DAMAGE – CONSTITUTIVE ELEMENT OF TORT LIABILITY IN ENVIRONMENTAL LAW

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Abstract:
In order to discuss about tort liability, several conditions need to exist: the illicit act, damage, causal link between the illicit act and damage, and last but not least, illicit offender fault. Thus, the damage is a sine qua non condition of tort liability, the illicit act being necessary but insufficient for its employment. Damage was defined as the harmful result, with a patrimonial or a non patrimonial nature, a result of violations of subjective rights and legitimate interests of an individual. It is known that the patrimonial damage does not present special discussions, but in terms of non patrimonial damage is required to be made a few observations. In the expression of environmental damage caused by pollution, it is used phrases like "environmental damage" or "environmental prejudice" including both the damages suffered by the natural environment through pollution as well as those incurred by the person or property, other than those in natural environment. In this paper we propose to analyze the environmental damage with special attention on the non patrimonial damage, both theoretically, but also in terms of jurisprudence.

Key-words: *damage, tort liability, environment, patrimonial, non-patrimonial.*

1. Introduction

Damage is the sine qua non condition for tort liability[1]; the unlawful act is necessary, but insufficient for its involvement[2].

Thus, damage was defined as the damaging result, of pecuniary or non-pecuniary nature, a result of violations of subjective rights and legitimate interests of an individual[3].

There are several types of damage, their classification being made according to several criteria[4]. With regard to the first criterion, *after the intrinsic nature of loss*, losses are divided into pecuniary and non-pecuniary. *The pecuniary loss (material)* is the most common and can be measured in money, such as: destruction of property, killing an animal, a person's health injury followed by decrease or loss of the working capacity etc. *The non-pecuniary loss (moral)* can not be measured in money, resulting from prejudices and violations of non-pecuniary rights: death, physical and mental pain, harm caused to the physical harmony or appearance of a person, reducing the human being's possibilities to enjoy life's pleasures and joys etc.

The second criterion for classification is *after the way an injury can affect the human being or just his assets. Injuries caused directly to the human person* are also classified, after the human personality criterion, as it follows: bodily injury, caused to the physical personality: physical and psychological pain (the monetary compensation for such harm is also called *pretium doloris*), recreational injury (consisting of the loss or restriction of the human being's opportunities to enjoy the normal joys and pleasures of life), aesthetic injury – damage done to the physical harmony and

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[1] Ion Dogaru, Pompil Draghici, *Romanian Civil Law. Treaty. Vol. III. The general theory of obligations*, (Brasov: Omnia UNI S.A.S.T. Publishing House, 1998), p. 193.

[2] Ernest Lupan, *Civil Liability*, (Cluj-Napoca: Accent Publishing House, 2003), p. 72.

[3] Ioan Albu, Victor Ursa, *Civil liability for moral damages*, (Cluj-Napoca: Dacia Publishing House, 1979), p. 29.

[4] Ernest Lupan, *Civil liability* ..., p. 73-76; Ion Dogaru, Pompil Draghici, *op. cit*., p. 196-197.

appearance caused to a person (the compensation is called *price of beauty*[5]); damage to the affective personality: the death of a close relative, death of an animal, etc., damage caused to the social personality: honour, dignity etc. *The damage caused directly to assets* may appear under two forms: damage caused to public property, damage caused to private property.

The third criterion is *related to the possibility of predicting the moment of damage*, and they are divided into predictable and unpredictable. *The predictable damages* are those harmful consequences that could have been foreseen at the moment of committing the illegal act. *The unpredictable damages* could not have been foreseen at the moment of committing the illegal act.

Finally, the last criterion for classification is related *to their occurrence length* and distinguishes between instant damages and successive damages. *The instant damages* are harmful consequences that occur suddenly or in a very short period of time. *The successive damages* occur continuously or in a long period of time.

