

# CRIMINAL LEGAL PROTECTION OF THE ENVIROMENT IN THE REPUBLIC OF MACEDONIA

\*Jasmin Kalac, page 59-68

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## ABSTRACT

The environmental and nature protection in which man lives and works as an individual is one of the most important and most complex problems in the world. Since the very human existence the environment is the primary condition and necessity for its existence. Considering the fact that the environment is endangered and therefore human health, through the enormous industry and technology development, is required more serious and more effective preventive role by the competent authorities in relation to criminal legal protection of the environment. In this paper I will try to give an overview of the way that criminal legal protection of the environment is regulated under the legislation of the Republic of Macedonia.

**Keywords:** environment, nature, pollution, legislation, criminal code;



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## **1. INTRODUCTION**

The main subject of the paper is the theoretical analysis of the criminal legal protection of the environment and the nature in the country. Object of protection in committing these crimes are: air, soil and water from their pollution, and the protection of flora and fauna. (Владо Камбовски, 2011 год.) The action execution can be manifested through various forms such as ejecting large amounts of smoke or toxic gases in the air, putting toxic substances into the waterways from a factory etc. (Камбовски, В.; Тупанчевси, Н., 2011 год.) being subjective in these crimes, i.e. ways of their execution may be intentionally or negligently. Pollution of these goods necessary for human existence has become a global problem, and hence the need for incrimination of norms in the penal legislations around the world and the European countries. Especially in Europe, we have witnessed a number of developments in the field of environmental protection in general, which undoubtedly attaches particular importance to criminal/legal environment protection. Whitin the European Union, these trends and directions of development of this area are well known. It is a process that is defined as the occurance of the Community as an ecological actor. (SCOTT J., 1998). It can also be metioned the efforts to transform “the right to a decent environment” into “human right” (Vercher Nougera A., 1998).

## **2.METHOD**

In the research it is used a method of analysis of the legislation in the country which is related to the protection of the environment and the nature. The information are realistic, concise and clearly show the norms of the laws, in particular the Criminal Code of the Republic of Macedonia that are related to this issue. Firstly, I think this topic is insufficiently researched. It takes more research and discussions to come to certain conclusions which will serve as a roadmap for successful reform and regulation for this type of crime and their eradication. The overall research aims to show that a reform is needed in the Republic of Macedonia and harmonization

of the domicile legislation, its unification and harmonization with EU. The Council of Ministers of the European Union back in 1977, has adopted Resolution concerning the contribution of criminal law in protection of the nature. (Resolution 77 (28), 1977). There are directives adopted by the European Parliament as is the Directive in terms of environment protection through criminal law (Directive 2008/99/EC., 2008). Countries such as R. Macedonia that aspire to join the European Union should implement in their country. The Council of the European Union in 1990 has adopted the Guidelines on the right of informing the citizens about the state of the environment (Council Directive 90-313., 1990). The citizens are guaranteed the right to free access to information on the condition of the environment held by state authorities. The damages that in the future will occur due to inadequate legal decisions or inferiority in relation to the punishment of the perpetrators of this type of crime can lead to the collapse of the environment and therefore man as an individual. Today, because of the great technological and industrial development, pollution of nature occupies on a global scale, resources are used much more than allowed, violated criminal legal norms in this area are causing great danger to life and health,

### **3.RESULTS AND DISCUSSION**

Republic of Macedonia until 1991 was part of former Yugoslavia, which means that the penalties for criminal offenses against the environment were part of the legislation of Yugoslavia. After the independence of the Republic of Macedonia the norms have been incriminated in the Criminal Code of the Republic of Macedonia. It must also be noted that the right to a healthy environment is raised to a constitutional level, as one of the fundamental rights of man and the citizen. (Constitution of the Republic of Macedonia, article 1)

The environment is also protected by several laws such as the Law of the Environment, the Law of the quality of ambient air protection, the Law for protection of the environment noise and etc. Environmental and

nature pollution in certain cases may constitute crimes. In the Criminal Code of the Republic of Macedonia are incriminated criminal offenses against the environment and nature, or in Chapter 22 are 18 members, 17 of which are related to different types of crimes, and article 1, that last article applies to qualified forms of this type of crime:

- ***Environmental and nature pollution:*** Under the Criminal Code of the Republic of Macedonia anyone who contrary to the provisions will cause contamination of soil, water and air and thus cause danger to life and human health, flora and fauna will be punished. Also in this kind of crimes include acts which is committed by an official or responsible person in the legal person by omitting certain actions or measures, will cause environmental pollution in larger or smaller amounts. It is provided a prison sentence as the main sentence, and if the offence is committed negligently is provided fine. Also, the Court may adjudge and the conditional sentence with the condition to deflect harmful consequences.
- ***Drinking water pollution:*** the offence under the Criminal Code of the Republic of Macedonia is the water pollution intended for drinking, springs water, wells, cisterns, tanks and more. The qualified form of this offence refers to the fact that if due to pollution occurred appearance of epidemics.
- ***Production of harmful treatment of livestock or poultry:*** according to this crime whoever produces and sells assets intended for the treatment of livestock and poultry, and thus cause infection or a perishing thereof shall be punished by a fine or imprisonment.
- ***Unscrupulous providing of veterinary assistance:*** this crime occurs when a veterinarian or an authorized veteri-

nary worker due to the use of unsuitable assets or wrong ways of curing, so it will cause deaths of livestock or poultry. Act of the execution is irregular treatment or use of ineligible assets. Object of protection represent the livestock or poultry.

