

# Theoretical and Practical Aspects Regarding the Applying of the Principle "Polluter Pays"

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**Abstract** - The subject matter of environmental law is the social relations that arise in connection with the preservation and development of the natural and artificial environment. The "*polluter pays*" principle is the concept according to which the polluter has to pay for environmental pollution. By payment is meant material, financial, ethical, aesthetic, social and legal responsibility. According to the Environmental Law, the "Polluter Pays" principle requires the polluter to bear the costs of implementing pollution prevention measures or to pay for pollution damage. The "polluter pays" principle expresses the idea that environmental polluter will be subject to the rigors of the law, whether it is guilty or not. However, it is more effective to develop policies that address the causes of pollution than to address finding solutions to the effects already caused.

The author was involved as a lawyer in some of the cases presented in the paper.

**Key-Words** – polluter, environment, biodiversity, prevention, pollution, damage, liability, compensation, principle

## 1. Introduction

Over the last 30 years, European environmental policy has developed from a limited set of technically overriding measures to one of the most well-known aspects of the EU.

An important objective in the European Treaty regarding the EU's environmental policy is based on the belief that setting high environmental standards stimulates innovation and business opportunities also.

### 1.1. Recent historical aspects

In November 1993, the Treaty of the European Union in Maastricht added the concept of "sustainable and non-inflationary growth with respect for the environment" to the Commission's tasks and that led to the adoption of the precautionary principle as a matter of European policy.

The entry into force of the Amsterdam Treaty in 1997 appreciated the principle of sustainable development as one of the most important objectives of the European Community (Article 2) and introduced in its

absolute priorities the protection of the environment at a high level.

This way it has been created the need to integrate environmental protection requirements into defining and implementing other policies. This approach was introduced by the Commission in its 1998 Communication on Environmental Integration into EU Policies and the Vienna European Council (11<sup>th</sup> and 12<sup>th</sup> of December 1998). Since then, this obligation has been taken into account in various Commission acts, in particular as regards employment, energy, agriculture, transport, development cooperation, the single market, industry and fishing. [1]

The program reveals four areas:

1. Climate change, the objective in this area being the reduction of greenhouse gases to a level that does not cause unhealthy variations for the earth's climate.
2. Nature and biodiversity: the objectives in this area are to protect and restore the structure and functioning of natural systems and to stop the loss of biodiversity both at EU and global level.
3. Environment and health: The goal is to achieve an environmental quality level that does

not cause significant impacts or risks to human health. For example, it was necessary to review the European Community Chemicals Management System. The new EU strategy on chemicals sets new stricter rules governing the production and handling of chemicals substances.

4. Natural resources and waste management: the goal is to ensure the consumption of environmentally-friendly and non-renewable resources.

## **1.2. General principles of environmental protection**

### **1.2.1. The principle of subsidiarity**

EU legislation respects the principle of subsidiarity: whenever it is possible, the actions should be taken by the authorities closest to the persons affected by these actions. But just some countries acting in isolation cannot save the environment. For example, air pollution, the global impact of climate change, pollution or irradiation from a power source can cause effects thousands of miles apart. States' policies regarding the protection of environment should be coordinated at a higher level. The role of the European Union is to support and coordinate all these efforts of the Member States and to verify whether governments respect their commitments. [2]

### **1.2.2. The precautionary principle**

Being introduced into European environmental policy in the late 1970's, the precautionary principle has been preserved and respected in many international treaties and declarations. It is, by the 1992 EU Treaty, the basis for the European Environmental Law and plays a very important role in the development of health policies.

Many EU measures have been inspired by the precautionary principle, such as measures that should be taken in order to protect the ozone layer or regarding the climate change. The principle has been recognized in various international agreements, notably the

Sanitary and Phytosanitary Agreement adopted within the World Trade Organization. [3], [4]

In EU policies, the objective is to ensure a high level of protection of the environment and human, animal and plant health when available scientific data does not allow a full risk assessment.

The precautionary principle is based on two aspects: - the political decision to act or not to act - if so, the way in which the response takes place depends on the level of risk considered "acceptable" by the society, the company or the group to which the risk is imposed. A decision based on the precautionary principle should be taken according to the most complete possible scientific evaluation and preceded by a potential risk assessment in case of inaction; once the results of the scientific and risk assessment are available, the results stakeholders are informed by the maximum possible transparency.

### **1.2.3. The "polluter pays" principle and the "prevention of pollution at source" principle**

Any person who causes environmental damage, hazards or risks is responsible for avoiding, reducing and dealing with those damages, dangers and risks. To this end, EC environmental policy will cause the responsible person to pay the costs of bringing the environment to the stage before the damage was caused. Similarly, it is more effective to develop policies that address the causes of pollution than to address finding solutions to the effects already caused.

Worldwide, in Rio de Janeiro in 1992, the Rio Principles were adopted, including among others that "polluters must bear the cost of pollution."

