

## CRIMINAL LAW IN THE CONTEXT OF ENVIRONMENTAL, NATURAL AND CULTURAL HERITAGE CRIMES

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### ABSTRACT

*The evolution of law follows the evolution of society and the socio-economic relations that generate legal relations. Lately, environmental crimes among which we mention: pollution, contamination with dangerous chemical substances of abiotic environmental factors; wildlife poaching; deforestation in violation of the forestry regime, etc., are frequent, entering a spectrum of everyday normality. At the same time, the poaching of cultural heritage is a new element that has come under the focus of criminal investigation bodies, although the trade in artefacts and priceless heritage values has been consumed for a long time. The Romanian authorities and legal specialists easily pass over existing cases affecting the environment and cultural heritage, as these important paradigms for humanity are not active subjects of law. The correction of some characters whose aim is to enrich themselves through the destruction of abiotic environmental factors and the sale of cultural heritage objects, can only be done in an organized and focused way, including through the development of a criminal code of the environment and cultural and natural heritage. The code will have to capture the existence of crimes in relation to the action or inaction of individuals and in relation to the legal ethical principles of the environment and heritage accepted by the international community, which gives more and more importance to this segment, which is imposed in constitutional law of the signatory countries of international conventions. Our material launches some ideas and puts into scientific debate the possibility of creating a unitary legal framework to prevent the destruction of elements of cultural and natural heritage and to protect the environment.*

**KEYWORDS:** pollution, poaching, deforestation, criminal, law.

### INTRODUCTION

The environment, natural and cultural heritage are indisputable values and notions for humanity. It is true that society is not aware of the effects of their deterioration. Regarding the environment, we identify two situations: a situation in which the environment has insufficient resources and reserves compared to the population living in the respective geographical areas. In these situations, we find geographical areas with a dense population and a rather low social standard. These people don't know any better and have no voice to be heard in world politics. A second situation is that of economically and socially developed societies which, however, have enough biosphere resources to not feel the effects of global warming and industrialization. In these societies scientists develop theories and present experiments about what humanity and the environment will look like in a projection of 20 to 50 years. Politicians have ignored the messages until now over the last 10 years, when serious negotiations have begun on future strategy for industry, trade, agriculture, and habitable geographies.

We know the fact, which has become a certainty, that coastal areas will be flooded due to the rise in the level of the planetary ocean. These coastal areas of the seas and oceans

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are inhabited areas with a high population density per unit of land area. It is estimated that in the not-too-distant future a migration of over one billion inhabitants will occur due to climate reasons. Reality cannot be proved - it can only be presented in mathematical models that give us a gloomy projection. On this pattern we can discuss a global need for regulations through international, regional, and state normative acts of activities that affect the environment and especially the resources for a healthy life.

Regulations exist starting with international conventions, regulations and directives of the European Union implemented in Romanian law through laws, government ordinances, government decisions and subsidiarily ministerial orders.

Normative acts in the field of environment cover a wide range of regulatory objectives. We have specific legislation in the field of water, soil and subsoil resource management, regulations on air quality, regulations on geographical areas with forests, lands intended for agriculture, lands intended for the conservation and protection of habitats and human settlements. At the same time, we have normative acts dedicated to causes that destroy the environment.

Thus, waste management of all categories starting from municipal waste, construction waste, vehicle fleet renewal, biological waste from agro-zootechnical farms and up to hospitals and research laboratories are strictly regulated. Most of the time, the implementation of these regulations represents a real challenge for the state authorities, but also for private entrepreneurs.

The natural desire for profit sets in motion economic and financial mechanisms, which are not related to a judicious and balanced management of environmental resources. The desire for enrichment leads to the corruption of a segment of the state or local public administration so that the law is not applied correctly and on time.

There are situations where the representatives of the authority are overwhelmed by the large number of crimes and the "law" element turns into a purely theoretical notion. Most of the normative acts elaborated punctually in each field also have the part of incriminating contraventional and criminal acts. Criminal liability is imposed on the perpetrators, the deed being related to each normative act with a higher or lower value. Hence the need for a criminal code and a code of criminal procedure in environmental law.

We find liability in environmental law in the bibliography, in international treaties, but we do not find it in the finality of many files instrumented by the Prosecutor's Office regarding environmental crimes.

A situation mirrored in environmental law can also be found in natural and cultural heritage law. The phrase "natural heritage" is closely related to environmental law, as it refers to the inventory of geographical areas where natural monuments, biosphere reserves, natural parks, wetlands, biological, geological, or speleological reserves are located. These symbol values held by humanity must be reference systems between the beginnings of life on earth and the everyday.

The more often we refer to these areas of natural heritage, the more we notice the destruction caused by the evolution of society and the economy with everything it entails: industry, trade, intensive agriculture, and others.

