

C.E.D.R.



**European Council for Agricultural Law
Comité Européen de Droit Rural (C.E.D.R.)
Europäisches Agrarrechtskomitee**

XXII European Congress and Colloquium of Agricultural Law – Almerimar-El Ejido (Spain) – 21-25 October 2003

**XXII Congrès et Colloque Européens de Droit Rural
– Almerimar-El Ejido (Espagne) – 21-25 octobre 2003**

**XXII Europäischer Agrarrechtskongress mit Kolloquium
– Almerimar-El Ejido (Spanien) – 21-25 Oktober 2003**

Commission I – Kommission I

**AGRICULTURE, ENVIRONMENT AND FOOD PRODUCTION:
THE ROLE AND LIABILITY OF THE FARMER/GROWER**

**AGRICULTURE, ENVIRONNEMENT, ALIMENTATION:
FONCTIONS ET RESPONSABILITES DE L'AGRICULTEUR**

**LANDWIRTSCHAFT, UMWELT UND ERNÄHRUNG:
ROLLE UND HAFTUNG DES LANDWIRTS**

National Report – Rapport national – Landesbericht

Slovenia – la Slovénie – Slowenien

Agriculture, Environment and Food Production – The Role and Liability of the Farmer/Grower

Franci Avsec, Ljubljana, Slovenia

1. General questions and questions regarding Community law

1.1) Are there specific norms in your country dealing with civil liability of farmers?

In Slovenia, the civil liability of farmers is regulated in general obligational law and some specific agricultural regulations which do not repeal the general principles and provisions, but supplement them.

The general damages law in Slovenia is characterised by the principle that a person who causes a damage is liable to repair it unless the causer proves that the damage occurred without his/her fault. The injured person is, in order to be entitled to restitution, required only to prove (1) the damage, (2) the law-infringing act or omission of the causer and (3) the causal relationship between the unlawful conduct and the damage. This principle is laid down in the Obligation Code from 2001 (OC).¹

In general obligational law, the strict liability is foreseen for the damage caused by dangerous activities or by dangerous things, as well as in other cases, specified by the Act (Art. 131(2) of OC). The damage which occurs in connection with a dangerous thing or dangerous activity, is presumed to be caused by such a thing or such an activity (Art. 149 of OC). In this case of strict liability, the person liable is holder of a dangerous thing or operator dealing with a dangerous activity (Art. 150 of OC).

Among special cases of civil liability, the OC regulates the liability for dangerous and domestic animals. The person responsible for a damage caused by a dangerous animal, is its holder. If the damage is caused by a domestic animal, the liability rests on its holder, unless the holder can prove to have provided for necessary custody and control (Art. 158 of OC).

The Nature Conservation Act from 1999² regulates a strict liability for damage caused by a bred animal. A bred animal is an animal which is an offspring of parents bred in captivity. The owner is liable for damage caused by bred animals, regardless of his/her guilt (Art. 22(4)).

The OC proclaims the principle »*Neminem laedere*«³ and the principle of due care among its fundamental provisions. The due care is assessed according to the diligence of a good manager. In fulfilling the obligations arising from the professional activity, the participants in obligational relations must act with care corresponding to the rules of profession and common practice (Art. 6).

The standards of good manager are getting stricter due to the recent regulations which require minimum qualifications for certain activities belonging to agriculture. For instance, the Phytopharmaceutical Agents Act from 2001⁴ allows individuals, who deal with agricultural

¹ Obligacijski zakonik, Ur. l. RS (Official Gazette of the Republic of Slovenia), No. 83/2001, Art. 131(1).

² Zakon o ohranjanju narave (ZON), Ur. l. RS, No. 56/1999.

³ Cf. Art. 10 of OC: »Everyone has to refrain from any act which might cause damage to others.«

⁴ Zakon o fitofarmaceutskih sredstvih (ZFFS), Ur. l. RS, št. 11-663/2001.

activity and produce agricultural products for the market, to use phytopharmaceutical agents only if they comply with the requirements regarding the adequate education or training (Art. 9). According to Art. 7 of the Veterinary Act from 2001⁵, all persons who, while pursuing a registered activity, come into direct contact with animals, must have basic knowledge about animal diseases.

The principle proclaimed in the Agricultural Land Act from 1996⁶, that a person who causes damage to the farmland is liable to the owner, tenant or other user of the land, in accordance with regulations (Art. 5(2)), can not be seen as a specific provision, but rather as an emanation of the general principle »*Neminem laedere*«. Its referring to the regulations is important because the steadily increasing body of the agricultural law is expressly included into the legal base for assessment of due care by this provision.

