

# The Criminal legal protection of the environment under the applicable Criminal Code

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## Abstract

The Criminal Code was adopted in 1995. The Code groups the criminal acts against the environment in the Chapter IV of the special part. The grouping of criminal acts against the environment in a separate chapter serves for a better classification of offenses under the common group object and is also an indicator of a significant change in the conception of the environment and its components as a direct object of criminal acts. The Criminal Code of 1995 made significant changes compared with the previous Criminal Code. Concerning to the variety of criminal acts, it is noted that in addition to the actual figures that existed before, although distributed in different headings, they are already grouped in a separate chapter and at the same time have added new figures of criminal acts against environment. An innovation of the Criminal Code is the assessment of the lawmaker on the degree of social risk of the offense and the importance of the object protected by the criminal norms consists in selecting the classification of various acts against the environment as criminal offenses or criminal acts. The Criminal Code has changed and with regard to the foreseen punishments. In the code, the criminal acts contain evaluations of technical character such as the case of violation of allowed norms in air pollution or in relation to types of polluting substances in water pollution. Particularly important for criminal acts against the environment in the performance of which legal entities are involved is another innovation brought by the Criminal Code. In this context we will analyze, innovations, differences and similarities with previous criminal codes.

**Keywords:** criminal; legal; protection; environment; code.

## 1. Introduction

The historical development of criminal legislation until the adoption of the first criminal code of the Albanian state in the twentieth century has been based on customary norms. It was characterized by diversity related to local, economic, and social features. The Albanian criminal legislation, which essentially consists of the Criminal Code, has begun in 1927<sup>1</sup>. From that period up to now, 4 Criminal Codes have been drafted, adopted and implemented which have reflected the systems they have designed and consequently presented those figures that were closely related to the country's economic and social development.

## 2. Material and Methods

Criminal law protection of environmental elements of the Penal Code of 1927. The first Criminal Code was passed by the decree of 3/6/1927 which abrogated the Criminal Code of the Ottoman Empire and entered into force on 1 January 1928, which had acted thus far, thereby representing the main source of the criminal law of the Albanian state. This Code was divided into 3 books. In the first book the norms of the general part were foreseen, the second book provided criminal offenses and in the third criminal offense book. Precisely in the third book, criminal records were envisaged for the protection of environmental constituents such as the pollution or dumping of contaminated objects in wells, springs, rivers or water lines, whose waters are used as drinking water, negligent behavior on animals, dumping and dangerous items of things that can hit or break people as well as the violation of measures taken against contagious animal diseases. The offense was punished when:

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<sup>1</sup> Kodi Penal i 1927

- It was not in conformity with the orders received by the authorities against the spread of such diseases;
- He kept hidden or knowing that he bought, sold or sold for sale animals or meat of diseased or dead animals. The spread of the disease was an aggravating circumstance.

A special offense was the pollution or dumping of items. The code was foreseen as a deed and disregard of the authorities' orders to clean up, the repetition of which constituted an aggravating circumstance.

Punishments for criminal offenses mainly included fines of 10 francs - 2000 francs, as well as five to three months imprisonment. In the case of violation of orders or measures taken by the authorities against contagious diseases, in addition to the main punishment, provision was made to be under observation or special protection by the public security authority. The negligent behavior on animals included a fine of 10 francs - 100 francs. As a crime against the environment and include cases where damaged trees or hunting in the property to another private entity. Special cases of drinking water pollution were included in the category of criminal offenses, the punishment for them was from 3 to 10 years in prison if in consequence there was a loss of human health while when it caused damage to animals, the sentence was 1 month - 3 years in prison.

One particular feature of the Criminal Code was arson in the woods, when intentionally committed the sentence was from 5 to 10 years in prison, and when it was caused by negligence the sentence was 30 months imprisonment or 1000 fine francs. The punishment was cumulative when it posed a threat to people's lives. The 1928 Criminal Code was mainly based on the Italian model.

Criminal law protection of environmental elements of the Penal Code of 1952

In September 1952<sup>2</sup>, the Criminal Code came into force. This code consisted of two main parts, serving as the model of the former Soviet Union Criminal Code of 1922 and 1926. The code did not recognize the classification of criminal offenses. Crimes that had different environmental components were found in chapters and subchapters of the special section. Specifically in chapter 3 crimes against the socialist system of economy, of subheadings you were paying special crimes in the field of agriculture, in the field of forest economy, hunting and fishing. Considered as crimes, abuse of cereal seeds, cutting various fruit trees, careless use of agricultural machinery, damage to irrigation canals and drainage, breach of quarantine provisions plants and animals (white clause only if it transpired that the violation had brought or could have serious consequences).

