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Comparative presentation of environmental protection in the criminal laws of Kosovo and Albania

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Abstract. Today, environmental protection is almost one of the most problematic issues facing modern society. This is because the ambiguous impact on the environment is directly related to life and health. This justifies the treatment of this issue in this dissertation! When it comes to protecting the environment or the environment in general, modern society foresees some measures in the function of this protection. Given that the problem of environmental protection is not only a national concern, it is a problem at the global level. As a result of the work of various international organizations, within the framework of their national legislation, provisions and laws have been created that sanction environmental protection violations. The Republic of Kosovo regulated the issue of environmental protection with a special law. However, in order to further implement this protection, in the Criminal Code of the Republic of Kosovo, which entered into force on January 1, 2013, a special chapter provides for some legal acts that cause damage to environmental protection. This chapter in the Criminal Code is called "Criminal offense against environmental protection", referring to the group protection of the facility. This work deals with "Protection of the environment in terms of its legal protection" (Sakib Softić, *Međunarodno pravo*, Sarajevo 2012.godine). Also, for the purposes of this work, contemporary acts were used, which regulate the issue of environmental protection, as well as various statistical data that are of interest for solving this problem. (Mučibabić S, 1960. Sarajevo). Therefore, we consider worthy of thinking about solving this problem, and on the territory of Kosovo, considering the fact that this topic is very little represented at academic levels.

Keywords. Comparative presentation of environmental protection in the criminal laws of Kosovo and Albania, Environmental protection and criminal legislation, Authorities responsible for investigating and prosecuting criminal offenses against the environment

1. Environmental protection and criminal legislation

Knowledge of the legislation on access to justice in matters of environmental protection and the implementation of legislation in the field of environmental protection is very weak. Legislation exists and is often very specific. A large number of proceedings have been initiated in Europe for criminal offenses in the field of environmental protection. The Directorate General for the Environment is aware of the need to improve cooperation between the EU and national judges, and launched a special program in 2008 to develop training modules on different types of EU environmental legislation and to organize workshops and seminars for judges on the implementation of EU law. At these workshops, the training modules were also

tested and then improved based on the feedback received. (National Environmental Action plan BiH, NEAP-Akcioni plan za zaštitu životne sredine BiH, mart 2003.godine). The main purpose of the workshop is to increase awareness of EU legislation on environmental protection and EU policies in this area. As a rule, crimes against the environment lack a direct victim, and this type of crime can go unnoticed for a long time before any damage becomes visible. The police or law enforcement bodies are usually not educated enough to recognize when and where this type of crime occurs. These bodies are burdened on the one hand with the investigation of other criminal acts, and on the other hand with a lack of knowledge of the technical aspect of criminal acts against the environment. („Ekologija i pravo“ Beograd 2012). To this should be added the general lack of interest in prosecuting and punishing these crimes, which is noticeable at all levels, among administrative bodies responsible for supervision and inspection, among criminal prosecution bodies, and finally among judges. The protection of the environment has been exceptionally well analyzed by the authors Jasarevic and Maloku (2021) in their book *Criminology, etiology and phenomenology of criminality*. Also, the same authors Jasarevic and Maloku (2021) have elaborated this negative phenomenon as a criminal offense in their book *The Law of Criminal Procedures I and II*. The rate of detected and reported criminal offenses against the environment is closely related to the activity of the administrative bodies responsible for carrying out supervision in the field of environmental protection. Inspections of the ministry responsible for environmental protection should, as a rule, be the first to notice and report criminal acts against the environment. (Džemal Najetović, *Međunarodni odnosi-zbirka eseja*, Novi Pazar, 2012.godine). The inspections they carry out are of key importance for detecting violations of environmental protection regulations, and thus for such violations that constitute criminal offenses against the environment. However, the possibilities and engagement of these bodies in terms of reporting criminal offenses against the environment depends on a number of factors, about available funds, set priorities and about the legislation itself. The authors Shabani and Maloku (2019) in their two books *Sociology and Social Pathology* also analyze the social impact on the increase in criminal offenses. They analyze and elaborate the various theories that influence the appearance and development of criminality. The author Maloku (2019) has made an extremely large contribution to the terminology of environmental protection terms that have to do with the victimological aspect, while the authors Maloku and Maloku (2021) have given an exceptionally large contribution to the legal criminal aspect with their dictionary of legal terminology – criminal law for journalists.