A more specific provision can be found in the Forest Act from 1993⁷. This Act prescribes that the owner must reforest the area devastated or clear cut in contradiction with regulations. On the other hand, the causer of a fire is liable to the forest owner for the damage incurred and the lost income, ad to the Republic of Slovenia for the reforestation (Art. 23).

1.2) Does the implementation of Council Directive concerning the liability for defective products concern agricultural products?

As early as in 1978, the former Yugoslav Act on Obligational Relationships⁸ introduced the so called strict liability of producers for damage caused by their defective products. According to the provision of this Act, which was overtaken also by the present Obligational Code, a producer who puts a product into circulation and this products represents, due to a defect, risk for persons or property, is liable for the damage, which occurs due to the defect. The producer is liable also for dangerous characteristic of the product, if he/she has not undertaken all measures required in order to prevent the damage foreseeable by warning, safe package or in any other convenient manner (Art. 179 of the Act on Obligational Relationships, and now, Art. 155 of OC).

In 1998, Slovenia adopted the Consumer Protection Act⁹ which contains detailed provisions about producer's liability. The basic principle is that producer is liable for the damage caused by a defect in his/her product. All movables are considered to be a product according to the Act. There are no exemption for the agricultural products. Agricultural producers are liable under the same conditions as other producers.

1.3) When implementing Directive 91/676/EEC of 12 December 1991 concerning the protection of Waters against Pollutions caused by Nitrates from Agricultural Sources, are farmers included as subjects of civil liability for environmental damages?

The Decree on the input of dangerous substances and plant nutrients into the soil, issued in 1996 and amended in 2001¹⁰ designates the entire area of Slovenia as a vulnerable zone where the livestock manure applied to the land each year, including by the animals themselves, shall not contain more than 170 kg N (nitrogen). The decree contains detailed provisions about

⁵ Zakon o veterinarstvu, Ur. l. RS, No. 33/2001.

⁶ Zakon o kmetijskih zemljiščih, Ur. l. RS, 59/1996, 68/2000, 27/2002, 36/2003.

⁷ Zakon o gozdovih, Ur. l. RS, št. 30/1993, 67/2002.

⁸ Zakon o obligacijskih razmerjih, Ur. l. SFRJ, No. 29/1978, 39/1985 in 57/1989.

⁹ Zakon o varstvu potrošnikov (ZVPot), Ur. l. RS, No. 20/1998, 110/2002.

¹⁰ Uredba o vnosu nevarnih snovi in rastlinskih hranil v tla, Ur. l. RS, No. 68/1996, 35/2001.

quantities and other conditions relating to the time and type of the agricultural land under which the application of fertilizers is allowed.

1.4) Does a code of good agricultural practice exist in your country? Does it include any regulations of civil liability for environmental damages?

In 2000, the Ministry of Agriculture, Forestry and Food issued the Code of good agricultural practice relating to plant protection.¹¹ The publication is not a regulation but contains a collection of science-based instructions and advises which may provide the legal basis for assessment of due care in obligational law, dealing with damage caused by agricultural activities. In the same year, the Ministry for Environment, Planning and Energy issued Rules concerning good agricultural practice in manuring.¹² Also these rules do not refer to liability directly, but provide professional standards which must be applied by a reasonable and careful operator in agriculture and have to be, therefore, taken into account when assessing civil liability of agricultural producers.

1.5) Is there any regulation concerning the diffuse contamination in your country?

In the National Environmental Action Programme¹³, the intensive agriculture is considered to be among the most important diffused sources of water pollution. Besides the already mentioned designation of the entire territory of the State as a vulnerable zone, the Water Act from 2002¹⁴ provides for water protected areas.

Art. 74 of the Water Act authorizes the Government to establish the water protected areas in order to protect the water bodies designated for the abstraction of drinking water. The water protected areas, the measures, prohibitions and restrictions applied in this areas are defined by the Government. Art. 76 of the Water Act provides for prohibitions and restrictions of activities in the water protected area if activities might threaten the quantity and quality characteristics of the water sources.

2. Specific subjects of civil agricultural liability

2.1) When using phytosanitary products and pesticides, are there specific limits as to the use in respect to the quantity and in respect to the locations where they can be used?

