

## Increasing role of criminal liability amid intensified environmental crime phenomenon

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**Abstract:** *Criminal liability acquired in environmental law, a primordial place in the hierarchy of legal liability tipurilor, amidst a growing number of negative facts against the environment. The new Criminal Code contributes to punish acts against the environment. Another aspect analyzed in this paper refers to the phenomenon of organized crime booming. Against this background were amplified and destructive actions against the environment, which led to the ecological crime. In Europe and globally are important steps towards a more rigorous control of crime. The work captures the situation of Romania and France in terms of concerns for stopping crime in ecology.*

**Keywords:** *environment protection; criminal liability; organized crime; environmental crime.*

### Introduction

The role of criminal liability has increased in recent years amid intensified actions with negative environmental impacts that have caused serious damage to the phone, which led to the realization that need tougher sanctions and closer to halt crime in this area.

Against this background, criminal, a long time played a role in the legal liability of specific environmental law, has become the primary form of accountability of all subjects of law that brought severe harm environment SIU components.

The work captures the evolution of criminal responsibility from one instrument accessory penalties in the right environment to one that tends to be mainly demonstrated by the recent adoption of the draft law on protection of the environment through criminal law model and in accordance with Directive 2008/99 / EC environmental protection through criminal law. In addition, they captured a number of concrete examples of environmental crime evolution of the phenomenon and how to try to stop it globally.

### 1. Issues on the role of criminal liability in environmental law

Type criminal liability protection, conservation and improvement of the environment is one of the ways to sanction environmental damage relatively recent, and this, as much as it had a subsidiary role.

From a historical perspective, the rules of criminal type were considered among the first to have been applied to environmental protection, but a representative bundle of specific rules related to a criminal environment are more recent.

Long, first there were preventive actions which in the right environment were considered the most effective measures to repair the environmental damage, followed by the civil and administrative offenses. Criminal penalties were required increase of crime in this area and the need for robust and tougher measures appropriate to the new types of offenses committed by man against his environment.

Against this background, the liability type of criminal environmental law has taken on greater importance, and at national, European and international level has become increasingly obvious interest in creating a beam specific "offenses green" and a criminal environment.

"From this perspective, criminal law came specifically to help public law or constitutional law, administrative law, tax law, economic law and even international public law, by establishing rules of criminal particular relating to their coagulation in a specific criminal law, with trends autonomy" [1].

Own ecological crimes - said the damage to the environment should aim at having very destructive effects which affect the environment and human communities. Criminal liability should be protected environment, its components (air, water, soil, subsoil, biodiversity) and defended the human right to a healthy environment constitutionally guaranteed.

"As regards environmental criminal offenses are a series of difficulties related to the need for special equipment and means of finding and evidence of a particular qualification agents investigating the nature of diffuse or difficult found the effects of pollution, etc." [2].

Offenses 'green' own - said refers to attacks not so interests of individuals, goods and their rights, but some collective interests major.

*Regarding the Romanian law*, criminal matters in environmental law has long had an incomplete, partial and unfinished.

In theory, it is believed, rightly, criminal law appears as a kind of *second degree* as positive, indirect and mediated influences receptând general social plan manifested in the new guidelines [3].

## 2. Environmental criminal liability under the new Romanian Penal Code

Romanian new Penal Code does not allocate a separate chapter crimes against the environment. The only provisions affecting the environmental issues, without being criminality direct of crimes strictly organic, are found in Title VI - *Crimes Against activities of public interest or other activities regulated by law*, Chapter IV - *Offences relating to regime established for certain activities regulated by law* and Title IX - *Offences affecting relations on social cohabitation*, Chapter II - *Offences against public health* (Coord. Valerian Cioclei, the Penal Code and Code of Criminal Procedure, Bucharest, C.H. Beck, 2010, pp. 111-115 and 123-124).

In Chapter IV of Title VI, the following acts are criminalized failure to observe regulations on ammunition (art. 279); not respecting the nuclear material or other radioactive materials (279<sup>1</sup>) and not respecting the explosives (art. 280).

