Global Journal of Politics and Law Research
Vol.3, No.3, pp.43-56, June 2015
Published by European Centre for Research Training and Development UK (www.eajournals.org)

CIVIL LIABILITY ARISING FROM DAMAGE FROM ENVIRONMENT

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ABSTRACT*: To talk about the environmental beauty and to leave aside its legal protection, would mean to deny its rights for protection and progress. It is our right to be a part of the environment, to use and to taste it, likewise it is our obligation to protect and develop it at any time and place. The rapid technological development, population growth, industrialization, carbon dioxide emissions augmentation in the atmosphere and other 'greenhouse' gases, cutting of the forests, new various pollutants used in the cultivation of land and sea etc., pose serious global threat to the climate system and the global ecosystem. Due to all these factors careful attention must be paid to the protection of the abovementioned elements, the damage of which can cause unexpected and devastating changes on the world's climate and therefore harm the human health or life. After the 90s, especially in the recent years, a growing attention has been given to environmental issues and the various measures have been taken in order to protect it and reduce its damage. This was legitimized with the entry into force of Law no. 8934, dated 05.09.2002 "On environmental protection", Article 2 of which makes it clear that the protection of the environment from pollution and other damages has been declared a national priority. From the law perspective the environmental protection is an interactive process between individuals, organizations and government. Despite the protection guaranteed by the Constitution in Articles 56 and 59/d and the special law for the protection of the environment, the object of this paper is an analysis of the civil legislation in force in Albania, concerning the issue of environmental damage and the responsibility in these cases. The legislation of this field will be analyzed bearing in mind these issues: the definition of environmental damage, the legitimacy of the procedure, the reasons, the criteria for compensation, and the insurance issues in the event of environmental damage.*

KEYWORDS: Environment, civil legal protection, health damage, Albanian Civil Code.

INTRODUCTION

-Genesis and the legislative and doctrinal evolution of the institute of environmental damage is closely related to the human evolutionary development. As the protection and improvement of the environment are a prerequisite for the welfare of the people and development of the whole world in general, the issue has become a priority of special importance in the Albanian legislation. In recent years and especially in the early 90s, after the entry into force of the Civil Code, it is clear the attempt to reassess the civil liability instruments as a means of combating the pollution and preventing the environmental damage and the appearance of the consequences of these damages into the citizens.

According to a study of regulations dealing explicitly with issues related to civil liability in the field of environment there can be identified a number of different problems the legislators are facing, which are solved in different ways: 1) The first important issue has to do with the object of protection and the access to various definitions of environmental damage that the legislators have

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

adopted; 2) The meaning that the notion of environmental damage takes on the national background and the identification of fewer or more problems connected with the damage; 3) the procedures dealing with the reparations and the criteria for the compensation of individuals; 4) the criteria for determining the responsibility; 5) problems associated with the identification of causal connection; 6) environmental risk insurance. However, the main issue we face in the case when damage from the environment occurs is the need of its prevention, the identification of the responsible person and baring the responsibility under the provisions of the Civil Code, with the aim of making available the instruments for responding to the urgent needs we face in this case.
With the entry into force of the Law no 7850, dated 29.07.1994 "*The Civil Code of the Republic of Albania*" (amended), our legislator has shown a general discipline in Article 624, with regard to the issue of the responsibility from the environment, where it is expressed that: *"the person who has culpably violated the environment by deteriorating, altering or damaging it partially or completely, is obliged to compensate the damage caused"*, constituting an important step in the evolution of this problematic, even thou this Article is basically a principle and the analysis and its derivative elements are presented to the court to be treated case by case.

This article provides a framework for preventing and repairing the damage from the environment based on a fundamental principle known in the international law as the *'polluter pays'* principle envisaged also in Directive 2004/35/CE *[1]*. The abovementioned article provides individual and collective responsibility for disrespecting the rights and obligations of subjects, implying that the pollution issue can only be resolved with the payment of claims on damages, but it is necessary to reach an agreement on the control of activities that can cause environmental damage, in order to prevent it or lessen as much as possible. The 'polluter pays' principle finds its place under the understanding that the regime of the environmental responsibility of the polluter includes maximal repayment of the costs caused by any contaminants, from the person who caused it. The Code chooses the path of minimum harmonization in regards to the notion of environmental damage, the activities to be taken into consideration to undergo the environmental liability regime, the criterion on the basis of which the liability is attributed to the person or entity, the actions to be taken in the event that the damage is still occurring or has already occurred, the active legitimacy and the available options for the reparation of the damage.

