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PAPRICULARITĂȚILE REPARĂRII DAUNELOR CAUZATE REGNULUI ANIMAL PRIN PRISMA REGLEMENTĂRILOR SPECIFICE UNIUNII EUROPENE

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Rezumat: *Adoptarea unui cadru de reglementare uniform în domeniul prevenirii și reparării daunelor aduse mediului a reprezentat o preocupare majoră pentru instanțele Uniunii Europene de ceva vreme. Aceasta este legată de necesitatea aplicării unor principii de bază, precum răspunderea și principiul „poluatorul plătește", în gestionarea problemelor de mediu.*

Principiul răspunderii se referă la ideea că cei care cauzează daune aduse mediului trebuie să suporte consecințele acțiunilor lor și să repare daunele cauzate. Acest principiu este esențial pentru asigurarea unei abordări juste și echitabile a gestionării problemelor de mediu și reprezintă un pilon important al dreptului și jurisprudenței Uniunii Europene.

Cuvinte cheie: regnul animal, daună, reglementare, Uniunea Europeană, reparare.

THE PARTICULARITIES OF REPAIRING DAMAGE CAUSED TO THE ANIMAL KINGDOM THROUGH THE LENS OF SPECIFIC EUROPEAN UNION REGULATIONS

Abstract: *The adoption of a uniform regulatory framework in the field of prevention and remedying of environmental damage has been a major concern for the courts of the European Union for some time. This is linked to the need to apply basic principles, such as liability and the polluter pays principle, in the management of environmental problems.*

The liability principle refers to the idea that those who cause environ-

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mental damage must bear the consequences of their actions and make good the damage caused. This principle is essential for ensuring a fair and equitable approach to the management of environmental problems, and is an important pillar of European Union law and case law.

Keywords: animal kingdom, damage, regulation, European Union, repair.

Introduction

On 9 February 2000, the European Commission adopted the *White Paper on Environmental Liability* [1], an international act which succeeded in establishing a set of environmental principles which clarified the shortcomings in the European regulatory framework. Community intervention in the field was conditioned by the need to ensure the coherence of policies and Community law, creating a basis for guaranteeing competition and improving the functioning of certain mechanisms of the internal markets of the Member States.

The common objective was to fill the gaps in the legislation of the EU Member States, which allowed for liability in the event of damage to the health of persons or property, but did not always cover damage caused to natural resources and in particular to biodiversity.

In these efforts, the *White Paper* represented an essential instrument for strengthening liability in the field of environmental protection, so that damage caused to natural resources and biodiversity would be taken into account and fairly compensated in accordance with the „polluter pays" principle. This approach had a significant impact on the harmonisation and efficiency of environmental policies within the European Union.

Issues were addressed regarding the acceptance and applicability of the principle of non-retroactivity in the regime of liability for environmental damage, including discussions on the assessment of „past pollution". These issues were addressed in the context of the development and implementation of environmental policies and legislation in the European Union, with the objective of clarifying and establishing clear and fair rules in the management of liability for environmental damage, regardless of when it occurred [13, p.363].

Core content. The principle of coherence has been emphasised and

capitalised on in European policies on environmental liability, expressed through the definition of a set of priorities. The European Commission has emphasised the importance of integrating the environmental liability regime into the context of appropriate prevention regimes. Thus, it has been highlighted that the environmental liability regime should not be considered separately from the associated prevention measures.

In the context of the European Union legislative framework, not all activities with the potential to cause environmental damage are treated uniformly, and the protection of the environment and species is not applied equally and uniformly. In this regard, particular attention is paid to activities with increased danger or that significantly affect natural balances. Emphasis is also placed on contaminated areas and the need to protect biodiversity, as they are more vulnerable and require specific measures for conservation and recovery.

