

THE POLLUTER-PAYS PRINCIPLE- -EXPRESSION OF TORT LIABILITY FOR ENVIRONMENTAL PROTECTION

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Abstract

Polluter pays principle is a fundamental principle within the structure of specific environmental liability. This is the foundation of the establishment of pollution taxes and other charges imposed by the State in order to protect the environment. In this article we analyze a possible definition of this principle, looking into the compared law, to see how legislation is perceived by various community legislations and we will review the implementation of this principle by concrete means, including pollution tax imposed to second-hand vehicles, in terms of current legislation, ECJ decisions and adopted legislation, which will take effect in 2013.

Keywords: polluter, environment, pollution tax, principle

INTRODUCTION

In the environmental law, the legal responsibility became, under the impact of the technical-scientific revolution a „hot zone” because of the ecological crisis seriously affected by the consequences of industrialization and automation, the irrational exploitation of natural resources and other factors (Neagu, 2007).

In environmental law, liability is committed when the act that violates the law, produces an effective pollution thereof, the essence of the liability of environmental law being the pollution (Măgureanu, Măgureanu-Poptean, 2010).

Polluter pays principle is integrated in a classic civil liability: is an author who act more or less inadvertently, cause damage by action, between action and injury author is a causal relationship, he must pay (Teleagă, 2004).

The polluter pays principle is “the principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level(standard) of pollution(Glossary, 1997)”.

The basic tenet of the principle is that the price of a good or service should fully reflect its total cost of production, including the cost of all the resources used. Thus the use of air, water or land for the emission, discharge or storage of wastes is as much a use of resource as are other labour and material inputs. The lack of proper prices for and the open-access characteristic of many environmental resources mean that there is a severe

risk that over- exploitation leading to eventual complete destruction will occur. The aim is to integrate use of the environment (including its waste assimilation capacity) into the economic sphere through the use of price signals and the use of economic instruments such as pollution charges and permits (Mann, 2009).

The polluter pays principle, which is one of the basic principles of EC environmental policy, also governs EC State aid policy, and subsidies may be granted to companies for environmental purposes only in specific circumstances (Martin, 1994).

MATERIALS AND METHODS

In the analysis of the problems treated, of which object is the polluter pays principle, as a fundamental basis of tort liability for the protection of the environment, there were used specific methods of judicial sciences: logic method, comparative method and sociologic method. Using the logical method, we tried to analyse international and comparative law to draw logical conclusions arising from the interpretation of legal texts incidents and also to make a critical appreciation of the doctrinal opinions conveyed in this area. Regarding the comparative method, the operation that follows the finding of identical or divergent elements of two or more systems of law, by analysing features and legal institutions and rules governing them, this proved fruitful in studying the methodological legal phenomena. So we tried to use the specified methods in their complementarity in order to achieve a useful result, which is to draw a conclusion about the vision of the national and comparative doctrine and legislation that could be a pertinent approach to the notion of polluter pays principle.

RESULTS AND DISCUSSION

Many foreign authors emphasize that “There is no agreed definition of the term ‘polluter pays principle’. . . nor of any precisely defined scope of its application, nor of any clear agreement on permissible exceptions”(Mcloughlin Bellinger, 1993).

Professor Bugge states that: “The so-called 'polluter pays principle' ... has several meanings” (Bugge, 1996): (1) the principle is an economic principle; a principle of efficiency; (2) the principle is a legal principle; a principle of “just” distribution of costs; (3) the principle is one of international harmonization of national environmental policy; and (4) the principle is a principle of allocation of costs between states.

The principle of the human right to a healthy environment to national legislation originally known, appearing in several states constitution, as the right of the state to protect its citizens. There are heated discussions whether

this principle entitles an individual right that can be asked of citizens before the court.

This principle is first specified in a document prepared by the Organization for Economic Cooperation and Development (OECD). This principle means that the polluter should bear the expenses of carrying out the above mentioned measures decided by public authorities to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the costs of goods and services which cause pollution in production and/or consumption”.

In 2001, all the documents prepared by the OECD, it was established that the polluter pays principle is found the idea that "... the polluter should be held responsible for environmental damage caused and bear the expenses of carrying out pollution prevention measures or paying for damaging the state of the environment where the consumptive or productive activities causing the environmental damage are not covered by property rights" (de Lucia, 2008).

Also in the charge of the polluter would fall, according to a draft of the European Commission in 2008, which sought to impose a new system of taxation of motor vehicles traveling on roads in Europe based on the statistics and hence transport vehicles over 3, 5 tons account for 90% of the environmental costs of all forms of transport, the costs involving noise pollution, air pollution and traffic congestion. In this regard, Antonio Tajani, EU transport commissioner, said that with this package "is intended that the polluter, and not the taxpayer, to pay for environmental damage".

