

Environmental Crimes and Criminal Legal Framework in Albania

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Abstract

Environmental protection is an essential issue in today's society. With the increasing number of environmental problems and issues, it is essential to have a comprehensive understanding of the role of criminal law in environmental protection. This paper aims to explore the relationship between criminal law and environmental protection, determining the effectiveness of criminal law in addressing environmental threats. Also, through this study it is analyzed from a comparative point of view in relation to the legislation of the developed countries of the European Union, the shortcomings of the Albanian criminal legislation which need to be updated. Criminal law has also played an important role in protecting the environment by imposing penalties and punishments on individuals or corporations that violate environmental laws. However, there is a need to assess the effectiveness of criminal law in protecting the environment and the challenges it faces in achieving its objectives. This research aims to contribute to the existing literature on criminal law in environmental protection by providing a more complete understanding of its effectiveness and challenges. The findings of the study will assist policy makers in designing and implementing more effective environmental protection measures, resulting in the promotion of sustainable development.

Keywords: environmental protection, criminal law, punishment and effective measures.

1. Introduction

Environmental protection is an essential issue in today's society. With the increasing number of environmental problems and issues, it is essential to have a comprehensive understanding of the role of criminal law in environmental protection. This proposal aims to investigate the relationship between criminal law and environmental protection, determining the effectiveness of criminal law in addressing environmental threats. Environmental pollution poses a major threat to the planet. Increasing industrialization, urbanization, and population growth have led to an increase in environmental problems such as air pollution, water pollution, and land pollution, among others. According to a report by the United Nations Environment Program (UNEP, 2019), environmental protection has become a global concern due to the Regional Environmental Agency reported increase in environmental problems caused by human activities. This proposal aims to build on the UNEP report by exploring the relationship between criminal law and environmental protection and establishing the effectiveness of criminal law in addressing these environmental threats. Environmental pollution caused by industrialization, urbanization,

and population growth has resulted in problems such as air pollution, water pollution, and land pollution, among others (Lahiri-Dutt, 2018).

Environmental issues have resulted in severe consequences, including climate change, deforestation and species extinction. To address these issues, governments around the world have implemented various policies and laws aimed at preserving the environment. Criminal law has also played an important role in protecting the environment by imposing penalties and punishments on individuals or corporations that violate environmental laws. However, there is a need to assess the effectiveness of criminal law in protecting the environment and the challenges it faces in achieving its objectives. Based on a study by Berliner and Renn, criminal law has been an essential tool for environmental protection, but its effectiveness depends on the cooperation of other legal fields, such as civil and administrative law (Berliner & Renn, 2013).

Over the years, various legal measures have been implemented to protect the environment. However, the effectiveness of these measures has been constantly questioned due to the increasing number of environmental problems. Existing literature shows that the involvement of criminal law in environmental protection can be an effective tool in mitigating environmental challenges. The literature also identifies challenges associated with using criminal law to address environmental issues.

Criminal law is an important tool for protecting the environment from Regional Environmental Agency caused by individuals, corporations and governments. Environmental protection is increasingly becoming a vital global issue and in response, new legal frameworks are being developed to address these issues. The purpose of this literature review is to explore the role of criminal law in environmental protection and to identify the main legal principles and challenges involved in this process. According to a literature review by Sweeney and Manzi, criminal law has a critical role in addressing Regional Environmental Agency and protecting the environment by deterring Regional Environmental Agency full practices and imposing penalties on offenders (Sweeney & Manzi, 2018).

Environmental law is a concept that has evolved over several decades, with criminal law playing an essential role in this evolution. One of the earliest examples of environmental law is the Air Act US Clean Act of 1970, which criminalized the release of hazardous substances into the air. Similarly, the UK Environmental Protection Act 1990 includes specific provision for offenses relating to pollution and waste disposal (Erbelding, 2017).

One of the main principles of environmental criminal law is the concept of strict liability. In other words, a person or corporation can be held liable for environmental damage regardless of whether they were aware that their actions would result in environmental damage. This principle places a significant burden on businesses and individuals to ensure that their actions are monitored by Regional Environmental Agency (Reid, 2011).