Damage or illegal cutting of forests was punishable by fines ranging from 500 to 10,000 ALL as well as correctional work up to 1 year imprisonment and sequestration of wood material or the full value of wood material. Illegal cutting of trees in gardens and parks, the material subject of the crime was also the plants including the medicinal plants. Penalty fine up to 3000 ALL and corrective work up to 6 months. Illegal hunting, the object was wild animals and wildfowl that were in natural state in our country, was fined up to 10,000,000 ALL or with corrective work up to 6 months and confiscation of hunting or hunting equipment. Illegal fishing in the sea, in rivers and lakes, when deliberately committed up to 20,000 ALL / corrective work / imprisonment up to one year, additional seizure of seizure of fish with or without the confiscation of fish.

Criminal law protection of environmental elements of the Penal Code of 1977<sup>3</sup>.

In contrast to the previous Criminal Code which separated offenses in criminal offenses and offenses. In this Criminal Code all criminal offenses against the environment were classified as criminal offenses as well as acts with a lower social risk.

These offenses were foreseen: 1) Violation of provisions on plant quarantine; 2) Violation of veterinary provisions; 3) Careless handling of livestock; 4) Illegal cutting of forest or damage to them; 5) Illegal fishing.

It is noticed that their number is reduced as no illegal hunting, slaughter of illegal livestock and the illegal cutting and felling of trees in gardens and parks are no longer criminal offenses. On the criminal offenses of violation of the provisions on plant quarantine and violation of veterinary provisions; the enacting clause does not provide as a condition for criminal liability that the violation should not constitute an administrative offense. Regarding the illegal cutting of the forests or their damage, it is worth noting that there is no longer foreseen the adoption of the fallen or broken wood of the trees.

Regarding the criminal offense of illegal fishing, the main difference consists in the fact that it is considered as a sole violation of seas, lakes, rivers, reservoirs with prohibited means and modes. Regarding the penalties

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<sup>2</sup> Kodi Penal i 1952

<sup>3</sup> Kodi Penal I 1977

provided for the aforementioned figures of criminal offenses, in all cases the sanction did not contain additional penalties but only major penalties.

In this code provides for a specific figure of the crime and environmental pollution.

The protection of the environment (water, air and soil) from pollution was not protected by criminal law as such in itself but in the function of protecting human health. In the decree "On the protection of the environment from pollution" of 1973 this decree prohibited the importation of deposits and disposal of hazardous waste in Albanian territory. This decree was in force until 1993.

Contamination of intentional or negligent environment was condemned with accompanying or punitive fine of up to 1000 ALL, with re-training through labor, imprisonment for 2 (two) years.

The legal-criminal protection of the environment under the Penal Code in force, the differences and similarities with previous criminal codes.

The current criminal code was adopted in 1995<sup>4</sup>. In the current code criminal offenses are grouped into a special chapter of the special part. Their grouping represents a novelty compared to previous Criminal Codes. With regard to the variety of criminal offenses, it is noted that in addition to concrete figures that existed earlier, new figures have been added such as: transport of toxic waste, air pollution, water pollution.

The lawmaker's assessment of the degree of social risk of the offense and the importance of the protected object specifically consists in the selection of the lawmaker regarding the classification of the criminal offense against the environment as criminal offenses and offenses. The report on crimes against criminal offenses has been overturned with the supplements provided for in the 2008 Criminal Code.

Most of the figures of criminal acts against the environment are crimes. In the new Criminal Code, the criminal norms for offenses against the environment contain and evaluations of a technical nature such as the violation of permitted norms limits to air pollution (Article 201) or the types of polluting substances in water pollution (Article 203). They refer to other legal acts to clarify the content or to concretize certain elements. Particularly important is the subject of criminalization of the offense (legal entity)<sup>5</sup>.

The addition of two new figures 206 / a, 206 / b in 2013 have aggravated the limits of the punishment of imprisonment for the offense provided for in Article 206 /a/b.

### 3. Results and Discussion

The criminal legislation on environmental protection is focused on the Criminal Code and criminal offenses against the environment are not distributed in the various laws. This can be considered as an important step towards modernizing criminal legislation in the field of offenses against the environment, reflecting the latest developments in criminal codes of of the European Union.

The new Criminal Code contains some concrete figures of criminal offenses against the environment that have been foreseen in the previous Criminal Code but on the other hand it is concluded that there are not included certain concrete figures such as: illegal hunting.

The new Criminal Code specially focuses on air and water components, not including a special figure for soil contamination<sup>6</sup>.

The penal law should be adapted to the tendency of extending criminal offenses against the environment

Concentration of criminal acts against the environment only in the Criminal Code is in accordance with the recommendations of the Constitutional Court. The concentration is considered positive as it avoids the problems of the allocation of environmental criminal norms outside the Penal Code.

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<sup>4</sup>Kodi Penal i vitit 1995

<sup>5</sup>Law no. 9754 dated 14/06/2007 "On Criminal Responsibility of Legal Persons"

<sup>6</sup>Turkeshi E.: **Criminal law protection of the environment**. PhD Dissertation The University of Tirana, 2014

<sup>7</sup>Decision No. 3 dated 5/02/2010 of the Constitutional Court

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