The rationale underlying the principle of internalisation of external environmental costs is that if the real value of the environment, and components of it, are reflected in the costs of using it, the environment will be sustainably used and managed and not exploited wastefully (Preston, 2005).

Thus, environmentalists define a "polluter" far more broadly, not as someone who is harming others, but often as someone who is simply using his own property and resources in a way that offends the environmentalists. Because, in such cases, there are no victims to compensate, the amount to be paid is determined by the extent to which it will deter the politically disfavoured activity. The payment (whether there are real victims or not) typically goes to the government in the form of a tax. In such cases, the principle polluter pays is used to promote an environmental agenda rather than to insure that real polluters pay compensation to real victims of their activities (Cordato, 2001).

Liability for damage to the environment is another way to ensure that the polluter pays. Currently there are moves to introduce an EU-wide liability regime for environmental damage. The Commission's 2000

Environmental Liability White Paper (COM (2000) 66) suggests that individuals could be made financially liable for certain environmental damage, notably serious damage to protected areas designated under the EC birds or habitats Directives. Proposals to introduce such provisions into EU law are currently being developed by the Commission. Many Member States already have liability regimes in place that should apply equally to damage caused by the fisheries sector as to other economic sectors (Coffey, Newcomb, 1991).

Polluter pays principle in Romanian legislation

OUG no. 195/2005 adapts the civil liability to the environmental protection, so that the fundamental principles of precaution and “the polluter pays” are being respected. One of the conditions for this principle to be applied is that the victim must prove that the act of a person caused the prejudice. This person will be forced to pay for the damage caused. One of the conditions for this principle to be applied is that the victim must prove that that the act of a person caused the prejudice. This person will be forced to pay for the damage caused. The contravention liability has an important role in applying this principle, because, it is a contravention and sanctioned in consequence breaking the natural or legal persons’ obligations to pay for the reparation of the prejudice (Marica, 2008).

The legal framework of this principle is given by G.E.O. 195/2005 on environmental protection in Article 3, letter e, as amended, where it lists, among other principles sanctioned by law in this area, also the polluter pays principle.

This article is supported by art. 94, letter i where is specified, among the obligations of all persons, natural and legal, in relation to the right to a healthy environment, also the obligation to "bear the cost to repair damage and remove the consequences of it, restoring the previous conditions to the damage, the principle" polluter pays'."

The obligation to repair is resulting from the analysis of text, which includes not only actual damages but also the costs of prevention and restoration of ecological balance. Under the "polluter pays" principle, an operator causing environmental damage or creating an imminent threat to the environment, should, in principle, bear the costs of measures necessary preventive and remedial (Marinescu, 2009).

Reference to this principle is an incomplete one, which do not fully clarify the action of this principle.

Michel Prieur, in a broader sense, considers that this principle seeks charging the polluter with the social cost of pollution that he causes. What would lead to a mechanism involving liability for the environmental damage covering all impacts of pollution not only as regards goods and people, but also the environment itself, and for taking measures to prevent it?

The generic formulation of this principle our law tends to permit acceptance of the concept supported by Michel Prieur.

In economic terms, this principle could be translated as "internalizing" of external costs (externalities theory). In a narrower sense adopted by OECD also EC, the principle aims assuming the costs on combating pollution, by the polluter.

The polluter must internalise these costs as a cost of doing business. Internalisation will be complete when the polluter takes responsibility for all the costs arising from pollution; it will be incomplete, when part of the costs is shifted to the community as a whole (De Sadeleer, 2002).

It was also said that under the polluter pays principle, the community effectively "owns" the environment, and forces users to pay for the damage they impose. By contrast, if the community must pay the polluter, the implicit message is that the polluter owns the environment and can use and pollute it with impunity. This message is inconsistent with the principles of sustainable development (Moffett, Bregha, 1996).

The basic idea that has started the adoption of this principle is that in order to allow all people to live in a satisfactory environment it will have to ensure the real-pollution, being established in that regard a number of tools to put apply that principle. In this regard, it is necessary to establish a system of pollution charges, imposition of restrictive rules (emission) also implementation of various financial mechanisms (compensation, tax exemptions, etc.).

Such tools are:

Table 1

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| <p>A. <u>Pollution tax-</u> is essentially a mandatory sampling that charges the polluter and is designed for the restoration and also for the environmental monitoring</p> | <p>B. <u>Technical emission standards-</u> Emission standards to reduce pollution, imposing a mandatory threshold that charges the polluter.</p> | <p>C. <u>Financial mechanisms-</u> Environmental law is increasingly calling on certain financial incentives to encourage investment in pollution reduction or remediation.</p> | <p>D. <u>Abolition of gained rights</u> - is considering those affecting the environment. Thus, holders of authorization for the environment tend to believe that it holds a creative individual administrative law and therefore untouchable. Intervention of a new legal regulations to which the previously issued permit conditions do not comply, may result, of course, in the invalidation of that authorization.</p> |
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Romanian legislation, like other EU countries, knows to regulate a pollution tax, under the polluter pays principle.

