



Research Article

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Environmental Protection through Criminal Law Practical Parallelism Between Directive 2008/99/EC and Albanian Criminal Law

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Abstract

Environmental crime is the fourth largest criminal activity in the world, after drug trafficking, human trafficking and falsification, growing between 5%-7% per year (Assessment from Interpol of the United Nations Environment Programme). Our criminal code provides numerous of offenses with a focus on environmental protection. These criminal acts, regardless of the immediate needs for investigation and prosecution, have been not taken seriously rather in investigation and further in judgment. This is due to various factors, among the most important being the neglect from almost all responsible structures on environment protection. Today, as the consequences of these crimes have taken an unstoppable consequence, the focus of policymakers and legislative body, must turn to environmental protection through various mechanisms, but especially through criminal sanctions. Within this protection, which has already reached the levels of a challenge, there is a need for new legal provisions. In this regard, in this paper, we address shortly the legal regulation and evolution of environmental crimes in Albania, various aspects of the investigation and prosecution of environmental crimes in Albania, referring to statistics, analyzing them and drawing recommendations, which are still valid and more, taking into consideration the initiation of work for drafting the New Penal Code, as well as the practical parallelism between Directive 2008/99/EC on environmental protection through criminal law and Albanian criminal law in environmental protection.

Keywords: environment, environmental legislation, environmental crime, directive 2008/99/EC

1. Introduction

Minimizing and preventing environmental crimes is definitely an objective of contemporary criminal policy. This is because during the last years the impacts on the environment caused by humanity

have been extremely large, causing death or serious injury to people and damage to the environment itself. It is understood that in solving all the problems found in society and the entire institutional chain for the protection of the environment, national and international legislation is of a great importance, as in a large part of the cases the consequences of this crime take dimensions beyond the borders of the country where the environmental crime takes place.

Among many special laws that regulate and define the boundaries, the relationship between man and the environment, the substantive criminal law, which is the Criminal Code of the Republic of Albania, is of particular interest. The content of which foresees 18 criminal offenses, focusing on environmental protection. The efficiency of which has not been at the best possible levels, as we currently have alarming figures on the negative consequences in the environment caused by human hands.

Precisely because of the consequences that have brought in practice the behavior of people in damaging the environment, it has been seen with interest to further address in this paper the legal regulation, the evolution of environmental crimes in Albania, as well as the need for new legal provisions, various aspects of the investigation and judgment of these criminal offences. This includes presenting a detailed analysis of statistics, issues, and evaluated effective solutions, as well as an overview of the practical parallelism between Directive 2008/99/EC on environmental protection through criminal law and Albanian criminal law in environmental protection.

At the end of this paper, the conclusions and recommendations are reflected, which are even more valid on the eve of the drafting of the new Criminal Code and the new Directive of the European Union for the protection of the environment through criminal law.

2. Legal Regulation and Evolution of Environmental Crimes in Albania

In the Constitution of Albania, as the fundamental law of the state, provisions of the highest importance are provided in relation to the hierarchy of sources of law in our country. Among other things, related to the object of this paper, the Constitution provides that: *"Everyone has the right to be informed about the state of the environment and its protection."* (Constitution of the Republic of Albania, 1998), as well as, in chapter V of the Constitution, which coincides with the social objectives, it is provided that:

"The state, within the constitutional powers and means at its disposal, as well as in addition to private initiative and responsibility, aims to: ...d) a healthy and ecologically adequate environment for the present and future generations; dh) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development; (Constitution of the Republic of Albania, 1998).

As it is understood, from the Constitution of the Republic of Albania, the need first arises to find the appropriate legal mechanisms for the protection of the environment, which is defined as:

"...the set of interactions of biotic and non-biotic components that promote and feeds living life on earth, including the natural biophysical environment of air, land, water, the diversity of biological ecosystems, human health, cultural, scientific, religious and social values and heritage." (Law no. 8934 "On Environmental Protection", 2002).

Without its protection, the quality of life would be very low and therefore directly and indirectly it would negatively affect people's lives, violating their rights from time to time. Therefore, the legislator has estimated to protect the environment not only through legislations dedicated to setting the limits of the use of the environment (Law no. 8934 "On Environmental Protection", 2002), but also through criminal sanctions, which are provided in the Criminal Code of the Republic of Albania (Criminal Code, 1995).

Specifically, in the general part of the Criminal Code, it is provided that:

"The criminal legislation of the Republic of Albania has the duty to protect the independence of the state and the entirety of its territory, human dignity, rights and freedoms, constitutional order, property, environment, coexistence and understanding of Albanians with national minorities, as well as religious coexistence from criminal offenses, as well as their prevention."

