it may be concluded that not even the existence of a special legislation within the environmental field does completely abolish the action of civil law rules in terms of liability.

## 4. GROUNDS FOUNDING LIABILITY FOR ENVIRONMENTAL DAMAGES, ACCORDING TO PROVISIONS OF THE NEW CIVIL CODE

Law No. 287/2009 on the Civil Code (published in the Official Gazette No. 511 of 24th July 2009), which shall come into force at the date provided by the law for the enforcement of the new Civil Code, regulates liability for prejudices caused by things at art. 1376. According to the same legal text, any person must make amends for the prejudice caused by a thing in his custody, independently of any fault. It is therefore being clearly acknowledged objective liability for prejudices caused by things.

As pointed before, the analysis of civil laws on liability for prejudices caused by things is an useful one, as a result of the fact that, even in the presence of the G.E.O. No. 195/2005, liability for environmental damages may be governed by the rules of civil law. According to the new Civil Code, liability for prejudices caused by things is an objective one, independent from the author's fault. As a result, the victim of pollution will be able to receive compensations for the prejudice incurred, no matter if the author's fault is or not proven.

It has been consequently insured a just regulation in terms of liability for prejudices caused by things, one long demanded by specialized literature.

It can be stated that the provisions of art. 1376 of the new Civil Code obviously evince an advanced character, by containing the expression: "independent from any fault".

On the contrary, art. 1000 align. (1) of the current valid Civil Code, speaks about liability for prejudices caused by things both out of the author's fault and independent from the author's fault. Thus, according to the same alignment, "We are as well held accountable for the prejudice caused…by things which are in our custody".

At the same time, at its art. 1382, the new Civil Code also acknowledges the principle of joint liability, according to which those who cause a prejudice are each liable for making amends in relation to the prejudiced person.

By regulating liability for prejudices caused by things, the new Civil Code insures in a natural but indirect way the long expected protection of the victims affected by environmental prejudices.

## 5. CONCLUSIONS

Currently, by respecting its commitments taken on a community and international level, Romania benefits in terms of liability for environmental damages from a coherent system of rules and procedures, instituted after a quite lengthy process.

By *lege lata*, making amends for environmental damages has been made possible by the regulation on a constitutional scale (art. 35) of the right to a healthy balanced environment, but also by the existence of a

normative act (G.E.O. No. 195/2005) whose provisions deal exclusively with the issues on environmental protection.
After being revised, Romanian Constitution has introduced in an indirect manner, through its art. 44 align (7), two possible grounds for liability triggered by environmental damages: the non-observance by the landowner of the duties regarding environmental protection and the non-observance of the duty to maintain good neighborhood relations.
Yet, not even the existence of a special regulation does completely abolish the effect of the civil law provisions on tort liability.
As a consequence, although civil liability is not entirely compatible with the principles of environmental law, it still remains an extremely efficient juridical method of making amends for the prejudice caused by environmental pollution.
Therefore, both the provisions of the current Civil Code and of the new one contribute to creating a complete accurate legal background for remedying prejudices caused to environment. Moreover, the new Civil Code, trough its' obviously advanced provisions, similarly to the G.E.O. No. 195/2005, consecrates objective liability which applies even in regard to environmental damages.

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