ASPECTS REGARDING ENVIRONMENTAL OFFENCES STIPULATED IN SPECIAL LAWS

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ABSTRACT: *Any act that violates environmental law and causes major damage or risks to the environment or human health is considered an offence against the environment. Offences against the environment are a serious and growing problem, and they appear under a lot of forms. This problem is not limited to air, water and soil pollution, it also pushes commercially valuable wild species closer to extinction. Ecological crime can also include offences that accelerate climate change, the destruction of fish stocks, deforestation and the depletion of essential natural resources. Directive 2008/99 / EC on the protection of the environment through criminal law identifies a number of environmental offences that are sanctioned in all EU countries.*

KEY WORDS*: environmental offence, environmental criminality, Directive 2008/99 / EC, pollution, waste, nuclear activities*
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1. GENERAL ASPECTS CONCERNING LIABILITY IN ENVIRONMENTAL LAW

Historically speaking, criminal rules have been considered among the first to be applied for environmental protection, but a representative bundle of specific rules related to a criminal environmental law is more recent. The preventive actions have occupied for a long time, the first place, being considered in environmental law, the most effective measures to repair the damage brought to the environment, followed by those of civil and misdemeanour nature. (Duțu 2015) Criminal sanctions have been required by the increase of the criminal phenomenon in this field, and by the need to apply harsher and more appropriate measures to the new types of acts committed by man against the environment in which he lives. On this background, criminal liability in environmental law has become more important, and at national, European and international level, the interest in creating a specific bundle of "environmental offences" and a criminal environmental law has become increasingly obvious.

The legal liability in the field of environmental protection must also be included among the coordinates that mark the regulation of the content of a fundamental right to a protected environment. Primordial in this matter is the prevention of ecological damage,

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and not the establishment of liability for the recovery of those already produced (due to the sometimes irreversible nature of the ecological damage).

Legal liability in the field of environmental protection presents a number of difficulties, especially related to the fact that not all forms of damage can be remedied by applying legal liability. In addition, the following conditions must be met: there must be one or more identifiable pollutants; the damage must be concrete and quantifiable; a causal link between the injury and the identified polluter or pollutants must be established.

Legal liability differs depending on the degree of actual social danger of the act, which may constitute, according to this criterion, a crime or misdemeanour, resulting in two possible forms of legal liability: misdemeanour or criminal. If the deed does not fall into any of these categories, but still caused property damage, it will be repaired through civil liability. (Manta 2009)

The term "liability" is specific to sociology or morality rather than law. In general, this concept is defined as "to be responsible, the obligation to do something, to be accountable, the responsibility." From etymological point of view, liability and responsibility are synonymous notions; from legal point of view, however, this synonymy is at most partial. However, these two terms must be placed in a framework of social nature, because liability and responsibility are specific to the human behaviour. (Manta 2009) Any act that violates environmental legislation and causes major damage or risks to the environment or human health is considered an environmental offence. Among the most common such crimes are: the illegal emission or discharge of substances into the atmosphere, water or soil, the illegal trade in species of wild fauna and flora, the illegal trade in ozone-depleting substances, the illicit transport or illegal dumping of waste. (https://ec.europa.eu/info/energy-climate-change-environment /implementation-eu-countries/criminal-sanctions-environmental-offences_ro)

Directive 2008/99 / EC on the protection of the environment through criminal law identifies a number of environmental offences that are penalized in all EU countries.

In addition to the environmental offences listed above, it is also illegal to engage in hazardous activities (including the manufacture or handling of nuclear materials) and to treat waste in an illegal manner.

Under EU law, all Member States must apply effective, proportionate and dissuasive criminal sanctions to those who commit crimes against the environment intentionally or through gross negligence. Instigation, participation and complicity in the commission of an environmental crime can also be penalized.

2. TRANSPOSITION OF DIRECTIVE 2008/99/CE INTO NATIONAL LAW

The non-incrimination of ecological crimes within a separate chapter of the new Criminal Code was compensated by the adoption of the draft *Law on environmental protection through criminal liability*. This was done as a result of the need to internally transpose the obligations imposed by Directive no. 2008/99 / EC laying down the need for Member States to provide in national law for effective, proportionate and dissuasive criminal sanctions for serious infringements of the provisions of Union law on environmental protection. The Community Directive has emerged as a response to the ecological crisis in which the environment finds itself, which requires, on the one hand,

an appropriate criminalization of acts which seriously harm natural data and, on the other hand, the imposition of deterrent penalties on subjects of law. (Cobzaru 2016)

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 the establishment of effective measures to combat the increase in environmental crime. The stated purpose of the Directive is set out in its Preamble: "The Community is concerned about the increasing number of environmental offences and their effects, which are increasingly spreading beyond the borders of the states in which they are committed. Such offences pose a threat to the environment and therefore require an appropriate response. "Experience has shown that the current sanctioning systems have not been sufficient to ensure full compliance with environmental protection legislation. Such compliance can and should be strengthened by the provision of criminal sanctions… "

