

ROMANIA

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High Court of Cassation and Justice, Civil Section 1, Decision no 1255 of June 1, 2016

Liability for environmental pollution – Strict liability –
regulated (laconically) in Art. 95, para 1 of the EOG no.
195/2005

Supplemented by the rule of the New Civil Code and with
the general principles of tort liability as developed by
doctrine and case-law.

Brief Summary of the Facts and Judgment of the Court

Claimant's fishpond, located very close (300 m) to the defendant's well was polluted, allegedly with petroleum products from the defendant's rig.

Evidence: reports of public authorities (National Environmental Guard and National Waters Authority); ascertainment *ex propriis sensibus* of the court.

Vrancea Tribunal ordered the defendant to pay € 180,000 as compensation for (1) lack of use of the land leased for the fishpond and (2) value of the investment in the fishpond. The Court of Appeal upheld the decision

The error in the legal reasoning of the lower courts noted by the High Court

Environmental liability is a strict liability, i.e. independent of fault, but is not independent of the causal relation.

The lower courts erroneously denied the request for evidence which was not meant to demonstrate the lack of fault, but the lack of causal relation.

The principle “no liability without causal relation” was breached.

Another issue solved by the High Court: Among the causes precluding liability in case of strict liability: force majeure, act of the victim and the act of the third party (the latter two must comply with requirements for force majeure).

The doctrine: These elements are objective, affecting the causal relation with the damage, and not related to the subjective fault of the author.

The doctrine insists on the terminology “**act**” of the victim and “**act**” of the third party, because fault is irrelevant in strict liability.

The cause precluding objective liability omitted by the High Court: the third party's act

The breaking of the pipe flanges by thieves, i.e. a criminal activity of some third parties which is apt to have produced the pollution of the fishpond.

Doctrine: For the act of a third party to be applicable, it is not necessary to identify the third party. The third party's act must not have been provoked by the defendant.

The fact that the wrongdoers who broke the pipe were not identified does not prevent the application of the principle of a third party's act as a cause precluding liability.

The proof of a negative fact

The “absence of a causal link” between defendant’s act and the damage.

Doctrine: the proof of the lack of the causal link will be the “positive proof” of the fact that the damage was caused exclusively by a case of force majeure, by the act of the victim or by a third party’s act.

Conclusion: essentially the High Court’s Decision to overturn the lower court’s judgments is correct

The grounds on which it is based can be subject to criticism and amendments.