PREVENTIVE MEASURES UNDER ENVIRONMENTAL LAW APPLICABLE TO COMPANIES GOVERNED BY LAW NO. 85/2014

Candit Valentin VERNEA*

Abstract

This article addresses the relationship between environmental law and insolvent companies. The author will analyze the incidence of preventive measures in current national legislation and will identify its applicability in regards to insolvency proceedings.

The article is structured in two parts. The first part aims to define and identify the particularities of preventive measures under environmental law as well as the environmental liability of companies, followed by the second part that highlights the obligations that insolvent companies have in order to prevent environmental damage by linking the provisions of Law No. 85/2014 on insolvency prevention and insolvency procedures with the provisions of the Government Emergency Ordinance No. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage.

Keywords: *insolvency proceedings, environmental damage, preventive actions, environmental liability, environmental protection, environmental law, commercial law, company law, insolvency procedures, insolvency practitioner, judicial administrator, judicial liquidator.*

1. Preventive measures provided for by environmental law

As a legal institution, environmental liability is governed by the general framework established by the Government Emergency Ordinance No. 195/2005 on environmental protection, with its subsequent amendments. A more detailed legal framework is established by the Government Emergency Ordinance No. 68/2007 regarding preventing and remedying environmental damage, as amended, which transposed and implemented in full Directive No. 2004/35/EC[1].

The main objective of Government Emergency Ordinance No. 68/2007, with its subsequent amendments, is to emphasize the preventive nature of its provisions and to promote caution as a core principle. By means of this ordinance, an important role was given to the positive obligation of the State to guarantee the fundamental right to a healthy and a balanced environment.

The fundamental right to a healthy environment is established by European conventional law and constitutionally recognized, requiring the creation of an administrative and legislative framework with the aim of preventing damage to the environment and human health[2].

In legal specialty literature it was pointed out that without the prospects of genuine liability, adapted to the particularities of the field and efficiency, in the sense of using legal means and instruments to ensure that the damage is repaired as fully as possible and appropriately and in a reasonable time, environmental law cannot be either effective or credible".[3]

Liability in environmental law is a specific type of responsibility based on principles that combine elements of environmental law with elements of administrative and civil law. Administrative law prescribes that environmental protection is an objective of major public interest, determining the possibility of establishing reparatory measures, but also the assessment of the significance of the damages done to the environment by public administration authorities for the protection of the environment.

The failure of economic operators to comply with environmental obligations regarding the prevention or mitigation of environmental damage and failure to communicate information to the competent authorities for the protection of the environment may even result in contraventional sanction.

The aforementioned environmental responsibility is based on principles specific to environmental law such as: the principle of preventive action, the principle of sustainable development, the principle of the conservation of biodiversity and ecosystems specific to the natural biogeographical framework and also the principle of the "polluter pays".

As stipulated, environmental liability occurs in the event of environmental damage, which implies that an economic operator is negatively affecting the environment through actions or inactions in the course of its activity. In order for responsibility to exist, there are certain conditions that must be cumulatively met, as follows: the committing an illicit act, causing

* PhD Candidate, Faculty of Law, University of Bucharest, insolvency practitioner, CITR SPRL (e-mail: candit.vernea@citr.ro).

[1] Directive No. 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage was published in the Official Journal of the European Union L143 of 30 April 2004, as amended by Directive 2006/21/EC of 15 March 2006 on the management of residues in the extractive industry, published in the Official Journal of the European Union L 102 of 11 April 2006.

[2] ECHR, judgment of 27 January 2009, Tatar v. Romania, para. 88.

[3] Mircea Dutu and Andrei Dutu, *Liability in environmental law,* Romanian Academy Publishing House, Bucharest, 2015, pg. 117.

environmental damage and the existence of a causal link between them[4].

In legal specialty literature it has been stated that while in the case of minor damages to the environment, the damages can be pecuniary assessed, i.e. the costs of restoring the damaged natural balance can be evaluated, in the case of significant damage to the environment, i.e. irreversible or long-term damage, caused in any way to the environment or which has caused or is likely to cause death or serious injury to the bodily integrity or health of a person, the damages may or may not be quantifiable[5].