It is important to underline that the adoption of a Union document on liability for causing environmental damage was not enough. On 23 January 2002, the proposal of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage was published (COM 2002/17 final), which was subsequently amended on 26 January 2004 (COM 2004/55 final) and was finalised as *Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage* [5, p.56], adopted on 21 April 2004. This Directive represented a significant step in strengthening the legal and institutional framework for liability for environmental damage in the European Union. It provided clarity and guidance on liability for environmental damage, setting out clear requirements and procedures for its prevention and remedying. It also encouraged the harmonisation of practices and standards in the Member States, thus helping to ensure a high level of environmental protection throughout the EU. According to the provisions of *Directive 2004/35/EC*: „...(pre)vention and remedying of environmental damage must be implemented in accordance with the „polluter pays" principle, meaning that the polluter must be charged with the costs of measures taken by public authorities to maintain the environment in an acceptable state" [14, p.116]. At the same time, it is stated that: „the operator whose activity has caused environmental damage or an imminent

threat of such damage must be held financially liable, in order to induce operators to adopt measures and develop practices designed to reduce the risks of environmental damage, so as to reduce exposure to the associated financial risks" [5, art.2, p.56].

From the above-mentioned act, we can see that the following categories of damage were assessed:

– direct or indirect damage caused to the aquatic environment covered by Community legislation on water management;

– direct or indirect damage caused to species and natural habitats protected at Community level by the 1979 Wild Birds Directive and the 1992 Habitats Directive;

– direct or indirect contamination of soil posing a significant risk to human health.

In the context of the application of the polluter pays principle, the Directive imposes on Member States the responsibility to ensure that damage caused to species and natural habitats protected at Community level is repaired. This can be a difficult task, as sometimes the exact identification and assessment of the damage, as well as the determination of culpability and remedial measures, can be complex.

Under the Directive, Member States are required to cooperate with the operator or person responsible for the activity that caused the damage. This involves establishing mechanisms for collaboration and communication between authorities, environmental protection bodies and private entities involved in the activities causing the damage. Cooperation is therefore essential to ensure that the damage is remedied effectively and in accordance with legal and regulatory provisions.

We would like to emphasize that cross-border crime has a special dynamism, with serious negative consequences on environmental elements, but also positive on the profits made by some, not infrequently with the concurrence of political factors, and the clandestine storage of toxic and hazardous waste, the trade in illegally exploited natural resources, as a rule, in a smuggling system, etc. In response to such dangerous effects, a quasi-unanimous social reaction has emerged, requesting the intervention of the criminal legislator or the incrimination of the respective phenomenon, adequate to operate the axiological transfer from the „criminological

assessment" to the „legal-criminal assessment" of these phenomena [16, p.549].

In terms of environmental liability and environmental protection through criminal law at the EU level, we would like to point out that after the adoption, on 4 November 1998, of the *Council of Europe Convention on the Protection of the Environment through Criminal Law* [3], the Tampere European Council in October 1999 called for increased efforts to adopt common definitions, criminalisations and sanctions in significant areas of crime, including environmental crime.

Moreover, taking a first step towards establishing environmental protection through criminal law instruments, *Directive 2008/99/EC on the protection of the environment through criminal law* was finally adopted on 19 November 2008 [3], representing real progress in the field, being the first EU regulatory act concerning environmental criminal law.

Directive 2008/99/EC is a European legislative framework that establishes minimum standards for the protection of the environment through criminal law. This Directive aims to prevent and sanction activities that may cause environmental damage, being applicable to a wide range of activities with a potential negative impact on the environment. In this context, from the moment of adoption until the present period, legislative „deadlocks" have been identified, which have led to a blockage of the activity of the European courts.

The European Commission carried out an evaluation of Directive 2008/99/EC in the period 2019-2020, the results of which were published in October 2020. The evaluation criteria used were:

a) effectiveness (whether the objectives of the directive have been achieved);

b) efficiency (whether the benefits of implementing the directive justify the costs);

c) coherence (in relation to other EU regulations in the field of criminal law and environmental law, as well as to the EU's international obligations;

d) relevance (of the initial objectives of the directive in relation to present and future needs).

Following the evaluation, the experts concluded that the document did not produce the desired effects for the *following reasons*:

– The scope of the directive is outdated and defined in an overly complex manner, which hinders effective criminal proceedings and cross-border cooperation,

– The directive contains numerous unclear definitions used to describe environmental crimes, which may hinder effective criminal proceedings and cross-border cooperation.