(Criminal Code, 1995) and in its second part, it foresees criminal offenses against the environment, starting from Article 201 of the Criminal Code up to Article 207/ç. A total of 18 (Criminal Code, 1995) criminal offenses aimed at protecting the environment.

If we look at the evolution of these criminal acts, we notice that they have become part of the material criminal legislation in several different periods of time. Specifically, in 1995, a period of time that coincides with the entry into force of the Criminal Code, which provides for the first criminal offenses against the environment: Pollution of air, water and land (Article 201), Damage to protected species of flora and wild fauna (Article 202), Ozone-depleting substances (Article 203), Prohibited fishing (Article 204); Unlawful cutting of forests (Article 205); Cutting of decorative and fruit trees (Article 206); Breach of plant and animal quarantine (Article 207).

Furthermore, in 2008 (Law no. 10023, 2008) the criminal offense was added: Destruction of forests and forest environment by fire (Article 206/a) and Destruction due to negligence of forests and forest environment by fire (Article 206/b).

Meanwhile, in 2013 (Law no. 144, 2013), only the criminal offense of destroying forests and the forest environment by fire underwent changes (Article 206/a).

As well as, most recently, there were the changes of 2019 (Law no. 44, 2019), which further developed the protection of the environment through the change of existing criminal offenses and the criminalization of other actions such as: Waste management (Article 201/a), Waste transportation (Article 201/b), Hazardous activities (Article 201/c), Nuclear materials and dangerous radioactive substances (Article 201/ç), Trade in protected species of wild flora and fauna (Article 202/a), Damage to habitats in environmentally protected areas (Article 202/b), Abandonment of a companion animal (Article 207/a), Intentional killing of a companion animal (Article 207/b), Animal abuse (Article 207/c), Matches between animals (Article 207/ç).

From the reflection above, we understand that criminal offenses in the protection of the environment have been increasing and this is due to the need to adapt the criminal legislation and respond efficiently to the situation of environmental crime in Albania. However, regardless of this, we bring to your attention that, currently, since 2019, the last amendments to the Criminal Code related to criminal offenses against the environment have passed 5 years, a period of time that is not long compared to the aim of stability over time of the norm, but relatively long compared to the development and advancement of diverse and harmful human actions against the environment.

3. Investigation and Trial of Environmental Crimes in Albania

Referring to the data obtained on the official website of the General Prosecutor's Office (Prosecutor, 2022), it is concluded that, for the years 2016-2022, it results that year after year there has been an increase in the number of proceedings registered for criminal offenses against the environment and investigated by the prosecution body, but almost only half of these proceedings have been sent to the court, which means that a large part of them have been dismissed due to the lack of a criminal fact or suspended due to the fact that the author is not found. From all the cases sent for trial by the prosecution body, it results that only a small number of the defendants have been sentenced and mainly with a fine or imprisonment applying Article 59 of the Criminal Code, "*Suspension of the execution of an imprisonment sentence and placing of the sentenced person under probationary*". Despite the fact that in 2019, a number of new provisions were added, it results that the conviction rate against the perpetrators of criminal offenses against the environment continues to be low.

Regarding the measures taken and the penalties applied to the defendants declared guilty, we

have the application of fines and imprisonment. Punishments in fine is the most used one in trials regarding environmental crimes. From the statistical data related to the amount and type of punishment, it results that in most cases the prosecution requested the application of a fine, but in cases where a prison sentence was requested, the application of Article 59 of the Criminal Code was also requested. Suspension of the execution of the decision with imprisonment and probation". If we observe the statistical data over the years, we see that there is no decrease in the number of proceedings for the specific offenses of this group, nor a decrease in the number of convicted persons, which shows a low effectiveness of the criminal law against violators of the law for the protection of the environment.

We note that only a few cases are notified or taken into account by the prosecution, few initiated cases are brought before the court, most punishments lead only to soft sanctions, and few cases end with punishments.

In these conditions, there is **certainly a need to update criminal legislation**, especially in accordance with technological developments, which, despite the positive aspects they have brought to everyday life, which enable some important processes to be carried out at a lower cost and faster work and people's lives, have also brought negative effects, as they have developed in new ways the violations of many important human rights, including the violation of the environment.