However, it is essential to distinguish between the different meanings of the term damages, as it can mean two different notions with distinct legal regimes. The first meaning of the term is corresponding to term "damnum", which comes Latin, meaning a simple injury, harm or impairment of personality rights. The second meaning of the term is corresponding to the Latin term of "praejudicium", which refers to a material or moral loss caused by someone. Taking into consideration the different meanings of the two terms, we consider that "damnum" is a primary injury, while "praejudicium" represents the consequences of said injury. While there could be "damnum" without "praejudicium", there cannot be any "praejudicium" without "damnum".

With these said, in Romanian legal literature, the notion of "ecological damage" was borrowed from its French counterpart, in order for it to express the particularities of indirect damage resulting from harm done to the environment[6].

The notion of ecological damage has been defined as "the harm which affects the environment as a whole, or the elements of a system, which, because of its indirect and diffuse nature, does not permit the establishment of a right to compensation'. [7]

In legal literature, some authors considered that ecological damage is the one that causes harm to people and goods, the environment being considered to be a cause and not the victim, while other authors have considered that ecological damage causes damage to the environment, shaping the concept of the extent of an ecological damage[8].

Also, it was pointed out that "in the notion of 'environmental damage' were included both the damages suffered because of pollution, done to the environment, and the damages suffered by humans or goods, the environment being defined in the legislation prior to Law No. 137/1995 on environmental protection, as consisting of all natural and human created factors, civil liability regulations making no distinctions between different elements of the environment"[9].

Government Emergency Ordinance No. 195/2005 on environmental protection, as amended, keeps the notion of "damages done to the environment" in the dispositions regarding liability in Article 95(2)[10].

In matters regarding damages done to the environment, humans are the ones that cause most of the damages, including the most serious of them. If environmental damage has been caused, it will be assessed from a pecuniary point of view, in order to estimate the necessary expenditures needed to restore the damaged natural balance. In this field, environmental damage could also be irreversible, so the persons responsible will be compelled to bear the costs related to the removal of the negative consequences, as for of restitutio in integrum. Also, those responsible for environmental damage have to bear both the costs of reparation of the damages caused and the costs for preventing and restoring the ecological balance[11].

In accordance with the 'polluter pays' principle, economic operators that cause environmental damage will have to bear all the costs necessary to prevent and repair environmental damage. The person responsible could be held liable if, through his own actions or inactions, he has caused certain, direct and personal damage to the environment which has not been repaired by another person. Environmental damage is certain when its existence is proven and its extent is established.

Another principle regarding liability, for environmental damage, is that of solidarity in the case of plurality of authors. The Government Emergency Ordinance No.195/2005 on environmental protection, as amended, provides in Article 95(1) solidary liability in case of plurality of authors. In such cases, the burden of reparation can be divided proportionally by analyzing the culpability of each person, and, if the person's participation cannot be exactly established, those responsible will be equally liable for compensation for the damages done to the environment.

Economic operators, whose activities are carried out under environmental agreements or environmental authorizations, which are in insolvency proceedings, will be required to comply with all environmental legal dispositions. For environmental damages, insolvent economic operators may be required to repair any

[4] The term "damage" is defined in Article 2 Pc. 12 of G.E.O. No. 68/2007 as "a measurable negative change in a natural resource or a measurable deterioration of a service linked to natural resources, which may occur directly or indirectly'.

[5] D. Marinescu and M.C. Petre *Treaty on Environmental Law, 5th Edition,* University Publishing House, Bucharest, 2014, pag. 713.

[6] This term was first used by Michel Despax In *Droit de l`environnement,* Litec-Paris, 1980, pg. 1036.

[7] Michel Prieur, *Droit de l`environnement,* Daloz, 1991, pg. 1034.

[8] R. Drago, Preface to P. Girod's work, *La reparation domage ecologic,* These, Paris 1974, pg. 13.

[9] D. Marinescu and M.C. Petre *op. cit.*, pg. 715.

[10] Article 95 (1) of the G.E.O. No. 195/2005 on environmental protection, as amended, stipulates: *Liability for environmental damage shall be objective, independent of fault. In the case of plurality of authors, liability shall be joint*.

[11] This results from the corroboration of the provisions of Articles 6 and 94 of the G.E.O. No. 195/2005 on environmental protection, with amendments.

damages caused, as Law No. 85/2014 on insolvency prevention and insolvency procedures provides the possibility for injured creditors to have said damages repaired.

For the purpose of finding any breaches of environmental obligations, the County Environmental Protection Agency is the competent authority in the field which operates under the authority of the National Environmental Protection Agency, and which can establish preventive and reparatory measures. Furthermore, the County Environmental Protection Agency also has the power to assess damages done to the environment[12].