In this sense, the G.E.O no. 50/2008 on the pollution tax for motor vehicles, in its preamble, explains the need to implement pollution tax, motivated by the need "to ensure environmental protection by implementing programs and projects to improve air quality and compliance by the limits set by Community legislation in this domain " From the collection of these taxes are funding various measures that have as goal the protection of environmental benefits and minimizing air pollution.

So far nothing special. It could say the GEO 50/2008 has a well-established purpose set in accordance with the polluter pays principle.

In other words, certainly as vehicle emissions pollute the environment, the law requires that these polluters to pay a cost of pollution because, using the amounts that are required, programs can be implemented and could be taken measures to clean up.

Stated, further, in its order that the law covered cars from M1-M3 and N1-N3 But the same article 3, but paragraph 2, begins providing a list of exceptions for cars that do not fall within the scope of this law, among which we mention as an example, vehicles belonging to diplomatic missions, consular offices and their members, etc.

Are vehicles owned by natural person to say "qualified" would not pollute? This is why the law excludes from the scope of a pollution tax? Therefore be subject to active polluter who make the difference between whether or not pollution tax?

This question makes us think that perhaps the so-called pollution tax is not only a pollution tax that they may not be related only to pollution and remediation.

Somehow, Article 4 of that order provides the answer. It establishes the obligation of payment of the first registration of a car in Romania or the movement of a vehicle restored after cessation of an exemption or exemptions provided by art Article 3 align. 2.

This provision has generated criticism of the doctrine, and after sentencing decisions of Romania to the European Court, judicial practice has become unified in the sense of admitting the actions of pollution tax refund paid as a charge collected illegal.

The reason for the admission of the complaints to the ECJ and the condemnation of Romania regards the unlawful establishing of these fees by our country because of discrimination regarding the free movement of goods.

Until now collecting a fee, as noted above, was done at the first registration of a vehicle in Romania. It was considered so that buyers of the vehicles purchased and registered in EU countries are discriminated because the Romanian Government imposed a tax levied on used vehicles directly purchased from national vendors.

Given the cases against Romania at the ECJ and reorienting the practice of law for the purposes of the admission of the complaints actions by the restitution of pollution taxes paid, the Romanian Government adopted Law no. 9/2012, whose entry into force was postponed for 2013.

The new law eliminates discrimination in the matter condemned by the ECJ, but began to be subject to criticism even before beginning implementation.

The main criticism of this law on the "polluter pays" principle was that, because the criteria for calculation and large amount of tax imposed on, owners of jalopy will not be able to sell, given the amount of the fee prohibitive. Consequence of this is that the owner will use ad infinitum jalopy thus leading to greater pollution of the environment. Instead, those who buy cars, new cars eventually, less polluting, will pay the pollution tax. Discrimination among buyers of new cars and those who buy old cars (imported or domestic) is eliminated, in exchange for other discrimination, regarding the above also means a reversal of the polluter pays principle (Piperea, 2012).

Current legal regulations and case law has held that for the author of a source of loss, the contribution of several causes to produce ecological damage does not exonerate and does not constitute a mitigating factor of responsibility, each being responsible for all damage, if is not proof of blame of the victim or of an external fact, a plurality of authors cannot prevent that the victim asks one of them for the full reparation (Marica, 2006).

This principle not only establishes the polluter' obligation to repair the damage, but this one is charged with the social cost of pollution that it generates, that is all the effects of pollution, not only on the assets of individuals, but also on nature itself, and all these independent of fault. It therefore expressed responsibility in a large sense, including any obligation to make the observance of law to pay civil penalties or criminal offenses (Drăgan, 2011).

As the discussion above has indicated, the PPP, which originated as an economic principle, is now accepted, explicitly or implicitly, as a principle of law in many nations, and environmental measures govern its implementation. When applied, the principle can be effective to avoid wasting natural resources and to put an end to the cost-free use of the environment as a receptacle for pollution (Rosso Grossman, 2007).

The Polluter-Pays Principle is not a principle of equity; rather than to punish polluters, it is designed to introduce appropriate signals in the economic system so as to incorporate environmental costs in the decision-making process and, consequently, to arrive at sustainable, environment-friendly development. The aim is to avoid wasting natural resources and to put an end to the cost-free use of the environment as a receptacle for pollution (Vicha, 2011).

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