1.1. Authorities responsible for investigating and prosecuting crimes against the environment

The success of the state attorney as an authorized prosecutor in the prosecution of criminal offenses against the environment depends on the professional knowledge of experts, expert reports, the means at his disposal, cooperation with regulatory agencies, bodies of competent ministries. (Ševko Kadrića, *Zenica 2004.godine*). The investigation of environmental pollution in a specific component of the environment, in air, water or soil, requires specialized knowledge from various fields of natural sciences, geology, chemistry, dealing with dangerous and toxic substances, and investigators should be able to interpret the results of scientific tests. Therefore, a team approach and interdisciplinarity are of particular importance in the investigation of crimes against the environment, and field work is just as important as laboratory work. (Miloš Stopić, Nevena Dičić, Jovana Zorić, *Beograd 2009.godine*). In most EU member states, the police, state attorney's offices, and sometimes specialized police agencies for economic crime and, when it comes to crime related to

endangered natural species, customs agencies are responsible for investigating crimes against the environment. In almost all member states, there are various administrative agencies and inspectorates as supervisory bodies. A number of countries have established specialized environmental crime units at either regional or national level. Some countries, such as Norway, Spain, the Netherlands, have specialized departments of prosecutors for criminal offenses against the environment, which are responsible for prosecuting more serious criminal offenses against the environment. However, there is a large number of countries where there is an obvious lack of experienced staff or institutional experience. (Opasne stvari u okolišu, Dr.sc.Tahir Sofilic, Sisak 2013. godine). Also, in a large number of cases, a unit for collecting and analyzing data on crimes against the environment has not been established at the central level. EU member states in a survey conducted as part of the IPEC project pointed out certain problems related to the cooperation of administrative and criminal authorities regarding the investigation of criminal offenses against the environment. Likewise, criminal offenses against the protection of the environment, both nationally and internationally, I am the author of Maloku (2016), an extraordinary contribution. in the research paper International cooperation in the fight against transnational organized crime. In this paper, the author elaborates on the difficulties of the regional cooperation of the Balkan countries in the fight against organized crime. The aspect of criminality is analyzed by Maloku (2016, 2018, 2021) also from the approach of the theory of social disorganization, the author elaborates the influence of this theory on the increase of criminality.

1.2. Cross-border cooperation

One of the obstacles in the effective fight against environmental crime is the lack of an international approach in the investigation and prosecution of crimes against the environment. Crimes against the environment increasingly include a cross-border element, so the increase in international trade and the abolition of border controls in the Schengen area contribute to the increase of this type of crime. (Brigadir Mujo Alić, Sarajevo, 2000. godine). Part of the problem is caused by different and unharmonized legislation of EU member states and differences in the application of existing EU directives. Inconsistency in terms of the amount and type of sanctions for criminal offenses against the environment may call into question the application of certain instruments of judicial cooperation that also refer to this type of criminal offences, such as the European Arrest Warrant and the European Evidence Warrant. For example, the issuance of a European arrest warrant is possible for criminal offenses for which a prison sentence of one year or more is provided for, so if a member state has prescribed milder sanctions, it will not be possible to carry out an EUN. (Zakon zaštiti okoliša, BiH, 1998-1999.godine). For criminal offenses against the environment, the issuance of a European Arrest Warrant without checking double criminality is only possible if the issuing state has prescribed a prison sentence or a measure that includes deprivation of liberty for a maximum period of three years or more.

2. Law on Environmental Protection in Albania

The creation of new legislation required time that cannot be tolerated or avoided, it was developed in the New National Environmental Action Plan in 2001 and took first place among the tasks that the Ministry of the Environment is dedicated to solving. Pursuant to this task, a legal package for the environment was designed, where more urgent laws will be included in order to fill the significant legislative gap that existed in environmental protection. Currently, Albania has established its complete and highly enforceable environmental law.

Gradually, environmental law was consolidated as a separate branch of Albanian law. Moreover, there is not only one Albanian law on the environment, but it also has its divisions, where each of these laws and regulations belongs to the main components or issues of environmental protection. So, it can now be considered an almost complete law dedicated to the preservation of biodiversity and its components. (Sanel Prelič, Univerzitet u Tuzli 2006-07). It includes the Law on Forests and Forest Protection, the Law on Fisheries and the Aquatic Environment, the Law on Seeds and Seedlings, the Law on Wild Animals and Hunting, the Law on the Protection of Horticulture, the Law on Protected Areas, the Law on the Protection of Transboundary Lakes, the Law on Forests and pastures, the Act on the Protection of Natural Medicine, Ether and Oil. In addition, another group of laws was drafted that protects the environment from pollution and damage, such as the Law on Protection of Air from Pollution, the Law on Environmental Protection of Solid Waste, the Law on Disposal of Waste from Public Property, the Law on Environmental Protection with Wastewater, the Law on the Regulatory Framework for Water Supply and Waste Disposal and Water Treatment and the Law on Chemical Compounds, etc. The second special group will consist of laws that regulate environmental impact processes and environmental permits that issue environmental impact.