The assessment of environmental damage is very important in the case of an insolvent company, taking into consideration the legal dispositions of Law No. 85/2014, as amended, which impose certain obligations that the affected creditors must comply with. Thus, following an assessment carried out by it, the County Environmental Protection Agency may request the its registration in the bankrupt's estate of the insolvent debtor, or may ask the Syndic Judge to order the debtor to pay the damages caused and assessed, as well as to repair any damage done to the environment or to persons. Depending on the time and involvement of the insolvent company in causing the environmental damage, the County Environmental Protection Agency may establish obligations for the insolvent company to take preventive or reparatory measures leading to the prevention of any further environmental damages.

In order to establish preventive measures, the County Environmental Protection Agency may consult with the county commissariat of the National Environmental Guard or with other authorities responsible for environmental law that can offer support in making such decisions.

In the event of environmental damage done by an economic operator, the County Environmental Protection Agency will assess the significant nature of the environmental damage in consultation with the environmental authorities involved as well as the National Environmental Protection Agency. [13]

After drafting the assessment on the significant nature of the environmental damage, the County Environmental Protection Agency will inform the economic operator of the outcome of the assessment and, based on the conclusions of the assessment, it will impose measures to repair the environmental damage that was caused. In the case of insolvent companies, the assessment of the significant nature of the environmental damage can constitute proof for registration in the bankrupt's estate of the insolvent debtor.

Article 7 (1) of the Government Emergency Ordinance No. 68/2007, as amended, imposes that for the performing of its tasks, the County Environmental Protection Agency may:

"(a) to carry out the preventive or reparatory measures established, in accordance with the provisions of Article 11 (d), Article 12 (1), Article 15 (d) and Article 16 (1), respectively, directly or through the conclusion of contracts with natural or legal persons, in accordance with the provisions of the Government Emergency Ordinance No. 34/2006 on the assignment of public procurement contracts, public works concession contracts and service concession contracts, approved with amendments by Law No. 337/2006, as amended.

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

(c) request the operator to carry out his own assessment and to provide any information and data necessary in the event of causing damages;'

Judicial practice at national level has concluded that the National Environmental Protection Agency together with the County Environmental Protection Agencies are obliged to take all necessary measures to prevent and repair any environmental damage. The expenditures, for measures that will be taken by the Environmental Protection Agencies, can be advanced by them and eventually recovered from the economic operators. Thus, Decision No. 3196/30.05.2016 of the Bucharest Court of Appeal judged the appeal put forward by the County Environmental Protection Agency against Civil Sentence No. 3779/ 20.05.2015 of the Bucharest Tribunal, in which the action was guaranteed and the defendant was ordered to take over the entire quantity of waste under the applicant's legal guard. The expenditures necessary to take legal measures for the disposal or recovery of waste will be advanced by the County Environmental Protection Agency[14].

Government Emergency Ordinance No. 68/2007, with amendments, imposes a time limit in which a claim ca be brough of 5 years for the recovery of the expenditures advanced by the County Environmental Protection Agency for carrying out the measures to repair environmental damage. In the case of insolvent companies, that limitation period will be suspended once the proceedings have been opened, in accordance to Article 90 of Law No. 85/2014 on insolvency prevention and insolvency procedures[15].

[12] According to Article 6 (1) of the G.E.O. No. 68/2007, the County Environmental Protection Agency is the competent authority for establishing and taking preventive and remedial measures, and for assessing the significant nature of environmental damage.

[13] According to Article 6 (3) of the G.E.O. No. 68/2007, in assessing the significant nature of the environmental damage and in determining remedial measures, the County Environmental Protection Agency shall consult the National Environmental Protection Agency, besides the authorities mentioned at (2).

[14] Decision No. 3196/30.05.2016 of the Bucharest Court of Appeal available at https://idrept.ro/Document View.aspx? DocumentId=81506204 consulted on 28.02.2021 on the website idrept.ro.

[15] Article 32(2) of the G.E.O. No. 68/2007, stipulates that the right of the County Environmental Protection Agency to file a claim against the operator for the recovery of costs shall has a statute of limitation of 5 years from the date on which those measures were carried out or from the date on which the responsible operator or third person was identified.

The decisions for establishing preventive or reparatory measures that the County Environmental Protection Agencies take can be contested by the persons concerned, in accordance with the provisions of the Law on Administrative Disputes[16].