According to the Art. 31 of the Forest Act, the use of chemical agents in forests is, in principle, prohibited. Exceptionally, the tested chemical agents can be used under the condition that their use does not threaten the biological balance, if their use is necessary for the protection of forest seedlings from game browsing and for suppressing of excessive populations of insects which number can not be reduced in any other way. The permission for the use of tested chemical agents is issued by Forest Service by an administrative order.

¹¹ Dobra kmetijska praksa varstva rastlin, Ljubljana: Ministrstvo za kmetijstvo, gozdarstvo in prehrano, 2000, 28 p.

¹² Navodilo za izvajanje dobre kmetijske prakse pri gnojenju, Ur. l. RS, št. 34/2000.

¹³ Nacionalni program varstva okolja (NPVO), Ur. l. RS, št. 83-3953/1999.

¹⁴ Zakon o vodah (ZV-1), Ur. l. RS, No. 67/2002.

The Rules on the responsibilities of users of plant protection products from 2003¹⁵ provide several restrictions regarding the use of phytopharmaceutical agents in the neighbourhood of other plots, waters, roads, dwelling houses, schools, hospitals and similar buildings. The rules also provide restrictions necessary to protect the bees from the harmful effect of systemic or contact phytopharmaceutical agents. According to the rules, the plant protection products must be used according to the instructions for the use and warnings on the label as well as in accordance with the principles of good agricultural practice, integrated plant protection and other procedures, including safety at work, which ensure the minimal possible use of plant protection product so that the use does not cause an unallowed pollution of the environment.

The Water Act from 2002 prohibits the manuring and the use of phytopharmaceutical products in a certain width from the water banks, measured on the ground plan. This width amounts to 15 meters for the first class waters and 5 meters for the second class waters (Art. 65).

2.2) Are there any vulnerable zones of protection included in those zones in regard to which the use of chemical products is prohibited or restricted?

According to the Decree on the designation of the status of endangerment due to phytopharmaceuticals to areas of aquifers and their drainage basins and on the integrated rehabilitation measures, issued in 2002¹⁶, the Government each year defines endangered areas and the active substances due to which an area is considered to be endangered. In an endangered area, the use of phytopharmaceutical agents containing the active substances (1) due to which the area is endangered or (2) which are found, due to exceeding of their limit values, to considerably contribute to the extra strain of underground water, is prohibited. The competent authorities control the observance of the decree by direct inspections and by measurement of active substances in samples taken from the soil. In addition, the quality of underground waters is subject to monitoring.

2.3) In the case of miscompliance with the before mentioned limitations, is there a civil liability of the farmer or it is considered as a simple administrative infringement?

Since the observance or nonobservance of the prescribed limitations is checked on individual plots, liability for damage could be individualized and therefore enforced. However, due to the recent introduction of these norms, very fragmented agricultural structure and great number of persons who may be liable for the damage, the cases where the civil liability of farmers would be enforced are not known so far.

2.4) Is it planned to provide for licences or administrative authorisations for the realisation of certain activities of farmers which may affect environment? If yes: Is the action of the farmer causing environmental damages, even when acting within the limits of the licence, subject to civil liability of the farmer or it is covered by the licence?

According to the Environmental Protection Act from 1993¹⁷, when the law prescribes a preliminary licence for an activity, the competent authority prescribes obligatory assessment of environmental impacts and specifies the scope of the environmental impact report. If such

¹⁵ Pravilnik o dolžnostih uporabnikov fitofarmaceutskih sredstev, Ur. l. RS, No. 62/2003.

¹⁶ Uredba o določanju statusa zaradi fitofarmaceutskih sredstev ogroženega območja vodonosnikov in njihovih hidrografskih zaledij in o ukrepih celovite sanacije, Ur. l. RS, No. 97/2002.

¹⁷ Zakon o varstvu okolja, Ur. l. RS, No. 32/1993, 1/1996.

procedure is not prescribed, the operator of the intended activity may ask the competent Ministry to specify the environmental impact report (Art. 58).

According to the Nature Conservation Act, activities affecting nature which may threaten biodiversity, a valuable natural feature or protected area and for which a permit is not required under the regulations on spatial planning and other regulations, shall be carried out on the basis of a *permit for an activity affecting nature*. Activities affecting nature are defined as activities which concern:

- 1. the carrying-out of activities affecting nature at the site of a valuable natural feature, in protected areas, ecologically important areas and special protection areas,
- 2. the protection of plant or animal species,
- 3. the protection of genetic material,
- 4. the protection of valuable natural features,
- what means that also agriculture is encompassed.