- ***Transferring infectious diseases to animals and plants:*** according to this crime will be punished anyone who does not abide by provisions given in the order to prevent or eliminate epidemic, and therefore cause damage. Action of the execution in this case represents a failure to act according to provisions issued by the competent authority. Object of protection represents the flora and fauna.
- ***Contamination of animal food or water:*** act of executing this crime is the contamination of food or drinking water intended for livestock, poultry and vension. Also in this type of crime it is included pollution of ponds, lakes, rivers and streams. Qualified form of this offence exists when as a consequence of committing it, a large number of animals and fish perished.
- ***Destruction of crops by using harmful substance:*** object of protection for this offence is the flora, and act of executing is the destruction of plants with the help of some harmful substance.
- ***Usurpation of real estate:*** according to this crime will be punished anyone who will take a property that is designed for general use, which is declared as a cultural heritage, natural rarity or other natural wealth. These goods are object of protection because they represent goods that are in general use and are designed to meet human needs. Act of executing this crime is the seizure in order to establish condominium.

- ***Unlawful exploration of mineral resources:*** this offence is relatively recent offense incriminated in the Criminal Code of the Republic of Macedonia. Act of executing this crime is any illegal of unlawful exploration of raw materials from the country. Object of protection represent the mineral resources.
- ***Forests devastation:*** according to this crime will be punished anyone without permission or against the regulations given by the competent authority devastates forests. Act of executing this crime is repurposing, cutting, thickening, etc. Objects of protection are protected forests, national parks and forests for special purpose because forests represent a natural treasure that is necessary for human existence.
- ***Causing wildfire:*** as a special criminal offense by which forests are protected as part of the environment, it is incriminated the cause of forest fire. Act of executing this crime is causing fire and object of protection are forests and protected forests, forests for special purpose and national parks.
- ***Unlawful hunting:*** with this crime the venison is protected. The act of committing this crime is unauthorized hunting, killing, wounding and capturing of wild animals. Qualified form of this offense exists when hunting venison which is under special protection, and for this type of hunting is required hunting permission because it is rare or thinned out venison.
- ***Unlawful fishing:*** this crime is similar to the offense unlawful hunting, with the difference that here the object of protection are fishes. Act of executing an unlawful fishing with explosives, electricity, poison, stunning instruments, devices for underwater fishing, directly with hands, network and other means.

- ***Endangering the environment with waste substances:*** according to this crime, act of execution is any storage, depositing and dispersal of waste substances, which threaten the flora and fauna, and even the man. Qualified form of this offense exists when pollution is to a greater extent.
- ***Unauthorized acquisition and disposal of nuclear materials:*** one who by force or threat, by committing the crime, or otherwise unlawfully will obtain, intermediate, use, transport nuclear materials to another, or enable another to get them, shall be punished with appropriate sanctions. This crime is given as a separate act of crime because nuclear materials represent dangerous substances whose effect often causes permanent and irreversible consequences. Qualified form of this crime exists when the resulting damages occur on a large scale or death to large number of persons.
- ***Entry of hazardous substances in the soil:*** in this crime, act of execution is the intake of substances that could be hazardous to the environment in the Republic of Macedonia. For if it were a crime, these radioactive materials or waste should be stored on our territory against the given regulations. This crime is punishable for the authorized person who will allow that, as same as a legal entity.
- ***Torture of animals:*** in this crime object of protection is the animal world. Act of executing the crime is abusing the animals expressed through exposure to torture, infliction of pain, molesting, and exposing to arduous situation.
- ***Serious crimes against the environment:*** in a separate article of the Criminal Code of the Republic of Macedonia are given major penalties for more serious cases of crimes against the environment and nature, i.e. when committing the crimes occurred severe consequences.

## **4.CONCLUSION**

In this paper I tried to give an overview of the way in which crimes against the environment and nature in the Republic of Macedonia are incriminated in the Criminal Code. Crimes against the environment and nature belong to the group of general criminality. The execution of these crimes is endangered the environment in which the man lives. The term environment includes those factors that determine the survival, reproduction of living beings, that is, everything that surrounds man (water, soil, vegetation and wildlife – all linked in a dynamic balance). So, by committing these crimes are endangering the necessary resources for human existence, which means the danger to human health. Crimes against the environment represent a phenomenon, which in recent decades occupies a large extent in our country and the world. The easiest to the most difficult forms of crimes against the environment are included.

In the Republic of Macedonia according to certain analyzes the situation is alarming. We are witnesses as citizens of the Republic of Macedonia that the capital Skopje and towns as Tetovo and Kumanovo are among the most polluted towns concerning the cleanliness of the air in Europe, but not yet is initiated a serious research of the reasons this happens. The competent authorities such as the police, inspection bodies for the protection of the environment and judicial authorities need to seriously and effectively prevent and help in eliminating thy type of crime. An important role in the prevention and eradication of this kind of criminal acts and has the public, i.e. the citizens. General public is a powerful entity for undertaking certain actions and activities. (Марина Малиш Саздовска, 2007 год.). The environment and nature are protected by law, but requires a more serious approach of the institutions in the implementation of those laws if they are violate. Initiation of researches by the Interior Ministry in conjunction with the Public Prosecution Office, to establish the criminal responsibility of individuals and legal persons if there are grounds for suspicion of committing a crime of this group, proving their guilt and punish them accordingly.



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