In accordance to the provisions of Article 8(2) of the Government Emergency Ordinance No. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage, the decisions of the County Environmental Protection Agency will be notified to the operator within 24 hours.

The National Environmental Protection Agency is involved in the development of sustainable development plans at all levels by actively participating in the process of integrating environmental policies into other sectors. The County Environmental Protection Agencies, under the supervision of the National Environmental Protection Agency, perform the tasks of implementing policies, legislation and strategies in the field of environmental protection at the county level.

In matters regarding the discovery of environmental damage as well as of imminent threats of such harm is the responsibility of the National Environmental Guard, through county commissioners[17].

The National Environmental Guard is the public inspection and control institution in the field of environmental protection, being the competent authority for conformity verification, which operates as a specialized body of the central public administration. The National Environmental Guard is responsible for the discovery, prevention and sanctioning of operators in breach of the legal provisions on environmental protection[18].

2. Preventive actions applicable to insolvent companies

Government Emergency Ordinance No. 68/2007 on environmental liability with regard to the prevention and repair of environmental damage, devotes an entire chapter to preventive actions, since imminent threats of environmental damage are easier to prevent than to repair.

Economic operators operating on the basis of an environmental agreement or authorization will be required to take all necessary measures to prevent any incidents with environmental consequences. Imminent threats of environmental harm will have to be reported by the operator within 2 hours of being made aware of the occurrence of such threats. The information will be transmitted by the operator, with regard to imminent threats of environmental damage, to the County Environmental Protection Agency and to the county commissioners of the National Environmental Guard, from where the activity is carried out[19].

In the case of operators covered by the Insolvency Act, the duty to inform of imminent threats of environmental harm lie with the special or judicial administrators, depending on the situation. The activity of the insolvent company is coordinated and led by the special administrator, appointed in the proceedings, under the supervision of the judicial administrator, if the right of administration has not been lifted by the opening judgment of the proceedings. In this case, the person responsible to communicate any threats of damage to the environment to the authorities is the special administrator of the company, which also directs its economic activity. The special administrator, appointed in the proceedings, is also the person responsible for taking all measures to prevent such threats of harm which may be caused to the environment.

The duty of the judicial administrator or liquidator to communicate to the authorities of any threats of damage to the environment, will be his, respectively hers, from the date of the lifting of the right of administration of the insolvent operator, respectively from the date of the opening of bankruptcy proceedings. The opening of bankruptcy proceedings of the operator has the consequence of lifting the right of administration and the appointment of a judicial liquidator, as well as stopping the company's activity in order to liquidate its assets.

We consider that the judicial liquidator appointed in bankruptcy proceedings is the person responsible for fulfilling all the obligations regulated by Article 10 (1) of the Government Emergency Ordinance No. 68/2007 on environmental liability, since he is the person designated by the Court for the representation of the insolvent company. Furthermore, the judicial liquidator is also the person responsible to take all necessary preventive measures to remove the threat to the environment.

Regarding the preventive measures necessary to avoid environmental damage taken in the context of insolvency proceedings, we consider that they are part of the company's current business and the approval of the creditors' committee is not necessary. These measures may be taken by the special administrator of the insolvent debtor, with the prior opinion of the judicial administrator.

---

[16] Law No. 554/2004, on administrative litigation, with amendments, published in M.Of. No. 1154 from 7 December 2004.

[17] Article 9 of the G.E.O. No. 68/2007 stipulates that the competent authority for the assessment of environmental damage, of an imminent threat of such damage and the identification of the operator responsible shall be the National Environmental Guard, through the county commissariats.

[18] Article 2 (2) of Government Decision No. 1005/2012 on the organization and functioning of the Environmental Guard, with amendments, published in M.Of. No. 352 from 22 October 2012.

[19] Article 10 (1) of G.E.O. No. 68/2007 stipulates that in the event of an imminent threat of environmental damage, the operator shall immediately take the necessary preventive measures and, within 2 hours of becoming aware of the threat, inform the County Environmental Protection Agency and the county commissariat of the National Environmental Guard.

Preventive measures, in insolvency proceedings, for which costs cannot be covered by the insolvent company, can be requested from the creditors by the judicial administrator by holding a general meeting of the creditors, organized by the judicial administrator. If such a request is approved, creditors who have incurred the costs of the preventive measures can take precedence in recovering the allocated money and may even request to have a charge be born on certain assets of the insolvent debtor.

