

LEGAL REGULATION OF RESPONSIBILITY FOR VIOLATIONS OF ENVIRONMENTAL PROTECTION REQUIREMENTS IN THE REPUBLIC OF LITHUANIA

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INTRODUCTION

With the rapid development of industry, transport, energy and other branches of economy the environmental impact of such activities increases constantly. Unfortunately, human activities very often cause enormous environmental damage and irreversible adverse environmental changes. Thus, proper environmental policy is vital in order to reduce the environmental damage, ensure safe and clean environment for the current and future generations. One of the means used by the states to coordinate public activities with the operation of natural laws is legal regulation, which employs special means to establish environmental requirements dictated by the natural environment itself. But the establishment of respective environmental requirements does not *per se* ensure their observance³. Therefore, it is important not only to properly regulate certain activities causing environmental impact but also to develop an efficient mechanism of compensation for environmental damage ensuring the full remedying of damage, high-quality and timely restoration of the damaged environment, and responsibility for violations of environmental protection requirements. Therefore an institute of legal responsibility in most cases is called as a mean of realization and protection of citizens' right to environmental safety⁴.

In order to enforce legal responsibility certain conditions must be met, i. e., all the activities towards the environment must be regulated by law, legal means of responsibility for environmental violations must be foreseen in laws, environmental violations must occur.

The basis for legal regulation of responsibility for environmental violations of law is certain norms of the Constitution of the Republic of Lithuania adopted by the citizens of the Republic of Lithuania (the Constitution)⁵. There are few Articles directly dealing with environmental issues in the Constitution. Main environmental rules are provided in the Articles 53 and 54.

Article 53 (3) of the Constitution states, that "The State and each person must protect the environment from harmful influences."; Article 54 – that "The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of

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³ A. MARCIJONAS, B. SUDAVIČIUS. *Ekologinė teisė*. Vilnius, Eugrimas, 1996, p. 246.

⁴ V. ANDREYTSEV. *Law of Environmental Safety*. Dnipropetrovsk, National Mining University, 2009, p. 268.

⁵ *Constitution of the Republic of Lithuania / Lietuvos Respublikos Konstitucija*. Vilnius: TIC, 2005.

particular value and shall supervise a sustainable use of natural resources, their restoration and increase. The destruction of land and the underground, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law.” According to the opinion of the authors of the Commentary of the Constitution⁶ and to the practice of the Constitutional Court of the Republic of Lithuania (e.g. Ruling of the Constitutional Court of the Republic of Lithuania of 1 June 1998, “On the compliance of Paragraph 3 of Item 3.4 of the Resolution No 329 of the Government of the Republic of Lithuania Resolution "On the Compensation for the Damage Done to Forests" of 14 August 1991 with the Constitution of the Republic of Lithuania”, the latter norm of Constitution not only establishes a duty for all legal and natural persons to refrain from such actions that would harm the natural environment, but also this norm is a background for legal regulation of responsibility for illegal actions in the sphere of environmental protection.

The Environmental Protection Act of the Republic of Lithuania⁷ is a framework legal act on environmental protection. This Act regulates public relations in the field of environmental protection, establishes the principal rights and duties of legal and natural persons (individuals) in preserving the biodiversity, ecological systems and landscape characteristic of the Republic of Lithuania, ensuring a healthy and clean environment, rational utilisation of natural resources in the Republic of Lithuania, the territorial waters, continental shelf and economic zone thereof. As it is stated in the Environmental Protection Act, other laws regulating the utilization of natural resources and environmental protection and other legal acts must be adopted on the basis of this Act. Article 34 of Environmental Protection Act establishes the general rules for environmental responsibility and states, that persons, acting in breach of the requirements of environmental protection, shall be held liable under laws of the Republic of Lithuania. Economic entities shall be subject to civil liability irrespective of their guilt for any environmental damage or an imminent threat thereof as a consequence of their economic activities, with the exception the cases provided for by this Act. The civil liability indicated above shall not apply to the persons in pursuit of the activities the principal purpose of which is national defence or international security and the sole purpose of which is protection against natural disasters.

