

## THE ALBANIAN CRIMINAL LAW AND ENVIRONMENTAL CRIME-ECOMAFIA

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SUMMARY: 1. Introduction. – 2. Understanding criminal offences against the environment. – 3. Special nature of environmental crime. – 4. Development of the Albanian criminal law in the area of environment. – 5. Organised environmental crime – Ecomafia. – 6. Jurisprudence of the European Court of Human Rights on environment. – 7. Conclusions.

### 1. Introduction

Criminal offences against the environment (air, land, water, flora and fauna) have become a global concern and problem which calls for immediate solution. Very often, the print and electronic media highlight that the Ozone layer is being destroyed because of unlawful interventions or that illicit trafficking of hazardous wastes or flora and fauna is becoming a constant phenomenon. The governments of many States in the framework of undertaking general national policies have been preparing strategies and plans for the protection of environment and also the fight against environmental crime aiming at the taking and implementation of both institutional and legislative measures so as to prevent and lower the level of such crime. The criminal phenomena that have a detrimental effect on the environment become a considerable concern when committed in an organised way by organised criminal groups and in such case the term “organised environmental crime” comes to play. Other literatures mainly the Italian one refers this crime under the term “Ecomafia”. Nowadays, many international, domestic, regional and global organisations around the world are undertaking initiatives and cooperating for the protection of environment.

A considerable number of bilateral and multilateral international instruments have been signed. Such instruments impose concrete obligations on the contracting parties as regards the protection of environment. The scope of criminal offences against environment is quite expanded and complex because of the specifics of such offences which are different from those traditional criminal offences. Environmental crime is somewhat specific because it affects not only human beings as it happens in the case of traditional crimes. Environmental crime affects the nature and all its components (land, air, water), and also flora and fauna. Moreover, the victims are numerous. Because of these characteristics, environmental crime becomes very often the subject of scientific research and studies by the jurists who consider the issue from the legal perspective and also from the criminal phenomenon perspective.

## 2. Understanding criminal offences against the environment

The Declaration of the United Nations Conference on Human Environment held in Stockholm on 5-16 June 1972 in principle 21 reads: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.<sup>1</sup> Therefore, the protection of environment through legal instruments has become a challenge for many governments in the world. Such challenge is on the focus of their programmes. Between 1980 and 1990, efforts were made to find an exact definition of environmental criminal offences<sup>2</sup>, however the effort to find a definition has been difficult<sup>3</sup> considering that environment is an area which includes many components and also its “philosophical” nature and particularities and complexity. Notwithstanding this, the environmental legal doctrine has been quite useful in the formulation several environmental crime-related definitions.

Environmental crime can be broadly defined as including both crimes that “result directly from the destruction and degradation of the earth’s resources” and those that “aris[e] out of the flouting of rules that seek to regulate environmental disasters”<sup>4</sup>. According to the legal procedural perspective “environmental crime is defined as violation of the criminal law which protects the environment, health and human safety”<sup>5</sup>. On the other hand, there is a socio-legal perspective which elaborates further the meaning of environmental crime. Based on this perspective the domain of environmental crime includes as well all the regulations provided for the administrative infringements. According to this perspective, “environmental crime constitutes any form of illegal activity or formal infringement of rules”<sup>6</sup>. According to the ecocentric and biocentric<sup>7</sup> perspectives, the life and health of human beings is detrimentally affected by environmental harm. Usually illegal criminal offences are committed against water, air, land and ecosystems, i.e biodiversity. However, the debate on the definition of environmental crime is extended and it remains open. The Slovenian Law on the protection of environment 1993, in article 5, paragraph 9/2 defines as environmental

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<sup>1</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>

<sup>2</sup> SKINNIDER, *Victims of Environmental Crime-Mapping the issues, The International Centre for Criminal Law Reform and Criminal Justice Policy*, March 2011, p. 16.

<sup>3</sup> CLIFFORD and EDWARDS, *Environmental Crime: Enforcement, Policy and Social Responsibility*, Aspen Publishers, 1998, p. 26.

<sup>4</sup> WHITE, *Crimes Against Nature: Environmental criminology and ecological justice*, Willan Publishing, 2008, p. 88.

