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FROM LIABILITY FOR *IMMISSIO* TO LIABILITY FOR *EMISSIONS*

Twenty years ago, at the beginning of my university career, I was present at the very interesting discussion raised by the proposal to initiate a multidisciplinary research project on environment protection. This discussion gathered lawyers, on one side, and biologists, chemists and technologists, on the other. The debate began by the remark of one of the law professors who said that this was not anything new for lawyers because there has been a civil liability for *immissio*[1] since the Roman times. However, scientists could not understand his point. Then the law professor explained that for nearly two thousand years the owner of the property was to be held liable if there was induction (*immissio*) of smoke, noise or polluting waters from his real estate to the neighboring estate. The scientists concluded that this was the case of liability for *emissions*[2] but not for *immissio*. This debate lasted for a while and, as you can guess, lawyers did not give up on their argument.

The first impression might be that this is nothing more than terminology misunderstanding. However, here we have two completely different legal concepts with substantially different implications for the environment. Further analysis of this problem would certainly prove that one branch of legal theory still relies on old models of thinking despite the fact that social context and legal rules have evolved long time ago.

[1] *Immissio* – to send or let into a place, to introduce, admit, to send or despatch against, to let loose at, discharge at, to cast or throw into

[2] *Emissio* – to give off, send forth or discharge

Classical Roman law enacted the rule on the use of waters which was quite progressive for that time. There was a specific legal action (*actio aquae pluviae arcendae*) which one could bring against the owner of the neighboring property who created a danger of imminent harm by changing the natural flow of waterway, by increasing the power and speed of the stream after having narrowed the bed, etc. Only the owner of the endangered property could ask for legal protection. The respondent was liable for „*immissio*" (bringing in) the water to the neighboring property in the way contrary to the common water regime, which eventually created the imminent danger of harm. There are two important points of law raised by this rule. First, this rule testifies that prevention as such, which has been considered as a primary tool for last few decades, is not the invention of modern legal doctrines, and that some forms of preventive legal protection were developed back in the Roman times. Secondly, this rule shows that Roman lawyers connected liability with activities which consequences affected only neighboring properties. In other words, there was liability for illegal *immissio*, but not for the *emissions*. This normative approach was fully in accordance with individually oriented Roman law.

The Roman concept stayed unchanged for centuries. Liability for *immissio* exists in almost all legal systems. However, last few decades led to certain changes which imply the gradual formation of the new liability model that is more appropriate for given social context. Our legal system followed these trends. The federal Law on Obligations came into force in 1978 which set forth that „(1) Everyone has the right to demand from another person to remove the source of danger which may cause a substantial damage to him or to indefinite number of persons, or demand from another person to abstain from any activity which may cause distress or imminence of danger provided that the cause of distress or danger cannot be removed in any other way. (2) Upon the request of the person with legal interest, the court will order measures in order to prevent damage or distress, or to remove the source of danger at the expense of the holder of danger source if he fails to do it by himself. (3) If damage was caused as the result of the activity undertaken in public interest, which was approved by competent authorities, action for damages can be brought only for the amount which exceeded tolerated value. (4) Even in this case it is legitimate to demand measures which can prevent or decrease damage." [3]

National legal theory argues that this rule introduced *actio popularis* which gives right to every person to request preventive measures.[4] This could

[3] Law on Obligations: Article 156.

[4] See: Jožef Salma, *Obligaciono pravo*, Novi Sad, 2004; Dušan Nikolić, *Građanskopravna sankcija (evolucija i savremeni pojam)*, Novi Sad, 1995; Dušan Nikolić, Uvod u sistem građanskog prava, Novi Sad, 2005.

also mean that there has been a shift in legal reasoning, so that the respondent now can be held liable not for *immissio* but for emissions. This concept provides for more effective environment protection, especially protection of water resources which are vital for the future of our planet.[5]

However, modern legal framework standing alone is not sufficient. There also need to be social awareness and commitment that particular and individual interests should not supersede common social interests. However, there is still much more to do which can be illustrated by the judgment of the Supreme Court of Montenegro: „The plaintiff was right when demanding from the respondent to remove the source of harm…During the proceeding it has been established that this harm can be removed by redirecting polluting waters, through appropriate plastic pipes, to its natural recipient, the river…"

[5] See: Dušan Nikolić, *Stvarno pravo i zaštita životne sredine,* Pravo (teorija i praksa), 7-8/1989, pp. 74-88.