In most cases anyone harming the environment may be held liable to those injured or may be subject to criminal or administrative sanctions sought by the state⁸. The most common types of responsibility in the field of environmental protection in Lithuania are: administrative responsibility, criminal responsibility and civil liability. This article is dedicated to give an overview of the basic legal regulation of these three types of environmental responsibility in Lithuania and describe the major problems in this field.

1. ADMINISTRATIVE RESPONSIBILITY IN THE FIELD OF ENVIRONMENTAL PROTECTION

Administrative responsibility is the most common type of responsibility applied in the field of environmental protection. The application of this type of responsibility is based on the Code of Administrative Offences of the Republic of Lithuania⁹ (CAO). It should be mentioned that this Code was adopted in 1984, and since the restitution of Lithuania’s independence in 1990, it has been changed more

⁶ Lietuvos Respublikos konstitucijos komentaras/ I dalis. K. JOVAIŠAS (ed). Vilnius: TI, 2000, p. 502.

⁷ Environmental Protection Act of the Republic of Lithuania (Lietuvos Respublikos aplinkos apsaugos įstatymas), *Official Gazette*, 1992, No 5-75.

⁸ A. KISS, D. SHELTON. *Manual of European Environmental Law*. Cambridge University Press, 1995, p. 66.

⁹ Code of Administrative Offences of the Republic of Lithuania (Lietuvos Respublikos administracinių teisės pažeidimų kodeksas). *Official Gazette*, 1985, No.1-1.

than 240 times. For several years already the plans to adopt a new code of administrative offences are under discussion, however it hasn't been done yet.

According to the CAO regulations violations of environmental law that are being punished by administrative liability could be divided into three categories: 1) violations against the ownership of natural resources (e. g. occupation of land, forest, water; usage of natural resources without permission; etc.); 2) violations of environmental protection requirements (e. g. non-implementation of environmental protection measures; failure to comply with waste management rules; pollution of the environment with different materials, construction in violation of environmental requirements; etc.) ; 3) violations of the order of usage and protection of natural resources (usage of natural resources without a permit, exceeding the allowed limits or in a manner that is forbidden by legal acts, etc.).

The subject of administrative responsibility might only be a natural person (both civilians and officers). Though there were ideas, that legal persons also should become subjects of administrative responsibility, the required changes in the CAO were never made. However it should be mentioned, that according to the court practice, the economic sanctions, foreseen in special laws (not in CAO) and applied to legal persons should be regarded as administrative penalties¹⁰. Thus it can be concluded, that legal persons in some cases are also subjects of administrative responsibility¹¹.

According to CAO, for administrative offences in general the following administrative penalties may be imposed: 1) warning; 2) fine; 3) confiscation of the object, which was the instrument or the direct object of an administrative offence, and income, which were obtained by an administrative offence; 4) deprivation of special rights (e. g. the right to hunt or to fish, etc.); 5) administrative arrest; 6) suspension from work (position).

All the above mentioned administrative penalties, except for administrative arrest, might be imposed in case of environmental administrative offences. CAO defines state authorities that have a right to investigate cases of administrative offences in the field of environmental protection as well as decide upon the type of punishment to be applied (e. g. district courts, a number of institutions belonging to the system of the Ministry of Environment, police, etc.).

One of the most important shortcomings of the CAO, in the opinion of the authors, is that it is rather old and the amount of fines is sometimes not adequate and does not have the required preventive effect. One more shortcoming is that CAO is not applied to legal persons, i. e. that administrative responsibility for the violation, caused by a legal person, falls on the manager of that legal person. Another imperfection is the fact that too many persons (institutions) have the right to investigate administrative cases, file administrative protocols, make decisions on administrative punishment. Lots of the officers having these rights lack legal education and make mistakes, which sometimes lead to escaping administrative responsibility, and this of course has a negative influence on the effectiveness of administrative liability. One more problem which arises, when applying administrative responsibility in practice, is finding the distinction between administrative and criminal responsibility, but this problem will be described more in detail in the next section of this article after analyzing the specifics of criminal responsibility for environmental violations of law.