Going back to the first criterion for classification, it is known that the pecuniary loss does not involve particular aspects; on the other hand, a few observations are required to be made on the non-pecuniary loss. According to the specialized literature[6], the tort liability for non-pecuniary loss has existed since the Roman law when the victim of the crime of writing and saying outrageous words, or of gestures and actions defamatory or contrary to morality was provided by law with her own action, *actio iniuriaro.*

The modern civil law settles in a differential manner, the tort liability for non- pecuniary losses: *Swiss and German law* recognizes tort liability for non-pecuniary losses only in cases provided by law; in the *common law* system, the law does not cover such liability, but it is widely accepted judicially; *in French and Romanian law*, the tort liability for non-pecuniary losses was judicially admitted due to some express legal texts[7].

Regarding the expression for environmental damage caused by pollution, phrases like "environmental damage" or "ecological damage" are being used, and they include both damages suffered by the natural environment, through pollution as well as those damages incurred by the person or property, other than those from the natural environment. The term of "environmental damage" was first used by Michel Despaux to reveal the particular features of indirect damages resulting from harming the environmental quality, especially if it envisages that the damage caused to some of the environment natural components spreads and influences other environmental components[8].

A controversy was born on the question who is the victim of ecological damage? The environment or the man? Most authors say it is about people and property damage caused by the environment, in which they are located, and other authors, who are fewer, state that environmental damage can only be considered the harm caused by man, to the environment.

In this regard, a clarification initially made by other specialists in the field[9], to which we join, should be made, namely, the emergence of damage represents the general foundation for the right to compensation of the holder of environmental factor, namely the polluter's obligation to pay compensation for environmental damage caused by pollution.

Regarding the definition of environmental damage, it should be noted that a complete and accurate definition of this notion is missing from traditional environment sources. Romanian legislature has attempted a definition which, unfortunately, as we shall see below, does not actually cover all the damage caused by environmental pollution, in general.

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[5] Ernest Lupan, *Civil liability* ..., p. 75-76

[6] Ion Dogaru, Pompil Draghici, *op. cit*., p. 197-198.

[7] *Idem.*

[8] Ernest Lupan, "On the legal concept of environmental damage", "Dreptul" Review, no. 3 (2003), p. 78.

[9] *Idem*, p. 78-79; Ernest Lupan, "The pollution victim's right to compensation", "Dreptul" Review, no. 9 (2002), p. 69 et seq.

Thus, Environmental Protection Law no. 137/1995 was the first legal text that defined the environmental damage as "the measurable effect in cost of damage on human health, property or environment caused by pollutants, harmful activities or disasters", in Annex nr. 1. Subsequently, Government Emergency Ordinance no. 195/2005 resumed in art. 1, the definition of environmental damage without any improvement. *In this respect, we believe that the suggestion of ferenda law of an addition, in a future regulation, to the definition of environmental damage, in order to eliminate the existing confusion in theory and in practice is entitled.*

We detach the following characteristics from the definition given by the legislation in force[10]: it is about expressing the value of consequences of damages caused; damage can be done to human health, goods of any kind or to the environment; damages are the negative consequences of pollutants, harmful activities or disasters.

An observation[11] is required to be made: the effect of the value of environmental damage is indeed measurable, but this measurement is not always real, knowing the fact that the damage dimension does not come to light immediately.

Before further analysis of the environmental damages, a comparison between the notion of "civil damage" and "environmental damage" is required to be made:

- first, the civil law protects the subjective rights of individuals; the environment can not be protected by civil means. A form of protection is, however, ensured, most negative effects on the environment resulting in violations of civil rights, such as the right to property or the right to health;
- the task of civil law is to restore the situation previous to causing the damage, focusing rather on *restitutio* than on prevention, which characterizes environmental law;
- in environmental law, the categories of *damnum emergens* (Latin expression that means an element of the prejudice, the actual damage. In its totality, the damage includes both the actual loss, but also the lack of gain or benefit that the creditor of the obligation or the injured person would have achieved if no illegal act had occurred) and of *lucrum cessans* (Latin expression used to designate part of the prejudice which consists of the legitimate gain or benefit unrealized by a person as a result of failure or improper fulfilment of obligations assumed by another person or of the committing, by that person, of illegal acts. According to a fundamental principle from the civil liability field, compensation should cover the actual damage, damnum emergens and lucrum cessans) are not sufficient to determine the concept of damage, knowing that the environmental damage can be the outcome of a long process and can occur immediately and permanently or irreparably or only in the future.

