

The Damage Caused to the Environment in the Context of the Sustainable Development of Society

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Abstract

The opportunity to use the tangible resources of our planet – water, air, subterranean depths – secure the existence of our civilization. Despite the existence of private property and the division of ownership of tangible resources between natural and legal persons, the resources required for life are objectively determined by the very life form. Any living creature needs air, water and subterranean depths. They are the common value of the mankind. The right to live in a favourable environment is recognized as the basic right of each individual, of each member of the public. A significant aspect is the high quality environment, which includes specific standards and requirements for the quality of air, water and subterranean depths. This is necessary in order to ensure the legal protection of the environment, balancing the rights of private owners and society as a whole. The protection of the environment is the subject matter of the legal framework. The key challenge for the protection of the environment is to find an opportunity to balance the economic development and the sustainable development of the environment, which is why the greatest attention should be allocated to the questions that relate to the prevention and compensation for the damage caused to the environment.

Keywords: environment, damage caused to the environment, sustainable development

1. Introduction

The increase in the population of the planet and the growth of the economic development along with the improvements of the quality of life and changes in the people's awareness of the favourable environment for life create challenges for the protection of the environment within the legal framework. This is how the logical contradiction is formed between the consumption of the environmental resources and their preservation for the next generations. Environmental rights as independent rights represent a relatively new area. The key challenges pertain to compensation for the damage caused to the environment because it is clear that the technological progress is unstoppable. Natural resources are being and will be used, which is why the objective of the legal framework is to find effective mechanisms and within the constraints of the possible is to reduce the damage caused to the environment or, if it has been caused, how to compensate for the caused damage, thus, reducing negative consequences.

The most important question for the protection of the environment within the legal framework is how to balance divergent interests of different individuals, organization and the needs and interests of society (Kudeikina: 2014).

The protection of the environment requires an interdisciplinary approach, in which private rights, public rights and international rights should be reflected as a specific rights area. Therefore, the absolutism of the property rights should be aligned to the rights to the objective, fair legal procedure and state national interests.

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The legal framework for the protection of the environment is not codified. It is formed as a multilevel system of specific legal acts, including those of local authorities and national, interstate and world levels. It should be noted that the procedural order and liability for the damage caused to the environment are regulated by state national legal acts.

In Latvia, the national basic legal act that includes the material legal norms is the Environmental Protection Law (Environmental Protection Law: 2006). Important legal instruments are provided by the legal area of the European Union. The legal framework covers important components of the environment protection – climate change, air pollution, water usage, soil protection and noise reduction. Each of these components has a wide legal framework which includes specific requirements for the protection of each component of the environment.

In order to secure full operational capability of the legal framework, it is important to consider procedural framework and the mechanisms that are available to the state so that the state can hold the persons that have caused the damage to the environment accountable for their actions and to ensure compensation for the caused damage.

Each member of society and the society at large have constitutional rights to live in favourable environment. Questions of environment protection are closely linked to the sustainable development of society. In each specific case, land, air, water and natural resources are the property object of natural and legal persons, but overall, as one whole unity, the environment is the object of society interests. The protection of environment is ensured by applying civil rights, administrative and criminal legal instruments and by regulating preventive measures. In cases when preventive instruments have not yielded the expected results and the environment has sustained damage, the State applies coercive measures in order to punish the guilty, prevent or compensate for the incurred damage.

This research focuses on issues that relate to preventing the damage to the environment and compensation issues as well as determining the volume of the caused damage and limitation boundaries. The researched issues are interdisciplinary and require the systematic approach.

Using these methods, legal acts and views of legal scientists were reviewed and analyzed, and subsequently conclusions and recommendations were made.

2. Research

A feature of the environment protection measures is such that these measures form a multilevel system. The first level includes preventive measures that focus on that human activities affecting the environment should be as environmentally friendly as possible, thus, leading to minimal environment transformations. The real life, rights doctrine and legal framework have secured the basic principles – “the polluter pays”, the precautionary principle, the prevention principle and the assessment principle. These principles are generally recognized and do not require comments. It should be stressed that a supporting view has been expressed by Prof. Christopher P. Rodgers, who has indicated that many contemporary problems are linked to the rights of the owner of the environmental object. These rights are referred to in the legal provisions on property

protection and in the environment regulating rights, which in turn constraints the rights of the owner, which is done to protect society interests in the protection of the environment (Christopher P.Rodgers: 2013).