Regarding the internal framework, on October 6, 2010, at the initiative of the Ministry of Environment, Waters and Forests, the Government of Romania adopted the draft Law on environmental protection through criminal law. The Official Communiqué issued by the Ministry of Environment, Waters and Forests states that the new approved normative act complements the internal legislation on environmental protection, ensuring alignment with European standards and fulfilling Romania's obligations as a member of the European Union. The crimes contained in this law relate to non-compliance with certain legal provisions governing specific important aspects of the management of pollutants or environmental protection in general, provisions which constitute either the transposition of Community legislation or even regulations of the European Union. (Cobzaru 2016)

The infringement concerning the conduct of export operations in breach of the relevant legal provisions concerns the compliance with the obligation imposed on the Member States, by means of that directive, to penalize illegal shipments of waste. At present, the internal legislation of Romania sanctions the import, transit, introduction or removal from the territory of the country, of the waste, with the non-observance of the legal provisions, but not sanctioning as such the export of waste. Regarding the crimes to the regime of nuclear materials or dangerous radioactive substances, the law comes to complete the existing provisions within the Criminal Code or of some special laws in the field, such as Law no. 111/1996 on the safe conduct, regulation, authorization and control of nuclear activities, with certain ways of committing crimes not included in the current legislation and which the directive includes as such.

Law no. 101/2011 for the prevention and sanctioning of acts on environmental degradation is part of the category of national legislation transposing 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[1]. This normative act empowers at a higher level the concept of environmental crime, including a series of definitions for the terms and expressions used in art. 2 and incriminating six crimes (art. 3-8) meant to confer criminal protection to a large number of components of the environment. (Vernea 2020).

[1] Republished in the Official Gazette no. 223 of March 28, 2014.

According to Article 3 of Law no. 101/2011[2], the special legal object is represented by the social relations related to the protection of the environment and public health in case of faulty operations of waste, insofar as they are likely to cause death or serious injury to a person or significant damage to the environment. The material object in question is waste, subject to the offending operations.

The law in question does not define the notion of "waste", which can be taken over, without difficulties, from the special legislation, respectively point 9 of Annex no. 1 of Law no. 211/2011 on the legal regime of waste, with subsequent amendments and completions, in the following form: "any substance or object that the holder discards or has the intention or obligation to discard". The material element is represented by alternative actions, namely the collection, transport, recovery or disposal of waste, the supervision of these operations and the subsequent maintenance of disposal sites, as well as the actions taken by brokers in the waste management process. The immediate consequence consists in a state of abstract danger, respectively the ideal aptitude of the incriminated action to cause the death or serious injury of a person or a significant damage to the environment, without the need to actually produce a result. The significant damage brought to the environment is defined by the provisions of art. 2 letter e) of Law no. 101/2011, as follows: "an irreversible or long-term damage, quantifiable or not in money, produced in any way on the environment, or which caused or is likely to cause the death or serious injury of the bodily integrity or health of a person". Taking into account the legislative definition, we consider that the reference to the death or serious injury of a person is not redundant, as long as the immediate consequence attracts the typicality of the deed and in the situation where there was no irreversible or long-term damage to the environment. (Vernea 2020)

Regarding Article 5 of Law no. 101/2011[3], we appreciate that the special legal object is represented by the social relations regarding the protection of the environment and public health, against pollution with dangerous substances or preparations. The material object in question is the installations in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used. The premised situation is the pre-existence of an installation in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used. According to art. 2 letter f) of Law no. 101/2011, the installation in which a dangerous activity is carried out is defined as "the installation provided by the legislation in force in which activities that can have a significant impact on the environment are carried out". The material element is represented by the activity of operating such an installation, susceptible to a multitude of factual ways.

[2] According to art. 3 of Law no. 101/2011: "The collection, transport, recovery or disposal of waste, including the supervision of such operations and the subsequent maintenance of disposal sites, as well as the actions taken by brokers in the waste management process, in violation of the relevant legal provisions, which may cause the death or serious injury of a person or significant damage to the environment, constitutes an offence and is punishable by imprisonment from 6 months to 3 years".

[3] According to art. 5 of Law no. 101/2011: "The operation in violation of the relevant legal provisions of an installation in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, likely to cause the death or serious injury of a person outside the installation or a significant damage to the environment, constitutes an offence and is punishable by imprisonment from 6 months to 5 years".

