



Research Article

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Received: 22 April 2024 / Accepted: 30 June 2024 / Published: 5 July 2024

Reflection on the Criminal and Civil Liability on the Environmental Damages in Albania

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DOI: <https://doi.org/10.36941/ajis-2024-0137>

Abstract

This paper seeks to analyze the form of law enforcement in Albania against environmental crimes and civil liability committed by companies. This research uses the library research method, which collects data from legal material, legislation, literature, and research papers related to this research, processing and analyzing qualitatively. The result shows that there has not been law enforcement against the companies in environmental crime. In 2019, changes were made to the criminal code, where regulations were made on criminal offenses against the environment. Even though we have committed a criminal offense or not, being injured in an environment brings civil liability. Criminal and civil liability seem very similar, but many elements differ. The Albanian legislation, as well as that of other countries, is fully aligned with the Directive "On environmental responsibility, prevention and repair of environmental damage. The environmental legal framework has been drafted as a part of a legal package that aims to enable the transposition of all directives in this domain. The focus of this paper will be directed to the environment and legal framework, which aims to protect the environment by qualifying which kinds of persons' behaviors are considered illicit, in that measure that brings them in front of civil liability or criminal liability. Criminal law enforces the protection of society from crime. Interventions in the environment are considered a crime if the actions of responsible subjects break the balance of the environment. The civil legal framework has yet to make any provisions concerning environmental protection. There exist other legal mechanisms for requiring the damage and seeking compensation. It is worth using the methodological and theoretical methods to analyze two institutes. By using the analysis and comparison method, we address the most critical issues of relevance of research.

Keywords: Criminal responsibility, civil responsibility, environment, compensation, civil, polluter pays

1. Introduction

Environmental Protection is the existential right of human¹ sanctioned in different international legal acts. Concretely, environmental law is based on the European Directive on Environmental Liability, which aims to prevent and remedy environmental damage (Directive 2004/35/EC). The rules, responsibilities, and general procedures for environmental responsibilities are defined here based on the "Polluter pays" principle. This fundamental principle of this Directive should, therefore, be that an operator whose activity has caused environmental damage or the imminent threat of such damage is to be held financially liable to induce operators to adopt measures and develop practices to minimize the risks of environmental damage so that their exposure to financial liabilities is reduced (See the 2nd paragraph of the Directive 2004/35/EC).

This legal framework has determined the concrete tasks for all competent public authorities charged with the duty of environmental protection. Also, we include economic operators as subjects that attract specific interests in taking measures to protect the environment. (See Articles 5/11, 51, 52, and 53 of Law No.10431/2011 "On the Environmental Protection")². Before addressing the issue of civil and criminal liability in terms of environmental protection, we recall the institutions charged by law with environmental protection duties. The National Environmental Agency³ and the Inspectorate⁴ institutions under the Ministry of the Environment cover environmental protection, but they are independent in decision-making and performing the functions sanctioned by the law. (see article 59/1, 62 of the Law no.10431/2011 "On the environmental protection")⁵. If the operator performs in a certain way that constitutes a possible risk for severe pollution of the environment, it can suspend the activity. The Inspectorate can send the public authority a notice of the suspension of the activity (See Article 62 Law no.10431/2011 "On the environmental protection"). The Albanian Criminal Code has established the applicable regulations concerning environmental crimes to ensure the preservation and protection of the environment. I emphasize that according to the Albanian criminal code, most criminal offenses against the environment are crimes. Regarding the Criminal Code, two concrete examples of criminal misdemeanors against the environment are punishable only by fines. In the theories of criminal law, the opinion was expressed that such figures of criminal offenses, although in the formal-legal aspect, they are criminalized as a criminal offense, "the meaning of the criminal offense cannot be fulfilled until their social danger is missing as an essential element (I.Elezi; 2014 pg.57)⁶. Without social risks, this illegal activity against the environment can be classified as an

¹ See the (Aplication no.67021/01 Tatar and the others vs Romania , 2000), It is worth noting that the jurisprudence of the Strasbourg Court has confirmed and accepted the existence of a specific human right to a healthy environment.

² See Article 5/11, 51, 52 and 53 of the Law no.10431/2011 "On the Environmental Protection"

³ The National Environment Agency administers the environmental information system. It takes the necessary measures, and the economic operator is responsible for covering the corresponding cost. It asks the operator to take necessary measures to be taken. Although the Agency is responsible for identifying the economic operator that presents the direct threat of possible harm or that there is caused damage to the environment, for assessing the significance of the damage caused, as well as for the determination of rehabilitative measures (Article 45, 50/7/11/13/14/ 15; of the Law no.10431 "On the Environmental Protection," 2011)

⁴ The Inspectorate must take any action that, based on this law, can be necessary to ensure compliance with the requirements of the permit conditions relevant to the environment. The Inspectorate must take any action that, based on this law, can be necessary to ensure compliance with the requirements outlined in the provisions of the construction legislation for the planned activities for which an environmental impact assessment is needed. (Article 62 of the Law no.10431 "On the Environmental Protection," 2011)

⁵ The National Environment Agency is a central public institution depending on the minister, who exercises his jurisdiction over the entire territory of the Republic of Albania through the central office and regional branches in the districts, which will be addressed here and below, referred to as regional environmental agencies.