<sup>5</sup> SKINNIDER, *op.cit.*, p. 16.

<sup>6</sup> *Ibid.*, p. 17.

<sup>7</sup> *Ibid.*, p. 18.

abuse “Any intentional or negligent act or omission of a mandatory procedure which results in an ecological accident, environmental damage, or the destruction of a natural treasure”<sup>8</sup>. Trying to find a definition on environmental crime, Mary Clifford proposed one philosophical and one legal definition.

“An environmental crime in an act committed with the intent to harm or potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage (general philosophical definition). An environmental crime in any act that violates an environmental protection statute (legal framework definition)”<sup>9</sup>. Therefore it may be said that crimes against the environment shall mean the dangerous actions foreseen explicitly in the legal acts which cause serious harm to the environment and which consequences is a negative impact on the community and society. Criminalisation of criminal offences against the environment is an effort to impose criminal sanctions on these criminal behaviours harming the environment and consequently the public interest. This has been a starting point for elaboration of some main legal concepts of criminal responsibility, extension of criminal responsibility of legal entities, corporate and representatives acting on their behalf. Indeed, legal persons and representatives working on their behalf are increasingly criminally responsible for criminal offences against the environment. This is the reason for the increasing criminal prosecution of representatives of legal persons during the 1980 and presently because the imposition of criminal sanctions against such persons is one of the most effective means, along with the “polluter pays” principle, of preventing violation of environmental law by legal entities and also commission of environmental crimes.

Directive 2004/35/CE<sup>10</sup> of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage lays down and materializes an accurate framework of environmental responsibility based on “polluter pays” principle. The idea behind this is that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced. For the purpose of this Directive “environmental damage” means: (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species, (b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential ; and (c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land,

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<sup>8</sup> *Environment Protection Act of Republic of Slovenia*, 1993, p. 4.

<sup>9</sup> CLIFFORD and EDWARDS, *op. cit.*, p. 26.

<sup>10</sup> Directive 2004/35/CE, available at:

[http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=32004L0035&lg=EN](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=32004L0035&lg=EN)

of substances, preparations, organisms or micro-organisms<sup>11</sup>. It is also important to point out that not all forms of environmental damage can be remedied by means of the liability mechanism.

For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors. The Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages. In 2008, the EU adopted Directive 2008/99/EC on the protection of the environment through the criminal law, to be implemented in Member States by December 2010. The Directive requires Member States to 'criminalise' certain defined breaches of EU environmental law. Previously, Member States had the sole responsibility to determine the appropriate sanction. The range of acts which now require the imposition of criminal law include, *inter alia*, (i) instances of pollution, the generation, disposal and other activities related to hazardous waste, nuclear materials and radioactive waste and the operation of a plant in which a dangerous activity is carried out, but in all cases only where they "cause [...] or [are] likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants"; (ii) the illegal shipment of hazardous waste; (iii) the destruction of wild fauna and flora and habitat; (iv) trading in protected specimens of wild fauna and flora or parts or derivatives thereof; and (v) the various production, transit and marketing stages involving the sale of ozone-depleting substances<sup>12</sup>.

According to the INTERPOL definition provided in the Environmental Crime Programme, Strategic Plan 2011-2013 "*Environmental crime is a breach of a national or international environmental law or treaty that exists to ensure the conservation and sustainability of the world's environment, biodiversity or natural resources*"<sup>13</sup>.

The above-mentioned definitions point that the main aim is legal protection of environment from various threats through legal norms or relevant rules. Criminal acts against the environment and those which may be referred to as environmental crimes are complex due to the fact that the environment itself is a complex area of several dimensions. Therefore, one can talk of the environmental or "*ecologic*" crime.

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<sup>11</sup> Damage to environment means "a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly" (Article 2/1 and 2/2 of the 2004/35/CE Directive).

<sup>12</sup> Article 3 of the Directive 2008/99 of the European Council.