In Article 6 of Law no. 101/2011[4], the special legal object is represented by the social relations regarding the protection of natural areas and species of wild flora and fauna. According to the analysed legal provision, the active subject is not circumstantial, and can be represented by any person, natural or legal, who performs acts of trade with protected species of wild fauna or flora or with parts or derivatives thereof. The main passive subject is the state, in its capacity as guarantor of the security of the social relations created around the protection of the environment. The immediate consequence consists in a state of concrete danger for the social relations regarding the protection of the environment and of the species of protected wild flora or fauna, respectively it is required that, through the committed deed, a small amount of such specimens is not affected, therefore, the deed must present a concrete level of gravity. In this sense, it is noted in the incrimination norm that if the deed has an insignificant impact on the conservation status of the species, it lacks typicality. The causal link must exist and be proved, under the conditions of the circumscription of the state of danger, by the legislator. The subjective side involves committing the act with intent in both ways provided by law, and the motive and purpose are not relevant to the qualification of the act, having importance in the process of judicial individualization of punishment. (Vernea 2020)

3. CONCLUSIONS

In March 2020, the draft law on the establishment of the Directorate for the Investigation of Environmental Offences (DIIM) was submitted. It was conceived as an institution on the model of DIICOT to operate at national level and to fight crimes against the environment. USR Senator Allen Coliban showed then that *"Environmental problems in Romania are numerous and serious, they are chronic. We know about them not only from the infringement cases opened by the European Commission, we all see and feel them. We can talk about problems in the forest area, where 20 million cubic meters disappear from Romania's forests annually and, if we were to add up the damage, we would exceed the amount of 1 billion euros. We are talking about air quality problems and, unfortunately, 25,000 Romanians die every year due to pollution. We are talking about waste management issues and we know about both illegal waste imports and ecological pits that have become real bombs that poison our air and pollute our waters and soil. If we look at the facts behind these issues, many of them raise suspicions of organized criminal groups. Many of them are classified as crimes, but very few people end up being punished and that is why we need specialized structures".*

[4] According to art. 6 of Law no. 211/2011: "(1) Trade in specimens of protected species of wild fauna or flora or in parts or derivatives thereof, in breach of the relevant legal provisions, unless the act affects a small number of such specimens and has an insignificant impact on the conservation status of the species, shall be punished by imprisonment from 3 months to one year or by a fine. (2) If the trade is carried out with fauna species from those provided in art. 33 para. (1) and (2) of the O.U.G. no. 57/2007 on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna, approved with amendments and completions by Law no. 49/2011, with subsequent amendments, the sanctions provided in art. 52 para. (1) of the emergency ordinance are applied".

There is a very high incidence of environmental offence. After drug trafficking, human trafficking and arms trafficking, on the fourth place in the world, there are the crimes that harm the environment, whether we are talking about water pollution, soil pollution, or illegal logging and poaching, which has even led to the extinction of some species. The Directorate for the Investigation of Environmental Crimes will function within the General Prosecutor's Office and will be headed by a chief prosecutor, appointed by the President of Romania at the proposal of the Minister of Justice with the approval of the SCM. The maximum number of posts is as follows: 295 posts of prosecutors, 40 posts of specialists, 270 posts for specialized auxiliary, economic and administrative staff, 40 posts of judicial police officers and agents and 290 posts of officers and judicial police officers to be appointed in the next 5 years (50 per year).

DIIM allegedly investigated, among other things, illegal deforestation, illegal storage and trafficking, non-compliance with anti-pollution rules, permanent or temporary removal of agricultural or forestry land from the protected natural area, capture or killing of wildlife with illegal means.

By DECISION no.681 of 30 September, 2020, published in the Official Gazette no.959 of 19 October 2020, CCR admits the objection of unconstitutionality formulated by the Romanian Government and finds that the Law for the organization and functioning of the Directorate for Investigation of Environmental Crimes, as well as for amending and supplementing some normative acts are unconstitutional.

In recent years, there has been an unprecedented development of organized crime, which has led to a sustained fight against dangerous actions that threaten the safety and security of the world's citizens. Globalization, as a current phenomenon in full expansion, brings with it not only positive effects, but also many negative aspects, which make their mark on all areas of economic, cultural, social and political life. At European and global level, there is no consensus on the terminology of the phenomenon of environmental crime. Attempts to define the concept are rather clumsy and controversial and, in most cases, the definition of the term is avoided, retaining only a functional classification of the offences to which it refers. However, important legal steps have been taken to create a more appropriate legislative framework to better deal with the current criminal phenomenon. The favourite areas in which ecological crime has developed are: illicit trade with wild, rare or endangered species, trafficking in radioactive and nuclear materials, trafficking in hazardous waste, intentional pollution of water, air, soil, subsoil, etc.

Considering what is shown in this paper, we consider that it would be very useful for Romania to have a specialized body, dedicated only to investigating and bringing to justice environmental offences. We agree with the idea of setting up a *Directorate for the Investigation of Environmental Crimes*, given the precarious situation in which we find ourselves regarding ecological crime.

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