### **1.2.4. The principle of "sustainable development"**

The EU's interest in sustainable development has grown alongside the United Nations initiative for this concept and culminated in the Rio (1992) World Environment and Sustainable Development Conference.

The principle of environmental integration into Community policies was confirmed by the EU Treaty, which stipulated that "environmental protection requirements should be integrated into the definition and implementation of Community policies". The Treaty of Amsterdam (1997) clearly clarified the legitimacy of sustainability. Today, sustainable development is the fundamental principle of EU states members. [5]

In June 2001, EU leaders adopted a document on the European Strategy for Sustainable Development. This has promoted a long-term strategy tailored to policies for sustainable economic, social and environmental development.

The main dimensions of sustainability are:

1. Environmental sustainability, ability to preserve natural resources and to maintain ecosystem integrity in order to avoid affecting the elements of life; preserving biodiversity.
2. Economic sustainability, ability to generate income and jobs; eco-efficiency of the economy, meaning efficient and rational use of resources and reduced use of non-renewable resources.
3. Social sustainability, ability to guarantee people's well-being and chances (safety, health, education, etc.) distributed equitably in present and future communities.
4. Institutional sustainability, capacity to ensure stability, democracy, participation, information, training and justice.

### **1.2.5. Responsibility for protecting the environment**

Many EU countries have recently adopted specific legislation on liability for environmental damage. These laws follow the "polluter pays" principle and impose clear responsibilities for environmental damage. It is no longer concerning about the guilt or negligence, but only the causes, with only a few means of defense allowed in order to avoid liability.

Polluters have to pay for the damage caused to the environment. This principle acts

as a means of intimidating against violations of environmental standards.

For this principle to be effective:

- Polluters must be identifiable
- Damage must be measurable
- There must be a link between the polluter and the damage.

When considering the damage, the competent authority may act in different ways. If there is a danger of causing imminent environmental damage, the authority will ask the potential person to take all precautionary measures or will take these measures itself and will cover the costs later. If the damage occurs, the authority will require the operator to take all the necessary repairs or will take the measures itself and will cover the costs later. [6]

### **1.3. Concept. Legal provisions.**

The "polluter pays" principle and its framework is established by the Directive no. 2004/35/ EC of the European Parliament and of the Council of 21<sup>st</sup> of April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. [7]

The previous legislation, Law 137/1995, Law on Environmental Protection, defined the object of the law as the regulation of environmental protection, an objective of major public interest, on the basis of the principles and strategic elements that lead to the sustainable development of the society. [8]

In the actual Romanian legislation, article 1 from Emergency Ordinance 195/2005, establishes the purpose of the law consisting in to regulate environmental protection, an objective of major public interest, on the basis of the principles and strategic elements that lead to the sustainable development of society. [9]

Emergency Ordinance no. 68/2007 was adopted by the Romanian Government by taking into account

-the obligation to transpose the Community legislation, in the new quality of Romania as a member state in the European Union,

-given that the objective of the adoption and entry into force of Directive no. 2004/35/EC on environmental liability relating to the prevention and remedying of environmental damage consists in

-establishing a unitary legislative framework in this field which requires full transposition and correct implementation of this Directive,

-the fact that it is necessary to complete the existing legal framework with a normative act ensuring a unitary and distinct regulation of the environmental damage,

bearing in mind

-that the maintenance of legal vacuum in the area of environmental liability can have serious consequences in the field by the lack of a legal framework for operators to be obliged to take measures and to implement practices to minimize the risk of damage or to take the necessary repair measures in the event of injury,

-that the correct transposition of this Directive requires the adoption of successive regulatory acts defining financial guarantee forms, including for insolvency, and measures to develop the supply of financial instruments on environmental liability, allowing operators their use in order to guarantee their obligations under this Emergency Ordinance,

-that the transposition deadline of the abovementioned Directive was 30 April 2007,

-the fact that the failure to comply with this deadline led to the notification of the non-transposition of the Directive in time, starting the offense procedure against Romania, according to article 226 of the EC Treaty. [10]

The principles and strategic elements underlying the above mentioned law in order to ensure sustainable development are presented by article 3 as follows:

a) the precautionary principle in making the decision;

b) the principle of prevention of ecological risks and damage;

c) the principle of biodiversity conservation and ecosystems specific to the natural biogeographical framework;

d) the "polluter pays" principle;

e) priority removal of pollutants that directly and seriously endanger human health;

f) creation of the national integrated monitoring system for the environment;

g) sustainable use;

h) maintaining, improving the quality of the environment and reconstruction of damaged areas;

i) creating a framework for the participation of non-governmental organizations and the population in the development and implementation of decisions;

j) development of international collaboration to ensure the quality of the environment.

The ways of implementing the principles and strategic elements are:

a) adopting environmental policies, harmonized with development programs;

b) the obligation of the environmental impact assessment procedure in the initial stage of the projects, programs or activities;

c) the correlation of environmental planning with the planning of the land and the urban planning;

d) the introduction of stimulating or coercive economic levers;

e) solving environmental issues according to their magnitude, by competency levels;

f) developing standards and standards, aligning them with international regulations and introducing compliance programs;

g) promotion of fundamental and applied research in the field of environmental protection;

h) training and education of the population as well as the participation of non-governmental organizations in the development and implementation of decisions.