METHODOLOGY

Having regard to the aim to analyze the Albanian civil legislation about protection in case of damage caused by environment, in this paper the prevalent methodology is analytic methodology, which is combined with comparative and descriptive method. The analytical method is used to present a breadth and depth analysis of the civil responsibility arising in the event of damages caused by environmental pollution, the requirements and conditions a person should fulfill to be charged with civil liability in this case, the compensation procedure under a doctrinal perspective. The research is a process that has also followed the phase of arranging and ranking bibliographic items within the function of preparing and writing this paper. Juridical analysis of civil liability arising from environmental damage is further complemented by descriptive method. By means of it are reflected historical aspects of Albanian legislation about protection of environment as well is reflected the approach of Albanian legislation with EU Directives in this field. Descriptive

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

method is an indispensable instrument for clarification of terms concept from legal to practical aspects and approach with reality.

FINDINGS

This paper as it is explained in its beginning aims to familiarize the reader with the provisions of civil law for damages caused by environmental pollution. During the research has resulted that a special section that provides the responsibility arising in this case in which action or inaction should be conducted with guilt and consequently to have brought the exacerbation, change or full/partial damage of environmental. An important element of this research is the responsibility with guilt of legal persons for damage to the environment. Taking into consideration the definition of the concept of guilt by which is understood the mental attitude of the person towards the illegal action or inaction and its harmful consequences it turns out that in the civil law in contrast to criminal law wherein it is understood in the subjective aspect, in the civil law it is not necessary the subjective meaning of action for verification of guilt (it is necessary to determine the degree of guilt), but only an objective situation of assessment of human behavior, comparing this behavior of cautious people (homo iuridicus). The guilt in every case has a personal nature and it must be proved during the judgment. After the '90s in Albania it is viewed continuous efforts to the improvement of special legislation and in the court it is increased the number of civil cases which have claims with legal basis the Article 624 of Civil Code.

THEORETICAL UNDERPINNING

- *The environment concept*

The environmental issue is an interdisciplinary issue, where the law is only one part of the whole. Article 56 of the Constitution states: *"Everyone has the right to be informed about the state of the environment and its protection."* Whereas in Article 59, letter d) and f) it is written:
"The state, within its constitutional powers and the means available to it, and as complement to the private initiative and responsibility, aims at:
a. A healthy environment and ecologically suitable for the present and future generations (the principle of sustainable development);
b. Rational exploitation of forests, water, pasture and other natural resources, based on the principle of the sustainable development."

Since the year 2000, the Albanian government has approved the national strategy and action plan on the protection of nature and biodiversity, where the main focus is put on building an EU-wide ecological network, the inclusion of the biodiversity and landscape principles in other economic sectors, on a greater awareness and public participation in the preservation of landscapes, coastal and marine ecosystems, wetlands, river, herbaceous, agricultural, forestall, alpine and of the endangered species. Since 1991, Albania is a party to more than 13 international conventions and environmental agreements, including the Convention for the Protection of Biodiversity. This program also seeks to meet the requirements and obligations derived from the EU Stabilization and Association Agreement and from other important documents.
When we study the environmental damage, a key element to ensure a more effective protection through the civil law by analyzing the civil liability limits, the power of national and international

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

institutions and defining the scope of the legal rules, is related to the very concept of the word *'environment'*. The legal approach to this concept, except for the Civil Code, in which there is no specific definition referred to the Law no.10431, dated 09.06.2011 *'On environmental protection'[2]* is aligned more to its physical concept. However, in different periods and different national legislations we have definitions that provide more notions, ranging from general to more specific and from a more broad meaning to the strictest one, related with this concept.