Cultural heritage is a notion that offers us a new challenge parallel to environmental

law, as these notions are similar. The history of mankind is reflected by the goals achieved in the past. By these objectives we understand the way of life of people in different geographical areas, political and military systems of the time and technologies of the past. In this context, the identity of the peoples is found in the artifacts discovered by archaeologists, military fortifications with the engineering of the moment. All these elements must enter the universal heritage and must be protected. In this sequence of cultural heritage, history and the present reflect an impressive casuistry of crimes by poachers trading on a black market „everything old”.

This market is exclusive and sometimes protected by the interests of the beneficiaries of the artefact trade, most often influential people capable of powerful pro causa lobbies.

This is the introduction to our research on environmental law, natural and cultural heritage law. We are trying to see what is missing or what is not working in holding the perpetrators accountable for misdemeanors and crimes that affect this heritage.

### **NORMATIVE ACTS REGARDING CRIMINAL LAW AT INTERNATIONAL AND NATIONAL LEVEL**

The need to protect the environment imposed its own regime of criminal liability through general criminal law. In the special criminal law, there was a need to highlight the crimes regarding the protection of the environment, which over time were categorized as environmental crimes. The Criminal Code rarely identifies environmental crimes. Reality sets in and environmental crimes are in full regulatory process both at the European level, within the European Union, but also at the international level. In 1970, at the level of the United Nations Organization, in the Declaration on the principles governing the bottom of the seas and oceans, a more special notion, but of fundamental importance, is called for: that of the common heritage of humanity.

Over time, the highlighted phrase is used in international law, so that any attack on the environmental resource prevents the declaration of the abiotic environmental element or factor as the common heritage of humanity. Some researchers make an „x-ray” of the evolution of environmental law regulations (Duțu et al., 2015). It is noted, however, that a criminal law of the environment is necessary. At the level of the European Union, the environmental criminal law is imposed by the directive<sup>1</sup> 2008/99/CE by which the states have the obligation to introduce into the domestic law criminal sanctions for actions that generate destruction of environmental factors.

We notice that there is a specialization in law through many normative acts, but there is no unified working basis by which to treat all the acts and facts that harm the environment and natural heritage in a code. An environmental code and a procedural code simplify the work of the authorities that aim to protect the fundamental values that ensure our right to a healthy environment<sup>2</sup>.

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<sup>1</sup> The directive was published in the "Official Journal of the European Union" and transposed into domestic law by law 101/2011 for the prevention and sanctioning of acts related to environmental degradation, published in the official monitor part I, no. 449 of 28.06.2011.

<sup>2</sup> Romanian Constitution, art.35: "(1) The State recognizes the right of any person to a healthy and ecologically balanced environment. (2) The state ensures the legislative framework for the exercise of this right. (3) Natural and legal persons have the duty to protect and improve the environment.

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To justify the theoretical elements, we bring to attention seemingly trivial cases or trivialized by the mass media, which by their nature, affect in the long term this constitutional right to a healthy and ecologically balanced environment. We will not go into the details of the cases, as it would mean overloading the content and failing in the synthesis in the conclusions. The pages of the written press, the airwaves of radio stations and the images shown on television are numerous when the Public Ministry through the territorial structures presents us with serious crimes against the environment.

In Tulcea county, the prosecutors found that after the capsizing of a ship loaded with sheep, their carcasses were simply buried, without respecting any article of the legislation on biological waste. The infection outbreak is a ticking time bomb that will indefinitely affect the water table, air and soil in the area where the criminals falsely claimed to have incinerators.

In Constanța county, "investors" from Italy imported particularly dangerous waste from western Europe, collected in southern Italy, and then unloaded by sea at Năvodari. The garbage mountain reached a height of 95m according to criminal investigations.

In the Crisana area, areas of agricultural land on the edge of some rural towns became warehouses for particularly dangerous waste whose accompanying documents showed that the waste was in transit to the Republic of Moldova.

Particularly hazardous waste was imported from Great Britain to the city of Strehăia, Mehedinți county. The transport was made by rail from Great Britain to the border of Romania, and from there - by road. This small detail shows that the perpetrators were afraid of the authorities of the states in transit and chose rail transport, and in Romania the law is enforced with tolerance.

In many situations, the parks authorized by the Environment Agency for the dismantling of motor vehicles and the sorting of dismantled components by waste category are in fact waste dumps, sometimes abandoned, and other times, as if by accident, they catch fire spreading extensive fires. Normally, these contractors should have a limited period in which to dismantle and classify the waste by composition and "recycle/reuse/neutralize" destination.

These situations are numerous on the territory of Romania and benefit from an indulgence of the environmental protection and other authorities. Another area where environmental crimes are relevant due to their scale are the acts by which vast areas of forests are cleared, large volumes of gravel and sand are excavated from riverbeds, a fact that leads to a long-term damage to fauna and flora and the landscape.