According to article 5, the state recognizes the right to a healthy environment for all, guaranteeing for this purpose:

a) access to environmental quality information;

b) the right to associate with environmental quality organizations;

c) the right of consultation for decision-making on policy development, legislation and environmental rules, the

issuance of environmental agreements and permits, including land-use planning and urbanization plans;

(d) the right to address, directly or through associations, to administrative or judicial authorities for the purpose of prevention or in the case of direct or indirect damage;

e) the right to compensation for the damage suffered. [11]

#### **1.4. Principle "Polluter Pays"**

Directive no. 2004/35/EC gives the definition of environmental damage as "a damage to protected natural species and habitats, for example any damage that has serious adverse effects on the establishment or maintenance of favorable conservation status of these habitats or species. (...) Water damage (...) Land damage means any contamination of the soil which creates a significant risk to human health adversely affected by the direct or indirect introduction into, on or underground, of substances, preparations, organisms or micro-organisms."

In the event of imminent danger to the natural environment, an operator is immediately required to take the necessary preventive measures.

The principle stipulates that the polluting potential will bear all the pollution costs it has caused. However, the principle is an economic rather than a legal one. This means that it is not intended to punish the polluter but to establish the necessary economic conditions so as to take into account all the environmental costs associated with the polluter operations, and this process leads to sustainable development.

The principle applies if the polluters are identified, the damage is measurable and there is a demonstrated link between the polluter and the damage.

If environmental damage has been caused by an operator, the latter must without delay inform the competent authorities and take all the possible measures to take the situation immediately under control, in order to limit, eliminate or manage the relevant contaminants

and / or any other harmful factors, to limit or to prevent further damage to the environment and adverse effects on human health or subsequent damage to services. It is also required by the legal provisions to take the necessary remedial action.

The economic operator bears all the costs of preventive and remedial actions.

An operator may refuse to bear these costs only if the environmental damage or an imminent threat has been caused by a third party and occurred despite the fact that appropriate security measures have occurred or have resulted from compliance with an order or instruction coming from a public authority (...).

An operator may also be relieved of liability if it proves that the environmental damage or an imminent threat (...) is not related to his fault or negligence and was caused by a broadcast or a legal event and guaranteed by the provisions adopted by the Community and specified in Annex III to Directive no. 2004/35/EC.

An operator may also be relieved of liability if the environmental damage or imminent threat has been caused by an emission, activity or any use of a product that is not considered to be likely to cause it provoking, depending on the state of scientific and technical knowledge.

EU legislation also includes the European Parliament and Council Directive no. 2008/99/EC of 19<sup>th</sup> of November 2008 on the protection of the environment through criminal law. The Directive specifies which behavior constitutes an offense, more specific when it is illegal and committed intentionally, or at least through gross negligence. [12].

## **2. Cases under discussion**

### **2.1. Presenting the decisions pronounced by distinctive Courts**

Environmental Protection Agency from Ilfov County issued Decision no. 215/22.12.2012 ordering the necessary

preventive measures at the premises of CG Ltd., measures consisting in taking over, transporting, temporarily safely storing the dangerous waste stored in the open air and the oily residues stored in the underground tanks, as well as the emergency analysis of hazardous waste, their classification and labeling according to the waste codes. [13].

According to Decision no. 215/22.12.2012 issued by Ilfov County Environmental Protection Agency, S.C. EELOG & M Ltd. has rendered the services consisting in taking over, transporting, temporarily safely storing the hazardous waste stored in the open air and the oily residues stored in the underground tanks as well as the emergency analysis of the hazardous waste, their classification and labeling according to codes of waste laid down.

Bucharest Court of Instance 1<sup>st</sup> Criminal Section pronounced the Penalty Sentence no. 783/09.10.2013, a decision ordering the criminal conviction of some defendants and, at the same time, under the provisions of article 346 of the Criminal Procedure Code admitted the civil action formulated by the Ilfov County Environmental Protection Agency and consequently obliged the defendants BM, FC, GN and OE jointly with the civilly responsible party S.C. PI Ltd. to pay the civil party the sum of EUR 307,412 representing compensation for the costs incurred in collecting, transporting and storing the vast quantities of waste that the defendants have abandoned. [14].

Between March 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2010 the defendants BM (manager of SC PI Ltd. and SC PIM Ltd., having as main activity the collection of hazardous waste), FC (commercial director of SC PI Ltd.), GN (general manager of SC PI Ltd.) and OE (manager of SC PI Ltd.) have taken over from a number of companies a quantity of about 1500 tons of hazardous waste which they stored under unfit conditions at the point of work of the company in the town of Chitila, Ilfov County, without taking the measures provided for by the law for their capitalization or elimination. After the expiry of the lease agreement, defendant BM abandoned the amount of waste mentioned above in this place.