¹⁰ S.ŠEDBARAS. *Administracinė atsakomybė*. Vilnius: Justitia, 2005, p. 191.

¹¹ E.g. financial sanctions to legal persons, who have violated environmental taxes regime, are imposed according to special laws, regulating environmental taxes, but not according to CAO.

2. CRIMINAL RESPONSIBILITY IN THE FIELD OF ENVIRONMENTAL PROTECTION

The most severe type of legal responsibility is criminal responsibility. It is used in such cases, when the violation of environmental law has features of environmental crime and is mentioned in the Criminal Code of the Republic of Lithuania¹² (CC). Usually the application of criminal responsibility is related to violations of environmental law involving threat to the life or health of people or major damage (or the threat of such damage) to fauna, flora or other serious consequences to the environment, or the activity is dangerous in its nature. In CC the following activities are recognized as crimes: violation of the regulations governing environmental protection or use of natural resources, or maintenance or use of buildings in which hazardous materials are used or stored or in which there are potentially dangerous equipment or potentially hazardous operations are carried out; illicit disposition of the substances depleting the ozone layer or the mixture thereof; illegal waste transportation across the state border of the Republic of Lithuania; destruction or devastation of protected areas or protected natural objects; violation of legal acts regulating construction; illegal hunting or fishing or other use of wild fauna resources; unauthorised forest logging or destruction of marshes; unlawful picking, destruction, handling or other possession of protected wild flora, fungi or parts thereof. To some extent the activities foreseen in the Articles 256 and 257 of CC, related to illegal disposition of nuclear or radioactive materials or other sources of ionising radiation, might also be considered as environmental crimes, however these activities are included in the other chapter of CC.

For all of the above mentioned crimes CC foresees penalties more severe than in CAO, including fines and even deprivation of liberty. Responsibility for these activities might be applied both to natural and legal persons. Criminal responsibility is applied only by courts.

The statistics shows that the application of this type of responsibility is quite rare. The reason for that might be too vague and unclear definition of environmental crimes, which makes it difficult to make a distinction between the cases when CAO and the cases when CC must be applied. For example, CC neither defines nor explains the meaning of the concepts “major damage” or “serious consequences to the environment”. These concepts are essential while addressing the issue of criminal responsibility and have to be evaluated *ad hoc* every time. Another “bad” example could be Article 273 of CC, which states, that a person who, without an authorisation, cuts down or otherwise destroys an area of more than one hectare of own forest or drains a marsh shall be punished by a fine or by arrest or by imprisonment for a term of up to two years. This norm is problematic, because it does not take into account the value or the age of the forest, the amount of the trees cut, etc. The most important condition for application of criminal responsibility according to such norm is the area of the forest cut down or destroyed. However such regulation might lead to confusion, when choosing between administrative and criminal responsibility, because CAO distinguishes totally different criteria for administrative responsibility, e. g. the amount of timber, ownership of the forest (private or state). These differences make it difficult to compare and decide, which responsibility to apply – criminal or administrative. In addition it should be mentioned, that such decisions must be made by officials, who are not necessarily lawyers, and this causes even more problems. One more important shortcoming of the CC is that there is no special norm, establishing criminal responsibility for pollution, though pollution damage is one of the most dangerous and usually has long-term negative effects on the environment and the health of people. Of course, Article 270 of the CC, regulating responsibility for violations of the regulations governing environmental protection or use of natural resources, or maintenance or use of buildings in which hazardous materials are used or stored or in which there are potentially dangerous equipment or potentially hazardous operations are carried out, might be applied. However, if the pollution is caused, for example, by

¹² Criminal Code of the Republic of Lithuania (Lietuvos Respublikos baudžiamasis kodeksas). *Official Gazette*, 2000, Nr. 89-2741.

a road traffic offence due to which the spill of fuel occurs or any other “non-environmental” offence the criminal responsibility will not be possible. Such lack of legal regulation is inadequate, because it allows escaping criminal responsibility for serious environmental damage, caused by pollution, and in addition it fails to properly implement Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law¹³ and Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements¹⁴.