⁶ I.Elezi, S.Kacupi, M.Haxhia "The Commentary of the Criminal Code of the Republic of Albania (General Part) pg. 57

administrative violation of the law on environmental protection. However, in no case can the damaged private party claim compensation for the civil damage caused by the illegal activity of the bodies. For the subjects responsible for causing the pollution of the land, judges do not hesitate to charge the new debtors with responsibility by charging them with the obligation to repair. (Mustapha Mekki 2017 pg.24) In this paper, we will answer some questions. First, what is the difference between civil and criminal liability for environmental damage? Are the entities responsible for causing environmental damage exempted from responsibility for paying non-contractual damage in cases of income environmental damage as a result of their activities? Can a legal framework for environmental protection be summarized in a single code, or can it be better guaranteed by sectoral legislation? Analyzing the elements of the criminal offence of environmental crimes and the elements of civil responsibility in a comparative report with reference to the models of other countries, we will have the opportunity to present the results of this scientific investigation.

2. Methodology

The paper intends to analyze, through the methodological-theoretical framework, the responsibility of the actors in the society whose activities endangered the environment from the criminal- law and civil law aspects comparing the Albanian framework. To achieve this goal, we referred to the Albanian legal framework that aims to protect the environment in various aspects. We have analyzed the provisions of the criminal code, and we have referred to the civil code to make a comparison between civil and criminal liability. We have introduced a legal framework for environmental protection (Law no.10431 "On the Environmental Protection", 2011) (Law no.9537/2006 "On the administration of dangerous substances" O.J. 56, 2006). The community legal framework and community law also deal with environmental issues. Civil liability is also mentioned in the European Union Directive (Directive 2004/35/E.C. "On environmental liability concerning the prevention and remedying of environmental damage"), (Directive 2008/98 of E.P. and E.C. "On waste", 2008), which I will analyze in some aspects in another matter. The criteria of selection of this method serve to well clarify the qualifications of the actions as criminal offences or civil responsibility.

The analysis method will explain the concepts related to the environmental liability of the environment. The normative method will produce an overview of legislation that rules issues of criminal and civil law liability due to environmental damage to make the same provisions as the international acts and the EU legal framework. This method would emphasize the same relevant legal regulations in this area and the most crucial legal provision of accountability due to environmental threats from criminal and civil law aspects in Albania comparing with the other countries. To apply the analytical method, we needed to refer to the opinions of local and foreign authors based on literature, articles, commentaries, and doctoral theses to convey information and perform legal analysis to understand the difference between civil and criminal liability. Here, we can refer to the study of what happened in the criminal legal protection of the environment (Turkeshi, 2014). Presentation of the concepts and notions of civil responsibility for which the local literature about obligations and contracts (Semini, 1998), (Mustafaj, 2016), (Nuni, 2008) has helped us. The notion of guilt and civil responsibility is in the Commentary of the Criminal Code of the Republic of Albania (Ismet et al., 2012). In the doctrinal aspect of the matter of environmental civil liability, we have referred to the opinions of two authors to whom we have referred in several moments to understand the connection between environmental law and civil liability in terms of non-contractual damage (A.Manushaqe, 2017), (M.Mekki " Responsabilite civile et Droit de l'environnement", 2017). We have analyzed a little in a comparative view, again referring to the countries of the European Union. Also, using the same process, the actors will bring the basic concepts related to criminal law and civil law liability for environmental damage to the court. In order to better understand the problems related to the classification of responsibility, we have referred to a particular category of legal issues of a civil and criminal nature. Decision no.6/2009 and Decision no.4/2010 of the Court of General Jurisdiction of Kruja, where we have criminal liability due to the dangerous activity carried out by certain entities

that do not commit administrative offences. (Decision no.779 (00-2010-1070) dated 14.07.2010 of the High Court of the Republic of Albania (Criminal Section)). The Unifying Decision of the United Colleges of the High Court lays the foundations for the type and classification of property and moral damages (Decision no. 12/2007 "of the United Colleges of the High Court of the Republic of Albania, 2007). In this paper, we have also dealt with the decision-making of the French Cassation Court in cases where the responsible entity has delegated its obligation to rehabilitate the environment and environmental civil responsibilities to the contact authority (Decision no 91-10.608 of the Cassation Court of the Republic of France), Civil Chamber [Cour de cassation Pourvoi n° 91-10.608; Chambre civile], 1993)

In conclusion, we will indicate the methods in the comparative method. This one will clarify the similarities and differences in the legal regulations applied in Albania according to European regulations. At the same time, their results will be compared and analyzed, with the positive and negative aspects and various solutions case by case.

3. Criminal Responsibility and Environmental Damage

The Criminal Code of the Republic of Albania has sanctioned criminal offences against the environment in a particular chapter. The collected data brought to attention that the law has regulated specific data by defining special provisions depending on the type of damage caused to the environment. Specifically, air pollution, waste management (when it results in damage to the environment), transportation of waste (when it results in damage to the environment), dangerous activities, explosive materials, and radioactive substances, criminal offences consisting of destruction of flora and fauna, or trading of protected species, prohibited fishing, or illegal cutting of forests, etc.