Another important legal principle in environmental criminal law is the concept of due care. This principle requires individuals and corporations to take reasonable steps to prevent environmental bad occurring. For example, companies involved in waste disposal must take steps to prevent leaks, spills and other forms of environmental damage.

Referring to Reid, enforcement of environmental criminal law can be a challenging task, particularly in cases where the Regional Environmental Agency is not immediately apparent or where the Regional Environmental Agency extends across national borders. In addition, many environmental crimes are difficult to prosecute due to their complexity and lack of clear evidence of wrongdoing.

2. Criminal legal framework for environmental protection

The environment enjoys a special legal protection which starts with the Penal Code and continues with a series of special laws.

The Criminal Code provides for criminal offenses in the field of the environment in Chapter IV, of the Special Part of the Criminal Code, from article 201 to article 207/ç, several types of criminal offense are sanctioned.

The group object of these acts are the legal relations established and which receive special protection from the criminal law, to ensure the protection of the environment at a high level, its quality, preservation and improvement, prevention and reduction of risks to life and health of man, ensuring and improving the quality of life, for the benefit of present and future generations, as well as ensuring the conditions for the sustainable development of the country, good ones that are affected by pollution, damage or destruction of the environment.

The legislator through law no. 44/2019 “On some additions and changes to law no. 7895, dated 27.01.1995, Penal Code of the Republic of Albania”, has changed the content of some provisions, the legal requalification of figures, merging into a single one, as well as the sanctioning of new figures of criminal offences.

Only currently, after the changes in the criminal law, it is observed that special legal-criminal protection is provided for each of the components of the environment, which are: air, land, waters, climate, flora and fauna in the totality of interactions with each other, as well as cultural heritage, as part of the human-made environment. (The definition in point 7, article 5 of the law no. 10431, dated 9.6.2011 “On environmental protection”.)

Specifically, the following articles have been added: (1) 201/a “waste management”; (2) 201/b, “waste transportation”; (3) 201/c “Dangerous activities”; (4) 201/ç “Nuclear materials and dangerous radioactive substances”; (5) 202/a “Trading of protected species of wild flora and fauna”; (6) 202/b “Damage to habitats in environmentally protected areas”; (7) Article 207/a “Abandonment of a companion animal”; (8) 207/b “Deliberate killing of a companion animal”; (9) 207/c “Animal abuse”; and (10) 207/ç “Fights between animals”.

Environmental crimes are categorized according to the type of environment affected, envisioning them as crimes related to air, water or soil pollution, etc. Even in our criminal code this criterion is partially used. Thus, in article 201 of the Criminal Code, “Air pollution” has been provided as a criminal offense, while in article 203, “Water pollution” has been penalized.

But the categorization of environmental crimes can also be done according to the type of pollutant involved, such as electronic waste, oils, asbestos, etc. In Albanian criminal code, according to this categorization, we can single out article 201/ç “Nuclear materials and dangerous radioactive substances.”

They can also be classified based on the methods used to perform them. Thus, in Albanian criminal code, according to this categorization, we can single out the provisions in articles 204 “Prohibited fishing”, article 206/a “Destruction by fire of forests” or article 207 “Violation of plant and animal quarantine”.

Whereas, based on the geography of the scope, environmental crimes can be classified as internal environmental crimes, when they occur within state borders, as well as cross-border environmental crimes.

Another way of categorization is that according to the type of criminal offense, crime or misdemeanor.

The criminal offenses of “Air, water and soil pollution”, “Transportation of waste” and “Negligent destruction by fire of forests and the forest environment” are considered crimes under

the Criminal Code, especially in cases where these offenses have resulted in consequences serious for people's lives and health.

Meanwhile, the criminal offenses of "Prohibited Fishing" Article 204, "Illegal Cutting of Forests" Article 205, "Cutting Ornamental and Fruit Trees" Article 206, and "Violation of Plant and Animal Quarantine" Article 207 are classified in the category of criminal misdemeanors, being punished by a fine or a prison sentence of up to two years.

