Considerations on liability, according to European Law, for acts that harm the environment

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Abstract: Given the importance of the environment for conducting life under normal conditions, the Council of Europe and EU institutions are particularly concerned with the conservation of nature and environment protection, establishing sanctions and measures to be ordered against those who infringe these values by committing harmful acts. Over time emerged a certain "specialty" of the two continental structures in that the Council of Europe has been particularly concerned about nature conservation issues, while ensuring the protection of the environment (in terms of the effects of pollution) entered the scope of Union with the legal implications involved.

Keywords: environment protection; Europe; illegal acts; liability; sanctions.

Introduction

Aggressiveness of people through the ages on nature [1] has led to the accumulation of many environmental problems across Europe - as well as in other parts of the globe - which manifests by disharmony between the environment created by people and the natural one (that constitutes the common heritage of mankind) [2]; thus occurred not only alteration of the ecological balance, but also the reverse reaction, of boomerang [3], the environment becoming less favorable for the realization of socio-economic activities and for human life [4], whose quality is affected.

In the last few decades in Europe is pursued a broad social movement of accountability towards the environment, which involves civil society and public institutions at national and regional international plan [5], being adopted in this area several legal instruments that contain provisions guaranteeing the right to a healthy environment.

For actions affecting the environment was established that it would apply the same principle enshrined in international universal plan, that the violation of international legal norms involves liability of the subject of international law guilty.

Sanctions for infringing the environment may be of a civil nature for the ecological damage produced, criminal or administrative.

1. Role of the council of europe in sanctioning acts harming the environment

Classical European regional international law assumed judicially the environmental issues through creative interpretation by the European Court of Human Rights of provisions of the European Convention of Human Rights and Fundamental Freedoms, but especially conventionally, through the Lugano Convention and European Convention on the protection of the environment through criminal law.

a) European Convention on Human Rights and Fundamental Freedoms is the tool of reference for the international protection of human rights in the European space for adherent countries. It was signed in Rome on 4 November 1950, being supplemented by several protocols subsequently adopted.

Even if environmental issues are not among the matters covered by the Convention, the interpretation of the European Court of Human Rights has progressively integrated them, requiring states a genuine liability regime in the matter.
To protect the right to a healthy environment, the Court relied on Article, §81 of the European Convention of Human Rights and Fundamental Freedoms which recognize the right of individuals to privacy, family and their home and art. §61 which guarantees the right to a fair trial; ECHR considers the right to a healthy environment as an individual right in the category of intangible civil rights, which may be subject to exceptions only in exceptional circumstances, and states can limit it only by law.

Environmental Protection is required in an “incident” manner to the protection of private and family life, as an inseparable element, development of realities requiring consecration in the field, of rules of conduct judicially [6].

According to the decision of 18 December 1996, issued by the ECHR in the case of Loizidou v. Turkey [7], European Convention on Human Rights and Fundamental Freedoms is a “living instrument which must be interpreted in light of the actual conditions of life”. In doing this to defend the environment, has been practically used the Praetorian technique of “protection by default”, extending the protection of certain rights that are not expressly provided for in the Convention, by the broad interpretation of those guaranteed. Otherwise, in case of environmental damage could not be claimed violation of the “right to a healthy environment”, as this right does not benefit from conventional warranty than by “attraction” by another as expressly provided for in the Convention and under its cover.

In doing so, ECHR does not reduce the meaning of the term “privacy” to the intimate sphere of personal relationships, but it extends to the individual’s right “to establish and develop relationships with peers, covering accordingly, commercial or professional activities and premises where they are exercised” (Niemietz v. Germany, judgment of 16 December 1992, A251B §29). The Court also upheld (by judgment of 21.02.1990 in Case Powell and Rayner) that aircraft noise “reduced quality of privacy and serenity”, and in another case (López-Ostra against Spain, judgment of 9 December 1994) established that the serious touch to the environment can affect a person's well-being and can spare the normal use of his home, which brings harm to his private and family life. Moreover, in the case Guerra and Others v. Italy was considered that art. 10 of the European Convention requests states to provide environmental information necessary for the protection of persons on which some negative effects may be produced.

The scope of the art. 8 of the Convention has been extended to protect the health, affected by poor environmental conditions, noting exposure to nuclear radiation of British soldiers, considering that it “has a sufficiently close connection with their private family life” (decision of 9 June 1988, Case of Mc Glinley and Egan v. United Kingdom).