These are some criminal offenses for which the legislator has established specific sanctions as a function of environmental protection. (See Articles 201-207 of Law no. 7895 dated January 27, 1995, Criminal Code of the Republic of Albania, 1995)⁷. To illustrate the criminal liability for environmental damages, we will take a concrete example of the legal provisions concerning air pollution. Some provisions state that "when the act does not constitute an administrative offense," it refers to environmental law. If the environmental law uses no distinguishing criteria, it will refer to the Criminal Code. The provision made by the criminal code concerning punitive policies against the environment states a fine or five years imprisonment. The measures refer to the illegal cutting of forests, air pollution, and the transit or storage on Albania's territory of toxic and radioactive waste, punishable by one to five years. The same acts, when they bring grave consequences for people's health, are sentenced to 10 years. Pollution of the seas, rivers, lakes, or network cumulative resources, distribution of water with toxic radioactive substances, fishing in time, the tools, in places and by unlawful means, is punishable by a fine or imprisonment up to three months. Fishing in a prohibited time, place, or method constitutes criminal contravention and is punishable by a fine or up to three months of imprisonment (Article 204 of the Criminal Code). In a comparative report with other countries, Germany has undertaken two reforms, one after the other, to enrich their legislation. The first reform was in 1980 and later in 1994 as a function of codification and summary of criminal offences against the environment in a single legislation. The reform aimed at shifting environmental criminal offences to the criminal code. In the second reform mentioned above, works were also added which have to do with soil pollution, otherwise considered as "protection of soil qualities"⁸

In general, the criminal codes of other countries note that many qualifying circumstances provide for, which, in addition to severe consequences for people's lives and health, also include other consequences that are directly related to the environment, such as destruction or Part of the

⁷ See the Section IV Articles 201- 207/ç "The Criminal Offence against the Environment" Criminal Code of the Republic of Albania

⁸ *Idem*.

plant and animal world or any other damage to the environment with severe consequences, increase in the level of pollution, to a critical level, or permanent or permanent pollution, irreparable harm to air quality⁹.

3.1 Air pollution as a criminal act

Air pollution is one of the criminal offences that follow the model of abstract endangerment due to the practical obligations stemming from the EU Directive. Concretely, the use of substances that harm the thinning of the ozone layer can be considered a formal criminal offence. The pollution of environmental components is currently separated and classified under special provisions depending on the protected natural component. This model currently exists in the Hungarian Penal Code, which is similar to the model of the German Penal Code. This model has divided the criminal offence of aiding and abetting into three special provisions. The second possibility of combining these provisions in a single provision will make it more challenging to classify and define the concept of environment¹⁰.

The Italian Environmental Code outlines several criminal offences, the violation of which can have profound legal implications. These offences include installing or operating a factory that produces emissions into the atmosphere without the required authorization or continuing the activity with an expired, suspended or revoked authorization. Violating the borders, allowing dismissals or violations specified in the authorizations during the exercise of activities in the factory, and non-compliance with specific obligations for providing information according to the requirements in this code can lead to legal action.¹¹ "The question is when will these serious consequences be considered according the Albanian doctrine?

In the city of Kruja, during the activation of the coal furnaces, air pollution is regarded as a criminal offense air pollution based on Article 201 of the Albanian Criminal Code. Because in these concrete cases, the production of charcoal without a permit for the exercise of this activity, without filtering equipment applying primitive technology, incinerators such as wood waste and car tires were used, the combustion of which had reached the air after the release of fumes beyond the permitted limit, bringing severe consequences for life and health. Pollution at these levels has also been proven by environmental expertise, once again affirming air pollution through the air of toxic substances, pg.130;(Decision no.6/2009 and Decision no.4/2010 of the Court of General Jurisdiction of Kruja District)¹². In the framework of the full respect of the principle of legality and its principles in criminal law, also in terms of the effective implementation of the criminal law, it is necessary to take concrete measures to regulate this vacuum site in the legal framework on the criminal offense of air pollution. To be considered consummated, the criminal offense of air pollution must fulfill several elements. The cause-and-effect relationship must be such that air pollution results from the emission of gases. The release of gases and pollutants beyond the limits of the permitted rates. Also, the offense should not be considered an administrative offense. It is worth emphasizing that the severe consequences foreseen by the quality circumstances of air pollution are caused by carelessness, which must be proven in each specific case. In this context, if such consequences are caused in a causal connection with the offense, then the criminal offense of air pollution provided for in the first paragraph of Article 201 will not compete with the criminal offenses of grievous bodily harm or manslaughter since in this case, the legislator has provided for a qualified figure of the criminal

⁹ See the section 180 and 181 of the Austria Criminal Code, referred and in the Article 347 of the Kosovo Criminal Code referred in (Turkeshi, 2014) p.132

¹⁰ (Turkeshi, 2014) p.292, p.293

¹¹ See article 453 of the Italian Environmental Code (Decreto Legislativo no.152, 3 Aprile 2006, 2006)

¹² Decision no.6/2009 and no.4/2010 of the Court of General Jurisdiction of Kruja District, referred by (Turkeshi, 2014) pg.130

offense which is different from the crimes against the person. The main facility has again air pollution protection. (See Decision no.779/2010 of the Criminal College of the High Court of the Republic of Albania)¹³.