In addition to the provisions of the Criminal Code, a number of special laws have been approved, such as:

- Law no. 10431, dated 9.6.2011 "On environmental protection",
- Law no. 57/2020 "For forests",
- Law no. 9385, dated 4.5.2005 "On forests and the forest service",
- Law no. 64/2012 "On fishing", amended,
- Law no. 10 253, dated 11.3.2010 "On hunting", amended,
- Law no. 10006, dated 23.10.2008 "On the protection of wild fauna", amended,
- Law no. 81/2017 "On protected areas",
- Law no. 10463, dated 22.9.2011, "On integrated waste management",
- Law no. 162/2014 "On the protection of air quality in the environment",
- Law no. 27/2016 "On the management of chemicals",
- Law no. 9774, dated 12.7.2007 "On the assessment and management of noise in the environment",
- Law no. 155/2020 "On climate change",
- a series of by-laws.

3. Problems of judicial practice

From the study of judicial practice, a small number of investigated criminal cases and court decisions given with the object of criminal offenses in the field of the environment can be observed.

Even after the amendments to the Criminal Code approved by law no. 44/2019, dated 18.7.2019, the number of court cases is still low. Even the new changes to the Criminal Code mostly remained on paper and not updated in practice, being considered "elite" criminal offenses.

Courts of Judicial Districts mainly in most cases have judged offenses related to the specificity of the territory covered by the respective court. For example, the Court of Kruja (Where the author has been a Prosecutor for a period of almost 5 years and the cases of investigation of the criminal offense "Air pollution" were excessive) has tried mainly the criminal offenses "air pollution" and "illegal cutting of forests". The Court of the Judicial District of Lushnja tried the criminal offenses "illegal cutting of forests" and "forbidden fishing", as well as the Court of the Judicial District of Pogradec or the Court of the Judicial District of Saranda.

It is important to mention here that the Elbasan Judicial District Court tried the criminal offense of "water pollution" and "air pollution". In some cases, proceedings have been registered due to the criminal complaint of various entities, such as the People's Advocate (Report of the People's Advocate), against some companies that carry out the activity of heavy industry.

Few investigated cases have been identified for the new criminal offenses added to the Criminal Code with the amendments approved by law no. 44/2019, dated 18.7.2019, but very few, almost no cases sent to trial.

The act of technical-environmental expertise has a very important role in the investigation of the most frequent criminal offense of “Air Pollution”, provided for by Article 201 of the Criminal Code. From personal practice, difficulties are encountered in finding a licensed expert and finding a calibrated device. The delay in finding the expert also results in the reduction of pollution in relation to that found *a priori* by the judicial police.

From the study of the Albanian Committee of Helsinki regarding the investigation and trial of the criminal offense provided for by Article 201 of the Criminal Code “Air pollution” due to the disturbing situation in the Municipality Itching from the burning of lime pits, results in 11 decisions of the prosecutor’s office for not starting criminal proceedings or dismissing the case, it turns out that the Technical-Environmental Expertise Act was carried out when the lime kiln was not exercising its activity, burning fuels.

So, in all cases, the expert reports for measuring the level of air pollution were not carried out on the same date that the fact was established, but after a few days or weeks, when the pollution was minimized due to the cessation of the furnace’s activity.

The non-implementation of the Technical-Environmental Expertise Act during the time of the activity of the furnaces is estimated to have influenced the non-existence of one of the elements of the objective side of the picture of the criminal offense provided by Article 201, of the Criminal Code, which requires that air pollution be beyond the limit of the permitted rates. The studied decisions of the prosecutor's office show that the Prosecutor has decided to dismiss the criminal case in 9 cases and not start the criminal proceedings in 2 cases, because, based on the measurements according to the Technical-Environmental Expertise Act, it is not ascertained air pollution (from the release of gases and particles) above the permitted rates provided for in VKM no. 803, dt. 04.12.2003, “On the approval of air quality norms”.