In Chapter II of Title IX are devoted to three offenses relating to human health that can be extended to consequences that may result from the environment. These are: the spread of diseases in animals or plants (art. 310), infection of water (art. 311) and trafficking of toxic substances (art. 312)

It follows that, under the new Criminal Code, environmental crimes are not provided in a separate bundle and have only incidental connection with environmental issues. Even in the art. 311 - infested water, although it is an act aimed directly against the environment (environmental component), it is regarded as ancillary to the main deed which refers to the protection and care of people's health.

In all six articles of the new Penal Code criminalizing acts against man, which, however, may have consequences on the environment without this being specified.

Analyzing the new Criminal Code is clear that there is no express consecration of environmental crime (green), but only one incidental and indirect can not work for some situations than limiting.

We can not fail to mention that the Criminal Code as amended in 2004 (Law 301/2004), there is a separate chapter concerning environmental crime. It is Chapter V entitled "*Crimes and offenses against the environment*", part of Title VIII entitled "*Crimes and offenses of public danger*".

In the chapter dedicated to "Crimes and offenses against the environment", the legislator was stopped at a number of 11 (eleven) environmental offenses, as follows: 1. violation of rules on protection of the atmosphere (art. 395); 2. violation of rules on water protection (Art. 396); 3. violation of rules for water management (art. 397); 4. breach of the rules on the use of drinking water (art. 398); 5. destruction of water protection work (art. 399); 6. violating rules on soil protection (Art. 400); 7. violating forest protection rules (art. 401); 8. noise (art. 402); 9. accidental pollution (art. 403); 10. that attempting (art. 404); 11. sanctioning legal person (art. 405) (Constantin Crișu, Criminal Code approved by Law no. 301/2004 and 69 special laws which provide criminal sanctions, Arges, Argessis Publishing, 2004, pp. 179 - 186).

This form of the Code underwent immediate changes, it gave up the title of "crimes and offenses" in favor of one more appropriate to the crime, and crimes against the environment chapter was repealed.

Now, most crimes against the environment are provided in non-criminal laws considered as sectoral regulations aimed at protecting certain patterns and environmental factors, or some activities closely related to them. Returns their central place in the Government Emergency Ordinance no. 195/2005 criminalizing various acts that bring harm to the environment. Water Law no. 107/1996; Law no. 111/1996 regarding the safety of nuclear activities; O.U.G. no. 243/2000 on protection of the atmosphere; O.U.G. no. 2/2008 on fishing and aquaculture; Law no. 407/2006 of hunting and protection of hunting; O.U.G. no. 57/2007 on the regime of protected natural areas, conservation of natural habitats, flora and fauna.

Romanian legislation is characterized by "a large number of rules on the matter, but hardly a criminal environment, the purpose of building a beam fitted together in a proper system of environmental crime, uniform and effective" [4].

Moreover, there are large numbers of criminality of facts, often under contest, provided that the offense several legal texts in force at the same time, which leads to poor efficiency and effectiveness of criminal sanctions for environmental protection.

### **3. Criminal offenses referred to in GEO 195/2005 on environmental protection**

In environmental law, criminal liability of the role played a subsidiary role regarding sanctioning against the environment. Currently, we are witnessing a resizing of legal liability related to the environment in which beginning to take a greater share criminal responsibility. Since the steps taken to establish a prioritized criminal liability in environmental policy are just getting started, we can not find that document that assigns greatest importance is environmental crimes Government Emergency Ordinance no. Approved by Law No. 195/2005. 265/2006 on environmental protection.

Under the law establishes the categories of offenses, penalties and criminal fines related. Thus, art. 98 para. 1-6 and art. 99 para 1-2, shows concretely all kinds of activities likely to be punished by sanctions of criminal nature. Environmental offenses are punishable by imprisonment for a minimum of 3 months - 1 year, to a maximum of three years - 10 years for very serious acts. According to art. 98 para. 6 "attempt shall be punished" [5].

Finding and investigation is done ex officio by the prosecution, according to legal competence.

### **4. Increasing the role of environmental criminal liability following the transposition of Directive 2008/99 / EC into national law**

Neincriminarea environmental crimes in a separate chapter in the new Penal Code was offset by the adoption of the Law on protection of the environment through criminal liability. This was achieved due to the need to transpose into domestic obligations imposed by the Directive. 2008/99 / EC which sets out the need for Member States to provide in their national legislation criminal sanctions effective, proportionate and dissuasive sanctions for serious infringements of the provisions of EU law on environmental protection.