In the procedure for the issuance of the permit for an activity affecting nature and the permit for an activity affecting the physical space which might threaten biodiversity, a valuable natural feature or protected area, a natural or legal person shall obtain a *nature protection consent*.

A nature protection consent is issued by the organisation responsible for nature conservation on the basis of a public authority when it establishes that the intended activity is planned in accordance with the orientations, bases and conditions, prescribed pursuant to the Act.

The nature protection consent may lay down the conditions which have to be fulfilled upon the intended activity. The nature protection consent is granted by the verification of the permit or by a special document. When an environmental impact assessment is prescribed for activities, the compliance and suitability with the Nature Conservation Act and corresponding regulations are assessed within the framework of environmental impact assessment and the nature protection consent is substituted by an environmental protection consent.

The decision by which the activity affecting nature is permitted, lays down that the person responsible for the activity is obliged to pay caution money in the amount not higher than the foreseen costs of the elimination of effects of the activity affecting nature. The decision is no longer valid if the caution money is not paid within the period referred to in the decision (Art. 106 of the Nature Conservation Act).

2.5) Are there any specific norms of civil liability concerning agricultural activities causing environmental damages within protected areas?

The general protection regime, imposed by the Nature Conservation Act for all areas, protected or not, starts from the provision that it is prohibited to destroy or damage habitats of plant or animal species populations intentionally, without a justifiable cause. The cause is justifiable »when the action has a beneficial result and is socially acceptable«. Since this standard is rather flexible, there is a special provision for agriculture and other primary activities. The Act permits hunting and fishing of game species in accordance with the regulations governing hunting and fishing; performing of agricultural and forestry activities in accordance with the regulations governing agriculture and forestry and taking from the wild plants or animals for the purposes permitted by the law (Art. 14).

In a protected area, designated by the Act, it is prohibited to carry out activities affecting nature in a manner that might worsen the state of a valuable natural feature or change, damage or destroy it and to change the conditions or status so that the valuable natural feature is changed, damaged or destroyed or that its aesthetic value is reduced (Art. 64(2)).

A special obligation is prescribed in cases when the activity affecting nature results in the degradation of nature. In such a case, the person responsible for the activity must immediately

eliminate the adverse effects of his/her activity and cover all the costs of the elimination. When the person responsible for the activity affecting nature cannot eliminate the adverse effects of his/her activity and nature has been degraded in ecologically important areas, in special protection areas, at the sites of valuable natural features or in protected areas, the ministry orders him or her to implement a countervailing measure (Art. 103).

On the other hand, according to the Livestock Breeding Act from 2002¹⁸, individual activities (fertilisation and land cultivation, growing and harvesting of crops, animal husbandry, turning to pasture, beekeeping and others) related to animal husbandry and carried out according to regulations, shall not be deemed as inadmissible actions by the real estate owner under the regulations governing the rights *in rem* on the real estate. The animal holder or breeder may practise undisturbed animal husbandry of farm animals on agricultural land and in housing facilities which are owned or rented by him/her, and, in the case of beekeeping, also on uncultivated agricultural land provided that he/she practices animal husbandry pursuant to regulations. Nobody may hinder the holder or breeder by an unlawful act in his/her practising of undisturbed animal husbandry, provided that such practising is according to regulations (Art. 10).

2.6) Does the application of polluter pays principle have any concrete manifestations with regard to agricultural activities?

It could be said that the increasing body of administrative regulations dealing with the protection of environment in agriculture is itself an evidence of the polluter pays principle since these regulations provide legal basis according to which the liability of various stakeholders is assessed. As public interest is regularly involved in cases dealing with environment, a great number of conflicts is resolved in administrative procedures.

2.7) Is there any jurisprudence in your country related to the civil liability of the farmer for environmental damage? What subjects are concerned?

A great deal of environmental administrative regulations has been issued in recent years, in the process of bringing of the Slovenian legislation in line with the *acquis communautaire*. The judicial decisions in this area are still scarce. The proceedings, if instituted, have not reached yet the Supreme Court and the Constitutional Court which provide a good database of their decisions.

Since the food law could be classified as a part of environmental law, several judgments regarding environmental liability, deal with the food law issues, in particular, the food safety. However, farmers were plaintiffs or defendants only in a minor number of cases. Above all, the proceedings of this kind involved food-producing establishments.

¹⁸ Zakon o živinoreji, Ur. l. RS, No. 18/2002.