2. Categories of environmental damages

The environmental damage consists of damage of primary origin or damage of secondary origin[12]. Thus, *the damage of primary origin* is the one caused to material values, having a real character (it prejudices the pecuniary interests of persons and may consist of losses in the agricultural production, the death of animals for production, destruction of plantations, etc.). *The damage of secondary origin* is the result of primary damage caused to the environment, appearing as losses of physiological, moral, genetic nature etc.

With regard to environmental damage, in Romanian environmental law, one can distinguish the following categories: environmental damage assessed and repaired; predictable environmental damage and acceptable or permitted environmental damage.

[10] Ernest Lupan, *On the legal* ..., p. 79.
[11] *Idem*, p. 79-80.
[12] Ernest Lupan, On *the legal* ..., p. 85-86.

3. Conditions for the pecuniary loss

Regarding the first condition, in environmental law, just as in civil law, the damage must be *certain*, its existence must be beyond doubt and it must be evaluated at present. Certain are, however, not only *the actual damages, but also the future ones*, if there is certainty that they will occur and if there are the necessary elements to determine their dimension.

If the whole extent of the damage can not be know (which happens most often when it comes to environmental pollution or its components), the court order will be limited only to the repair of the damage found with certainty; the Court can also subsequently go back on the order and give the entire reparation for all damage arising after the ruling, under the only condition to prove that it comes from the same act. The natural or legal person responsible for the damage will be compelled to repair it and to pay the costs of removing its consequences in order to restore the previous situation[13].

The second condition for pecuniary damage is for it *not to be repaired*, because otherwise, the civil liability ceases.

Finally, the third condition is for the damage to be direct, occurring as a direct consequence of the act by which is connected through a causal relation; otherwise, the damage goes outside the scope of tort liability[14].

4. The repair of environmental damages

The repair of environmental damages is driven by a set of principles, as it follows[15]:

The first principle concerns the *polluter's legal obligation to pay compensation* for covering the environmental damage caused, and is accomplished through the "polluter pays" principle, and if the polluter is not a person, compensation expenses are paid of funds specially created for this purpose, at national level.

The second principle refers to the *total compensation for the environmental damage caused* by using different methods to assess the damage (the judicial evaluation, the legal contractual evaluation, the administrative evaluation)[16].

The joint compensation in case of multiple authors of the damage is the third principle.

The fourth principle according to which *the environmental damage is repaired regardless of the polluter's fault*, ensures and guarantees the obligation of any natural or legal person, guilty or not to restore the polluted environment, not only in the case of damage caused by high-risk sources.

5. The repair of non- pecuniary losses from the environment field

It is known the fact that environmental degradation through pollution may be the source of pecuniary losses, but also of non-pecuniary losses resulting from the breach of the right to privacy[17].

Thus, the European Convention on Human Rights (adopted at Rome on the 4th of November 1950, and entered into force in September 1953, document through which the first steps were taken in order to ensure the guarantee of some of the rights enumerated in the Universal Declaration of Human Rights from December 1948) indirectly guarantees the right to a healthy environment. This

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[13] Daniela Marinescu, *Environmental Law Treaty*, Third Edition revised and enlarged, (Bucharest: Universul Juridic Publishing House, 2008), p. 657.

[14] Ion Dogaru, Pompil Draghici, *op. cit*., p. 208.

[15] Ernest Lupan, *On the legal* ..., p. 86-87.

[16] For more details on damage assessment, see Simona Maya Teodoroiu, *The law of the environment and of sustainable development*, (Bucharest: Universul Juridic Publishing House, 2009), p. 205-208.