3.2 *Transporting or depositing toxic radioactive waste in Albania compared with the other countries*

"Transporting or depositing toxic and radioactive waste in Albanian territory is punishable by imprisonment from one to five years. Furthermore, this act, which has caused serious consequences for the lives and health of people, is punishable by imprisonment for five to fifty-one years " (See Article 202 of the Albanian Criminal Code). The characteristics of this criminal offense are the maintenance of the facility, where hazardous waste and substances are specified, which, referring to special laws, are classified as dangerous. Several by-laws and special laws regulate the collection and integrated management of waste. Prohibitions related to hazardous waste are also included in the law on environmental protection in the Republic of Albania. Currently, in Albania is in force the law of 2011 "On integrated waste management", which is an effort realized with the intervention of Directive 2008/98 of EP and EC "On waste ", 2008 . The special characteristics of this act have to do with the legal definition and terms of what the legislature has included in sanctioning this criminal offense. An essential aspect is the consummation of this criminal offense, which, according to the criminal code, "the crime of transporting toxic waste is called consummated when one of the prescribed actions is carried out." in the provisions of article 202 of the criminal code. The Penal Code holds the subject criminally responsible even when no harm has occurred to people or the environment. Below, referring to the arrival of the anticipated years, the criminal offense is considered consummated under certain circumstances. If it has severe consequences for the life and health of other people, it is classified as a criminal offense committed under certain circumstances. The Republic of Albania has not had any cases related to the discharge of toxic waste; however, for references, we refer to the jurisprudence of foreign courts. In German criminal legislation, exceptional cases of the introduction into the environment of substances that are particularly dangerous because they risk causing death or serious injury to a person are recommended to be placed under special provisions¹⁴.

From what we ascertain in the case of this criminal offence is the fact that this criminal offence is similar to the air pollution analyzed above (Nuni, 2008). The similarity consists in predicting a qualifying circumstance that causes severe consequences for people's lives and health. As a result, even in a fourth case, if the act has caused consequences other than those foreseen as qualified circumstances, such as it has caused dire consequences in the health of people, material consequences, or a plant or animal, the act is considered a crime. Simply. Regardless of whether there is a criminal offence, the subject who destroys the environment in every case is civilly liable. First, in a broad sense, civil liability does not exclude and does not make distinctions about its existence, whether we have to deal with heavy or light duty. Below, we will talk about civil liability and its elements. The illegal trafficking of waste is an offence that the Italian Environmental Code also covers. The text was quoted as follows: "Illegal trafficking of waste and organized activity for the trafficking of garbage are considered criminal offences that are punishable by law. Conviction in connection with them is punishable by a fine and imprisonment of up to two years¹⁵. Trafficking and organizing the illegal trafficking of waste is classified as a crime and is punishable by law.

¹³ See Decision no.779 (00-2010-1070), date 14.07.2010 of the High Court of the Republic of Albania, Criminal Section)

¹⁴ See German Criminal code referred by (Turkeshi, 2014) p.293

¹⁵ See Article 259 of the Italian Environmental Code (Decreto Legislativo no.152, 3 Aprile 2006 , 2006)

4. The Elements of the Civil Responsibility on the Environmental Damages

First, before dealing with the damage caused to the environment and the elements of civil liability in environmental damage, we must deal with some elements related to damage in the civil field, analyzing the relationship between the violated right and the damage suffered. This means that non-pecuniary damages which have not violated an essential right guaranteed by the Constitution cannot be compensated. Another critical element is the circumstances of the case. The civil judge, the same as the judge in the criminal court, aims to individualize the measure of punishment. He seeks to find a reward that matches the damage caused. Decision no. 12/2007 has stated that for non-pecuniary damages of a subjective nature such as moral, existential, etc., the court, in addition to its margins, must also take into account: "the concrete circumstances of the case to first estimate the effective degree of pain and spiritual suffering caused and, about it, the nature of the illegal fact or its dangerousness if it constitutes a criminal offense, the degree of culpability and in general the behavior of the causer of the damage about the event and the injured persons, the nature of the violated right and the consequences caused by the illegal fact, the subjective conditions of the injured party such as age and individual degree of sensitivity to the violation suffered, as well as the circumstances related to the social and economic conditions of the victim"¹⁶. Civil liability necessarily requires specific criteria. First, the damage must directly and immediately result from the person's action or inaction. In the objective sense of causing harm in civil law, liability is the basis of the quantity and value of the harm caused by the person (Nuni. A,2008, pg.98-99). The action has to be against the legal provision. This means that it must be sanctioned, protected, or prohibited by the civil code of the particular law, for instance, law no.10431 "On the Environmental Protection," or other normative acts. That is the second element important for civil liability, generally and specifically, environmental damages. The causal link between the irregular or illegal action or inaction and the resulting consequence that caused the damage is the third element cumulatively important for civil liability. The causal relationship represents the relationship between the respondent's actions, whose actions are presented as the cause and oblige him to compensate the injured persons or the community. (Mustafaj. I pg.95-96). Discussions in doctrine have been raised around the notion of guilt. Civil legislation, in many of its provisions, provides for civil liability, but it does not deal with the element of fault. By analogy and analyzing this element, we also refer to criminal legislation. Guilt represents the psychic attitude of the author of the person who caused the damage to his action and the resulting consequence. This attitude appears in its two aspects: intellectual and volitional moments.¹⁷ In contrast to criminal responsibility, where guilt appears as a necessary condition for the existence of responsibility, without which there is no criminal sanction, in civil responsibility, guilt is not an essential condition for the existence of responsibility, without which there is no criminal sanction, in civil responsibility, fault does not represent the essential condition for the emergence of responsibility, for the damage caused, because in civil responsibility there are situations where responsibility arises even without fault, as is the case with objective responsibility or responsibility without fault. ¹⁸ Referring to our interpretation of the civil code, we have two kinds of responsibilities: Objective liability and subjective liability. The objective responsibility accepts that the respondent may not be guilty, but he has civil responsibility. This kind of responsibility refers precisely to the case of responsibility for dangerous items and dangerous environmental activities. As it concerns subjective responsibility, the person is guilty. The situation is caused by his direct actions, expressing his direct gratitude for the consequences. In a sense, the responsibility for harm in a no-