If the Technical-Environmental Expertise Act could not be carried out at the time of the finding of the violation, it would have been advisable for the prosecuting body, the prosecution, to decide to conduct the experiment in accordance with articles 176 et seq. of the Code of Criminal Procedure. In the conditions of the experiment, or as it is otherwise known, the reproduction, as far as possible, of the state in which the fact occurred or is estimated to have occurred, the measurement of the level of pollution could also be carried out objectively and as close to reality as possible. by means of technical-environmental expertise (Report of the Albanian Helsinki Committee, December 2017).

Recent literature has focused on the effectiveness of these mechanisms in promoting environmental protection, with some studies showing that strict liability is a more effective tool than criminal negligence. For example, researchers have found that imposing fines and penalties for strict liability violations is more effective in deterring companies and individuals from engaging in environmentally behavior than criminal negligence, which places a higher burden of proof on prosecutors.

A recent study by Linder et al. (2021) conducted a comparative analysis of the effectiveness of strict liability and criminal negligence in promoting environmental protection in the United States, Canada and Europe. The study found that strict liability is the preferred approach to environmental protection in most countries, with the imposition of criminal liability reserved for cases of gross negligence or willful misconduct.

Another recent study by Lippert and Laushman (2021) analyzed the role of criminal law in the enforcement of environmental regulations in the United States. The study found that the lack of uniformity in environmental laws across states and jurisdictions makes it difficult to

enforce environmental laws using criminal law. The study recommends the development of a more cohesive and uniform approach to criminal law enforcement in environmental protection.

4. The right of access of civil society

For nearly four months, the Albanian Helsinki Committee (HLC) has been monitoring the environmental pollution from hydrocarbon waste and the real and potential damage to the health and life of the residents of the Zharrëz Administrative Unit in the Patos Municipality of the Fier District (Albanian Helsinki Committee).

Initially on 18 October 2022, a group of observers from Albanian Helsinki Committee monitored this unit, meeting residents, representatives of institutions and examining several hotspot areas, everywhere was easily identifiable and observed accumulations of hydrocarbon waste, or old wells, in the absence of security measures and rehabilitative measures. Some of these areas were very close to citizens residences and greenhouses where vegetables were grown, which were then sold on the free market. AHC met closely with residents who claimed to receive regular treatment for blood diseases, while there were also residents who stated that there was an increase in cancer and related deaths.

The Helsinki Committee has continuously expressed its concern regarding the continuous monitoring of environmental pollution. In the absence of complete information during the monitoring visit to some of the institutions visited at the local level, this unit subsequently addressed official requests for information. Not all institutions responded to these requests. Under these conditions, The Helsinki Committee has appealed to the Commissioner for the Right to Information and Protection of Personal Data regarding the lack of response from the Prosecutor's Office of the Judicial District of Fier (as regards information on criminal proceedings for pollution in "Zharrez-Fier") and the non-response full of the Local Health Care Unit in Fier.

Based on the responses of several institutions, such as the Municipality of Patos, the Fier State Health Inspectorate (ISSH), the Fier Territory Protection Inspectorate (IMKT) as well as the Fier, Vlorë, Gjirokastër Regional Environmental Agency, The Helsinki Committee notes poor levels' reaction and lack of cooperation between these institutions, to exercise their responsibilities in a coordinated manner to prevent pollution and to sanction polluters. In particular, a climate of lack of initiative in ex officio inspections is observed, which creates a climate of lack of accountability and responsibility towards the operators who carry out activities in the field of hydrocarbons in this administrative unit.