These shortcomings in legal regulation lead to the situation, when application of criminal responsibility is very rare, and administrative responsibility is sometimes applied instead of it, due to the unclear norms of CC, lack of practice of their application, lack of legal knowledge of the officials, who have to make a decision regarding the choice between criminal and administrative responsibility. This again reduces the effectiveness of the responsibility mechanism.

3. COMPENSATION OF ENVIRONMENTAL DAMAGE (CIVIL/MATERIAL LIABILITY)

In the analysis of compensation of environmental damage the concepts of “environment”, “damage” and “environmental damage” are vital. Environmental Protection Act defines environment as the totality of interconnected elements (land surface and underground, air, water, soil, flora, fauna, organic and inorganic matter, anthropogenic components) as functioning in nature and the natural and anthropogenic systems uniting them (Art. 1). The analysis of this definition leads to the conclusion, that Lithuanian Environmental Protection Act provides for a fairly wide (encompassing not only natural but also anthropogenic elements of the environment), but quite precise (clearly establishing that the concept of the environment includes the surface of land and its entrails, atmosphere, water, soil, flora, fauna, organic and mineral materials) definition of the “environment” allowing sufficient freedom of interpretation and elaboration by special-purpose legal acts defining the contents of concepts of individual elements of the environment (e.g.: land, entrails, forests, wild flora and fauna etc.). Thus, in order to fully reveal the content of the concept “environment” it is necessary to analyse not only the definition provided for by Environmental Protection Act but also the provisions of special-purpose legal acts, e.g. Wildlife Act¹⁵, Water Act¹⁶, Ambient Air Protection Act¹⁷, Wild Flora Act¹⁸, etc., as these laws define separate parts of the definition of “environment”.

The term “damage” is often used both in everyday language and legal literature when speaking about the damage to a person, his rights, interests, honour and dignity, property, damage to the state etc. The Commentary of the Civil Code of the Republic of Lithuania provides for the following definition of this concept: “Damage is the violation of the aggrieved person’s property or other interest, i.e. property or other losses of the aggrieved person due to which he suffers financially or his non-property interests are adversely

¹³ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. *Official Journal L 328*, 06/12/2008 P. 0028 – 0037.

¹⁴ Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements. *Official Journal L 280*, 27/10/2009 P. 0052 – 0055.

¹⁵ Wildlife Act of the Republic of Lithuania (Lietuvos Respublikos laukinės gyvūnijos įstatymas), *Official Gazette*, 1997, No 108-2726; 2010, No 81-4218.

¹⁶ Water Act of the Republic of Lithuania (Lietuvos Respublikos vandens įstatymas), *Official Gazette*, 1997, No 104-2615; 2003, No 36-1544.

¹⁷ Ambient Air Protection Act of the Republic of Lithuania (Lietuvos Respublikos aplinkos oro apsaugos įstatymas), *Official Gazette*, 1999, No 98-2813.

¹⁸ Wild Flora Act of the Republic of Lithuania (Lietuvos Respublikos laukinės augalijos įstatymas). *Official Gazette*, 1999, No 60-1944.

affected (human health, life, honour, dignity etc.)”¹⁹. Following this definition of damage it could be stated that damage normally occurs as the loss, reduction or failure to get certain valuables. When analysing the concept of damage from the legal point of view it should be noted that this is namely the impairment of values and objects protected by law. Lithuanian legal acts do not contain any single concept and classification of damage. But from the legal point of view the most general and the most common classification of damage in the legal acts and legal doctrine is the following: damage incurred as a result of the impairment of property valuables and damage caused by the violation of non-property interests. In other words, depending on the nature of the object damaged, damage is usually divided into property (material) damage and non-property (immaterial) damage²⁰.