What must be mentioned is that the nature of the obligation, which the operator must comply with in order to prevent an imminent threat of environmental damage, is a personal one. The County Environmental Protection Agency may force the operator to do something or abstain from certain activities in order to prevent environmental damage in the event of such an imminent threat.

In the case of companies covered by Law No. 85/2014 on insolvency prevention and insolvency procedures, the County Environmental Protection Agencies may order the operator represented by a special or judicial administrator, to take certain measures to prevent possible environmental damage, as it deems appropriate. The responsibility for carrying out these measures lies primarily with the person who carries out the company's business, i.e. the special administrator, in the case in which the right of administration has not been lifted by the Syndic Judge.

Enforcement in insolvency proceedings is not possible, so the only possibility for the County Environmental Protection Agency for compelling the debtor to carry out preventive measures in order to avoid environmental damage remains the request that he can put forward to the Syndic Judge. By analyzing the request of the County Environmental Protection Agency, the judicial administrator may find that the request is well founded and request the Judge to order the debtor to fulfil his obligations.

The preventive measures which any operator must take need to be proportional to the threat, with the main aim being the avoiding of environmental damage. These measures will be taken in accordance with the precautionary principle in decision-making[20].

This principle seeks to prevent irreversible decisions with the purpose of avoiding any form of pollution. It also is a principle of anticipating any alleged damage even if it is not unquestionably demonstrated. If the risk of environmental degradation exists or is plausible, then the precautionary principle is activated to protect the environment.

In the event of an imminent threat of environmental damage, in which preventive measures have been taken, which have been proved to be ineffective, the operator must notify the County Environmental Protection Agency and the county commissariat of the National Environmental Guard in order for new preventive measures to be established.[21]

The County Environmental Protection Agency can request the operator to provide information on any imminent threat of environmental damage. The County Environmental Protection Agency can also request information from operators whenever it considers that there may be threats of environmental damage.

In the event that a threat is found by the County Environmental Protection Agency, it can request the operator to take the necessary measures to prevent environmental damage. The County Environmental Protection Agency may also direct the operator in choosing the best approach in order to prevent imminent environmental damage, but it may also take the necessary preventive measures on its own[22], with the costs being incurred by the operator's estate.[23]

In case of operators that are debtors in insolvency proceedings, requests from public authorities for the protection of the environment will have to be communicated at both the company's headquarter and at the headquarter of the judicial administrator or liquidator. Any requests for information or measures taken by public authorities for the protection of the environment will have to be communicated to judicial administrators or liquidators as the insolvency proceedings of the operator are supervised or even run by the insolvency practitioner appointed by the Court.

The County Environmental Protection Agency has the legal possibility to take the necessary preventive measures in order to avoid environmental damage, but only after these preventive measures have been requested from the operator, which remained passive and has not complied with the request. In general, the operator is the person entitled to take all the preventive measures necessary in order to avoid environmental damage. If the operator does not take any measure, the County Environmental Protection Agency will have to

[20] Article 10 (3) of G.E.O. No. 68/2007 stipulates that the preventive measures referred to in paragraph (1) must be proportionate to the imminent threat and lead to the avoidance of the damage, taking into account the precautionary principle in decision-making.

[21] Article 10 (5) of G.E.O. No. 68/2007 stipulates that if the imminent threat persists despite the preventive measures taken, the operator shall inform, within 6 hours from the moment it has observed the ineffectiveness of the measures taken, the County Environmental Protection Agency and the county commissariat of the National Environmental Guard of: a) the measures taken to prevent the damages; (b) the evolution of the situation following the application of the preventive measures; c) other additional measures necessary to be taken to prevent the deterioration of the situation, depending on the facts.

[22] Article 11 of the Government Emergency Ordinance No. 68/2007 provides that at any time the County Environmental Protection Agency may exercise the following powers: (a) to require the operator to provide information on any imminent threat of environmental damage or any suspected case of imminent threat; (b) ask the operator to take the necessary preventive measures; (c) give the operator instructions on the preventive measures needed to be taken; (d) take the necessary preventive measures.

[23] Article 26 of G.E.O. No. 68/2007 stipulates that the operator incurs the costs of the preventive and remedial actions, including the situations in which these costs were forwarded by the County Environmental Protection Agency.

take preventive measures in its stead, with the costs being incurred by the operator's estate[24].