In response to this reality, it would be valuable to **criminalize a series of behaviors which**, in terms of the effects they have, should constitute an environmental crime according to the criminal law. This includes illegal recycling, pollution from the ships, illegal extraction of surface or ground water and handling of chemicals. More specifically, regarding the criminalization of the above behaviors, the following should be kept in mind:

The criminal sanction as a very important element in fulfilling the preventive goal against the consumption of criminal offenses against the environment. From the study and analysis of all criminal offenses against the environment, we note that the highest sanction is 20 years imprisonment, respectively for the criminal offense "Destruction by fire of forests and the forest environment" (Article 206/a, paragraph 3) and the criminal offense "*Nuclear materials and dangerous radioactive substances*" (Article 201/c, paragraph 3) and the lowest sanction is a fine, which is almost an alternative punishment in most criminal offenses against the environment. Of course, when we read that the heaviest penalty provided for criminal offenses against the environment is 20 years of imprisonment, we think that the sanction is heavy, there may be no need to change it and the attention of policymakers should go to finding other mechanisms with a preventive effect on consumption of criminal offenses against the environment. However, when we see that this sanction in both of the above cases is to this extent due to the consequence brought by committing these criminal acts, which in the first case is the death of the individual and in the other case is the damage to the property, health or life of people, as well as severe and prolonged damage to the environment or protected areas, we conclude that in fact the purpose of this sanction in the case of Article 201/c environmental protection is secondary, since the aim is the protection of life and in the case of Article 206/a the protection of the environment takes the same value as the protection of property, health and human life.

Further in the analysis, we note that the provision of this sanction is not to tell society that if you violate the environment you can receive a 20-year prison sentence, but to tell society that if you violate the environment and cause damage as a result serious harm to health, the death of people, and only in the case of consumption of the criminal offense of destroying forests and the forest environment by fire, paragraph 3, which also harms the environment, then you can receive a sentence of up to 20 years.

To be more concrete in the content of these two provisions, it is expressly provided that:

"Production, processing, treatment, use, storage, storage, transportation, import, export or extermination of nuclear materials or other dangerous radioactive substances, in violation of the requirements of the relevant legislation or of the permits and authorizations issued by the competent

bodies, when it causes or has the possibility of causing serious damage to air quality, soil quality or water quality, or to animals or plants, it is punishable by a fine or imprisonment of up to five years. ...

When the death of the person has resulted or is likely to result from the offense, it is punishable by imprisonment from fifteen to twenty years." (Criminal Code, 1995)

Intentionally destroying or damaging, causing serious material consequence, the forest stock, nursery – plot, forest reserve or any other unit similar to them, through fire, is punishable by imprisonment from five to ten years. ... when it has caused serious consequence to the property, health or life of people or causes serious damage over an extended period of time on the environment or protected areas, is punishable by imprisonment from ten to twenty years." (Criminal Code, 1995)

Of course, with the importance of guaranteeing the right to life and human health, this sanction is good and we agree with the legislator, but we do not agree on the sanction for any other paragraph of these criminal offenses, which are low and not they properly fulfill the preventive purpose, as long as various studies on the consequences of these criminal offenses in the environment are in high level.

In conclusion, this ceiling and floor limit, in the conditions of the daily increase of criminal offenses against the environment, reflects a non-efficiency of the current criminal norms in the protection of the environment, as far as it is related to the preventive purpose of the sanction, and at the same time there is a need for a more criminal sanction heavy and that fulfills the preventive purpose followed by effective mechanism for monitoring and implementing those provisions.

Of course, during the process of studying the criminalization of other actions against the environment and the amendment of the existing ones, the categorization of the criminal sanction should also be taken into account with reference to the entity that commits it, whether the perpetrator is a natural or legal person, the extent of the damage caused, as and as the case may be, the addition to the legislation of sanctions and auxiliary measures, such as the obligation to restore the environment, exclusion from access to public financing, disqualification from leading companies, exclusion from the right to financing and public assistance.

Within the framework of the review process of criminal offenses in the protection of the environment, the possibility for increasing the statute of limitations for criminal prosecution and the execution of the sentence, foreseeing special provisions for strengthening the enforcement chain, as the sentence decision has not been fulfilled, should be evaluated of the execution phase does not fulfill its purpose, as well as provisions protecting persons who report environmental crimes and support the investigation.

Meanwhile, evaluating the technological developments and taking into consideration the fact of updating the criminal law in the protection of the environment, in order to realize a complete and versatile investigative and judicial process, it is necessary to develop specialized knowledge for the investigation, criminal prosecution and the trial of specific environmental crimes, including the development of cooperation mechanisms and data collection tools, training materials for judges, prosecutors, police, inspectors, as well as increasing knowledge and improving methodologies for environmental damage assessment.

All of the above analyzed and recommended are of even greater importance in the conditions when the drafting process of the New Penal Code has begun and is continuing.