Also, the four defendants, by failing to comply with mandatory measures in carrying out hazardous waste collection, treatment, transport, recovery and disposal activities, created the possibility of harm to human health and/or environmental quality, harm the material goods or cause deterioration or impediment to the use of the environment for recreational purposes or for other legitimate purposes.

At the same time, between 2009-2010, the four defendants inserted unreal data about the carrier and the destination of the hazardous waste they had collected in the various forms registered with the Ilfov Environmental Protection Agency and the Inspectorates for Emergency Situations in order to obtain the approval of these transports as well as the approval of the transport routes.

On September 22<sup>nd</sup>, 2009, although he knew that SC PI Ltd. (administered by the defendant BM) was authorized to temporarily collect and deposit hazardous waste for disposal, the defendant FC concluded as a commercial director of the company a service contract with SC AB Ltd. on the basis of which he obtained unlawfully from this company a toxic substance, namely 44,855 Kg of mercury, which was subsequently transported and stored in a rented space in the town of Chitila, Ilfov County.

At the same time, after the expiry of the above-mentioned lease, the defendant BM abandoned the amount of mercury collected from SC AB Ltd. in this place

Between July 2010 and October 2010, the defendant BM collected, on the basis of a single criminal resolution, different types and quantities of hazardous waste from SC KR SA., SC C SA. and SC OP SA, which was transported by violating the legislation in the field regarding obtaining the approval of all shipments from Environmental Protection Agency and without the notification of Inspectorates for Emergency Situations.

Moreover, the evidence provided also revealed that the defendant BM subsequently stored this hazardous waste in other places, too.

On December 23<sup>rd</sup>, 2013, S.C. EELOG & M Ltd. has sued Ilfov County Environmental Protection Agency, requesting the institution to

take over the entire quantity of 918,496 tons of waste in the warehouse extension located in G. street, Ilfov county, subject to the payment of damages amounting to EUR 5,000 for each month of delay, as well as obliging the institution to take the legal measures required for the recovery of the quantity of 918,496 tons of waste.

Bucharest Court of Appeal, 2<sup>nd</sup> Administrative and Fiscal Section, issued the Civil Sentence no. 3779, obliging the institution to take over the entire quantity of 918,496 tons of waste, subject to the payment of damages amounting to EUR 5,000 for each month of delay, as well as to take legal measures to recover the quantity of 918,496 tons of waste. [15]

Bucharest Court of Instance, 2<sup>nd</sup> Administrative and Fiscal Section issued the Civil Sentence no. 1364/01.03.2016, obliging the institution to pay the amount of 3,251,629.67 lei representing services rendered and at the same time obliged the same institution to pay the sum of 27,782.24 lei, representing expenses trial consisting of court stamp duties. [16]

By Decision no. 215 of 22.12.2010, the Ilfov County Environmental Protection Agency, based on the provisions of article 8 para. 1 of Emergency Ordinance nr. 68/2007, in order to avoid any environmental damage, ordered, by means of article 1 of this administrative act, the responsibility of SC EELOG & M Ltd. to take all the necessary preventive measures.

These measures consisted of taking over, transporting, safely temporarily depositing hazardous waste stored in the open air (about 693 cubic meters) and oil residues stored in underground reservoirs (about 300 cubic meters) as well as emergency analysis of hazardous waste, their classification and labeling according to the waste codes of Government Decision no.856/2002.

Article 2 of the Decision stated that "if the waste is to be safely stored, its disposal and/or recovery as a next step for the completion of the preventive measures will be carried out in strict compliance with the provisions of article 7 paragraph 1 letter a of Emergency Ordinance no. 68/2007, with the

principles of environmental rights and all the legal provisions in the matter."

Article 3 of the same decision stated that "In accordance with the provisions of article 29, paragraph 1 and 2 of Emergency Ordinance no. 68/2007, the Agency will recover the costs of the preventive actions from the operator that caused the imminent threat of the damage and will introduce precautionary measures on the immovable and movable assets of SC PI Ltd. and SC PIM Ltd."

By the Decision no. 46/20.04.2011 issued by Ilfov Environmental Protection Agency, the above mentioned decision was modified and the disposal of the oily residues deposited in the underground reservoirs (about 300mc) was abandoned because they are not in the expression of article 2 paragraph 2 of Emergency Ordinance no. 68/2007, "a sufficient probability of causing environmental damage in the near future."

Thus, it was the responsibility of the applicant, SC EELOG & M Ltd., to take the necessary preventive measures for taking over, transport, temporary storage of environmentally safe hazardous waste (about 693 cubic meters), and of oily residues stored in underground reservoirs (about 300 cubic meters).