Regional Environmental Agency, also due to its scope of activity, is the institution that has performed more inspection activities, compared to other institutions that Albanian Helsinki Committee has monitored. But this inspection activity turns out to have been developed in a fragmented and not systematic way. Specifically, Albanian Helsinki Committee notes that Regional Environmental Agency has carried out a series of inspections in 2021 and at the beginning of 2022. After the inspection on 04.11.2021 (Interim decision on taking emergency measure No. AKM-FR-2021-000274-4 date 04.11.2021) against Albpetrol Sh.a, an urgent measure was taken: "Interruption of the performance of an action, activity or a part of her" since hydrocarbons were found on the surface in the village of Zharrëz and a fine of 500,000 Lek was also imposed. Within the same month, on 25.11.2021, a second environmental inspection of this subject was carried out, which was fined in the amount of 1,000,000 Lek, and the supplementary penalty was given "Enclosure of each of the well squares where the oil extraction activity is carried out" and that of "Taking measures to protect the soil from pollution and erosion." Another environmental inspection was carried out against Albpetrol on 06.01.2022, where the administrative measure "Warning" was taken against the subject. Earlier, on 27.07.2021 and 20.08.2021, Regional Environmental Agency conducted 2 environmental inspections against

Bankers Petroleum Albania LTD, which was fined in the amount of 1,000,000 Lek and 500,000 Lek, for violations related to the activity for the treatment of waste in accordance with the environmental permit. Albanian Helsinki Committee notes that the correspondence with the authority lacks information about the execution of fines and how efficient they have been for preventing pollution and rehabilitating the area, which in fact continues to be a concern. It is also worth noting that Regional Environmental Agency could have better coordinated the cooperation with the structures responsible for the environment in the local government units, according to Law no. 90/2012 “On the organization and operation of the state administration”, article 24 point 2 letter “c”, in order to create joint units to perform administrative inspection duties. During the years 2021-2022, the Municipality of Patos has also carried out, after receiving complaints from the residents of this area, two monitorings in the field, after which it has determined the problems, for which it has been addressed with an official letter to the responsible entities. After the first monitoring, the Municipality has asked the subjects Albpetrol Sh.a and Bankers Petroleum Albania LTD Fier to take measures on the rehabilitation of the land and the pollution caused by the exercise of their activity. Subsequently, Albpetrol Sh.a has informed the Municipality that several measures have been taken to improve the situation, among which the on-site verification of the situation, for the cleaning of oil well 2351, as well as the compensation of a complaining citizen for the rehabilitation of agricultural land. Regarding the second monitoring, carried out almost a year later, the entity Albpetrol Sh.a was asked to take measures for the removal of hydrocarbon waste. The Albanian Committee of Helsinki continues to refer that the municipality has not made available to us, information on whether the inspected subject has responded or taken measures after its request.

Also, Albanian Helsinki Committee notes that the responsible body, Insurance Institute of Health, has not carried out any assessment of the impact on the health of residents, of the activity of Albpetrol Sh.a and Bankers Petroleum LTD, pursuant to Article 43 of Law no. 10138, dated 11.05.2009 “For Public Health” and did not cooperate with local government authorities. Despite the competences of the national agency of territorial defense for the inspection of environmental pollution, this institution has not carried out any inspection mainly and has only carried out an inspection initiated by the complaint of the “Zharreza Association”, after which it found the existence of an ecological pit in the process of obtaining a permit, for which he found no violation. Despite the fact that this institution has requested the cooperation of other competent institutions, this approach was observed after the date of the monitoring of Zharreza by the AHC team, which means an awareness of the institution to act, even if delayed. In time in the overall evaluation of all the information and documentation we have so far, Albanian Helsinki Committee notes that the responsible institutions avoid part of the responsibilities, partially showing negligence and poor recognition of their competences, but at the same time a lack of logistical means for measuring pollution. The overlap of competences that is referred to as a deadlock between Regional Environmental Agency and the national agency of territorial defense can be overcome if there was a good will to cooperate.

Albanian Helsinki Committee underlines that the right to a healthy environment occupies a special place in Article 8 of the European Convention on Human Rights, which guarantees the right to private and family life. In the case of *Hatton and others v. United Kingdom* (d. 2003), the appellant raised claims for noise pollution created by the airport located very close to the residence of the residents. The ECtHR found a violation of Article 8 of the Convention, as the state had failed to exercise its responsibilities to regulate private industry in such a way as to guarantee the proper observance of the obligations arising from this right. Also, according to this jurisprudence, people have the right to know the information by which they can assess the degree of danger that threatens them, and the state has the obligation to determine the procedure that makes it possible for individuals to know this information.