¹⁶ Decision no 12 dates 13.09.2007 of the United Colleges of the High Court in Albania; Decision no.34 /2005 of the Albanian Constitutional Court

¹⁷ See M.Semini "E Drejta e retrieve the e contrastive [The obligations and contract law] (Semini, 1998), Tiranë 1998 (Semini, 1998)

¹⁸ I.Mustafaj Detyrimet dhe Kontratat [Obligations and contact], Tiranë; 2016, (Mustafaj, 2016)

fault toward the environment the Civil Code exists (See Article 624 at the Law nr. 7850/1994 "Civil Code of the Republic of Albania, 1994")¹⁹. Guilt implies the union of three elements. Material fault, in the case of damage caused to the environment, as a function of taking responsibility for the legal-civil relations causing damage to the environment, has an objective and quantitative meaning. The greater the guilt, the greater the knowledge, the greater the subjective responsibility of the person. In both civil doctrines, it does not matter how the damage is done by action or inaction. In conclusion, the civil doctrine defines guilt by including all actions in which mistakes are made and are caused by two specific persons whose standards of behavior are violated by the subjects of their law. The Civil Code has not defined a particular education category in a future environment. As a function of improving the legislation in compliance with international acts. According to the other authors' opinion, the Civil Code can be improved by making some adjustments or harmonization concerning special legislation in environmental Protection pg.104.

We emphasize that environmental damage should only occur because of illegal actions. The illegality of an ecological damage action means the violation of the legal norm, customs, or moral rules of society as a consequence of which this material damage has occurred. What must be understood is that the fault must be separated and distinguished from the illegality of the action caused to raise the special legal-civil liability about environmental damage. Civil doctrine has several theories related to illegal action or inaction and guilt. For example, if we refer to the objective theory, the prohibited action is judged, not guilt. The subjective theory of unlawful action is essential for understanding the amount of guilt. A combination of these theories would be more appropriate in assigning responsible subjects. Also, the environmental consequences allow us to understand the extent of the damage caused as a function of the calculation of the responsible entities. , pg.115²⁰.

As for the element of guilt, in most cases, the courts' positions have been different. For these reasons, about criminal law, it is worth noting the fact that guilt in the civil sense is not related to responsibility for the damage caused. This conclusion was reached after analyzing by analogy the decision of the Supreme Court, where it is stated that: "The award of damages is not related to the element of "fault" of the driver of the vehicle but to the use of the vehicle ."This issue, as judged by the Supreme Court, is related to the literal interpretation of the law "On Compulsory Liability Insurance for Damages Caused to Third Parties by the Use of the Vehicle ."Referring to this law, liability insurance for damages caused to third parties is related to using the vehicle without requiring any other element. In other words, the aspect of the subject's fault, in this case of the driver of the car, serves the criminal and administrative doctrine to determine the measure of responsibility of the vehicle's driver. However, the debt payment in favor of third parties is unrelated to these elements.

The third parties will have to be reimbursed by compulsory insurance for the damages caused by the use of the vehicle and the cause of the damage, but with the connection between the damage caused and the use of the vehicle as the source of the accident. The causal link is unrelated to the driver's fault and the damage caused. This means that compensation will be paid for the damage caused as a result of using the vehicle as a source of accident (Decision no.246/2023 of the Civil Chamber of the Hight Court pg.7). Using the same logical analogy, it is also valid in cases of damages caused in the environment. The difference is that we do not have to deal with an insured liability here. However, the analysis is based on the results caused. The actions of the economic operator caused the damage. (commercial entity), regardless of whether this activity was dangerous or not. Civil liability arises due to damage caused by pollution. It does not matter if the pollution caused the accident with or without fault. Even in this case, the payment of damages is not related to the fault of the entity that polluted the environment, but it is related to the fact that the activity of the private entity, which was carried out using the environment, resulted in the disruption of balances and

¹⁹ See Article 624 of the (Law nr. 7850/1994 "Civil Code of the Republic of Albania, 1994)

²⁰ (A.Manushaqe, 2017) pg.115

damaged the environment. The causal relationship between the damage caused and the use of natural resources has disturbed the balance and denatured its condition, bringing consequences to a specific community or third parties.