The previous Albania legislation that was in force during the dictatorship had essential gaps in the direction of a clear and definitive definition of the term *'environment'*. With the Decree no.5105, dated 30.10.1973 '*On the protection of the environment from pollution'* the term '*environment'* includes water, air and land, whose protection was the duty of all governmental and social bodies, enterprises, institutions and organizations, as well as of all the citizens.After the 90s we have seen that the special law for the protection of the environment has presented some concepts which have evolved with the changes made in the law. According to the Law No. 7664, dated 21.01.1993,

Article 2:
"The environment is a set of the elements and natural and human factors including their actions and interactions. The elements and phenomena are represented by water, air, soil and underground, solar radiation, plant and animal organisms as well as by all the natural processes and phenomena, which affect life, arising from their interaction. The human factors are represented by the existence of the human society and its economical and social activity".
As seen from this definition the environment is considered a set of elements with their actions and interactions, which are grouped into two main categories:
a. natural elements and factors, which are plant and animal organisms and water, air, soil and underground and solar radiation and
b. Human factors, including human society and its economic and social activity.
With the entry into force of Law no. 8934, dated 05.09.2002, the environment is defined as
"...the set of interactions between the biotic and non-biotic components which promote and nurture life on earth, including natural biophysical environment of air, soil, water, biological diversity of ecosystems, human health , values and cultural heritage, as well as scientific, religious and social heritage [3]".
We note that unlike the 1993 law this is a narrower definition presenting the environment as a set of biotic *[4]* and non-biotic components *[5]*.
Based on Article 5 of Law no.10431, dated 09.06.2011 "On environmental protection":
"The environment includes natural components: air, land, water, climate, flora and fauna as the whole of the interactions between each other, as well as cultural heritage, as part of the environment created by man ".

In this new definition, we note that in contrast to the previous one, the meaning of the term is explained in an environment with a summarized form, and for to the human factors it is expressively mentioned only the human cultural heritage as part of the environment created by man. In connection with the natural elements or components it is used apparently a slightly different terminology (for the constituents 'climate', "flora" and "fauna") although in essence, they are more or less the same natural biotic and non-biotic components. Even in this definition it is

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emphasized the complex nature of the environment as the set of interactions between its natural components *[6]*.

- *The environmental damage.*

Not all laws which have provided civil liability as an instrument of environmental policy share the same object of protection. Some jurisdictions only consider the damage caused to the property and to the individual that comes from actions of the pollutant, while in other jurisdictions the assumptions dictate a discipline that deals with the damage in a rather narrow sense, despite the violation of individual rights.

The first case accurately treats the property damage, while in the second case the environmental damage is explained in narrow sense. The difference that exists between the two cases is not irrelevant and as seen from the perspective of consequences, they are different regarding the quantitative problem of damages, the legitimated subject as the requesting party and in general regarding all other elements that belong to the civil law.

The Albanian civil right lacks a definition to the concept of *environmental damage*. After the ratification of the Stabilization and Association Agreement and the obligations deriving from it, the adjustments of the Albanian legislation in the field of environmental damage under the principle that the EU *'acquis comunitari'[7]* constitutes an obligation, in this case the legal approach in relation to the concept of environmental damage provided by Directive 2004/35/CE is considered available for reference also in the case of the Albanian legislation which, in respect of the environmental damage concept have had different attitudes. Directive 2004/35/EC provides that the environmental *[8]* damage constitutes:

a. Damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I *[9]*;

a) Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;

c) and damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

'Damage' means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly *[10]*;

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

As it appears from the above definitions the Directive 2004/35 / EC provides that the notion of environmental damage, seen in the context of the responsibility system, identifies the natural resources included, as well as the risk for responsibility from damage. The damage in terms of the Directive constitutes a *measurable negative change* of the qualities of a natural source directly or indirectly displayed *[11]*. *The quality* in this context consists of *the function performed* by a natural resource for the benefit of another natural resource and/or of the public. In terms of natural resources and under the concept of the environment provided in The Directive*[12]*, it emerges a three elements composition for the damage, as given below:

1) The damage caused to protected species and natural habitats, as predetermined in the Directives 92/43 / EEC and 79/409 / EEC *[13]*;
2) The damage caused to the water, it is worth mentioning here that this includes any damage that adversely affects the water situation, as defined in Directive 2000/60 / CE *[14]*;
3) The damage caused to the soil means any pollution of the terrain/soil that can cause significant damages to human health, followed by direct or indirect intervention on the land and underground of substances, ingredients, organisms and microorganisms.

From the above, the Directive does not take into account the traditional damage, i.e. the damage to the property and to the humans. The Directive specifically provides that its provisions do not give private parties the right for compensation as a result of environmental damage or of an imminent threat of damage *[15]*.