5. The role of the EU acquis and the Court of Justice of the European Union for environmental protection through criminal law

I. Issue no. 80-2021-1696 dated 28.05.2021 of the Administrative Court of First Instance Tirana

- Refers to the lawsuit filed by the associations “Eco Albania”, “EuroNatur”, “Riverwatch” and 39 residents of the Kalivac area in defense of the Vjosa river.
- The court established their legitimacy in the trial after assessing that they are interested parties in the trial and have the right to participate in the decision-making process based on the Aarhus Convention and domestic law.

II. Issue no. 49 dated 18.01.2021 of the Administrative Court of First Instance Tirana

- The plaintiff is a community of 8 residents of the Derjan, Mat Administrative Unit who have sued ERE and “Seka Hidropoër” shpk, which is the company that won the concession contract for the Seka hydroelectric plant.
- The plaintiff claimed that part of the hydroelectric plant was located in the protected area “Lure-Mali i Dejes”, contrary to the law and the status of protected areas.
- Regarding legitimation, the court directly applied the Aarhus Convention.
- Regarding the basis of the case – the Court accepted the lawsuit by canceling the administrative act issued by ERE, the license that enabled the company to produce energy. The court concluded that the license was issued in violation of the law “On protected areas”, Article 16, which prohibits the construction of hydropower plants in natural or water reserves.

III. Decision no. 322-2021 dated 21.07.2021 of the Administrative College of the Supreme Court

- The plaintiffs are 27 residents of the Municipality of Margegaj and the association “Toka” who have sued, among others, the Ministry of Energy, the Ministry of Environment, KMA and the companies that have received the relevant permits to build the hydroelectric plant in the Valbona National Park. In addition to declaring the concession contract for the construction of two hydropower plants “HEC Dragobia” and other administrative acts as absolutely invalid, the plaintiff requested the insurance of the lawsuit.
- The Administrative Court of First Instance and Appeal decided to dismiss the claim for insurance claim arguing that the plaintiff did not present any evidence to prove the damage caused to the environment.
- The Administrative College of the Supreme Court decided to change the decisions of the lower courts by accepting the claim insurance claim.
- Regarding the basis of the dispute, the lawsuit was dismissed by both administrative courts, while the review of the appeal in the Supreme Court is expected.
- In *Ozel and others v. Turkey*, members of the applicants’ family died after being trapped under collapsed houses in the town of Çınarcık, a high-seismic hazard zone, in an August 1999 earthquake in Turkey, one of the more serious consequences in Turkey.
- The ECHR said that there had been a violation of Article 2 of the Convention in the procedural sense, as the Turkish authorities did not act immediately to find the persons responsible and the circumstances of the accident.

6. Recommendations

- Criminal liability in the case of environmental crimes is a relatively difficult concept, since to be effective it is combined with civil and administrative liability.
- The imposed administrative or civil sanctions for environmental polluters are not always convincing enough and giving up in this part, the resulting criminal sanction is punitive rather than rehabilitative or educational.
- For this reason, to increase the fight against environmental crime, new environmental crime directives should be proposed.
- Albanian legislation should be adapted with the legislation of European Union or the definition of criminal offenses related to pollution, waste and threats to biodiversity and other natural resources. By improving the way Member States deal with the most serious environmental violations, the proposal will contribute to the overall goals of the Green Deal to tackle the climate crisis, environmental degradation, pollution and nature loss and contribute to strengthening the rule of law. environmental.
- Improving the effectiveness of criminal investigations and prosecutions, by clarifying or eliminating ambiguous terms used in the definitions of environmental crime.
- Ensuring the types and levels of effective, convincing and proportionate sanctions for environmental crime.

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