The next level of the environment protection contains information on compensation of the damage caused to the environment. In cases when preventive instruments have not yielded the expected results and the environment has sustained damage, legal liabilities, such as civil, administrative and criminal, are applied. Thus, the state has a wide range of instruments to punish the guilty person and recover fair compensation for the caused damage. The compensation for the damage is an interdisciplinary rights institute. The compensation for the damage is feasible within the civil legal, administrative and criminal procedure frameworks. Each of these procedures will differ from another only based on the applied mechanisms of proof.

A similar view is expressed in scientific literature. It is pointed out that the damage to the environment can be compensated in three ways by applying: 1) the administrative legal act that requires the guilty person to eliminate the caused damage, 2) the civil procedural order consistently with which the court passes the decision on recovery, 3) the regressive way when the state or the local authority eliminates the damage using own resources and when subsequently they demand the compensation for the elimination activities from the guilty person (Брославский: 2014).

The damage represents negative effects that have been caused to the environmental object, specifically, to water, air, soil or the environment overall. This follows from the grammatical translation of the concept (Akadēmiskā terminu datu bāze: 2019). In turn, the legal coverage is determined by Article 1 of the Environmental Protection Law (Environmental Protection Law: 2006). Having analysed the concept of this damage, it can be concluded that its components are formed by the following traits: transformation or pollution, devastation and other significant unfavorable changes that have been determined by quantitative and qualitative methods. The damage is a broader concept than the concept of losses, which are usually referred to as specific reduction of the value of property. In contrast to property reduction, not always can damage be measured as precisely as property reduction.

The objects that can sustain damage within the concept of the environment protection are the environment itself and people's health and property (On Pollution: 2001).

Environmental objects form a close system and the damage caused to one of these objects affects other objects. For example, water pollution is going to negatively affect the quality of soil and this, in turn, is going to negatively impact flora and fauna.

Yet another important aspect that must be considered when assessing the caused damage is that all the environmental objects can be divided into renewable and non-renewable ones. The former ones can be renewed, but when damage is caused to non-renewable environmental objects, its consequences are irreversible. Yet, the damage caused to non-renewable environmental objects must be assessed.

At the root of any recovery or voluntary compensation is a specific sum of money. It cannot be accepted or invented because at the root of any legal activity, especially, if it is connected to the state coercive mechanism (such as recovery), is a need for justice. Compensation must be fair. This paper agrees with the view of Aldis Laviņš, Judge of the Constitutional Court of the Republic of Latvia, consistently with which when

assessing a set of procedural actions from the justice perspective, it is important to consider the application consequences of legal norms when answering the question of whether the passed decision will be fair (Laviņš: 2018).

The compensation for the damage caused to the environment can be expressed as the renewal of the previous condition or if it is not plausible, the formation of the equivalent condition. For example, the cut tree, of course, cannot be renewed in its previous state, however, instead of it a new tree can be planted. The devastated cultural historical landscape can be neither renewed nor shaped from scratch, however, even in such cases it is important to talk about compensation for the damage as an opportunity to ensure the development of other protected environmental objects. Otherwise, ignoring already lost values, the principle of justice in law would be infringed. Each infringer of the environment protection regulations must assume legal responsibility. As is indicated in scientific literature, legal responsibility has social roots and it stems from the correlation of the individual and society needs. Legal responsibility is viewed as the responsibility for the past (Baikovs, Zariņš: 2012). In the context of the protection of the environmental rights, this conclusion takes a clear shape. Environment protection secures the sustainable development of society and therefore it is crucial for society as a whole in the present and future.