[17] Călina Jugastru, *The repair of non-pecuniary losses*, (Bucharest: Lumina Lex Publishing House, 2001), p.289.

right is considered, by a part of the legal specialized literature, as part of the third generation of human rights, called solidarity rights, next to the right to peace, the right to development etc.[18] , which however does not enjoy of an express dedication in the Convention. Given the importance of this right, the European Court of Human Rights has used the technique of "indirect protection" that has allowed the extension of the protection of some rights guaranteed by the Convention to rights which are not contained therein. Thus, through a broad interpretation of the scope of rights expressly stipulated by the Convention, the right to a healthy environment has been put next to the right to privacy, being considered a component of this right, leading, thus to the indirect protection of the right to environment.

The European Convention on Human Rights (the Convention) does not include in its articles or Protocols, the phrase "environment" or "right to a healthy environment". But, looking back at the moment of adopting the Convention (Rome, 1950), environmental issues were not a significant concern and industrial development did not pose serious problems for the environment. Under these conditions, the right to environment might be considered as not being part of the category of rights and freedoms guaranteed by the Convention[19].

According to theorists[20], the Convention was created as a result of atrocities committed during the Second World War, in an attempt to ensure human dignity and to support a true European Constitutional Charter, formulating in its content, individual rights to protect man's moral and physical integrity and freedoms; for this reason, the Convention editors were not concerned about the environment, at that time.

The interest in environmental issues emerged much later, namely, in 1972 during the first United Nations World Conference held in Stockholm. This was the first global environmental conference, attended by delegates from 114 countries. As it is known[21], the most important document adopted at the Conference is the "Declaration on the environment" in which 26 principles on states rights and obligations in that area and developing means of international cooperation were established. The importance of the document is that it explicitly stated for the first time, the connection between environmental protection and human rights. Thus, Principle 1 of the document states that: *"The man has the fundamental right to freedom, equality and satisfactory living conditions in a quality environment, which allows him to live with dignity and prosperity. He has the sacred duty to protect and improve the environment for present and future generations (...)"*[22]. But as stated above, the document establishes a relation between human rights and environmental protection, the quality of the latter being a key factor to ensure satisfactory living conditions, but, nevertheless, does not recognize directly a right to environment. Another novelty is that through this document, the grounds for the development of international environmental law have been set up.

After two decades from the first global environmental conference, despite the results achieved in terms of international cooperation, the planet's environment continued to deteriorate in a general manner[23], requiring a new measure, namely, the second United Nations Conference on Environment and Development held in Rio de Janeiro, in 1992 (during the second United Nations Conference on Environment and Development, a series of documents have been adopted, such as : the Rio Declaration on Environment and Development (Earth Charter), Agenda 21, the Convention on

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[18] Corneliu Bîrsan, *The European Convention on Human Rights. Comment on articles,* Volume I: *Rights and Liberties*, (Bucharest: All Beck Publishing House, 2005), p. 32.

[19] Doinița-Luminița Nițu, "The right to environment", "Themis" Magazine - Magazine of the National Institute of Magistracy no. 3 (2005), p. 47.

[20] Corneliu Bîrsan, *The protection of the right to private and family life, home and correspondence in the European Convention on Human Rights*, "Romanian Pandects" magazine no. 1 (2003), p. 28.

[21] Daniela Marinescu, *op. cit*., p. 18.

[22] Dumitra Popescu, Mircea I. Popescu, *Environmental Law. Documents and international treaties*, Vol I, (Bucharest: Artprint Publishing House, 2002), p. 62.

[23] Mircea Duțu, *International Environmental Law*, (Bucharest: Economic Publishing House, 2004), p. 59.

Climate Change, the Convention on Biological Diversity and the Declaration of Principles on the conservation and exploitation of forests).

Although, through the Rio Declaration, no progress was made in the recognition of the material right to a healthy environment, the document is important because its provisions enshrine a number of procedural rights that are considered derived from the material right to environment: the right to access to environmental information, the public participation in the decision-making process and the access to justice in environmental matters[24].