After analyzing the Directive we cannot say that environmental damage includes the damage caused from the elements of air unless they cause damage to water, land or to species and protected natural habitats. In the Directive there are no specific provisions for the damages caused from pollution of a diffusive character, with the exception of the case when there are evidences that there is a casual connection between the damage and the illegal acts or omissions. On the other hand the Directive provides that the system of liability for damage from the environment not only refers to the case when the damage occurs, but also to the threat of a possible damage. In this context prevention means that the competent authorities demand to the operators in the field of environment to take preventive measures or if they did not immediately respond, to do so themselves.

After 1990, in Albania existed three specific laws in force in the field of environmental protection that had different positions in relation to the concept of environmental damage, ranging from considering the environment as a set of natural elements, where if one of the elements is damaged as a result of intervention by human action or as a result of its natural flow, it is considered as a case of environmental damage, or when it is seen as a set of physical, chemical and structural characteristics of the natural ecosystem, which from the pollution of air, water and land disrupt the ecological balance and the quality of life, constitute an environmental damage. With the law of 1993 and 2002 the legislator have considered the scientific explanation of the concept by implying that the causative subjects responsible in case of damage, while in 2011 the law stated that these damages can be caused by active human actions and/or the natural flow of the damaged element. Below are listed the three definitions provided for the concept of *environmental damage* by the laws which have been improved in determining the responsibility:

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- According to Law No. 7664, dated 21.01.1993 "*On environmental protection*" *[16]*, environmental damage is considered:
"*The ruining of the physical, chemical and structural characteristics of natural ecosystems, reducing the biological productivity and the diversification of natural and human ecosystems, disruption of ecological balance and the quality of life, mainly caused by the pollution of water, air and soil from disasters".*
- According to Law No. 8934, dated 05.09.2002 "*On environmental protection'' [17]*, environmental damage is considered:
"Environmental pollution" is the direct or indirect introduction of the substances, vibrations, energy, heat, radiation, noise and biological factors in the air, water and soil, which may alter the quality of the environment and damage the quality of life".
- According to law nr.10431, dated 09.06.2011 "*On Environmental Protection*" (amended) *[18]* stipulates that:
"Environmental damage is considered the damage committed to the environment or loss of natural function of the components of the environment, caused by the loss of any of its components, by interference from man to connections between the environmental components and/or the natural flow of their development".

- *Civil liability and the criteria on which it is defined.*

Civil liability for environmental damage is one of the tools that are used to promote sustainable development. This legal instrument for the protection of the environment, is based on a fundamental principle of the international law, traditionally known as the "*polluter pays*" *[19]* through a system which aims to prevent and repair environmental damages. Inflicting damage in this case causes civil legal responsibility, which creates the obligation to pay the damage. The purpose of civil and legal liability is the protection of the damaged subject and his property from the consequences arising in cases of unlawful actions harmful to the environment.

From the analysis made to Articles 608 *[20]* and 609 *[21]* of the Civil Code we can distinguish four general elements that an act or omission should include in order to be considered as an *extra damage*. These elements are: fault; the damage caused; the illegality of the action or inaction; the casual connection. Concerning the issue of the damage from the environment, in order for a civil liability to arise it is necessary that the conditions, the elements of causing damage (mentioned above) and the criteria that the law defines. What is meant by each element and their legal concepts are explained below.

Guilt. The *Civil Law* provisions do not provide a definition of the concept of guilt, but this is accomplished by the *legal doctrine*. Although the Civil Code does not directly mention the definition of guilt, in its Article no.644 it provides that:

"When the person who committed the unlawful action or inaction, along with the damage caused, there was also an obvious benefit; the court at the request of the injured party and after having assessed the nature of the damage, the extent of liability and other circumstances of the case, can evaluate in the compensation of the damage, a total or a partial benefit".