– The level of sanctions is not sufficiently precise and dissuasive, a phenomenon found in all EU Member States.

– Insufficient cooperation at national and cross-border level on environmental crime between Member States hinders the efficient conduct of criminal proceedings.

– The lack of reliable, reliable and comprehensive statistical data on criminal proceedings concerning environmental crime in the Member States hinders the monitoring of the effectiveness of these measures by both policy makers and practitioners.

– Inefficiency of the law enforcement chain: environmental crimes are not prioritized, identified, investigated and sanctioned effectively, due to the malfunctioning of specific procedures. These have been found at the level of all Member States and concern all the institutions involved, at the same time, a lack of qualified personnel, insufficient training and a lack of specialist knowledge, together with poor cooperation and information sharing in the field, have also been identified.

As a result of this evaluation, the Commission decided to review the directive, and an impact assessment study was prepared between February and July 2021. At the same time, the European Commission ordered a separate study to identify the impact, in particular economic and financial, of the proposed changes, and a resolution was adopted in this regard [3].

In the context of the document, the section „special observations" stated that:

„The European Parliament regrets that environmental crime is one of the most profitable forms of transnational criminal activity; therefore calls on the Commission and the Member States to allocate adequate financial and human resources to prevent, investigate and prosecute environmental crime and to improve the skills of the authorities involved, including prosecutors and judges, in order to be able to prosecute and sanction environmen-

tal crime more effectively; calls on the Member States to set up or strengthen specialised units within national police services, at the appropriate levels, for the investigation of environmental crime; also calls on the Commission and the Member States to ensure that all Member States have adequate procedures for managing environmental crises, at national and transnational level, and encourages Member States to use joint investigation teams and exchange information in transnational cases of environmental crime, which facilitates the coordination of investigations and prosecutions carried out in parallel in several Member States" [6, p.5].

Based on the synthesis of the conclusions and studies carried out, the European Commission proposed a set of objectives aimed at improving the Union regulatory framework, as follows:

Objective no. 1 establishes the improvement of the effectiveness of criminal investigation and trial by updating the scope of the directive and introducing an efficient mechanism for its constant updating in relation to the *European Green Deal* [7].

Objective no. 2 focuses on improving the effectiveness of the criminal trial by eliminating vague terms used in the definition of environmental crime, defining them more precisely within the directive and eliminating imprecise terms, such as „significant damage", „high risk".

Objective no. 3 is based on the application of concrete and proportionate sanctions for environmental crimes, with minimum and maximum levels of penalties being established. At the same time, it is proposed to correlate the amount of the financial sanction with the financial situation of the perpetrator and/or with the illicit profile obtained by him.

Objective no. 4 consists of promoting cross-border judicial cooperation, by harmonizing criminal investigation tools, the obligation to cooperate through Europol, Eurojust and OLAF (European Anti-Fraud Office), but also new rules regarding material jurisdiction.

Objective no. 5 aims to improve information cooperation in the field of environmental crime by obliging Member States to collect and communicate statistical data to the Commission according to common harmonized standards.

Objective no. 6 aims at implementing training programs at all levels, creating national and Union strategies to combat environmental crime and

increasing awareness of the issue among the population.

Furthermore, in the light of the proposals for the Directive, the Commission has identified the need for criminal sanctions to ensure the effective implementation of EU environmental policies, in relation to the following categories of offences not currently covered by the Directive:

– placing on the market of products which, in breach of mandatory requirements, cause significant damage to the environment as a result of the wider use of the product;

– serious infringements of EU chemicals legislation which cause significant damage to the environment or human health;

– illegal recycling of ships;

– illegal abstraction of water;

– sources of discharges of polluting substances from ships (this category of offences is enshrined in Directive 2005/35/EC [4, p.11];

– illegal trade in timber;

– serious infringements of the rules on the introduction and spread of invasive alien species of Union concern;

– serious circumvention of the requirements to carry out an environmental impact assessment;

– illegal production, placing on the market, import, export, use, emission or release of fluorinated greenhouse gases [3, p.5].