ECHR Practice held the obligation of States parties to the Convention to adopt “positive measures” practical and effective, designed to guarantee the right to a healthy environment penalizing passivity of domestic public authorities (ECHR ruling in 1994, López-Ostra Case against Spain).

The Court reasoned under judgment of 10 December 2004 (Case Taskin and Others v. Turkey), admission of the application also by invoking the Constitution of respondent State, which guarantees the right to live in a healthy environment. Also, it established that a State Party may be liable also when, following military action - legal or not - violates environmental norms in areas outside national territory, if in practice exercises control over those areas (ruling of 18 December 1996, in the case of Loizidou v. Turkey).

b) Convention on civil liability for damage resulting from activities dangerous to the environment, adopted at Lugano on 21 June 1993 by the Council of Europe aims to encourage and standardize regulations of the Member States in the repair of damages resulting from a dangerous activity and rehabilitation of environment.

Are classified as hazardous activities arising from the use of harmful substances (Annex to Convention contains a list of pollutants according to EEC Directive no. 92/32 of 30 April 1992), and any production or use of genetically modified organisms, any use of a microorganism likely to pose risks to humans or the environment, and any operation that treats or stores waste.

Responsibility for acts affecting environment, generally lies to the operator or to the one controlling.

c) Convention on the protection of the environment by means of criminal law (adopted by the Council of Europe in Strasbourg on November 4, 1998 and signed by Romania on 15 February 1999),
has an important role in the development of environmental criminal law [8], setting obligations on State parties to criminalize certain acts which affect the environment in the common area.

Convention requires the criminalization of intentional acts or negligence, such as eliminating, the emission or introduction of substances or ionizing radiation into air, soil or water, whether causing death or serious personal injury; creates a significant risk in this regard; are likely to cause lasting damage to the atmosphere, soil or water; cause death or serious personal injury or cause substantial damage to protected monuments, other protected objects, property, animals or vegetables. It also stipulates the obligation of States to qualify as crimes or offenses and other illegal acts committed intentionally or negligently, such as emissions of pollutants; noise; disposal, treatment, storage, transport, export or import of waste etc.

Depending on the seriousness of acts, the sanctions and appropriate measures to be taken will be: jail, fine, obligation to restore the previous situation, the confiscation of instrumentalities, or property used to commit the offense or are its result.

Legal entities whose account a crime was committed (by their bodies, one of their members or other representative) is punishable, without this responsibility preclude prosecution of individuals (article 9).

2. Role of the European Union in sanctioning acts harming the environment

Within the European Union there is particular concern to create a complete and unified system regarding the environmental protection, regulations adopted being based on the principle according to which the polluter pays.

The competent bodies of the European Union are concerned for some time for the adoption of a comprehensive and uniform as to prevent and repair environmental damage.

On February 9, 2000 the European Commission adopted the “White Book on environmental liability” as a result of concerns that dated from May 14, 1993, when the Commission adopted the “Green Book” where was provided onset of specific regulations. The document advocates a common intervention to ensure policy coherence and Community law and to ensure competition, improving functioning of internal market.

A reference moment on the regulation of environmental issues was the adoption of the Charter of Fundamental Rights of the European Union (Nice, December 2000), which, in Chapter V, entitled “Solidarity”, includes environmental protection, among other rights, such as: the right to education, health, consumer protection, etc. In this respect, Art. 37 of the Charter provides that: “A high level of environmental protection and improvement of its quality must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”. While this Charter is general in nature and does not guarantee the effective right to a healthy environment, it is an important source of inspiration for the judges of the Court of Justice of the European Union (CJEU) in the adoption of solutions and to formulate conclusions of Advocate General, who when judging certain cases have already made reference to the provisions of the Charter (for example, in the cause of Gulhoed, July 12, 2001)

On 21 April 2004 was adopted Directive 2004/35/EC on the prevention and remedying of environmental damage, which aims to establish a common framework regulating liability for acts that harm the environment, based on the polluter pays principle and to prevent environmental damage at a reasonable cost to society.

Liability for environmental damage and imminent threats on their production applies - where they stem from the profession - if it establishes a causal link between the damage and the activities determined by the Directive [9].