By decision no. 215/22.12.2010, the obligations imposed on or assumed by the applicant consisted of the following operations: the taking over, transportation, temporary storage of hazardous waste for the environment, the emergency waste analysis their classification and labeling according to the waste codes in Government Decision no.856/2002. These obligations have been fulfilled, this situation being verified by the National Environmental Guard through the act entitled "Notice of Finding no. 128/12.07.2013", which states that:

"- all the quantities of waste in storage at the date of control are recorded and no quantities of waste have been identified without the evidence presented;

- it was checked the storage, packaging and labeling of stored waste and no apparent nonconformities were found;

- the waste shipment is made from the generator for temporary storage subsequently

handed over to the treatment/recovery/disposal with appropriate means of transport (with its own means and authorized third parties);

- in the 1279.62 sqm hall are stored the hazardous wastes taken and transported on the basis of the Decisions no. 215/22.12.2010 and 46/20.04.2011 issued by Ilfov Environmental Protection Agency, labeled; some of the packages in which they are stored show an advanced degree of physical degradation; the deposits are secured with locks/keys, supervised by a surveillance/alarm system, human patrol/patrol employed by the site owner."

As a result of the control, the applicant was appointed as mandatory measures:

"- compliance with the storage deadlines/periods prior to recovery/ treatment provided by the legislation in force, starting from the date of control;

- to ensure the necessary measures to avoid uncontrolled scattering of waste stored in packaging showing an advanced physical deterioration;

- to ensure all necessary and legal measures regarding the operation of existing installations within the facility in order to avoid any technological incidents with a potential risk factor for environmental compartments."

According to the same decision, after the waste has been safely stored - an obligation which was fulfilled by the applicant, as stated above - it was established that its removal and/or recovery was the next step in completing preventive measures, under the conditions of article 7, paragraph 1, letter a of the Emergency Ordinance no. 6 / 2007. According to article 6 paragraph 1 of the Emergency Ordinance no. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage, the County Environmental Protection Agency is the competent authority for establishing and taking preventive and reparatory measures as well as for assessing the significant nature of environmental damage. When establishing preventive measures, the County Environmental Protection Agency consults the county commissariats of the National Environmental Guard.

Depending on the potentially affected environmental factor, the county environmental

protection agency may also consult with the following authorities and/or institutions:

- basin water directions;
- scientific councils organized within the protected natural areas;
- the county pedological and agro-chemical studies offices;
- territorial inspectorates for forestry and hunting.

In assessing the significant nature of the damage to the environment and in determining the remedies, the county environmental protection agency consults the authorities referred to in accordance with paragraph 2, as the case may be, and the National Agency for Environmental Protection.

Representatives of the authorities and/or institutions consulted have the following obligations:

a) to analyze all the information and / or documents transmitted to them by the county environmental protection agency;

b) to send their opinions to the county environmental protection agency, within 24 hours, in the case of preventive measures, and 5 days in the case of repairs, from receipt of the information and / or documents referred to in a).

Article 7 paragraph 1 stipulates: "In carrying out the duties stipulated in article 6 paragraph 1, the county environmental protection agency is obliged to carry out the preventive or reparatory measures established, in compliance with the provisions of article 11 letter d, article 12 paragraph 1 and article 15 letter e, respectively of article 16 paragraph 1, directly or through the conclusion of contracts with natural or legal persons, in accordance with the provisions of Government Emergency Ordinance no. 34/2006 on the awarding of public procurement contracts, public works concession contracts and services concession contracts, approved with amendments and completions by Law no. 337/2006, as subsequently amended and supplemented.

The agency must also:

- to order the necessary preventive or reparatory measures to be taken on the property of a third party;

- to require the operator concerned to carry out his own assessment and provide any necessary information and data in the event of injury;

Operators are obliged to send to the county agency for environmental protection the results of the evaluations, as well as the data and information requested by it, within 3 days from their receipt.

Third parties have the obligation to allow preventive or repairs to be made on their properties. These measures should not, as far as possible, lead to a decrease in the value of the property.

Article 26. - The operator bears the costs of the preventive and reparatory actions, including in case these costs were incurred by the county environmental protection agency.

Article 29 - (1) Except as provided in article 27 and 28, the county environmental protection agency shall recover the costs of the preventive and reparatory actions carried out under this Emergency Ordinance from the operator who caused the damage or the imminent threat of the damage.

In order to guarantee the recovery of the costs incurred, the county environmental protection agency establishes a mortgage on the real estate of the operator and an indemnification in accordance with the legal norms in force.

The registration of the mortgage in the land book and the setting up of the indemnity is made on the basis of the order of the head of the county environmental protection agency which has established the preventive or repairs measures.

The county environmental protection agency may decide not to fully recover the costs incurred if the costs required for this purpose are greater than the recoverable amount or where the operator cannot be identified.

The Court finds that, in view of the specific nature of the operations which, because of the obvious danger and recognized from the outset by the legal provisions, require action to be taken as soon as possible, the term recovers suggests that operations be carried out and then recovering costs, not the expectation that the guilty pay and then, on the basis of the sums

paid, to carry out the disposal of hazardous waste, as it is strengthened by the mention. in the same article of the syntax of "preventive actions".