After a period of negotiations, E*U Directive 2024/1203 on the protection of the environment through criminal law was published*, replacing Directives 2008/99/EC and 2009/123/EC.

The adapted regulatory framework certainly improves the previous legal framework for combating environmental crimes, in particular with the extension of the offences and the introduction of specific criminal and non-criminal penalties.

Unlike *Directive 2008/99/EC on the protection of the environment through criminal law*, which contained a total of nine offences (including three pollution control offences, two waste management offences, three biodiversity offences and one air pollution management offence), the recast Directive 2024/1203 not only maintains these offences (with some changes ranging from significant to modest) but also introduces 12 new offences. In addition, it introduces two new offences for acts comparable to

ecocide [15], largely due to the interventions of the European Parliament during its negotiations [5, art.3 (3)]. This extension largely reflects new developments in EU environmental law and policy, including new EU environmental legislation that was being adopted while the recast Directive 2024/1203 was being negotiated. Ultimately, this led to essential changes to the text of Directive 2024/1203. In this In this regard, it should be noted that the 2008 Directive on the Protection of the Environment through Criminal Law already provided for the option to amend that Directive, taking into account new developments in EU environmental policy. However, this option was never exercised and no amendments were made in accordance with the 2008 Directive.

Overall, the new Article 3(2) of Directive 2024/1203 lists a total of 21 offences dealing with a wide range of environmental policy concerns, in particular:

– Pollution control (including mercury pollution);
– Waste management;
– Hazardous activities in installations;
– Pollution of offshore installations;
– Pollution with radioactive substances;
– Invasive species;
– Project execution/environmental impact assessment;
– Ship shipment;
– Ship recycling;
– Ship-source pollution;
– Operation of an installation;
– Radioactive materials;
– Placing on the market of goods/illegal trade in timber;
– Ozone-depleting substances;
– Fluorinated greenhouse gases;
– Illegal water abstraction;
– Killing/possession of species;
– Illegal trade in species/CITES;
– Habitat degradation.

It should be noted that most of these offences could be classified as „concrete endangerment offences", as they require a certain threshold of

environmental damage to be reached. There are also ,,abstract endangerment offences", which do not depend on a threshold of environmental damage being reached [17, p.158-163]. However, despite the significant expansion of the number of offences, it could have been criticised that Directive 2024/1203 could have gone further and criminalised other activities with a significant impact on the environment or health, in particular illegal, unreported and unregulated fishing, fraud in EU carbon markets, illegal trade in genetically modified organisms (GMOs) and their deliberate release into the environment and the setting of forest fires – none of which are included as separate offences in Directive 2024/1203.

For example, with regard to the EU Timber Regulation, although all Member States have included sanctions for offenders in national law, the types of sanctions and their maximum levels vary significantly from one Member State to another: administrative fines and confiscations can be imposed in 23 Member States, criminal fines in 16, imprisonment in 17, suspension of activity in 15 and other types of sanctions in 11. The fines applicable for infringements of the EU Timber Regulation range from EUR 50 to an unlimited amount [10, p.14].

These discrepancies between Member States' sanction regimes applicable to infringements of the EU Timber Regulation and the fact that sanctions are often considered too low to have a real deterrent effect on illegal behaviour, together with uneven enforcement across the EU, pose a risk of trade diversion.

Disparities in sanction regimes and inconsistent enforcement of the legislation across Member States can create an unfair playing field between economic operators, giving an advantage to those who do not comply with legal requirements or who do not face adequate sanctions for environmental damage. This can directly affect operators who strictly comply with the rules and invest in environmentally friendly practices.