However, the first international legal instrument specifically consecrating the right to environment was adopted during the Conference of the Organization of African Unity (now African Union, successor of the Organization of African Unity, founded in July 2002. The African Union is modelled after the European Union, its purposes being to promote democracy, human rights and development on the African continent), as "the African Charter on Human and Peoples Rights, a regional document, which in art. 24 provided that *"all peoples have the right to a general environment, satisfactory and favourable to their development"*. The document is especially important since it comes from a cooperative structure belonging to third world countries which, due to socio-economic difficulties do not give priority to environmental concerns[25].

Continuing the regional line of adopting some legal instruments enshrining the right to environment, we focus our attention on the "Additional Protocol" of the American Convention on Human Rights, adopted at San Salvador on the 17th of November 1998, on economic, social and cultural rights, which in art. 11, para. 1 recognizes the right to a healthy environment adding that *"everyone has the right to live in a healthy environment and to benefit from essential public services* (art. 11, para. 2)", but also states the obligation to *"promote the protection, preservation and improvement of the environment"* (art. 11, para. 2).

The Convention on the access to information, public participation in the decision- making process and the access to justice in environmental matters, signed at Aarhus on the 25th of June 1998 (ratified by Romania, by Law nr. 86 of May 10, 2000) brings an important contribution to affirming the legitimacy of the right to a healthy environment at European level[26], being particularly important due to the fact that it recognizes even from the preamble that *"everyone has the right to live in an environment adequate to his health and welfare* (…)[27]" and believes *"that to be (...) able to maintain this right, citizens must have access to information, be entitled to participate to the decision- making process and to have access to justice in environmental matters* (...)[28]. Also, the Convention believes that a better access to information contributes to public awareness of environmental issues.

As for the scope of legitimacy of the right to a healthy environment, three such situations are provided in the contents of the Convention, more specifically in article 9 (Access to justice): the access to justice in order to ensure procedural access to information, the access to justice for ensuring public participation in environmental decisions and the access to administrative or judicial procedures to challenge acts or omissions of private persons and public authorities which contravene to provisions of the national legislation on the environment.

Because after the first UN Conference held in Stockholm in 1972, to which we referred at the beginning of the chapter, the procedural guarantee of the right to a healthy environment and its recognition as independent right has penetrated the common constitutional traditions, from that moment on, all European constitutions have undergone reviews or have been replaced, by the insertion of provisions relating to that right considered of new generation; we consider of utmost

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[24] Doiniţa-Luminia Nițu, *op. cit*., p. 45.
[25] Daniela Marinescu, *op. cit*., p. 393.
[26] Mircea Duțu, *Treaty of Environmental Law*, 3rd Edition, (Bucharest: C.H. Beck Publishing House, 2007), p. 327.
[27] Dumitra Popescu, Mircea I. Popescu, *op. cit*., p. 121.
[28] *Ibidem.*

importance also Community provisions of the Treaty of Maastricht from 1995, which states that *"The Union recognizes the fundamental human rights, as guaranteed by the European Convention of Rome (1950), and resulting from the constitutional traditions common to Member States, as well as from the general principles of Community law"* recognizing, by indirect reference, the fundamental right to environment within human rights recognized and guaranteed in the Community judicial order[29].

As a conclusion to the above, we agree with the assessment of authors of the specialized literature[30] who consider that, in virtue of the fact that there is no legal document in the European Community, to enshrine and guarantee the fundamental right to environment, this right receives, however, the status of an essential component of the constitutional traditions of European countries.

Below, we shall present some decisions that concern the violation of article 8 of the Convention, and hence of the fundamental human right to a healthy environment.