We consider that companies covered by Law No. 85/2014 on insolvency prevention and insolvency procedures, the County Environmental Protection Agency can request the operator to take certain measures to prevent an imminent threat of environmental damage, without any limitation. If the County Environmental Protection Agency requests the insolvent operator to take certain preventive measures, the operator is required to comply with them, and if the measures exceed the current activity of the operator, the insolvent debtor will have to request, pursuant to Article 87 (2) of Law No. 85/2014, the approval of the creditors' committee. After the meeting of the creditors' committee has taken place, the judicial administrator will authorize the submitted preventive measures to be carried out by the special administrator of the debtor[25].

If the operator's right of administration is lifted, following the approval by the creditors' committee of the proposed preventive measures, the judicial administrator will be the one to carry out all proposed and approved operations.

Paragraph 2 of Article 12 of the Government Emergency Ordinance No. 68/2007 with regard to preventing and remedying environmental damage stipulates three exceptions in which the head of the County Environmental Protection Agency may take preventive measures:

"(a) has not fulfilled the obligations stipulated in Article 10 (1) or has not complied with the provisions of Article 11(b) or (c);

(b) cannot be identified;

(c) is not required to incur the costs under this Emergency Ordinance."

Whereas for the cases referred to in points (b) and (c) the situation is simple, and the head of the County Environmental Protection Agency can decide to take preventive measures much more easily, in case of operators which have not complied, although they have been requested to take preventive measures, the decision to advance the necessary costs for taking preventive actions by the Agency will always have to be justified. One of the risks that will have to be accounted for in taking these decisions is the possibility that the County Environmental Protection Agency will not be able to recover the expenditures made in order to take the preventive measures in place of the operator.

We consider that a high risk for non-compliance with the provisions of the County Environmental Protection Agency comes from those operators who are on the verge of insolvency or against whom insolvency proceedings have already been opened.

The heads of the County Environmental Protection Agencies should pay close attention to these types of insolvent operators, since any action to prevent environmental damage requires that the operator allocate a certain amount of money, which is usually not earmarked. If the operator fails to fulfil its obligations to take preventive measures in the event of imminent environmental damage, the County Environmental Protection Agency will be able to carry out these measures, at the operator's expense.

Unfortunately, Law No. 85/2014 on insolvency prevention and insolvency procedures does not have any stipulations that require the debtor to prioritize, in any way, the fulfilment of environmental obligations, even if they are actions in order to prevent the imminent damage which may be caused to the environment. The insolvent company operates, in accordance with the Code on classification of activities in the National Economy, from the opening of the insolvency proceedings until the eventual opening of bankruptcy proceedings, when its activity will be preserved, and the assets recovered. Preventive measures, in the case of companies covered by the Insolvency Law, are often transactions that exceed the debtor's current activity, which, to be carried out, require the meeting if the creditors' committee.

Government Emergency Ordinance No. 68/2007 regarding preventing and remedying environmental damage, stipulates that in the event of imminent threats of environmental damage, the operator is required to take the necessary preventive measures within 2 hours. In the case of insolvent operators, the taking of such measures would not be feasible, considering that the judicial administrator would have to present the measures that were taken to the creditors' committee, as required.

Considering that the creditors' committee can be convoked by the judicial administrator after at least 5 days from the date on which the notice appears in the Insolvency Proceedings Bulletin, meaning that the 2-hour deadline can never be met. In these circumstances, the operator cannot take the necessary preventive measures on the grounds that he does not have the

[24] Article 12 of G.E.O. No. 68/2007 states that, before carrying out the tasks referred to in Article 11 (d), the head of the County Environmental Protection Agency will request that the operator take preventive measures. (2) By way of exception to the provisions of paragraph 1, the head of the County Environmental Protection Agency may take the necessary preventive measures in case the operator: (a) has not fulfilled the obligations stated by Article 10 (1) or has not complied with the provisions of Article 11 (b) or (c); (b) cannot be identified; c) is not required to incur the costs under this G.E.O.

[25] Actions, processes and payments which exceed the conditions stipulated by paragraph (1) can be authorized in the exercise of the supervisory powers by the judicial administrator; the judicial administrator will convoke a meeting of the creditors' committee in order for the committee to cast a vote on the request of the special administrator for approval, within 5 days from the date of its receipt. If a particular operation exceeding the current activity is recommended by the judicial administrator and the proposal is approved by the creditors' committee, it will be carried out by the special administrator. If the activity is conducted by the judicial administrator, the operation will be carried out by him with the approval of the creditors' committee, without the need for the special administrator's request, in accordance with Article 87 (2) of Law No. 85/2014 on insolvency prevention and insolvency procedures, with amendments.

opinions of the judicial administrator and the creditors' committee.