3.1 *The practical parallelism between the Directive 2008/99/EC on the protection of the environment through criminal law and the Albanian criminal law on the protection of the environment*

In the framework of the Stabilization - Association Agreement (Law On the ratification of the Stabilization - Association Agreement between the Republic of Albania and the European Communities and their member states, 2006), specifically its article 70, which provides for the obligation of the Albanian state, within the process of membership in the European Union, to

harmonize and approximate the Albanian legislation with that of the European Union, Albania has the obligation to align the legislation for the protection of the environment, including its protection through the mechanism - criminal law.

Currently, the European Union has in force the directive 2008/99/EC (Directive 2008/99/EC on the protection of the environment through criminal law, 2008), the provisions of which focus on the protection of the environment through criminal law. As clearly noted by the period of its entry into force, the directive is old and with so many changes that the world has undergone in almost 1 and a half decades, the need for a new directive is now an emergency. The same for our criminal law. Despite the fact that the directive is an act with binding force for all Member States or some specific Member States (Borchard, 2024), within the framework of the approximation of our legislation with that of the EU, the formulation of national criminal norms under the same approach as that of the EU, is of special interest since:

"A complete and harmonized legislation lays the foundations for a more effective protection of the environment, for measuring capacities and institutions, for increasing efficiency in the use of natural resources, for reducing and preventing environmental problems, in accordance with the principle of sustainable development, as well as for promoting economic growth." (Qetësor Gurra, 2020).

According to Mr. Miroslav Angelov, from the European Commission, DG ENV, Unit E.4, the existing 2008 directive is outdated and not fitting with the purpose, due to a lack of proper implementation, there is still a need for precision in the definitions of crime, for provision of types and levels of sanctions, coordination and cooperation in the enforcement chain. These and because of the outdated list of criminal offenses, weak punishments, as well as the lack of proper implementation (Angelov, 2023).

Further, Mr. Miroslav Angelov has cited that the EU has already started work on a new directive for environmental protection through criminal law. Thus he refers that:

- On 15 December 2021, the Commission adopted a proposal for a new Directive on environmental crime;
- The Council agreed on a general approach on 9 December 2022;
- The European Parliament approved its report in March 2023;
- The agreement was reached on November 16, 2023.

In these conditions, we note that, just like Albania, the legislation of the European Union has highlighted the need for new, tougher, clearer and complete forecasts, as well as those that bring efficiency to the environmental protection mission. In both cases, the goal is the same, the protection of the environment through criminal law.

The recommendations discussed above should be equally valid, both for the process of studying the new European Union Directive for the protection of the environment through the criminal law, and at the national level, since we are in the process of drafting a new criminal code. Taking them into consideration would reduce the consequences of environmental crimes and therefore would bring a different standard of life for people living today and those who will come tomorrow.

4. Conclusions and Recommendations

At the end of this paper, from the study and analysis of criminal offenses against the environment and their efficiency in practice, mainly evidenced through the analysis of statistics and data related to the investigation, trial and details related to the execution of the sentencing decisions and the perpetrators criminal offenses against the environment, we note that the preventive purpose of the norm is not fulfilled, since over the years the number of criminal offenses against the environment has not decreased. In order to fulfill the purpose of the norm, as well as to respond to new ways of harming the environment, it is necessary to revise the material criminal law that sanctions criminal offenses against the environment.

During the revision process of these norms, mainly the addition of new criminal offenses, as well as on the eve of the drafting of the new Criminal Code in Albania and a new European Union Directive for the protection of the environment through criminal law, in order to prevent behaviors that affect the environment, we recommend taking the following elements into consideration.

First, the criminalization of behaviors such as: illegal recycling, pollution from the source of ships, illegal extraction of surface or underground water and handling of chemicals.

Secondly, with the preventive goal, sanctions and criminal penalties should be reviewed. Mainly, sever criminal sanctions should be foreseen, categorizing them also based on the subject, the perpetrator of the criminal offense, which can be a natural or legal person, as well as based on the amount of damage caused to the environment. Meanwhile, the addition of sanctions and auxiliary measures to the legislation, such as the obligation to restore the environment, exclusion from access to public financing, disqualification from leading companies, exclusion from the right to financing and public support, etc., should be evaluated as appropriate.

Thirdly, the possibility of increasing the statute of limitations for criminal prosecution and execution of punishment for criminal offenses against the environment should be evaluated. Special provisions should also be provided for strengthening the enforcement chain, since the sentencing decision without fulfilling the execution phase does not fulfill its purpose. Provisions that protect persons who report environmental crimes and support the investigation should also have an increased attention.

As recently, the challenge of protecting the environment through criminal law must be followed by the development of specialized knowledge for the investigation, prosecution and trial of specific environmental crimes, including the development of cooperation mechanisms and data collection tools, training materials for judges, prosecutors, police, inspectors, as well as increasing knowledge and improving methodologies for assessing environmental damage.

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