The first case to which we shall make reference is Moreno Gomez v. Spain[31] (2004). The plaintiff has been living since 1970 in a residential area in Valencia. From 1974, Valencia City Council has granted authorizations for the opening of bars, pubs and discos in the neighbourhood where the applicant resides, making it impossible for the inhabitants of that neighbourhood to sleep. The first complaint of neighbourhood residents was related to vandalism and noise, before 1980. With regard to the problem caused by noise, in 1983, Valencia City Council took the decision to grant no more authorizations for opening new nightclubs in the area. However, the measure was never implemented, and new authorizations are still being released. In settling the case, the Court finds that the exceeding of the maximum level of noise in the area has been found several times by the municipal services, so it does not consider necessary to claim an inhabitant of the area to prove what is already officially known by the mayor. Given the intensity of noise, beyond the level permitted at night, as well as the fact that this state has been repeatedly happening for several years, the Court concludes that there has been a breach of rights protected by art. 8. The administration has adopted general measures, but tolerated the infringement of rules imposed; the plaintiff has suffered a serious violation of her right to respect for home, because of local government passivity to nocturnal noises. For this reason, the Court finds that the respondent State did not fulfil its positive obligation to ensure the plaintiff's right to respect for home and private life, therefore, art. 8 of the Convention has been violated[32].

The second case is represented by Giacomelli v. Italy[33] (2006). The plaintiff has been living since 1950 near a factory that has as activity object, the storage and treatment of "special waste", variously described as either toxic or non-toxic. The factory started its activity in 1982. Since then, the plaintiff has requested several times to the Court to reconsider the authorization given to the factory. Even the Ministry of Environment found, in 2000 and 2001 that the factory functioning endangered the health of people who lived in the nearby. Other competent authorities reached the same conclusions. In December 2002, the local council moved temporarily the plaintiff's family together with other families, until the end of the lawsuit in which the factory was involved. In 2003, at the plaintiff's request, the administrative Court ruled that the decision to reopen the factory activity was illegal and must be cancelled, sentencing at the same time the temporary suspension of the factory activity. However, the decision was never implemented, and in 2004 the Ministry of Environment issued a favourable assent for further work in the factory, on the condition that it changed its operating conditions, under the control and supervision of the Court. However, only after

[29] Daniela Marinescu, *op. cit*., p. 394.

[30] Ioana Dragomir, George Augustin Dragomir, "The Right to a healthy environment as general principle of Community law", "Public Law" Magazine, no. 3 (2006), p. 135.

[31] ECHR, Decision of November 16, 2004, application no. 4143/02, available on site. www.echr.coe.int

[32] Corneliu-Liviu Popescu, *The Jurisprudence of European Court of Human Rights 2004*, (Bucharest: C.H. Beck Publishing House, 2006), p. 92.

[33] ECHR, Decision of November 2nd, 2006, application no. 59909/00, available on site. www.echr.coe.int

14 years since the factory started its activity and seven years after it began to detoxify industrial waste, the Ministry requested a report on the impact of the factory activity on the environment. Consequently, the Court considers that public authorities have not fulfilled the obligations imposed by internal law and have ignored court orders establishing that the activity of the factory was illegal. Also, the Court stated that, even assuming that since 2004, the factory activity had no longer been dangerous for the lives of local people, in previous years, the state failed to fulfil its obligation to guarantee them the respect for private and family life. Therefore, the Court concludes that article 8 has been violated[34].

In its jurisprudence, the ECHR, in addition to having recognized the right to a healthy environment through the broad interpretation of the right to privacy, family and home, it has also shown that the right to an environment of a certain quality can be related to the respect for property. Thus, chronologically, in terms of material right, the issue was raised for the first time in the case Arrondelle v. England[35] (1980). In fact, the plaintiff, the owner of a pavilion situated at the extremity of the flight and landing runways of London Gatwick airport and near a highway, complained about the noise that violated her right to privacy, but also her right to respect for property, the pollution contributing to the reduction of the visiting value of her house. In this case, the Commission admitted that complaints suffered by the plaintiff were related to art. 8 of the Convention and art. 1 of Protocol nr. 1 regarding the property. In this case, the admissibility decision focuses on the individual situation of the plaintiff "whose property is so close to the airport runway, that the airplanes noise submits her, according to an inspection report of 1976, to an intolerable stress. It seems that the noise of highway M23 aggravates this situation"[36].

