

Green Criminology and Criminological Aspects of Criminal Offenses against the Environment in Albania

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Abstract

Green criminology studies environmental damage, environmental legislation and the entire regulatory framework in the field of environment. The criminal offense group against the environment has occupied a specific weight with a downward trend until 2011, where after this year there has been an increase in the indicators of prosecution of these offenses. Criminological aspects of criminal acts against the environment show some characteristics that are related to the type of offenses, the place of commission of offenses, age, gender, education, employment etc. Some of these characteristics are considered criminogenic factors that have influenced the performance of criminal offenses against the environment.

Protecting the criminal justice legal environment as any other task of criminal legislation can only be realized if environmental protection against the criminal offenses directed against it is accompanied by and with their prevention. In addition to the preventive role that the punishment policy itself can have, other preventive measures have an equally important role in environmental criminality. Prevention of environmental damage should be achieved mainly through other non-criminal measures. The methodology used is analytical, descriptive and comparative for the offenses provided in Chapter IV of the Albanian Criminal Code.

An overview of the current situation of environmental legal protection and the role of criminal policy in environmental protection Amendments to criminal legislation associated with the adoption of other preventive measures will impact on more effective environmental protection.

Keywords: green criminology, prevention of environmental damage.

Introduction

Green criminology is the analysis of environmental damage from a criminological perspective, or the application of criminological thought to environmental issues.

The term "green criminology" was used in the early 1990s, where its main purpose was the study of crimes against the environment. This term became more common after the publication of an article on green criminology in the newspaper "Theoretical Criminology" by Piers Beirne and Nigel South (1998).

According to the legislation in force, the term "environment" means natural ingredients: air, water, soil, climate, flora and fauna in the entirety of interactions with each other as well as cultural heritage as part of a man-made environment. Also the protection of environmental constituents, according to this law, should be integrated, which includes protection against pollution both separately and in combination, taking into account the interactions between them.

In contrast to the 1977 Criminal Code where the pollution of the environment was foreseen as criminal offenses in the field of health, in the current criminal legislation these are foreseen as criminal offenses which have as their object the protection of the environment, therefore classified as a separate group of criminal offenses.

Our criminal law is codified, as opposed to environmental law legislation, which is presented in many laws or by-laws. Chapter 4 of the Criminal Code provides criminal offenses punishable by the environment, more specifically in articles 201-207. As far as administrative sanctions are concerned, they are found in special environmental laws as being the easiest violation. In this heading the figures of criminal offenses of pollution are predetermined mainly as crimes, except for the case of air pollution, which constitutes criminal offense. These constitute criminal offenses regardless of whether they have or did not have serious consequences for the lives and health of the people in contrast to the previous CPC, which necessarily required the advent of serious consequences in order to be ahead of the offense and not administrative offense.

Constitute a criminal offense under the Criminal Code:

- Air pollution;
- Transportation of toxic waste;
- Water pollution;
- Prohibited fishing;
- Illegal cutting of forests;
- Cutting of ornamental and fruit trees;
- Breach of plant and animal quarantine;

Albania's legislation provides for two kinds of criminal offenses: offense and crime. The same figure of the criminal offense is classified as a crime when serious consequences for people's lives and health are caused. Consequences remain to be tried during the trial in order to give the deserved punishment. The punishment range may be a fine or imprisonment from 3 months to 15 years.

The main place in environmental criminality is the criminal offense of illegal cutting of forests such as decorative and fruit trees, which is followed by criminal offense of stop fishing, air pollution, water pollution etc. Proceedings registered by the prosecution as well as the final decisions taken by the Courts result insignificant for these crimes.

Nowadays, there is a growing tendency to forest fire and forestry, whether through negligence, the offenses set forth in Articles 206/a and 206/b of the Criminal Code. The problem commonly encountered by the prosecution during the investigation of these criminal offenses is cases when the author is not known and therefore the prosecutor is obliged to decide the suspension of the case.

Criminogenic factors affecting the performance of these criminal offenses are the low economic and educational level, poverty and unemployment, but if the appropriate environmental protection measures are not taken, the whole society may become even worse, leaving completely no resources that nature has given us. If we consider the fact how difficult it is to calculate the environmental damage caused by an illegal activity. These types of offenses undermine the ecosystem and bring irreparable damage to future generations.