In terms of cultural heritage, the cases revealed by prosecutors regarding the treasures composed of gold bracelets and Dacian coins, poached from the mountains of Orăștie and sold at large auction houses in the world are an eloquent and brilliant media example. The importance of the cultural heritage is also given by the constructions, fortifications, defense, and transport systems of the past. The most mundane tools or sherds are of great importance in archaeologists' theses regarding the living conditions of the ancestors. To build an identity as a people you need historical and cultural landmarks summarized by the phrase "cultural heritage".

Through the Convention on the Protection of the World Cultural and Natural Heritage<sup>3</sup>, the United Nations Educational, Scientific and Cultural Organization, considering that the disappearance of the cultural and natural heritage constitutes a harmful diminution of the heritage of all peoples, and the protection of this heritage, only on a national scale, is ineffective, a common strategy is recommended to the signatory states. Through this strategy, the convention recognizes that the obligation to ensure the identification, protection, conservation, valorization, and transmission to future generations of cultural and natural heritage is a priority. In this context, international cooperation must focus on financial, scientific, and technical aspects, to protect and conserve heritage<sup>4</sup> as effectively as possible.

The presentation above shows us that steps are being taken towards the protection of the natural cultural heritage and the protection of the environment by developing specific sequential legal norms. These actions must be subscribed to a wider action in which the normative acts are centralized, duplicates and contradictory elements of the legislation are eliminated. A cultural heritage code in Romania is in the draft phase and probably, after the public debate, it will be able to be validated by the legislative forum to become a reference law. At the same time, actions for a code of laws regarding environmental law are timid and their coagulation for a greater objective, to create a code of laws from all existing legislation, is at the beginning.

We want to bring to the attention of the scientific community the fact that cultural heritage, natural heritage, and the environment are the most important elements to be regulated in this period. Improving the other branches of law: civil, commercial, constitutional is very important for micro- companies. Legislation on heritage and the environment is much more important in that the object of law is part of the "common heritage of humanity" and the subjects of law have the valence of international law. Pollution cannot be stopped within the borders of a state or union of states. Trade in artefacts and cultural heritage goods would have no value if it were not internationalized. Mineral resources, water, food resources cannot be ignored as they provide huge profits and ensure the life of humans and terrestrial or marine animals. Consequently, life on the planet depends on the quality of these primary resources: air, water, soil, and secondary resources resulting from agricultural products, fruit trees, vines, fisheries, and livestock, whether raised on farms or in their natural environment. Once we realize the importance of these elements necessary for life with an ever-increasing quality, we can demonstrate that the protection of these resources necessary for humanity must be achieved through well-articulated legislation, implemented on an international scale so as not to have regulatory differences. At first the legislation will create discomfort for some who make the profit in the short term, but in the future the profit will be for larger and larger geographical spaces, with the populations living in harmony in these places. An even distribution of public or private economic assets equalizes the standard of living. Standardization of living standards will slow down the desire to emigrate for economic and climatic reasons. Social and economic standardization will allow for more effective globalization, as differences between regions are smaller and easier to manage.

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<sup>3</sup> The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from October 17 to November 21, 1972

<sup>4</sup> Art. 4, Convention on the protection of the world cultural and natural heritage

### **CONCLUSIONS**

A correctly articulated and precisely implemented legislation ensures a good management of environmental resources (water, air, soil), of mineral resources that enter the technological processes necessary to produce consumer goods.

Consumer goods sooner or later become waste, a big problem for the high standard of living. The tendency of waste management is to be moved from large consuming societies to politically and economically dominated, poorer societies with uneducated populations and corruption in administrative structures. The reviewed cases on imported waste would become simple commercial acts if we were a member state of the Schengen Convention<sup>55</sup> on the Free Movement of Goods and Persons. It is up to the political factor to organize more effectively the structures to control more effectively the „waste trade”.

In parallel evolution, the trade in artefacts, which affects the value of heritage, has a dimension of international law. Artifacts from a state are hoarded through a sophisticated trade through dedicated auction houses in developed states. Buyers have enormous financial resources. If the poaching of cultural heritage is presented by the mass media as trivial actions, the losses at the state level are huge. Practically, cultural heritage is based on symbolic values and is not based on an economic and utility value of the moment. In these cases, known from the historical treasures in the mountains of Orăștie, the plates from Troesmis also have the intrinsic value of gold or bronze, but the most important is the symbolic, historical value.

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<sup>5</sup> Convention Implementing the Schengen Agreement of 14 June 1985 between the governments of the states of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic on the gradual elimination of controls at their common borders, Adopted at Schengen on 19.06.1990.