To remedy this situation and ensure a level playing field, the Environmental Crime Directive can be considered as an important instrument. Harmonising sanctioning regimes and approximating the levels of sanctions across the European Union could help to combat discretion and significant differences in the approach to environmental offences between Member States. This would increase trust in a fair enforcement system and encour-

age compliance with environmental rules across the European Union. As another example, illegal water abstraction is a serious problem, especially in the context of climate change, as it contributes to the accelerated depletion of water resources. This illegal activity can have devastating consequences for aquatic ecosystems, the environment and the human communities that depend on these resources. In its 2021 Special Report entitled „Sustainable water use in agriculture: CAP funds likely to promote more intensive rather than more efficient water use", the Court of Auditors documents the ineffectiveness of administrative measures to address excessive water abstraction and highlights that checks are rare and penalties are too low to ensure effective implementation and compliance with the relevant obligations. The report points to shortcomings in the penalty regimes in each Member State [8, p.32].

The Republic of Moldova, as a candidate state for accession to the European Union, is to harmonize national legislation with the Union legislation as a priority. Moreover, at the national level, according to the *Report on the activity of the prosecutor's office in 2021* [18, p.111-115], with reference to the investigation and combating of crimes against the forest fund and forest lands, in 2020-2021 only 13 criminal cases were initiated under art. 231 of the Criminal Code (Illegal felling of forest vegetation). For comparison, in 2019 1 criminal case was initiated under art. 231 of the Criminal Code. However, the statistics do not reflect the real situation in the area of illegal felling of forest vegetation, because the study shows that, in multiple situations, illegal felling of trees in the forest fund is the subject of criminal cases initiated under art. 186 of the Criminal Code.

An impediment to the investigation of the crime provided for in Article 231 of the Criminal Code is the calculation of the damage caused to the forest fund, which is carried out according to the methodology regulated by the Forestry Code [11], which is outdated and establishes minimum amounts in relation to the actual damage caused to the environment.

In comparison, the *Report on the activity of the prosecutor's office for 2023* [19] does not contain any data on the analysis of the investigation of criminal trials or cases, the object of which is illegal hunting or fishing. This denotes an alarming situation. Analyzing statistical data presented by the Ministry of Internal Affairs of the Republic of Moldova during the

years 2022-2024, criminal prosecution was initiated under art. 233 of the Criminal Code of the Republic of Moldova (Illegal hunting) – 29 criminal cases and under art. 234 of the Criminal Code of the Republic of Moldova (Illegal fishing, hunting or other exploitation of water) – 4 criminal cases.

Analyzing the decisions taken within the framework of criminal prosecution initiated during the above-mentioned period, we note the following:

1. Pursuant to art. 271 of the CPC RM, the materials were transmitted according to jurisdiction – **2 cases**;
2. Pursuant to art. 287^1, p. 2 of the CPC RM, the criminal investigation was suspended: The criminal investigation is suspended in cases where there is one of the following grounds that prevent its continuation and completion: „2) the person who can be charged is not identified" – **8 cases**;
3. Pursuant to art. 297 par. 2 of the CPC RM (the accused did not appear to familiarize himself with the case materials and receive the indictment) the case was sent to trial – **13 cases**.

Analyzing the presented data, we can conclude that in the period 2022-2024, only 13 criminal cases reached the court, while in reality several illegal acts were committed. The state was harmed in particularly large proportions. However, it is not only about the pecuniary aspect of the harm caused, but also about the fact that restoring the situation in nature is not always possible. Even then, a long period is needed in order to quantitatively restore wildlife.

A brief analysis of environmental violations recorded in the period 2022-2024 is summarized as follows:

In 2022, environmental violations were detected (we will expose the most frequent illegalities), as follows: art.115 paragraph 3 (Open field burning of plant residues of any origin) – **458 cases**, which constitutes 23.5%; art.154 paragraph 1 (Failure to comply with the established method of collection, storage, transportation, storage, neutralization and disposal, including in aquatic facilities, in the basement, etc., of industrial, construction, biowaste, municipal and other waste) – **777 cases**, which constitutes 39.9%; art.158 paragraph 1 (Violation of prohibitions or rules for keeping dogs, cats and other animals, approved by decision of the local public administration authority) – **237 cases**, which constitutes 12.2%. Of which,

misdemeanor cases sent to court: art.115 paragraph 3 (Open burning of plant residues of any origin) – **19 cases**, 38%; art.157 paragraph 3 (Cruelty to animals with harm to the animal's health) – **9 cases**, 18%; art.157 paragraph 9 (Public incitement to cruelty to animals or justification thereof) – **6 cases**, 12%.