If we referred to the Attorney General's report on the Crime Situation for 2015, we see that a specific weight reduction for this group of offenses is noted by 0.1%, but there is a 27% increase in sentencing proceedings compared to this with 2014.

From the point of view of perpetrators of criminal offenses against the environment it results that most of the defendants have been unemployed and with 9 years of education. Thus, from the statistical data of the prosecutor's office for 2015, it results that 79% of the defendants have been with 9 years of education and the unemployed result to be 50% of the defendants and residing in the municipalities. A very small number of defendants are highly educated.

Regarding the age of the persons involved in the commission of these criminal offenses, it results that all adults (over 18 years of age) have no minor at the time of the offense at the level of the Republic for 2015.

As for the gender of the perpetrators of the criminal offenses against the environment, it turns out that for 2015, they are all men, unlike the past years where the women were involved.

With regard to the state of the defendants, it turns out that the bulk of the defendants have been previously unpunished and only 2% of them are repeaters for various criminal offenses.

Effectiveness in Practice of Criminal Legislation

If we look at the decisions taken by the Tirana District Court, since it is the largest in the country, we will notice that very few issues related to environmental offenses by this court have been examined, which are related to Article 201, so air pollution and Article 205 illegal logging of forests. In most of these cases a guilty verdict has been rendered and the decision appeal was made by the prosecutor and never by the defendant. In these cases the duration of the trial varied from 6-9 months.

We can say that the duration of these processes could be even shorter based on the fact that in these cases the perpetrators were caught by the perpetrators by compiling the record of the damage caused in the country. Also, in these cases, the Court may have also given imprisonment sentences, especially when it comes to recidivists, as the fine imposed earlier on these persons did not give effect. Lack of proceedings for other criminal offenses in the field of the environment does not necessarily imply the non-consumption of these acts, but implies non-declaration, non-disclosure, non-identification of the perpetrators, or the dismissal of the case by the prosecution body. Since administrative measures are not giving the proper effectiveness in environmental issues then criminal measures can be more effective and educational in this regard. This taking into account the fine imposed by the Court (as mentioned above) on repeat offenders, which means that this type of measure no longer has any effect on these persons.

Conclusions

As emphasized in the Council of Europe Convention on the Protection of the Environment through Criminal Law, prevention of environmental damage should be achieved mainly through other non-criminal measures.

We are of the opinion that the criminal legislation in the field of environment in our country should be reviewed not only by including new criminal offenses such as illegal hunting, land pollution, killing and mistreatment of animals, which emerges as a necessity from everyday problems, but also by tightening the criminal penalties in terms of both the

fine and the length of imprisonment. Also some violations should not be considered as administrative, but should be categorized as criminal offenses.

Environmental non-governmental organizations should play a very important role in raising the individual's degree of awareness so as to bring as little harm to the environment during their activity. The issue of public awareness has continued to be one of the most problematic issues for years.¹ Schools can also play a decisive role in educating young generations at an early age about the importance of environmental protection.

An important instrument is also the national environmental strategies to be drafted by the Ministry of Environment, Forestry and Water Administration periodically, accompanied by appropriate action plans that can play an important role in preventing criminal offenses against the environment.

The role of criminal law in environmental protection is becoming more and more important, taking into account the requirements for approximation to environmental law in the context of membership in EU. More attention is being focused on EU's environmental crime directives, which have set only a minimum standard in this area, leaving room for states to establish greater environmental protection through their criminal law.

Another problem that requires resolution is also the definition of the "dividing line" between administrative offense and offense. For this reason, the criteria should be clearly defined so as not to create a gap in the implementation of legislation. The most problematic situation is presented in the case of the criminal offense of air pollution, because on the one hand the respective criminal provision requires as a condition that the offense does not constitute administrative offense and on the other the legal provisions on administrative offenses refer again to the Criminal Code that consists in the expression "When the violation does not constitute a criminal offense" not further fulfilled by the clear definition of any discriminatory criteria for offenses. This should also be taken into account in the case of inclusion of new environmental offenses in legislation for the correct determination of the criteria between administrative offense and criminal offense. The main role in preventing these offenses is the strengthening of administrative control capacities that are necessary to ensure the effective implementation of the law. Equally important is the ongoing training of the employees of the relevant authorities involved in the enforcement of the law. Continuous and up-to-date training on staff qualification should serve to bring about major changes to the practical implementation of environmental legislation.

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¹ See progress report of the European Commission for the Republic of Albania until 2012.