Regarding the subject of legal responsibility, it is important to follow general rules on the types of rights that can be assigned responsibility, specifically, they refer to aspects of action capacity and legal capacity. It can be any natural or legal person whose action or its lack has resulted in damage caused to the environment and which has necessary legal capacity and action capacity. Undoubtedly, it must be taken into account that in some cases there will be a special subject – a state official whose service responsibilities included specific activities aimed at protecting the environment. For example, the subject of administrative liability for violation of accounting records of natural resources and their usage, for violation of accounting records of pollutants, for providing inappropriate information or unjustified refusal to provide information on the quality of the environment is an official whose responsibilities included carrying out these activities (Latvian Administrative Violations Code: 1985).

The basis of the loss compensation is the existence of four mutually connected components – unlawful conduct of a person (actions or their lack), this person's guilt, the existence of losses (their assessment in economic terms), causal relationship between the unlawful conduct of the person and the losses. This statement is embedded in case-law (see, for example, the verdict in case SKC-190/2016 of the Civil Case Department of the Supreme Court of the Republic of Latvia).

Such specific criteria are not put forward for compensation for the caused damage. The size of compensation must include not only specific losses caused to a concrete environmental object but also negative consequences that are going to be incurred by connected objects. This makes it complicated to calculate the overall sum of the recovered or voluntarily paid amount of money and proving the causal relationship between the guilty person's actions or their lack and the consequences emerged as a result of such actions or their lack. When assessing the compensation for the caused damage in civil procedure, it is important to consider that according to Article 192 of Civil Procedure Law, the demands must precisely point to the subject of the demands

and basis of these demands (Civil Procedure Law: 1999).

Thus, the civil procedure incorporates an argument between two or more specific subjects of the private law with pertinence to the infringed rights. Regarding the damage caused to environment objects, this principle cannot be applied to full extent because the damage caused to the environmental objects concerns society as a whole or at least its part, but in any case, not just one specific person. A specific person might sustain losses, for example, through illegal cutting of trees, whereas the damage sustained by society will be viewed through the prism of deterioration of air quality. So, this specific person, the owner, has the rights to obtain compensation for the sustained losses, while the society has the rights to receive compensation for the caused damage. This is why it would not be appropriate to constrain proving in the civil procedure only to the scope of an individual's affair. Proving is a complicated, time- and resource-consuming process, in which one rights subject might not be able to ensure the required quality, for example, by not being able to obtain convincing proof and considering the fact that the civil procedure is a competition process, it might be possible to lose in the legal procedure not because the damage was not sustained but because it was not proved in legal proceedings. In this case the society as a whole might be viewed as a loser, while the guilty person might avoid liability.

Taking into account the importance of the environment protection for the sustainable development of society and specific features of compensation for the damage caused to the environment, the specialization of the review of cases of such a category should be considered. One solution might be the involvement of a prosecutor in legal proceedings. Drawing a parallel, a prosecutor participates in cases of such categories as approval of adoption, limitation of legal capacity. In addition, Paragraph 1 of Article 90 of Civil Procedure Law provides that the prosecutor has the rights to submit a claim if it is necessary for the protection of state and local authority's rights and interests, which should be conducted consistently with the law (Civil Procedure Law: 1999). The legal instrument has been provided but it is not properly used. Reviewing the data of court statistics from 2006, when the Environmental Protection Law came into force, to 2019, not a single case has been identified, when a prosecutor submitted a claim for compensation for the damage caused to the environment (ManasTiesas: 2019). Therefore, this paper agrees with the view of Prof. Broslavskis that the offence rights cannot fully secure compensation for the damage caused to the environment (Брославский: 2014). At the same time, however, it should be noted that participation of the prosecutor as a representative of the state public power in the civil procedure might be unusual, which can explain the lack of such claims.

The legal instruments of prosecutor's activities are largely connected to the criminal procedure, including application of the prosecution function (Kaija: 2018), which is why the criminal procedure might be viewed as a supported solution in specific cases on compensation for the damage caused to the environment.

A harmful offence (act or failure to act) committed deliberately (intentionally) or through negligence, provided for in Criminal Law, and for the commission of which criminal punishment is set out shall be considered a criminal offence against the environment.

Criminal offences against the environment are discussed in specific parts of Section 19 of

Criminal Law (Criminal Law: 1998). This section includes 23 clauses (clauses 96 to 115¹ of CL).