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Article 30 of the Albanian Constitution [*22]* establishes the principle *'Nullum crimen', nulla poena sine culpa* (the principle of innocence presumption). But although there is no written definition about guilt in the Civil Code, we cannot proceed further in our study without defining this important element of the extra damage. To achieve this, we refer to the Albanian criminal law, specifically Article 14 of the Criminal Code of the Republic of Albania, which provides: *"A person is guilty who commits the offense intentionally or recklessly"*. With guilt it is intended the mental attitude of the person towards the illegal action or inaction and its harmful consequences. Guilt is divided into *the guilt as the result of negligence* and *the intentional guilt*. The mental attitude of the person is expressed through the consequences, which he anticipates and wants, or intentionally allows and could come also from his/her negligence. Guilt in every case is personal and should be verified during the trial. Guilt consists of *intent* and *negligence*. The offense is committed intentionally when the person foresees the consequences of the act and wants their occurrence (direct intent) or, although he/she foresees and does not wish for them to happen, he/she consciously allows them (indirect or eventual intention, Article 15 of the Penal Code). The offense is committed by negligence when the person although does not want the occurrence of the consequences, he/she foresees the possibility of their occurrence and, in a foolish behavior hopes to avoid them (excessive self-confidence), or when he/she does not foresee it, although according to the circumstances he/she have had the opportunity and should have done so (negligence, Article 16 of the Penal Code). Unlike fault in criminal law, where it is understood in subjective terms, in civil law is necessary not the subjective meaning of action for determination of guilt (this is important while determining the degree of guilt), but only an objective situation assessment of human behavior, comparing this behavior with the behavior of cautious people (*homo iuridicus*). The civil law often differentiates between light and serious negligence, and it is used as a fundamental criterion for determining the degree of responsibility which has a quantitative and not qualitative character. The more concrete the forecasting of the possibility for consequences occurrence, the more serious will be the degree of guilt.

In contrast to criminal liability where the fault appears as a necessary condition for the existence of liability *[23]*, without which no criminal sanctions apply, in the civil liability fault does not represent a necessary condition for the existence of responsibility for the damage caused, because there are civil liability situations when the liability arises even without guilt, as is the case with *objective responsibility*, otherwise called responsibility without guilt (responsibility for dangerous items and dangerous activities). Guilt represents the internal subjective element of responsibility for the damage caused, as this is a relationship between the will of the damager, damaging actions and the consequences caused by that action. When guilt is found for the damage, the damager will be responsible not for the mere fact of the damage caused, but for its internal psychological decision that has brought him/her to cause the damage. Thus, the responsibility for the environment *is a responsibility that appears both as subjective and objective*.

The objective responsibility cases have been quite limited before, because moral principles were dominant over the legal ones and according to the later there were no responsibility for the damage caused unless it was caused at least by negligent. The limits of the scope of objective liability are related to the character of the *industrial civilization*, based on the use of production means that are themselves sources of danger to persons and items (industrial plants, motor vehicles, etc.) of a risk socially accepted as an inevitable component of our civilization. The increasing cases of damage,

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a characteristic of the industrial society, have raised the problem of a different system of responsibility for damages.

One, who causes damage during the exercise of a dangerous activity, is responsible despite of the degree of his guilt: even if at the moment of occurrence of the fact, has used carefully used his/her ability. Ex.: the entrepreneur is liable for the damage caused by pollution as a result of a defect in the treatment plants of a chemical plant, based just on the fact that pollution has caused damage to people or the objects (even if the plant was maintained at its best conditions and controlled by expert persons). He/she is released from responsibility, as we mentioned, only by proving that he/she *"had taken all the necessary measures to avoid the damage"* (Article 2050). The evidence that releases from the liability does not comprise the modalities of the fact that has caused damage, but the *modalities of organizing the dangerous activity* that should be able to prevent the possibility of damages. Who suffers damage have the right to demand the indemnity, despite the fact that the damage caused to him/her happened intentionally or by negligence.

The caused damage. One of the most important requirements of the law is that a harm must occur (economic or non-economic) in order for the extra damage to exist. Article 640 explains what the damage consists of. The damage to the property consists of *loss* (damage effect, what has been destroyed or damaged) and *missing profit*. Indemnified are also the reasonably incurred expenses paid to avoid or reduce the damages, those expenses necessary to determine the responsibility and the extent of damage, as well as all the reasonable costs incurred to obtain compensation in extrajudicial ways *[24]*.

As we see the injury may consist of several units that are added to each other depending on the factual situation. It is not said that all these units should be rewarded, as all these elements may not be met in every extra damage case. For instance: to the 3-year-old resident of the area PM in District F, where the BP company carries out exploitation, extraction and processing of oil has been caused a rare blood disease because of the level of pollution in the air, that is the presence of higher CO than the allowable norms of 25-30 ppm *[25]*. In this case there are the costs arising from the factual disease including compensation for the recorded hospital treatment in general as the process of medical visits (hospital accommodation, medicines, medical team charges, operating room, intensive care unit, when applicable) respective analysis, diagnosis according to the type of disease, treatment in the event of complications, enabling treatment to specialized centers (even if they are located abroad), support and compensation for all the expenses required for the associative parent or legal guardian. Creating facilitating conditions for the administrative infrastructure required for these processes, etc. In another case it may occur the indemnification of all the five elements mentioned above under Article 640.