In the authors’ point of view, environmental damage may be marked as a separate, specific type of damage, as this type of damage has a twofold nature, i.e. it has the features of both property and non-property damage. In the most general sense adverse change of the environment or its individual elements, impairment or loss of its functions should be considered as environmental damage. Such definition is established in Paragraph 21 of Article 1 of Environmental Protection Act, which defines, that “environmental damage shall mean a directly or indirectly occurring adverse change in the environment or elements thereof (including protected areas, landscape, biodiversity) or impairment of the functions or qualities thereof which are beneficial for the environment or people (society)”. In the authors’ opinion, this definition is fairly precise and clear, particularly taking into consideration the fact that the Environmental Protection Act is a framework legal act. Definition established in the Environmental Protection Act may be elaborated in special-purpose legal acts covering individual environmental damage categories, establishing the rules of evaluation and calculation of environmental damage as well as in the case law. The wording of Part 1 of Article 32 of Environmental Protection Act is disputable. According to it, it shall be recognised that damage has been caused to the environment where there is a direct or indirect adverse effect:

- 1) on the favourable conservation status of species or habitats under maintenance or aimed at preservation, also the status of biodiversity, forests, landscape and protected areas;
- 2) on the ecological, chemical, microbial and/or quantitative condition of surface and ground water and/or ecological capacity (potential) as defined in the Water Act of the Republic of Lithuania;
- 3) on land, that is, land contamination, when contaminants are introduced on, in or under land (into the underground);
- 4) on other elements of the environment (functions thereof), when requirements of environmental protection are violated.

From the first look everything seems to be clear. However one should pay attention to the fact, that the provision of the Article 32 requires “adverse effect” on the environment and not the “adverse change” in the environment or elements thereof as it is required in the concept of “environmental damage”. Of course systematic analysis of these norms together with the definitions of “harmful (adverse) effect on the environment” and “consequences for or effects on the environment”, provided in Environmental Protection Act, leads to the general conclusion, that the significant adverse *change* in the environment is required in order to raise the question of environmental liability, as harmful (adverse) effect on the environment in Environmental Protection Act is defined as deterioration or loss of the natural functions of an ecosystem or elements thereof, and consequences for or effects on the environment - as the consequences or effects (physical, chemical, etc.) on the environment which lead or may lead to significant changes in the natural

¹⁹ Lietuvos Respublikos civilinio kodekso komentaras. Šeštoji knyga. Prievolių teisė. I dalis. Vilnius: Justitia, 2003, p. 341.

²⁰ ŽVAIGŽDINIENĖ, I. *Materialinė atsakomybė už žalą aplinkai*. Vilnius: Justitia, 2008, p. 35-36.

functions of an ecosystem or elements thereof. Though systematic analysis may help to clarify legal norms, such inaccuracy should be considered as the flaw of legislation. Another ambiguity of Part 1 of Article 32 of Environmental Protection Act is that from its wording seems, that the requirement of violation of environmental law applies only in cases when adverse effect is on “other elements of the environment (functions thereof)”, i.e. it does not apply in cases when the adverse effect is on protected species, habitats, biodiversity, forests, landscape, protected areas, water or land. Such provision raises a question, if it should be interpreted as meaning that the mere fact of adverse effect on the environment in the latter cases is enough, and environmental liability will apply even in cases of accidents or other similar circumstances. Another thing, which is hard to explain, is why such component of environment as air is considered “less valuable” (because it falls under point 4), as the requirement of environmental law violation will apply in this case.

Numerous practical problems may be encountered in the application of civil liability for environmental damage due to the obscurity of the relation of the said provision with the definition of environmental damage and other provisions of Environmental Protection Act. Taking into consideration the aforementioned, authors propose either to delete the provision set forth in Part 1 of Article 32 of the Environmental Protection Act or at least to correct it in order to avoid the ambiguity and inaccuracy of legal regulation. For example, Part 1 of Article 32 of the Environmental Protection Act could provide that significant adverse impact on the environment or its individual components should be considered as one of signs of threat of environmental damage for which liability is also established by Environmental Protection Act.