Community directive arose as a response to the situation of ecological crisis in which the environment, which requires, on the one hand, an indictment adequate facts to seriously affect the given natural, and secondly to establish penalties discouraging subjects law targeting.

Directive 2008/99 / EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law proposes to establish effective measures to combat increasing environmental crime. The stated purpose of the Directive is still set in its Preamble: "Community is concerned at the rise in environmental offenses and their effects which are increasingly extending more and more outside the States in which they are committed. Such offenses pose a threat to the environment and therefore requires an appropriate response." Experience has shown that the existing systems of penalties were not sufficient to ensure that the whole of environmental protection legislation. Such compliance can and should be strengthened by providing criminal sanctions ... " [6].

Regarding the internal on 6 October 2010 at the initiative of the Ministry of Environment and Forests, Government of Romania has adopted the draft *Law on the protection of the environment through criminal law*.

The official communiqué from the Ministry of Environment and Forests that approved the new law complements national laws on environmental protection, ensuring alignment with European standards and obligations of Romania as a EU member state.

Incriminations contained in the law relating to breach of certain legal provisions governing important aspects of managing specific pollutants or environmental protection generally, provisions which are either transposition of Community legislation or even regulations in the European Union [7].

It is, for example, waste operations that penalize conduct operations with waste falling within Article. 3 of the Law. Currently, these operations without lawfully incriminated only as regards hazardous waste, but the Law on Protection of the environment through criminal law comes with a new indictment in relation to the regime of collection, transport, recovery or disposal of waste other than dangerous.

Also criminalize the conduct of operations of export violation relevant laws envisages compliance with the obligation imposed on Member States through the directive, to penalize illegal waste transfer operations. Currently, Romanian law sanctioned the import, transit, or out of the country waste, contrary to legal provisions, however nesancționând as such and export of waste.

Regarding crimes related to nuclear materials or hazardous radioactive substances law complements the existing provisions in the Criminal Code or special laws in matters such as Law no. 111/1996 regarding the safety, regulation, licensing and control of nuclear activities, with certain ways of committing crimes and not included in the current legislation, which the Directive includes as such.

## **5. Items on the occurrence of environmental crime**

In last years it found an unprecedented organized crime which led to a sustained struggle against dangerous actions that threaten the safety and security of citizens countries of the world. Globalization, as the expanding current phenomenon brings with it not only benefits, but also many negative aspects that mark on all areas of economic, cultural, social and political.

European and global level there is no consensus regarding terminology environmental crime phenomenon. Attempts to define the concept are quite clumsy, controversial and often avoids defining the term, whichever is only a functional classification of offenses to which it refers.

However, important legal steps have been taken towards creating an appropriate legislative framework to better cope with the current crime. We commend and welcome the adoption at European level Decision - Framework 2008/841 / JHA of 24 October 2008 on the fight against organized crime is a concrete example of harmonization in the field, which can contribute to react more decisively and qualified judicial authorities [8].

Decision - Framework 2008/841/JHA [9] on the fight against organized crime aims to "improve joint capabilities of the Union and the Member States and the fight against transnational organized crime. This objective is in particular by harmonizing legislation. Closer cooperation is needed between Member States of the European Union to counter the dangers and proliferation of criminal organizations and to respond effectively to citizens' expectations and their requirements (art. 1).

Extrapolating from the general to the particular, from organized crime in general ecological crime, in particular, we find a similar situation at both levels. Crime organic forms that all serious European and global level. The new directive - approved framework does nothing to enhance and support the idea that each Member State must contribute to better cooperation at European and global level to better control this phenomenon.

Favorite areas in which developed crime organic are illicit trade in wildlife, with rare or endangered, trafficking in radioactive and nuclear materials, trafficking in hazardous waste, pollution intentional water, air, soil, subsoil, etc.

In this context, it is increasingly evident that the current situation poses new objectives to scientific research: defining international crimes, global, transnational, global analysis and detection manifestations of globalization murder structure transnational crime, fundamental role of criminal organizations, the factors and processes of globalization crime [10].