In comparison, in 2023 the largest number of environmental violations were detected, based on: art.115 paragraph 3 (Open field burning of plant residues of any origin) – **404 cases**; art.122 paragraph 1 (Illegal cutting or damage to trees and shrubs to the extent of cessation of their growth or damage to trees and shrubs that does not interrupt their growth) – **135 cases**; art.158 paragraph 1 (Violation of prohibitions or rules for keeping dogs, cats and other animals, approved by decision of the local public administration authority) – **997 cases**.

In 2024, the number of violations detected under art. 115 paragraph 3 (Open field burning of plant residues of any origin) – **293 cases**; art. 122 paragraph 1 (Illegal cutting or damaging trees and shrubs to the extent of cessation of their growth or damaging trees and shrubs that does not interrupt their growth) – **174 cases**; art. 158 paragraph 1 (Violation of prohibitions or rules for keeping dogs, cats and other animals, approved by decision of the local public administration authority) – **1102 cases**.

During the period 2022-2024, the number of contravention cases sent to court is modest, as follows: art.115 paragraph 3 (Open field burning of plant residues of any origin) – **11 cases**; art.116 paragraph 2 (Illegal occupation of land, its fencing) – **1 case**; art.142 paragraph 2 (Marketing or circulation of wood products without legal documents of origin (delivery documents according to accounting documentation) – **1 case**; art. 154 paragraph 1 (Failure to comply with the established method of collection, storage, transport, storage, neutralization and disposal, including in aquatic facilities, in the basement, etc., of industrial, construction, biowaste, municipal and other waste) – **1 case**; art.154 paragraph 2 (Failure to comply with the established method of collection, storage, transport, storage, neutralization and disposal, including in aquatic facilities, in the basement, etc., of industrial, construction, biowaste, municipal and other waste, which created the danger of environmental pollution) – **1 case**; art.157 paragraph 2 (Intentional illegal infliction of avoidable pain or suf-

fering to an animal, if the act does not constitute a crime) – **2 cases**; art. 157 paragraph 12 (Intentional unlawful infliction of avoidable pain or suffering to an animal, if the act does not constitute a crime repeatedly during the same calendar year in public or in the presence of minors; by a person responsible for the care, protection and welfare of animals, for training or for providing veterinary medical assistance; towards two or more animals – **1 case**; art. 158 paragraph 1 (Violation of prohibitions or rules for keeping dogs, cats and other animals, approved by decision of the local public administration authority) – **1 case**.

The analysis of contraventions (2022-2024) detected in the field of harm to the animal kingdom is summarized in art. 114 (Violation of the rules for the protection of fish resources and fishing rules – **67 cases**; art. 140 (Collection or destruction of plants, capture or destruction of animals included in the Red Book of the Republic of Moldova and in the annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) – **3 cases**; art. 149 (Environmental pollution causing damage) – **2 cases**.

Conclusions

We find that the documentation of contraventions of illegalities related to harming the animal kingdom is insignificant, with priority being given to illegalities related to the violation of prohibitions or rules for keeping dogs, cats and other domestic animals, approved by decision of the local public administration authority.

It is essential to have adequate and dissuasive sanctions for activities that harm the environment, given the increase in the number of environmental crimes and their extended impact beyond the borders of the states in which they are committed. The introduction of more severe sanctions can contribute to protecting the environment and preventing significant damage to air, soil, water, animals and plants, including the conservation of species.

A prompt „criminal reaction" is an important „tool" for guaranteeing compliance with the objectives established in European Union legislation on accountability and environmental protection through criminal law.

By applying more severe and dissuasive sanctions, the aim is to hold those who commit crimes against the environment accountable and reduce the negative impact on it. At the same time, such an approach contributes

to promoting a culture of respect for the environment and awareness of the importance of protecting it for future generations.

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