The number of criminal offences of this section committed in Latvia is relatively low compared to all other registered offences in Latvia and constitutes less than 1%. For example, in 2018 in Latvia there were 43260 registered criminal offences and of those 403 were against the environment (Kriminālā statistika: 2018).

Having analysed the available statistics (see Table 1), it has been concluded that the greatest number of all crimes committed against the environment in 2018, which were 292 crimes, were the crimes described in Clause 109 of Criminal Law (unauthorised tree cutting).

Table 1: Registered criminal offences against the environment in Latvia in 2018

XI section of CL	99	99. Part 2.102.107	108 Part 1	109 Part 1.	109 Part 2.			
In total 403	1	1	2	3	21	238	54	
110	110 Part 2.	110. Part .2¹.	112.	112 Part 2.	112. Part 3	114	115	115¹
5	1	4	34	26	8	2	1	1

The second largest group of registered offences includes unlawful hunting in accord with Clause 112 of Criminal Law (34). Other regulated offences of Section 11 of Criminal Law are rarely registered or not registered at all.

The subject of offences against the environment is usually natural objects in natural environmental contexts (this creates the value of natural objects), while the object is the interests in using the natural objects.

Considering the fact that natural objects can be someone's (of natural person, legal person, state) property (in legal terms), it is important to separate criminal offences against the environment from offences against the property. It is plausible to achieve this in two ways: considering the group of the offence of the object and the threatened subject (natural object or property) (Krastiņš: 2015); considering the circumstance, which points to the violation of usage rules consistently with the protection norms for natural objects, which can be expressed as interference into the usage rights of the owner with activities that in Criminal Law are referred to as offences against the environment.

The criminal law rules included into Section 11 of Criminal Law can be characterized by their dispositions being mostly found in other normative acts and other related rules, whose violation entails application of criminal liability and which are included into other legal acts. Depending on the content of the law violation and manifestations of the illegal activity, those rules contain descriptions of features of the objective side of specific offences. The composition of offences against the environment are mostly formed as material compositions, which are characterized by the offence (action or its lack) which creates specific harmful consequences. The severity of such consequences determines the offence classification and in some cases allows to separate the offence from the administrative punishable infringement.

3. Conclusion and Implications

As a result of this research the authors have made the following conclusions:

- 1) incurred damage to one environmental object results in passing negative effects on the related environmental objects;
- 2) with reference to the specific environmental object, the damage compensation institute is applied, whereas with pertinence to the issue related to damage prevention, the compensation institute is involved, yet in relation to the issues of related damage – the prevention institute;
- 3) the claim for prevention and compensation for the caused damage to the environment is the rights of each member of society.

Environment is a closed system, in which damage incurred by one element affects elements of other systems, which is why the damage evaluation and determination is complicated. One must evaluate not only the direct damage caused to the specific object but also to related objects. The most important issue to discuss in this context is the transition to the initial situation or condition, the one prior to the sustained damage. Therefore, the damage compensation can be realized as compensation for the direct damage and as completion of related events (for example, water cleaning, planting trees etc.). Considering the fact that every member of society has the rights to initiate the claim for the compensation for the damage caused to the environment, cooperation and help of state institutions are critically important. Procedurally the protection of society rights might be viewed through the prism of the initiation of the civil case or the case of criminal proceedings when the environment has sustained significant damage. In civil and criminal proceedings the legal status of society is different. The initiator of the case, the private person in civil proceedings, engages in procedurally complicated because of the necessity to protect own rights (when protecting own rights, the plaintiff defends all society rights to the favourable environment), and in criminal proceedings it is difficult to do it because the burden of proof is borne by the State. Therefore, considering the fact that the environment is the foundation of the sustainable development of society, the State has to provide greater support in civil proceedings, too. Specifically, in those cases when the private person has submitted the claim for the compensation of the damage caused to the environment consistently with the civil procedural order, the prosecutor has to get involved in court proceedings and the burden of proof must be shifted from the plaintiff to the defendant because it is not the duty of the plaintiff to prove the fact of the damage caused to the environment but that of the defendant and in particular to prove the fact that the damage has not been caused.

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