## **6. Ecological crime. The France**

In France, the fight against environmental crime is much more active. A manifestation of large scale took place from 27 to 29 March 2012 in Lyon attended by over 70 countries, with the objective of facilitating the agreement on a strategic global respect of environmental law and the harmonization and unification fight environmental crime [11].

Regarding the deadline for crime ecological debates mention is made of a Report of the US Government in 2000 regarding international organized crime, in which the term crime Organic is a deliberate violation of national or international law concerning pollution control hazardous to health or the environment, uncontrolled exploitation of natural resources, protection of plant and animal species threatened or endangered.

The terminology in this regard is not very clear or unified, using the notion of "delinquency organic" in France and other countries, or "crimes against the environment", all, however, with direct reference to serious crime They are directed against the environment.

In the Lyon summit, we discussed some of the most serious problems brought by the expansion plan of environmental crime: illicit trade in wildlife trafficking in radioactive materials and nuclear waste trafficking.

**6.1. *The illicit trade in wildlife.*** According the World Customs Organization, the illicit trade in wildlife can be considered as dangerous as drug trafficking. Also according to the World Customs Organization, "illicit trade in wildlife can be as profitable as drug trafficking. Shawls from the wool of Tibetan antelope, whose sale is totally illegal, sold nearly 20,000 euros / per piece and sturgeon caviar sells for about 8,000 euros / per kilogram" [12].

In March 2012, police Thai announced that in one raid seized a large number of wildlife for illegal trade: Five tigers, 13 lions, three pumas, three kangaroos, four flamingos, 66 marmosets, two orangutans and two panda. Action belonged to three members of a criminal gang who were arrested and indicted. They imported animals from Africa, Canada and other countries and were reselling them in the US and China [13].

**6.2. *Trafficking of radioactive and nuclear materials.*** International Atomic Energy Agency (IAEA) has a database on incidents which its Member States have acquaintances. Thus, from 1993 to 2011, the number of incidents unfavorable was in 2164, consisting in the possession of unauthorized such materials (radioactive and nuclear), criminal activity related cases of loss or theft, and other events about which no information sufficient [14].

One thing is certain, these statistics show that demand for this type of product there, and that traffic is facilitated by lack of control of radioactive and nuclear materials.

**6.3. *Waste trafficking.*** According to the ILO, "each year, to 50 million tonnes of waste electrical and electronic equipment ("e-waste") are generated around the world". A Report of the United Nations Environment Programme (UNEP) published Monday, February 22, 2010, indicates that the volume of electronic waste will further increase significantly in the next decade [15].

Faced with an increasing demand for electronic waste, organized crime groups abound especially in developing countries. Every five to eight years, stocks of personal computers are replaced, turning into waste, which are the targets of illicit trafficking.

In November 2010, eleven people and four British companies were prosecuted for breaching European regulations on recycling waste from electronic devices (phones, computers, printers, televisions, etc.). The investigation carried out by the Environment Agency a branch of the British abolished the illegal export of waste that went to several countries in West Africa where electronic devices were dismantled for much lower costs than those received for recycling in Europe.

## Conclusions

Environmental crime is a serious and growing problem and that manifests itself in various forms. It is not limited to air, water and soil, but push commercially valuable wildlife species closer to extinction. Ecological crime can include also crimes that accelerate climate change, the destruction of fish stocks, deforestation and depletion of natural resources essential. These offenses can have a harmful impact on the economies and security of several nations, in some cases, could even jeopardize the very existence of a country or a people. In addition, a significant proportion of the crimes of pollution on wildlife and those proved the involvement of organized crime networks.

Lately, organized crime groups have expanded their criminal activities in the trafficking of species of plants and animals, the export of hazardous waste, radioactive materials, which adds a touch of danger these facts and outlines a close connection between organized crime and ecological crime.

Although environmental crime were considered crimes nonspecific crime business, and only when the cause or threaten to cause substantial losses assume special knowledge in business from criminals and were committed by businessmen in professions or functions, to consider, it must not overlook the fact that environmental pollution offenses (especially) are committed by "white collars", something which strengthens the link between crime and business crime organic.

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