2.1. The legal system is based on a hierarchy:

The Constitution, primary legislation (qualified laws) and supporting normative acts, such as laws, government decisions, decrees, ministerial orders, regulations, guidelines and standards. The Constitution, adopted in 1998, calls on the Albanian authorities to maintain a healthy life in an environmentally friendly environment for current and future generations (Constitution of Albania, 1998). The Republic of Albania has adopted a number of laws in the field of environmental protection, showing its commitment to environmental protection. Ratification of international agreements is done by law within seven chapters I and II of the Constitution "International Agreements" (Hitaj, 2013). Articles 116, 121 and 122 of the Constitution, sanction the following: International agreements ratified by Albania are classified as laws and become part of the national legislative system after publication in the Official Gazette.¹⁵⁰ International agreements are directly applicable, unless they are applied only and the request requires approval of the new law (Committee, 2002). International agreements are directly applicable, unless they are self-applicable and the request requires the approval of new legislation (Committee, 2002). Once ratified, international treaties take precedence over national laws (Hitaj, 2013, Sinagra & Bargiacchi, 2009).¹⁵¹ Albanian environmental legislation represents a general legal framework in which environmental relations can develop normally. This legislation represents a necessary basis for the legality of the use, management and protection of the environment (Schrijver & Weiss, 2004). Legally, it responds to current developments and medium-term perspectives and provides sustainable solutions to problems arising from practice in the field of environmental protection (Andrzejewski, 2009). It can be noted that this legislation is at the same level of development and change with those of the respective neighboring countries of the region, thus creating a basic space for undertaking joint regional environmental activities to facilitate services in this area, and to guarantee the same protection of environmental ecosystems, managed by two or more countries (Gillespie, 2001).¹⁵² Principles and requirements for environmental protection, and especially the adoption of European norms on environmental emissions, this law becomes unified with EU directives.

2.2. Responsibility for environmental protection

Objectives of environmental protection under Albanian Legislation and Albanian environmental law, influenced by the EU. The integration process (Hinteregger, 2008) are:

- a. prevention, control and reduction of water, soil, air pollution and any other
- b. preservation, protection and improvement of nature and biodiversity;
- c. preservation, protection and improvement of the environment
- d. reasonable and rational use of nature and its resources;
- e. preservation and restoration of cultural and aesthetic values
- f. protection and improvement of the quality of life and health of people (Law 10, 2011).

Protection of the environment from damage by pollution is a national priority and is mandatory for every resident of the Republic of Albania, for all state bodies, as well as for natural and legal persons, whether domestic or foreign, who perform their activities in the territory of Albania. Environmental components are protected from pollution, separately and in combination, taking into account mutual interactions. In case of danger to the environment, pollution and damage, the public has the right to: request the competent public bodies to take appropriate measures within the framework of the conditions and in accordance with the authorization by law; Sue in court, in accordance with the provisions of the Civil Procedure Act, against the public authority or a natural or legal person who caused environmental damage or could damage the environment.

3. Criminal acts against the environment in Kosovo

The limitation of the criminal case occurs when the perpetrator cannot be discovered, or it may be that the perpetrator is known, but the prosecuting authorities could not find him. Also, it may happen that the perpetrator commits a criminal offense, but after the sentencing, real or legal restrictions appear that prevent him from carrying out the sentence. "Limitation or statute of limitations is a legal institute that leads to the suppression of criminal sanctions due to the passage of time determined by law. When a limitation is presented, the state loses the right to enforce criminal sanctions against the perpetrator." The Criminal Code of the Republic of Kosovo recognizes two types of limitations: 1. limitation of prosecution and 2. limitation of execution. These two types of constraints can then be divided into relative and absolute constraints. (Energytransport & naturatresources, Pravni Instrumenti za zastitu životne sredine - Vlada Republike Hrvatske Ured za udruge (Ova publikacija izrađena je uz pomoć Evropske unije i Ureda za udruge Vlade RH. Sadržaj ove publikacije isključiva je odgovornost Zelena akcija / Friends of the Earth Croatia i projektnih partnera i ne predstavlja nužno stanovište Evropske unije i Ureda za udruge Vlade RH.). The relative limitation implies the transfer of the time prescribed by law of the offense until the prosecution can initiate or may not initiate the execution on the limitation of the death penalty. While the absolute limitation means more than twice the time prescribed by law at the time of the commission of the crime until the prosecution can be initiated, or the execution of the sentence in the case of the statutory penalty of death. The limitation of criminal prosecution starts from the day when the crime was committed.