4.1 *Types of environmental diseases depending on the circumstances*

Damage to the environment can result from extracontractual or contractual damages; the difference between them is the existence of a contractual agreement. The damage caused to the environment comes from violations of the contract concluded between the parties. "The obligation to seek compensation for damage caused by non-fulfillment of a contractual obligation is a secondary obligation."²¹ The author's rights and obligations may result from disagreements in violation of the conditions specified in the contract. While the extracontractual aid, according to the doctrine, is sufficient that the event occurred, the legal fact that the law has imposed inevitable legal consequences, which do not result in being regulated in any form in any contract (Nuni A, 2009; 583-584). The emergence of legal-civil liability for the damage caused to the environment can also come from dangerous activities or dangerous items, according to the definitions mentioned in the Civil Code²². The existence of dangerous activity deals with the presumption of guilt of the party who carries out the activity or possesses hazardous items, and there is no need to prove guilt as a subject of responsibility. In these cases, the person is charged to compensate for the damage. The extent of the scope of objective responsibility for environmental protection is related to the character of industrial development, based on the use of means of production, which in themselves are sources of danger for people and things (landfills, factories, quarries, factories for the processing of oil and by-products of her) of a social risk of being accepted as an unavoidable component of the environment in which we live. The origin of environmental liability in the legislation of this country is a liability with fault and no-fault (which includes intent and negligence). The person with his behavior has wholly or partially damaged it pg.119 .

4.2 *The jurisprudence of the cassation court related to civil liability on environmental matters*

In this section we are illustrating a concrete example of a judgment from the French Court of Cassation to understand and demonstrate the concept of civil liability for environmental damage. In this case, referred to as study intention, we are faced with the circumstances of a company, during its activity, having caused damage to the environment as a result of an explosion. As a rule, the responsibility for environmental damage is assigned to the party that, with or without fault, caused the damage through actions or omissions. According to the circumstances of the fact, it may happen that different companies, to protect themselves from civil liability, enter into other contractual agreements with third parties to reduce the level of liability in the event of an unforeseen event that results in this causing environmental damage to life and protection. In the case of the destruction and disposal of the remaining remains due to the explosion, two companies have been charged to destroy and cover several pits of the remains, which are located in the perimeter of the defense. Due to the undertaking of actions to protect the environment and dispose of hazardous waste, the companies charged with disposal were cut off from the water supply by the Municipality, reducing the pumping of water at the construction site due to the potential pollution that may be caused. The Municipality of "Montigny les Metz has purchased additional water from the Mosallan water supply to cover its and the community's needs. In a concrete case, the Municipality sued the responsible

²¹ See Nuni A, Mustafaraj I, Vokshi A "Contractual and noncontractual obligations in English Law" (Decision no.12/2007 "of the United Colleges of the Hight Court of the Republic of Albania , 2007) and Jac Rinkes, pg.178, 2008 pg.106.

²² See Article 622 of the Albanian Civil Code.

company that caused the damage due to the spill. In connection with the rehabilitation of the situation created, the responsible company has delegated its responsibilities to two other companies, which are charged with rehabilitation using construction contracts. Responsible or contracted companies? For these reasons, the responsible company is suing the newly contracted company, which dealt with compensation for his work, to answer for the surplus of the water purchase and other additional costs caused to the Municipality. To protect its financial interests, the subcontracted party can also share its responsibilities with another company by dividing them. For these reasons, the company "Cardem" (contracted company) appealed to the Somafer Company as the guaranteed entity and the company ("Le Continent") as the insurer of the "Somafer" company. The "Somafer" company has filed a guarantee claim against the contracting company "Malterise" de la Moselle. Given the conditions when the Municipality makes compensation, it is logical that the responsible company (which has contracted the companies Cardem and Somafer for the compensation of the damages) has sued the companies as mentioned above a function of reimbursing the costs of the work that was established after the pollution of the gravel pit. The court states that it is natural that the responsible company, even though it has subcontracted to other companies that will deal with the compensation for the damage caused, cannot ignore the quality of the accountable subject (professional) and the risk presented by the material.

In conclusion, the Cassation has decided that the obligation to pay the damage is charged to the leading company (responsible for the damage caused). It was delegating responsibility and charging a secondary company to realize the compensation. It is the indisputable responsibility of the company responsible for the efforts made to draw the attention of the Cardem company to the danger that the latter could not foresee. In the end, the court decided that the Cardem company was responsible for compensating the Municipality and agreed about the Cardem company's complaint against "Somafer" company, where, according to necessity, the latter was charged with the payment of its part of the contract against the "Cardem" company. The court ordered the company responsible for the damage caused to guarantee the "Somafer" company to pay half its value.²³

In addition, In the analysis of the issue taken above, in a review, we conclude that vicarious liability involves limited cases of liability. The responsibility for the damage caused by the fact of the same thing is related to the use and the powers of supervision and control that characterize them. Even though he entrusts the repair and compensation to another company or a third person, the owner of the work does not cease to be responsible only if it is proven that this third party has complied with the circumstances in every way possible to prevent the damage that may be caused.

5. Difference Between Civil and Criminal Liability as Environmental Damages

Environmental damage is a threat that directly affects ecosystems and protected species. It also affects our society's economy. The intervention of the companies in different resources disrupts the integrity of the territories and communities. Albania and other countries have failed to define environmental crime. Furthermore, there is an unclear difference between criminal and civil liability for environmental damages. If we refer to the Environmental Code of the European countries, we see that it does not include any definition of its sort. The modification made to the Italian Criminal Code tries to improve the overall legal framework, listing a series of critical offenses and addressing organized crime's involvement, but does not provide any article on environmental criminal liability. Albanian Civil Code, related to the civil liability for environmental damages, sanctions that: " The person who culpably violated the environment, worsening, changing or damaging it entirely or partially, is obliged to compensate the damage caused²⁴ (See Article 624 Albanian Civil Code_)"²⁵In

²³ (Decision no 91-10.608 of the Cassation Court of the Republic of France; Civil Chamber [Cour de cassation Pourvoi n° 91-10.608; Chambre civile], 1993)

²⁴ See article 624 (Law nr. 7850/1994 "Civil Code of the Republic of Albania, 1994)

European countries, environmental protection and coexistence with nature are fundamental values that drive economic and political action.