On 19 November 2008, was adopted Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law - the first law of the European Union regarding environmental criminal law, which provides a common framework for certain criminal measures to ensure more effective protection of the environment.

Directive 2008/99/EC lays down minimum standards for the protection of the environment through criminal law to a number of actually or potentially harmful activities (referred to in article 3). Member States may, however, adopt or maintain more stringent measures in the field, provided they are not contrary to EU regulations.
For the implementation of the Directive 2008/99/EC, Member States shall take the measures necessary for the application to crimes committed by a natural person, the “effective criminal sanctions, proportionate and dissuasive”.

Legal person can also be held liable for crimes that have been committed for its benefit by any person who holds a senior position who acted either individually or as a member of an organ of the legal person, based on a power of attorney or of an authority to take decisions on behalf of, or an authority to exercise control within the legal person.

On 25 June 1998, the European Union signed the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Therefore, to ensure procedural right to a healthy environment has been adopted Directive no. 2003/4/EC of the European Parliament and of the Council on public access to environmental information, which is the framework regulation on the matter. The procedural aspect is covered by individuals or legal entities right to seize any crimes that violate EU environmental regulations, and procedures for proceedings before the European Commission allow it to address the Court of Justice of the European Union or to submit petitions to European Parliament or to institute proceedings before the European Ombudsman concerning the right to a healthy environment.

EU Court of Justice ruled that the European directives on air and water quality must be interpreted as meaning that they confer individuals rights which must be protected by national courts of the Member States (judgment of 30 May 1991 in case Commission v Germany).

On the establishment of mechanisms to protect the rights to a healthy environment has also contributed ECJ case law, establishing common principles of Member States on this issue.

Examining the practice of the Court of Justice of the European Union shows that it carries out an activity for the finding of guilt Member States for failure to discharge obligations established by Union rules, with harmful effects on the environment [10]. In this sense we exemplify the judgment of 4 October 2007 by ECJ, Sixth Chamber, Case C-523/06 (OJ C297 of 8 December 2007), on the infringement action by a Member State of obligations regarding to waste from ship operation and cargo residues, with negative consequences for the environment. There are other decisions which found: non-compliance of Member States with regard to the handling of waste from electrical and electronic equipment (Case C-139/06, OJ C108 of 6 November 2006), lack of the measures needed to close illegal waste deposits (Case C-423/05, OJ C48 of 25 February 2006), failure to develop hazardous waste management plans (Case C-82/06, OJ C86 of 6 April 2006) etc.

Court of Justice issued several rulings that found the failure by some member institutions of the Union directives on the protection of water quality, such as not taking the proper treatment of urban waste water from agglomerations (Case C-405/05, OJ C48 of 26 February 2006), the failure of ensuring water quality for consumption, when it had a higher concentration of nitrates and pesticides (Case C-147/07, OJ C95 of 28 April 2007), the discharge of urban waste water in a sensitive area without adequate treatment (Case C-219/05, OJ C96 of 28 April 2007), failure to comply with a state’s obligation on protection of groundwater against pollution caused by dangerous substances (Case C-248/05 (OJ C205 of August 20, 2005).

Through numerous decisions, the Court of Justice of the European Union revealed other violations of EU directives concerning environmental protection in areas such as integrated pollution prevention and control (Case C-263/07, OJ C22 of 26 January 2008), access to Information, Public Participation in decision-making and access to Justice in Environmental Matters (Case C-391/06, OJ C294 of 23 June 2007), air quality and climate change (Case C-61/07, OJ C on September 8, 2007), conservation of natural habitats and of wild fauna and flora (Case C-183/05, OJ C182 of 23 July 2005), the effects of certain plans, public and private projects on the environment (Case C -2/07, OJ C107 of 26 April 2008), etc.

Conclusions

At the beginning of the new millennium, humanity is particularly concerned to ensure the safety of human, broad promotion of human rights [11], including the right to a healthy environment, ensuring the necessary conditions for the conduct of normal life.

Both the Council of Europe and the European Union increasingly manifest more concern for the purposes of environmental regulation, to prevent its degradation and to punish those responsible and their obligation to compensation in all cases of committing acts affecting the ecological balance.
They also ensure that the Member States improve legislation, linking relevant legislation with documents of European bodies, so to act with maximum efficiency for environmental protection.

References


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