General legal grounds for liability for environmental damage are established in Part 3 of Article 53 and Part 2 of Article 54 of the Constitution. The provisions of the Constitution are elaborated by other legal acts, first of all – by Environmental Protection Act. Part 1 of Article 34 whereof contains the provision that persons having violated environmental requirements bear liability based on laws of the Republic of Lithuania. The grounds for civil liability for environmental damage are established in Part 2 of Article 32 of Environmental Protection Act, establishing the duty of users of natural resources as well as the persons pursuing economic activities to take all the measures necessary to prevent environmental damage, damage to human health and life, property and interests of other persons, and the persons causing damage – the duty to restore the state of the environment, where possible, to baseline condition as it was prior to the causing of damage to the environment, and compensate for all the losses. The aforementioned legal provision first of all establishes the common duty of all users of natural resources and economic entities to act carefully and elaborates Part 3 of Article 53 of the Constitution providing for the obligation of each person to protect the environment from harmful influences. Thus Part 2 of Article 32 of the Environmental Protection Act sets forth particular means of environmental protection – use of preventive measures helping to prevent damage. In addition, it should be noted that this provision emphasizes the importance of a single protection mechanism for such objects as the environment, human life and health, property and other interests. On the other hand, this provision forms the grounds for the application of liability in case the users of the natural resources or economic operators fail to take preventive measures. Another aspect reflected in this provision – means of remedying of environmental damage. Part 2 of Article 32 of the Environmental Protection Act provides for two damage remedying means:

- 1) restoration of the condition of the environment;
- 2) compensation for all the losses.

In the first instance, if possible, the environment has to be returned to the baseline condition, which is estimated based on the best information available. In the second instance, obligation for a person having

inflicted damage to compensate for all loss is established. The amount of compensation for environmental damage is calculated according to the special methods settled in the legal acts. In some instances the fixed sums of money are foreseen in legal acts, e. g. for illegal killing of protected animals or plants. In other instances special formula are used to calculate the amount of compensation, e. g. for evaluation of pollution damage.

In Lithuania, both in the instance of liability for environmental damage and in the instance of classic civil liability a general rule applies that a person may incur liability only if he is at fault for the damage inflicted, except for cases when the laws permit to hold a person liable without fault. One of such cases is established in Part 2 of Article 34 of Environmental Protection Act, providing that economic entities shall be subject to civil liability irrespective of their guilt for any environmental damage or an imminent threat thereof as a consequence of their economic activities, with the exception the cases provided for by this Act. The civil liability indicated above shall not apply to the persons in pursuit of the activities the principal purpose of which is national defence or international security and the sole purpose of which is protection against natural disasters. According to Environmental Protection Act, an economic entity shall not be required to bear the cost of preventive and/or remedial measures in the case when environmental damage or an imminent threat thereof occurred due to force majeure, also where it proves that environmental damage or imminent threat thereof was caused by the actions of a third party (acts, omission), despite the fact that all appropriate safety measures were in place or resulted from strict compliance with a compulsory instruction emanating from an institution authorised by the law, with the exception of an instruction consequent upon contamination or incident caused by the economic entity's own activities (act, omission).

The subject of liability for environmental damage has general features of the subject of classic civil liability. In both cases natural and legal persons having caused adverse environmental impact by their actions may be subjects of liability. Environmental Protection Act marks operators of economic activities in respect of which the application of strict environmental liability for any environmental damage caused by their activities is established. But the said law contains a very broad and inaccurate concept of economic activities²¹, thus it is not sufficiently clear who the subjects of economic activities are. Taking into consideration the aforesaid, it should be concluded that the application of the strict liability regime may involve a number of practical problems related to the interpretation of these concepts.

The important changes in Lithuanian regulation of compensation of environmental damage had been brought by the implementation of the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage²². The Directive 2004/35/CE of the European Parliament and the Council has emphasised the threat posed by environmental damage and the significance of the principle "polluter pays" in the regulation of environmental liability. The process of the creation of the Directive 2004/35/CE took more than ten years. This shows not only the complexity of question, but also the interests (of the Member States, environmental organizations, business representatives, and others.), which had to be taken into account when preparing the draft of the Directive 2004/35/CE. All this led to the complex wording and unclear content of the provisions of the Directive 2004/35/CE leaving enough space for different discussions and interpretations. Due to the slow (late) transposition of the Directive 2004/35/CE into member states' national law, there is not enough practice yet in order to be able to assess objectively the real impact of the Directive on the member states'

²¹ According to Paragraph 12 of Article 1 of Environmental Protection Law, economic activities are economic and other activities which affect or may affect the environment.

²² Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. *Official Journal*, L 143, 30.4.2004, p. 56–75. (with the latest amendments done by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2004 L 140, p. 114).

national legal systems and the protection of the environment in general. But some apparent shortcomings in the Directive 2004/35/CE are already clear.

Firstly, concepts defined in the Directive 2004/35/CE form the basis for the developed liability regime, which has to ensure the unified practice in all Member States, however complex wordings leaving much discretion for national legal regulation are unlikely to provide proper conditions for the achievement of the objective set.

Secondly, the establishment of permitted exceptions for the Member States related to the release from obligation to remedy environmental damage in the Directive 2004/35/CE may also condition considerable differences between the Member States' national law provisions covering liability for environmental damage, therefore this will even more impede the development of the single environmental liability regime and thus the provision of equal market conditions for the Member States.

Thirdly, the establishment of compulsory insurance against environmental damage in the Directive 2004/35/CE was one of the main issues which caused long debates both in the European Parliament and the Council of Europe. Finally, the establishment of compulsory insurance in the Directive 2004/35/CE was rejected. But, in the opinion of the authors, it would be reasonable at least to try to lay down certain guidelines related to legal regulation of financial guarantees for remedying of environmental damage in the Directive 2004/35/CE, noting certain problematic aspects and in particular – the scope of application of financial guarantees.

In general, it should be stated that the complex wording of the provisions of the Directive 2004/35/CE and their abstract character, the abundance in cross-references to other legislation and granting of too much legal regulation discretion to the Member States in this field may not only prevent the development of the single environmental liability regime throughout the EU, but also even to induce even greater differences in national liability regimes. On the other hand it should be stated that the Directive 2004/35/CE was a welcomed first step in the regulation of environmental liability at the European Union level and hopefully after the evaluation of its implementation and certain changes, the desirable results will be achieved.

When evaluating the impact of the Directive 2004/35/CE on the national law of the Republic of Lithuania, in the authors' point of view, the establishment of strict liability for environmental damage *per se* was one of the most considerable changes in the Lithuanian national law, which has been conditioned by the passing of the Directive on environmental liability. But, as it was shown before, environmental law provisions providing for this liability are not sufficiently accurate and clear. Considering the aforesaid, the authors suggests correcting the provisions of the Environmental Protection Act covering liability without fault for environmental damage and exceptions when this liability is not applicable, as well as harmonising the provisions of special-purpose environmental legal acts with the Environmental Protection Act.

CONCLUDING REMARKS

Summing up the analysis provided in this article, it might be concluded, that shortcomings in Lithuanian legal regulation reduce the effectiveness of the responsibility mechanism in the field of environmental protection.

First of all this is true, when speaking about the legal regulation of criminal responsibility, where unclear, rather vague provisions of CC or the absence of certain provisions (e. g. provisions regarding criminal responsibility for environmental pollution), lack of practice of their application lead to the situation, when application of criminal responsibility is very rare, and administrative responsibility is sometimes applied instead of it.

Another problem is lack of legal knowledge of the officials, who have the discretion of making a decision regarding the choice between criminal and administrative responsibility. This lack of legal

knowledge also influences the effectiveness of the administrative responsibility mechanism, as these officials often make mistakes, while investigating administrative cases, filing administrative protocols, making decisions on administrative punishment, which sometimes lead to escaping administrative responsibility at all.

When evaluating legal mechanism for compensation of environmental damage, in the authors' point of view, the establishment of strict liability for environmental damage *per se* was one of the most important changes in the Lithuanian national law in the recent years, which has been conditioned by the passing of the Directive 2004/35/CE on environmental liability. But, as it was shown in the article, environmental law provisions providing for this liability are not sufficiently accurate and clear.

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