Moreover, the defendant's claims that there is no service contract concluded between Ilfov County Environmental Protection Agency and SC EELOG & M SRL, so that the agency is not the debtor of those expenses is not of general relevance, given that the determination of the obligation to pay for the defendant was made by legal provisions.

From the analysis of the aforementioned legal provisions, it is obvious that by contracting the necessary services to take preventive and/or reparatory measures, the legislator also considered the obligation to pay for these contracted services.

Moreover, paragraph 4 of article 29 uses the phrase "costs incurred" which implies the advancement of these costs. Even from the analysis of article 34 of Emergency Ordinance no. 68/2007, the defendant benefits from special intervention funds to finance urgent stricter actions and, as is clear from the content of Decision no. 215/2010, the abandonment of hazardous waste in the open air is a situation of emergency.

In the case in question, the applicant has proved the performance of the services rendered pursuant to the Decision no. 215/22.12.2010, services rendered until 01.02.2015, being filed to the case file tax invoices.

The defendant has never disputed this debit, but merely claimed that he does not have to pay the outstanding amount.

As a consequence, the applicant's action was admitted and the defendant Ilfov Environmental Protection Agency was ordered to pay to the applicant the sum of 3251629,67 lei representing the services rendered.

## **2.2. Measures to be taken**

Taking into account the above mentioned principles, according to which the environmental damage must be paid by the polluter, Ilfov Environmental Protection Agency has sued the defendants BM, FC, GN and OE jointly for the Court to oblige them to

pay the total amount paid formerly by the institution, consisting of:

- the amount of 804.502,69 lei, representing damages and costs with the release and disposal of the waste paid by Ilfov County Environmental Protection Agency to S.C. EELOG & M and to SC EFS, according to Civil Sentence no. 3779 issued by the Bucharest Court of Appeal, 2<sup>nd</sup> Administrative and Fiscal Section;
- the amount of 1,642,811.24 lei, representing amounts paid by Ilfov County Environmental Protection Agency for the services provided by S.C. EELOG & M, according to Civil Sentence no. 1364 issued by Bucharest Court of Appeal, 2<sup>nd</sup> Administrative and Fiscal Section;
- the legal interest in the amount of 2.447.313,93 lei (804.502.69 lei + 1.642.811,24 lei) until the actual payment date.
- the costs for the trial, in accordance with the provisions of article 451 of Civil Procedure Code. [17].

The normative acts under which the Environmental Agency is requiring the defendants BM, FC, GN and OE jointly to pay the sums paid by the institution under the binding force of the Civil Sentence no. 3779 issued by the Bucharest Court of Appeal, 2<sup>nd</sup> Administrative and Fiscal Section as well as on the basis of Civil Sentence no. 1364 issued by the Bucharest Court of First Instance, 2<sup>nd</sup> Administrative and Fiscal Section are presented below.

By respecting the legal provisions of the European Union, the institution is respectfully asking the Court for the application of the provisions of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

At the same time, when applying Directive 2004/35 / EC, the Agency is asking the Court to take into account the provisions of article 4 of the Civil Procedure Code, which

states that "in matters governed by this Code, the mandatory rules of European Union law shall prevail, irrespective of quality or status of the parties."

Internally, the normative act regulating the right of the institution to bear, as well as to recover the costs of preventive and reparatory actions, specify that it is regulated by the provisions of the Emergency Ordinance no. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage.

According to article 26, Chapter 3, Section 1 of the Emergency Ordinance no. 68/2007,

"The operator shall bear the costs of preventive and repairs, including where such costs have been incurred by the county environmental protection agency."

Article 29 of the same act sets out the obligations of the county agency for environmental protection:

"(1) Except as provided in article 27 and 28, the county environmental protection agency shall recover the costs of the preventive and reparatory actions carried out under this Emergency Ordinance from the operator who caused the damage or the imminent threat of the damage.

(2) In order to guarantee the recovery of the costs incurred, the county environmental protection agency shall establish a mortgage on the real estate of the operator and an indemnification in accordance with the legal norms in force."

Ilfov County Environmental Protection Agency, according to the provisions of Emergency Ordinance no. 68/2007, does not bear the costs of preventive and reparatory actions, but only recovers their costs from the operator that caused the imminent harm or threat of harm, thereby applying the "polluter pays" principle.

The term of injury is also regulated in the Emergency Ordinance no. 68/2007 and signifies: "a measurable negative change of a natural resource or a measurable deterioration of a natural resource service that may occur directly or indirectly".

The persons responsible for the pollution that required these precautionary and repressive measures are the ones against whom it was filed the petition for legal action.

In this respect, it was pointed out that the Ilfov County Environment Protection Agency has been constituted as a civil party in the criminal proceedings against the persons which are guilty of this pollution, namely in File no. 18577/3/2011, file in which it was pronounced the Criminal Sentence of the Bucharest Court of Instance no. 783/09.10.2013, which allowed the civil action filed by the Ilfov County Environmental Protection Agency and the defendants BM, FC, GN and OE were compelled jointly and severally with the responsible civil party S.C. PI Ltd. to pay the civil party the sum of EUR 307,412 representing damages (compensation for the expenses incurred for the collection, transport and storage of the huge quantities of waste that the defendants have abandoned).