The question is the dilemma about the fault. Although, it is difficult to classify the nature of that fault. In environmental issues, it is not easy to provide proof of fault in an original application of the theory of risk. Whoever creates the environmental risk must bear the burden. We try looking less for someone responsible than for someone to blame for the debt, a respondent (*Ph. Billet, le Principe de responsabilité in M. Mekki et E. Naim-Gesbert (dir.), p. 55 et s.*)²⁶. Here, specific special regimes are cited as providing for automatic liability, the charterer and the owner of the hydrocarbons. That means that despite the ambiguity of the legal framework as it concerns, the author of pure ecological damage will be fully responsible. Compared to Criminal liability, we can find differences in common elements. In general, natural or legal persons can commit criminal offenses against the environment. Persons often commit these criminal offenses. In particular, the scope of criminal responsibility also extends to the persons who ordered or allowed the commission of the criminal offense. The criminal doctrine does not limit the scale of the liability. The liability is not limited only to the executor of the criminal offense against the environment, pg 99²⁷ It has been proven that in most cases, it is not only natural persons who can commit criminal acts. The most severe criminal acts, which cause damage to the environment after violating the specific legislation established for the control of its pollution, tend to be committed mainly by the commercial society and various companies; this is due to the level of industrial activity carried out by them (S.Bell pg.264; ref. E.Turkeshi; pg.113)²⁸. This is because the institution of criminal responsibility of legal persons takes a particular situation (E. Turkeshi, 2014, p. 114)²⁹. In Albanian law, there is no limitation regarding the categories of criminal offenses for which a legal person is held criminally liable. Also, according to the legislation in force, the law does not impose any restrictions on executing administrative sanctions measures by tax bodies or other bodies by public administration bodies (See Article 2/3 Law no 9754/2007).³⁰ Regarding the object of this criminal offense, we can refer to the convention to understand it more clearly in its doctrinal aspect. In general, criminal offenses are classified into offenses that harm and endanger. Many are sufficient to endanger vital objects such as human life and health, property, or the environment.³¹ The legal person acts on behalf of natural persons, and the basis of criminal responsibility of legal persons is provided for the relationship between the natural person and the legal person. The Criminal Code provides those legal entities "are prosecuted for criminal offenses committed in their name or for their benefit by their bodies and representatives."³² It is worth discussing whether we must deal with civil liability or directly with the violation of criminal law norms in the field of environmental protection.

6. Results

In this section, we bring to your attention some concrete cases in the jurisprudence of how the Court has managed to apply the law in environmental matters. I also mentioned an issue related to air pollution due to the activation of coal furnaces. The Court of the Judicial District of Kruja, in the

²⁶ Ph. Billet, *le principe de responsabilité in M. Mekki et E. Naim-Gesbert (dir.), p. 55 et s. ref. (Mustapha Mekki " Responsabilité civile et droit de l'environnement", 2017) [The Civil responsibility and the environmental law]*

²⁷ See Recommendation no.7 in Resolutions of the XII-th International Congress of Criminal Law, Hamburg, 16-22 September 1979 in Resolutions of the Congresses of the AIDP.IAPL (1926-2004) vep cit.f.100.

²⁸ S. Bell, D. McGillivray, *Environmental Law cit fq. Two hundred sixty-four refereed by (Turkeshi, 2014)fq.113*

²⁹ Liability of legal persons for criminal offenses in the economic sphere, E.Turkeshi referred at the conference "Criminal Law and the Economy, Tirane 10-11 June 2010, idem.

³⁰ See Article 2/3 of (The Law no.9754/2007 "On criminal liability of legal persons in the Republic of Albania, 2007)

³¹ See (Convention on Protection of the Environment through Criminal Law , 1998)

³² See Article 45 of the Criminal Code of the Republic of Albania

application of Article 201 of the Criminal Code, has considered this illegal action of the commercial entities as a criminal offence, since in the specific case, the production of the gel happened using primitive technology, without filtering equipment, using flammable substances that cause pollution at alarming levels releasing smoke at alarming levels. This pollution has brought serious consequences for the health of the area's residents. It has disrupted the environmental balance of flora and fauna.³³ Assessed in this context, the criminal offence of air pollution referred to in the article, as mentioned earlier, will not compete with the criminal offences committed against the person, such as murder or wounding. The reason why we say this fact is because we need to distinguish between crimes against the person and crimes against the environment. So, air pollution is the object of environmental protection. As a rule, it is caused by carelessness, which is worth proving case by case. If, as a result of the causal relationship, it is proven that there have been harmful consequences intentionally, then in connection with these consequences, the offence cannot be considered according to the provision of Article 201 of the Criminal Code. Still, it will be considered a criminal offence against the person (Decision no. 779 (00 -2010-1070) dated 14.07.2010 of the High Court of the Republic of Albania (Criminal Section), 2010). In our opinion, if we have the consummation of a criminal act against a person, civil liability arises for the damage caused to the environment. In another case of a civil nature, Judged by the French Court of Cassation, the concrete application of the French Civil Code is reflected in the case where the responsible company has delegated the powers of repairing damages caused in the environment of another company. Referring to the legislation in force, "Taking into account article 1384, point 1, of the French Civil Code, since the responsibility for the damage caused by the action of something is related to the use and to the powers of supervision and control that characterize custody; that, except for the effect of contrary provisions valid between the parties, the owner of the thing, even though he entrusts it to a third person, does not cease to be responsible for it, unless it is proved that this third party has correlatively received any opportunities to prevent self-inflicted harm. For these reasons, the Court ordered the main company to be responsible for the compensation for the damage. (Decision no 91-10.608 of the Cassation Court of the Republic of France; Civil Chamber, 1993).