This being the case, we propose a harmonization of the provisions of the Government Emergency Ordinance No. 68/2007 Law No. 85/2014, by introducing an article, which would enable quick and essential decisions to be taken to prevent an imminent threat of damage to the environment. This article would provide the right of the judicial administrator or liquidator to take the necessary measures to prevent an environmental threat without the approval of any other body, such as the creditors' committee.

We also consider that Article 5 (2) of Law No. 85/2014 could be amended to ensure that the current activity also includes any acts made to prevent environmental damage. Thus, by lege ferenda, Article 5 (2) of Law No. 85/2014 should also contain a letter (d), its content being as follows:[26]

(d) ensuring that obligations to prevent imminent threats of environmental damage are fulfilled.

We consider that the introduction of this obligation in the debtor's current activity will make it possible for the debtor to comply with all the deadlines stipulated by Government Emergency Ordinance No. 68/2007 without the need to obtain a prior opinion from the creditors' committee.

Such actions constitute a concrete expression of the principle of preventive action, based on a practical element, *i.e.* the prevention of environmental degradation through actions with polluting potential.

By amending the definition of "current activity" measures to prevent environmental damage, one can avoid the sanctions stipulated by Government Emergency Ordinance No. 68/2007.[27]

References

- D. Anghel - *Legal liability regarding environmental protection*, Universul Juridic Publishing House, Bucharest, 2010;
- D. Marinescu, M.C. Petre – *Treaty on Environmental Law*, ed. V, Universul Juridic Publishing House, Bucharest, 2014;
- M. Dutu, A. Dutu – *Environmental law*, ed. IV, C. H. Beck Publishing House, Bucharest, 2014;
- A. Drago, Preface to the work of P. Girod, *La reparation domage ecologic*, These, Paris 1974;
- Commercial Law Magazine No. 9/2006;
- Law No. 31/1990, company law, republished in Official Journal no. 1066 of November 17th, 2004;
- Law No. 85/2014 on insolvency and insolvency prevention procedures published in Official Journal No. 466 of June 25th, 2014;
- Law No. 19/2008 for the approval of G.E.O. No. 68/2007 on environmental liability published in Official Journal No. 170 of March 5th, 2008;
- G.E.O. No. 195/2005 on environmental protection published in Official Journal No. 1196 of December 30th, 2005;
- G.E.O. No. 68/2007 on environmental liability published in Official Journal No. 466 of June 29th, 2007;
- G.D. No. 731/2004 for the approval of the National Strategy on the protection of the atmosphere published in Official Journal No. 496/2004;
- Statute on organizing and exercising the profession of insolvency practitioner republished in Official Journal No. 712/16.08.2018.

[26] Article 5 (2) of Law No. 85/2014 on insolvency prevention and insolvency procedures, as amended, states that current activities represent those activities of production, trade or providal of services and financial transactions, proposed to be carried out by the debtor during the observation period and during the reorganization period, in the normal course of his activity, such as: (a) the continuation of contracted activities and the conclusion of new contracts, according to the object of activity; (b) the carrying out of collection operations and payments relating to them; (c) ensuring the financing of the work capital, within current limits.

[27] Article 40 (1) of G.E.O. No. 68/2007 states that (1) The following actions constitute infringements and shall be punished as follows: (a) failure to comply with the provisions of Article 7 (2) and Article 10 (5) with a fine of between 5.000 lei and 10.000 lei for individuals and between 10.000 lei and 20.000 lei for legal persons; (b) failure to comply with the provisions of Article 10 (1) second part, 13 and 14 (1) (a) with a fine of between 25.000 lei and 40.000 lei for individuals and between 50.000 lei and 80.000 lei for legal persons; (c) failure to comply with the provisions of Article 7 (3), Article 10 (1) first part, and 17 (1) with a fine of between 40.000 lei and 50.000 lei for individuals and between 80.000 lei and 100.000 lei for legal persons; (d) failure to comply with the provisions of Articles 11 (a) to (c) and 15 (a) to (d) with a fine of between 40.000 lei and 50.000 lei for individuals and between 80.000 lei and 100.000 lei for legal persons.