Last but not least, the amount granted by the Criminal Court in the settlement of the civil side has taken into account the damage caused at that moment to the institution. However, assuming that the present case should be admitted, given that the present claims have their origin in the same damaging factor, that it is necessary to sue the responsible persons.

### 3. Conclusions

The social, economic, political and legislative evolutions of the last decades, the dynamics of law and the tendency that manifests itself in the sphere of law, namely the shaping of new, distinct branches of law, have determined the recognition of environmental law as an autonomous branch of law in the legal system.

For the designation of this branch of law different names are used, such as "environmental law", "the right to nature and environment protection" etc.[18]

Environmental law can be defined as the distinct branch of law in the Romanian legal system, consisting of all legal norms regulating the relations between persons established in

relation to the protection and development of the environment. [19]

The subject matter of environmental law is the social relations that arise in connection with the preservation and development of the natural and artificial environment. In other words, environmental law regulates a distinct category of social, complex and varied relationships, formed in connection with the protection and development of the environment.[20]

The State as an authority intervenes authoritatively and directly in the legal regulation of social environmental relations because environmental protection and development is a matter of national interest.

Social relationships on the protection and development of the environment are regulated by mandatory rules, from which it cannot be derogated. The imperative nature refers to all the norms, both preventive and defensive, as well as the repressive and reparatory rules regulating the legal relations.

Environmental law has links with other branches of law, as follows:

#### Environmental law and constitutional law

The constitutional legal norms, regulating the fundamental social relations, also set the law for the environment, the general framework of application.

The Romanian Constitution contains rules that set forth the principles of environmental law, the obligation of the state to protect and restore ecological balance, the obligation of the owners to observe the environmental protection tasks, the legal guarantees of the right to the environment. Also, the actual Constitution enshrines the fundamental human right to a healthy environment (article 35). [21]

Regarding legal liability, constitutional law creates the framework in which legal liability in environmental law must also be manifested. [22], [23]

#### Environmental law and civil law

Civil law includes rules governing the most important legal institution: property. In the sphere of regulation of this institution and in this respect, the field of environmental social relations is determined. [24]

The interconnections between the two branches are determined firstly by the exercise of ownership over legally protected environmental factors (soil, subsoil, water, forests, etc.). Civil law also provides the legal and procedural framework in order to cover potential damages, including those caused to the environment.

#### Environmental law and criminal law

Certain facts can seriously undermine the social values of the environment and the objectives of environmental policy. For this reason, the legislator has criticized a number of anti-social facts about the environment, through special criminal legal rules. Moreover, from a historical point of view, it is remarked that the legal norms regulating the environmental relations, at the beginning of their appearance, had, for the most part, a repressive character.

#### Environmental law and international law

In the last decades, with the diversification of areas where international legal rules have their application, it has become more and more clear the idea that, in achieving environmental objectives, it is both useful and necessary to involve states internationally in the development of environmental policies, and pursuing the realization and implementation of the measures established at the international conferences and meetings. At the same time, we note that Romania's involvement in the elaboration, adoption or ratification of international treaties in the field also accomplishes foreign policy objectives while at the same time allowing a positive appreciation of Romania on a global scale by the states and international bodies involved in monitoring the national and world environment. [25]

Environmental protection is the set of regulations, measures and actions aimed at

preserving, protecting and improving natural environmental conditions, namely reducing or eliminating, where possible, pollution of the environment and sources of pollution.

Environmental legislation in our country (Emergency Ordinance no. 195/2005 on environmental protection) defines pollution as the direct or indirect introduction of a pollutant that can harm human health and / or the quality of the environment, damage the material goods or cause deterioration or to prevent the use of the environment for recreational purposes or for other legitimate purposes.

Environmental protection is one of the most important concerns of contemporary society, aware of the fact that it can no longer develop to the detriment of the environment.

The "**polluter pays**" principle is the concept that the polluter has to pay for environmental pollution. By payment is meant material, financial, ethical, aesthetic, social and legal responsibility.

The "polluter pays" principle was enshrined in Romanian legislation, for the first time, by Law no. 137/1995 in art. 3 d.

Broadly, the polluter pays principle requires the polluter to charge the social cost of the pollution caused to cover all the negative effects on people and their assets on the environment as a whole.

In a narrow sense, this principle entails obliging polluters to bear the cost of depollution measures in the form of depreciating taxes and investments.

The "polluter pays" principle expresses the idea that environmental polluter will be subject to the rigors of the law, whether it is guilty or not.

The polluter in economic matters is, practically, in an anti-ecological position, being obliged to bear the consequences of non-observance of the duties stipulated by the law. This principle enshrines not only the duty of the environmental polluter to repair the damage caused, but also the obligation to impute it to the social cost of the pollution it generates, for example all the effects of pollution, not only on goods and persons, but also on the nature itself.