In addition to the *economic damage* there is also the so-called *non-economic damage*, which in different legal systems is translated into monetary value. One such damage relates to the physical suffering, fear, the stress caused to the victim from the illegal actions of the damager. The non-pecuniary damage is provided in our legislation in Article 625 of the Civil Code. For more on this matter we will be talking in the following paragraph, about the unifying decision of the United Colleges of High Court No. 12, dated 14.09.2007. As a conclusion we can say that the concept of

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

damage is mainly concerned with the reduction of someone's property (effective damage) and inhibition of growth or increase of these assets (missed profit).

The illegality of the action/inaction. The illegality of the action or inaction of the person who causes damage is a key element in the existence of responsibility for causing the extra damage. Article 608 of the Civil Code mentions the illegal way as an element of the extra damage. But what is the illegal way that causes damage? With *unlawful manner that causes damage* is understood that occasion when the activity of the person and his behavior is contrary to an ordering rate of the law. Even when a specific legal norm or a rule that establishes the obligation to maintain a certain attitude is lacking, careless or negligent attitude could preclude the existence of the extra liability. The only thing that can remove the element of illegality in an action that has caused damage is an accepted legal protection (legal justification).

So, there are regarded as unlawful those behaviors that interfere with the interests or rights provided and protected by law and that are not justified by any exculpatory condition like the necessary protection, the extreme necessity, etc. A person is responsible for causing the extra damage even if he/she deliberately and intentionally causes harm to another person in a way that is contrary to the good manners (*contra bonos mores*). In this case it is not important to show that the person causing the damage actually wanted to cause it, but it is sufficient to show that he/she was aware of the possibility of causing damage and still continued with the operation that caused that damage. An example of these could be the case of exploitation of natural resources in conflict with the law and the technical regulations in force, causing thus environmental damage in two ways: the deterioration of the natural environment and damage in whole or part thereof *[26]*.

The casual connection. Without the casual connection it cannot be any responsible for causing the extra damage. A link should exist between the action/inaction of the damager and the effect derived from it (the damage caused). The required connection must be direct, that is precisely the action or inaction of the person must have caused the damage and not an action/inaction of someone else. Also required is that the damage must be an immediate consequence of the act or omission of the person. This should be understood in relation to time and space between the action or omission and the damage derived (effect). It cannot pass a very long time interval between the behavioral performance (action or inaction) and the arrival of the effect *[27]*.

The evidence used to determine whether any particular part of the person's behavior was a condition for the damage that befell to the victim or not, is the *'conditio sine qua non'*. Could the damage have happened to the injured party if had not happened the behavior of the defendant responsible for causing damage? If that was the case, then the conduct of the defendant did not cause the injury. A doctor who negligently controls (or treats) a patient who dies for another reason, would not have a causative connection (and therefore will not be responsible) with the death of the patient. In the same way, a pharmacist who negligently gives a medication without firstly consulting with the patient's doctor will not be responsible if when the doctor is asked he states that would have continued the treatment with the same drug. In these cases, we need to examine if the behavior of the defendant is a *'conditio sine qua non'* for the damage that was caused. What we must do is to rebuild the entire chain of events to see where the role of the accused for causing the damage lies.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

So far we have seen that the rule *'conditio sine qua non'*, manages to produce satisfactory results in determining the guilty of causing an extra damage. But there are cases where this rule does not help us much. For example, in cases where there has been a damage which can be caused by more than one cause. Not necessarily the theory of *'conditio sine qua non'* will solve all the practical problems that arise.

IMPLICATION TO RESEARCH AND PRACTICE

What we aim through this work is to achieve the return of the violated right as a result of environmental pollution by recognizing in summary the legislation and jurisprudence of this field. What are the tools recognized by law? What comprises the remuneration of damage in this case and what is the practically evidenced problematic which constitute a contextual triangle as explain below?