In the case of Baggs v. England[37] (1985) the plaintiff, Frederick William Baggs, who lived with his family in a house situated in the surroundings of London's Heathrow airport, complained of noise pollution caused by airport runways extension, which put that family in an unbearable situation, the house being located in an area of 72.5 NNI (noise metric). It should be noted that if the index exceeds 60 NNI, the administration does not issue building permits. However, the town planning service refused the plaintiff's application to classify his property as for "commercial use" in order to be able to sell it more easily and then to buy another property in a quieter area. The complaint was declared admissible, the Commission finding that, according to an official report, the situation that family Baggs had to endure was "truly deplorable and outrageous"[38].

We agree with the doctrine[39] that states that within the European system of judicial protection of human rights, the damage caused to the environment and, therefore, to individual human rights must be proved in order for them to be covered by the Convention guarantees. In other words, individuals must provide, at least a piece of evidence to support their claims, without which they could not "pretend", in terms of the Convention, to be victims of a violation of rights and freedoms guaranteed by this text.

In this regard, we focus our attention on the case Tauira v. France[40] (1995), referring to an alleged harm done to the environment, caused by the resumption of French nuclear experiments in the Pacific, in 1995. The Commission stated, among others, that the plaintiffs had not provided any document related to their health. As a result for not having any proof to support their claims, they could not pretend to be victims of any violation of the Convention. According to the Commission,

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[34] Radu Chirita, *The European Court of Human Rights. Reports of Decisions 2006*, (Bucharest: C.H. Beck Publishing House, 2007), p. 333.

[35] ECHR, Decision of July 15, 1980, application no. 7889/77, available on site. www.echr.coe.int

[36] Michelle de Salvia, "Environment and the European Convention on Human Rights", "Romanian Pandects" Magazine, no. 6 (2003), p. 164.

[37] ECHR, Decision of October 16, 1985, application no. 9310/81, available on site. www.echr.coe.int

[38] Ioana Dragomir, George Augustin Dragomir, *op. cit.*, p.137

[39] Michelle Salvia, *op. cit.*, p. 163.

[40] ECHR, Decision of December 4, 1995, application no. 28204/95, available on site. www.echr.coe.int

the mere invocation of inherent risks in the use of nuclear energy is not sufficient to allow plaintiffs to pretend that they are victims of any violation of the Convention, since a significant number of human activities are risks generators. At the same time, plaintiffs must be able to support, in a reasoned and circumstantial manner, that in the absence of adequate preventive measures taken by authorities, the degree of probability of damage occurrence is high enough to be considered as generating a violation of the right, on the condition that the criticized act does not have repercussions too distant in time[41].

6. Conclusions

We can say that the main differences between civil and environmental damage can be highlighted by the following criteria[42]: from the point of view of *the protected interest by applying the repair rules*: by repairing *the civil damage*, private rights and interests of individuals are being protected, and by repairing *the environmental damage*, the public interests of the entire society, including of persons are being protected; as for *rules by which the damage is repaired*, *the civil damage* can be recovered only upon the notification of the person suffering the injury, under the regulations on civil liability, while *the environmental damage* can be recovered after the procedure and rules of environmental law, conceived outside the idea of liability, at the request of the holder of environmental factor, non-governmental organizations, or at the request of specialized state bodies; depending on *the position of parties in the legal relations for repairing the damage, in civil law*, the parties' position is of legal equality, and *in environmental law*, the position is of subordination; as for *the possibility to renounce at the recovery of damages*, *in civil law*, the one who suffered the damage may not claim for damage recovery, but *in environmental law*, the owner of the polluted factor can not waive the recovery of the polluted environment, because this is a legal obligation; *depending on the possibility of negotiating the amount of damage caused*, as for *the civil damage,* parties are offered the possibility to negotiate the size of the damage to be repaired, while in the case of *environmental damage*, negotiating is excluded, the damage must be entirely repaired, the polluter is compelled to bear the cost of damage repair and to remove the consequences of pollution; he must also restore as much as possible, the conditions prior to the damage.

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[41] Michelle de Salvia, *op. cit*., p. 163.
[42] Ernest Lupan, *On the legal*…., p. 87-88.

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