7. Conclusions

In conclusion to this research, criminal and civil liability, in terms of environmental damage, cannot be treated as alternatives which parties can choose according to their interest. The doctrine of Criminal Law recognizes a distinction between criminal and administrative offenses. I believe it cannot be declared the same thing as civil responsibility. Generally, the responsibility can be observed through the harmful consequences of a particular pollution. The liability is based on the gravity of the guilt as it concerns criminal responsibility. Then, the grade of damages against the environment determines the polluter's objective liability. Establishing the responsibility has an extended impact, and for instance, it is a factor to indicate the necessity of determining liability for insurance reasons. If an actor, according to their actions committee, a crime against the environment, the state is responsible for punishing him according to the legal provisions in force, respecting the principles of a proper judgment. The criminal responsibility executed by the competent authorities has nothing to do with the respondent's obligations toward a specific community. Because of his actions, the community may suffer the consequences, valuable calculated. First, we must emphasize that guilt is essential in the criminal aspect to measure the degree of responsibility. However, fault is not a necessary condition for civil liability in the civil aspect. With the existence or absence of the element of guilt, the responsible subject will be compensated for the environmental damage to the extent that it was caused. It is essential to emphasize the economic and economic benefits of the

³³ See Decision no.6/2009 of the Court of General Jurisdiction in District of Kruja referred by A.Shegani, E.Xhaxha "The Albanian Criminal Law and the Environmela Crime", p.10 referred by, (Turkeshi, 2014) p.130

illegal use of natural resources. The meaning of this calculation is vital both in the criminal aspect and in the element of civil responsibility.

First, the updated estimates of the income from environmental works result in the law-enforcement bodies setting in motion the implementation of different measures with an administrative or penal character. Referring to the great benefits achieved by economic operators in the conditions when they have not taken any measures to rehabilitate the environment in which they have used resources, the service is calculated correctly for the damage caused and the lost profit against the community or interested persons who were harmed by illegal actions. Economic calculations and economic analysis in environmental crimes apply to the fact that the incomes created by simultaneously consuming and criminal offenses against the environment result in the sequestration of criminal assets and then their confiscation by sending the incomes to the state budget. Analyzing and studying the legal framework related to the issues addressed in this research, it follows that regulations about criminal and civil liability due to environmental damage are two disciplines that cannot exclude one other. In addition, based on the findings of this research, it can be concluded that criminal and civil liability, due to environmental protection, has an unquestionable role in preventing damages and conserving the natural state of the environment before the occurrence of harmful events. We recommend that protecting the environment, both in terms of civil liability and criminal liability, necessarily requires a codification. The simple laws we mentioned result in negligence on the part of law enforcement bodies to distinguish whether illegal actions are criminal. This takes time and has high costs for the law enforcement bodies and, at the same time, for the community, which expects the punishment of the responsible actors as soon as possible and compensation for the damage or repair. It is also recommended that the Albanian legislators take a more active role in implementing the provisions of the income from the community instruments to exceed the minimum standard set by the EU directives in matters of environmental crime or civil liability and the repair of income damages, from the actions of the responsible entities. Executive power must play a more significant role in taking concrete measures aimed at implementing the law to guarantee the effectiveness of the provisions provided in the Criminal Code, environmental law, and even civil code in matters of civil responsibility.

Often, we have also mentioned in an article that there is an expression "if the work does not constitute an administrative offence. It is recommended that this expression be removed from the criminal code because, about the criminal offence of air pollution, the law on environmental protection refers to the criminal code as to how many times we have to act with criminal responsibility when air pollution is at alarming levels. Conversely, the penal code refers to this law. This brings great opportunities to abuse with the interpretation of legal terms. Technological developments and the dynamics of human activity are such that they have brought about the destruction of the environment by means and forms that are not foreseen or recognised by civil or criminal legislation. Referring to the international instruments, the traffic of hazardous waste, the illegal trade of some species of animals and plants, and the illegal use of some substances, which therefore bring serious and concrete consequences, even though the consequences for them are not currently observed, must be implemented. in internal criminal legislation as part of environmental crimes. In addition, such behaviour should indicate non-contractual damages when the damage occurred because of illegal actions. The multitude of behaviours that bring civil liability should be added and defined in a special chapter in the civil code, which will bring about the birth of environmental civil liability as a result of the damage caused to the environment, without excluding from criminal liability these actions which destroy the environment.

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