We do not intend to ignore here the undeniable support that instruments of public character have given for the problems associated with the environment, but what is important to note is the existence of *'shadow zones'* and *'empty spaces'* in this part of the legislation that do not contribute a direct protection of the individual's personal interests. This distinction between the provisions of these areas of the legislation becomes more important when considering the consequences of the damage in the health, life or quality of life of individuals. Through briefly analyzing and identifying the problematic in this area we will be able to provide concrete solutions.

CONCLUSIONS

From the analysis of our current legislation, made above, results that an attempt was made to give a little more moderated definition that protects the rights of citizens for health and life. On one hand, it is required to avoid the traditional definition that treats the environmental damage concentrated in the property damage; on the other hand, in the phase of compensation it should be taken into account the major damages resulting from injury or risk of injury to the health of persons.

Our Civil Code provides in Article 624, that a person who guilty has violated the environment by deteriorating, altering or damaging it, completely or partially, is obliged to compensate the caused damage. By this definition, which is very broad and inclusive it is understood that the main criterion for civil liability of a person (individual, natural person, legal entity) is the fact that he/she must guilty commit the action/inaction and as a result a deterioration, alteration or complete/partial damage of the environment happened. Considering that we are in terms of an extra liability the four elements of fault must exist simultaneously: liability, illegality, damage and casual connection, in order to determine the responsible person/s for damage indemnity and compensation for the resultant consequence.

In conclusion we can say that the need to analyze and make evaluations on state policies and environmental regulations aims to assure a better protection focusing on protecting the rights of the individual's health, quality of life and better life. However it is clear that in our legislation the

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choices and operational solutions in case of damage from the environment need to be reformed. This reform must aim to regulate the criteria of the civil liability system, taking into account the results and legal experiences of other European countries.

FUTURE RESEARCH

One of the features of our legislation is the lack of implementation of its provisions in relation to the continuous environmental threat. Continued economic development will be associated with increased risk for having a more and more polluted environment. One of the solutions that have started to find application, although not much applied in Albania, is the liability insurance for damages from the environment. Provision should be set as a condition in the moment that is given an environmental permit. One of the most important problems of insurance from damage from the environment is caused by lack of information that is manifested at various levels in this area. This may be a lack of information which leads to insecurity of both of the parties, the insurer and the insured, to make possible the damage calculation, although in an approximate figure, about the extent and periodicity of the actual damages, as well as its predictability. This could include data on certain toxic substances, the risk of a certain chemical process or a particular plant. To cope with the problems caused in these cases the insurers have developed specific techniques to fill the gaps in the information, in order to promote measures for preventing the damage.

The purpose of insurance for environmental damages, in reality is to provide compensation to the plaintiff party in every case, even if the actual financial situation of the defendant does not allow this.The preventive function, which is known along with that of compensation to victims, should be made possible in the institute of civil liability through the special insurance.

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[3]- Neni 3, pika 1 e ligjit nr.8934, date 05.09.2002 ‘per mbrojtjen e mjedisit’

[4]- *Biotic factors include living and living organisms in the ecosystem. These are taken from the biosphere and are capable of reproduction. Examples of biotic factors are animals, birds, plants, fungi, and other similar organizations.*

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ISSN 2053-6321(Print), ISSN 2053-6593(Online)

[8]- See Article 2, Directive 2004/35/CE 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', Official Journal of the European Union, L 143/56, 30.04.2004.

[9]- Annex I, 'Criteria referred to in Article 2(1)(A-)The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as: — the number of individuals, their density or the area covered, — the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level), — the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations), — the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition. Damage with a proven effect on human health must be classified as significant damage. The following does not have to be classified as significant damage: — negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question, — negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators, — damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.- Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 'On environmental liability with regard to the prevention and reedying of environmental damage', Official Journal of the European Union, L 143/56, 30.04.2004.

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[20]- See article 608 of Albanian Civil Code - *The person who, illegally and to his fault, causes damage to the other to his person or to his property, is obliged to compensate the damage caused. The person who has caused the damage is not liable if he proves that he is innocent. The damage is deemed illegal when it is a consequence of the violation or harm of the interests and rights of the other, which are protected by legal order or good custom*.

[21]- See article 608 of Albanian Civil Code - *The damage must be an immediate and direct consequence of person's action or missed action. The non hindrance of an event from the person who has the legal obligation to prevent it, charges him with responsibility for the damage caused.*

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ISSN 2053-6321(Print), ISSN 2053-6593(Online)