According to the Environmental Law, the "Polluter Pays" principle requires the

polluter to bear the costs of implementing pollution prevention measures or to pay for pollution damage.

The implementation of this principle at European level was achieved through Directive 2004/35 / EC on environmental liability, which was transposed into the Romanian legislation by GEO no. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage.

The "polluter pays" principle aims to ensure that the burden of environmental control costs rests primarily on polluters, ensuring that market mechanisms take account of these costs and that resources are appropriately allocated to production and consumption.

Anyone who causes damage to the environment, hazards or risks is responsible for avoiding, reducing and combating those damage, hazards and risks. This principle thus expresses responsibility in a broad sense, encompassing any obligation to comply with legislative provisions, until criminal or civil sanctions are handed down.

The Pollution Prevention Strategy replaces the search for solutions to combat the effects caused and materializes through preventive action, containment of pollutants at source, and precautionary decision making so as to avoid misinterpretations such as "pay, so I can pollute."

An economic mechanism ensures that all damages to the quality of environmental factors will be remedied by applying penalties. In this respect, it is necessary to meet certain conditions regarding:

- identifying sources of pollution;
- assessing pollutant loading monitoring data;
- the collaboration of all the institutions involved;
- the existence of an adequate institutional framework for the successful implementation of this principle.

### *References:*

[1] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?>

[2] Andrada Mihaela Trusca, *The Particularities of Legal Liability in Environmental Law*, Ed. Universul Juridic, Bucharest, 2012, pag. 7 - 9

[3] Andrada Mihaela Trusca, the quoted work, pag. 10 - 12

[4] From a historical point of view, this principle was formulated for the first time internationally at the OECD in 1987, and at European level, the Maastricht Treaty includes the precautionary rule

[5] This provision was first adopted in 1989 in the report of the World Commission on Environment and Development, entitled "Our Future of All".

[6] This principle is in line with the C.E. 35/2003 which provides for public participation in the development of certain environmental plans and programs.

[7] Directive no. 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

[8] Law no. 137/1995, Law on Environmental Protection. in force from 30 December 1995 till 28 January 2006, being repealed and replaced by Emergency Ordinance no. 195/2005

[9] Emergency Ordinance no. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage

[10] Article 5 of Emergency Ordinance no. 195/2005, stipulating that the state recognizes the right to a healthy environment for all people

[11] Annex III to Directive no. 2004/35/EC

[12] Council Directive no. 2008/99/EC

[13] Decision no. 215/22.12.2012 issued by Ilfov County Environmental Protection Agency from Ilfov County. Ilfov is a region nearby the capital of Romania, Bucharest.

[14] Penal sentence no. 783/09.10.2013 of Bucharest Court of Instance 1st Criminal Section

[15] Civil sentence no. 3779/20.05.2015 of Bucharest Court of Appeal, 2nd Administrative and Fiscal Section

[16] Civil sentence no. 1364/01.03.2016 of Bucharest Court of Instance, 2nd Administrative and Fiscal Section

[17] Article 451 of Civil Procedure Code, regarding the amount of trial costs, stipulating in paragraph (1) that "The court costs consist of judicial stamp duties and legal stamp, fees of lawyers, experts and specialists appointed under art. 330 para. (3), the amounts due to witnesses for travel and the losses caused by the necessity of attending the trial, the transport costs and, where appropriate, the accommodation, as well as any other expenses necessary for the smooth running of the trial."

[18] The first study on the need to recognize environmental law as a distinct branch of law belongs to Mircea Duțu, entitled "About necessity, the concept and the defining features of ecological law, in *Revista Română de Drept* nr. 5/1989, pag.21-28

[19] Daniela Marinescu, Maria-Cristina Petre - *Treaty of Environmental Law*, ED. Universitara, Bucharest, 2014, pag.31-33

[20] Ernest Lupan, *Environmental Law*, Ed. Argonaut, Cluj-Napoca, 1998, pag.47- 48

[21] Article 35 of the Constitution - The right to a healthy environment

Paragraph (1) The State recognizes the right of any person to a healthy and ecologically balanced environment.

Paragraph (2) The state shall provide the legal framework for the exercise of this right.

Paragraph (3) Natural and legal persons have the duty to protect and improve the environment.

[22] Constituția României din 2003 stabilește că tratatele internaționale la care România este parte sau le-a ratificat fac parte din dreptul intern și, ca urmare, ele se aplică în măsura în care nu aduc atingere prevederilor constituționale (art.11).

[23] Ion Muraru, *Constitutional Law and Political Institutions*, Ed. Actami, Bucharest, 1997, pag.19

[24] Liviu Pop, About the method of regulation in civil law, in „*Studia Universitatis*” Babeș-Bolyai, *Jurisprudenția* nr.1/1997, pag.49 - 54

[25] For details on the environmental law report/relationship, please see Ernest Lupan, the quoted work, Volume I, 1996, Chapter II and Daniela Marinescu, the quoted work, Chapter. II