3.1. The meaning of acts against the environment according to the CC of Kosovo

The question of responsibility in classical legal principles was reduced to responsibility due to the commission of a delict and the damage caused. However, due to the broad understanding of the term environment and considering that the consequences of human actions, i.e. their effects can appear where they could not be expected before, it was observed that

activities with the aim of preserving the environment must be shifted more towards preventive protection "with the intention of predicting as many potentially harmful situations and activities as possible due to the specific nature of the objects of regulation and having in mind in view of the circumstance that it is often not possible to completely eliminate harmful effects on the environment". (Međunarodni Odnosi (zbirka eseja 1), drugo izdanje. Novi Pazar, 2012. Dr.Džemal Najetović). Instead of remediation, in the form of compensation for complementary and compensatory damages, its concept is extended to include the costs of measures undertaken as a preventive measure - to protect the existing situation, as well as measures which are undertaken to restore the damaged environment. In essence, this type of responsibility for environmental protection has elements of tax burden in its basis. The goal is to create an insurance system that the costs of protection in this sphere are borne by those who cause pollution and that when calculating and making a strategic planning policy they are required to quantify the external costs. In this sense, it is pointed out that the fine distinction between burden and pollution of the environment, i.e. the situation in which "the polluter pays" and the situation in which the "polluter is responsible", indicates that the very concept of environmental pollution is normative. (Buletini Shkencor, ISSN 2310-6719 Nr.1, volumi 2, 2013, Univerziteti "Ismail Qemali" Vlorë). In Kosovo more of 800 people die annually from air pollution?. Air pollution in Kosovo causes more than 800 premature deaths annually, said representatives of the World Health Organization. "This fact is also argued by the global report of the World Health Organization, which establishes a direct relationship between the conditions of the environment and individuals who are exposed to the polluted environment, which represents predispositions for various diseases." "In the context of Kosovo, we are aware that we have serious environmental problems, whether it is air, water and soil pollution, but also various preparations, given that it is known that many areas of Kosovo have historically been contaminated with lead, zinc, etc. waste". (Kratko uputstvo za izbor teme za naučni rad (Mr i Dr), rad sa mentorom i obratno, metodologiju izrade i strukturu naučnog rada. Acc. Džemal Najetović, 2018). The Government of Kosovo should take the necessary measures in the coming years in order to significantly improve the environmental conditions in the places where people live. The Government of Kosovo should take the necessary measures to significantly improve the living conditions in which people live in the next few years. When it comes to air quality, there are significant improvements compared to previous years.

4. Methodology

From the aspect of the application of research methods, we can say that the qualitative method of document content analysis (Maloku, 2020, p. 323) was used for the needs of the paper from the following scientific fields: methodology, security, criminology, etc.. (Maloku, Kastrati, Gabela & Maloku, 2022:141)

We tried to elaborate environmental protection using the historical method. In the context of environmental protection by society, through different epochs of economic and social development.

- We used the legal method when researching the legal regulation of environmental protection, relevant legal provisions, as well as characteristics of environmental protection, elements that affect environmental pollution.

- We used the statistical method to display statistical data dealing with environmental protection and results showing the level of environmental pollution.

- We used the comparative method to compare the national codes of the countries in the region that provide legal protection, which are compared with the national laws given by international conventions on environmental protection.

- The method of data collection and document content analysis will have a special application in the study of the theoretical knowledge of domestic and foreign authors.

Because of the research's intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, Qerimi and Maloku, 2022:176)

6. Conclusions

In order to improve air quality and its protection from pollution, as well as to improve monitoring and reporting on air quality, it is recommended that:

The Strategy of the Air Quality Action Plan is implemented, specific projects aimed at improving air quality are implemented, the list of emissions and sources of air pollutants is being completed, the national air quality monitoring system is fully functional in order to improve the collection, processing and reporting of air quality data, an online (in real time) air quality data reporting system is implemented, the technical and institutional capacities for maintaining the air quality monitoring network, servicing and calibration of equipment are strengthened, as well as the accreditation of the air quality laboratory, the cooperation between monitoring institutions and operators is improved, especially in the process of information flow, processing, reporting and more effective information to the public about air quality. (Svijet, Možda čemo spasiti svijet - Sta je dogovoreno u Parizu, Autor: Hina, 13. 12. 2015.godine). In accordance with the principle of integrated water management, the strategy has a broad multisectoral approach that tries to include all important aspects of water management in the Republic of Kosovo, including among others water services for the population and households in populated areas such as: water supply, waste water collection as and waste water processing. This strategy also defines strategic objectives for efficient use of water as well as proper and effective water management. To prevent and fight this type of crime it is necessary to profile and train investigators, prosecutors, and judges for criminal offenses in certain areas. No country is spared from criminal offenses (Maloku, 2015: 119). Therefore, In order to beg for crime, it is more than necessary for the competent institutions of the nation-states to harmonize the legislation in accordance with the international conventions on transnational cooperation. (Maloku, 2015: 471)

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