<sup>13</sup> CARDWELL-FRENCH-HALL, *Tackling Environmental Crime in the European Union-The case of the missing victim?*, Witney, UK, 2011, p. 1:

[http://inece.org/conference/9/papers/French%20D\\_Enviro%20Crime\\_FINAL%20v3.pdf](http://inece.org/conference/9/papers/French%20D_Enviro%20Crime_FINAL%20v3.pdf)

### 3. Special nature of environmental crime

Due to the fact that environment is a multi-dimensional area, crimes against it emerge in different forms. Such crimes are somehow complex and particular for the mere fact that it covers an entirety of crimes connected between them. The perpetrators who commit crimes against the environment may act individually, but mostly environmental crimes are committed by different businesses or companies that have legal personality or in collaboration. In most of the cases, criminal responsible falls on the legal entity. The aim for economic and financial profit is at the focus of criminal actions. Environmental crime is interesting and special even as regards the respective criminal consequences and victims. Environmental crime is to a certain extent different compared to the traditional classic crimes. It rarely happens that the victim is an individual person. Considering the more or less abstract nature, identifying victims easily and quickly is difficult compared to the traditional criminal offences. *“Victims of environmental harm are not widely recognized as victims of “crime” and thus are excluded from the traditional view of victimology which is largely based on conventional constructions of crime..<sup>14</sup> Environmental crime victims challenge the traditional victimology approach as they are often victimized collectively and can involve non-conventional victims (non-human species, the environment and future generations)”<sup>15</sup>*. Since criminal offences are committed against the environment which is a multi-dimensional and immeasurable or boundaries-free area, the victims of environmental crimes belong to an extensive circle of persons or to a considerable part of the community. Illegal actions are committed against water, land, air, flora and fauna. Among such illegal actions one can mention contamination of waters of seas, bays, rivers, lakes, air pollution from emission of toxic substances, woodcutting, killing of animals which are protected species, noise pollution, transportation of hazardous toxic waste etc. The criminal consequences of environmental crimes do not emerge immediately as in the case of criminal offences of murder, theft, fraud, trafficking in human beings etc. Criminal consequences are extended in time and space. For instance, because of air pollution, water or soil contamination from hazardous radioactive substances considerable number of persons may be affected but these consequences emerge after they have lived for some time in the area of where the environmental crime has been committed (for instance families living in the areas where hazardous radioactive wastes are discharged suffer different tumour or immunity diseases).

The human beings are not the only ones affected by the criminal offences against the environment. This is another characteristic of environmental crimes. Criminal consequences emerge as well on the flora and fauna. As an example it may be mentioned the killing of animals which are always threatened including tigers or

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<sup>14</sup> SKINNIDER, *op.cit.*, p. 2.

<sup>15</sup> *Ibid.*, p. 2.

elephants for the industry of leather or ivory jewellery, or illegal deforestation which results in profits for the wood industry. Criminal actions against the environment are not committed only at national level, therefore, this is not only a *national environmental crime*, but it is also *international environmental crime*.

In order to protect the environment from criminal actions, legal and institutional initiatives through programmes of several international structures or bodies are being implemented all around the world. It is worth mentioning: INTERPOL, Environmental Investigation Agency (EIA), United Nations Environmental Programme (UNEP), European Environment Agency (EEA), (European Union Network for the Implementation and Enforcement of Environmental Law-IMPEL), Osservatorio Ambiente e Legalità-Legambiente, Greenpeace and many others. The focus of the mission of these bodies is the taking of measures to detect, denounce and investigate environmental crime and also the building of capacities through exchange of experience and international cooperation in the fight for prevention of environmental crime. The United Nations Conventions, Council of Europe Conventions and European Union *acquis communautaire*<sup>16</sup> occupy an important place and play an essential role because they determine the legal obligations on the contracting parties in the fight against environmental crime.

#### **4. Development of the Albanian criminal law in the area of environment**

The Constitution of the Republic of Albania in article 56 reads: *“Everyone has the right to be informed for the status of the environment and its protection”*. Further, in the chapter of social objectives, article 59, paragraph 1, letter d) and dh) of the Constitution highlights the term “environment” in more detailed and specific provisions under these objectives, providing for: *“The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with...d) a healthy and ecologically adequate environment for the present and future generations ...dh) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development”*.

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<sup>16</sup> Article 37 of the European Union Charter of Fundamental Rights provides for a high level protection of environment and improvement of the quality in implementing the principle of sustainable development. The most important legal act for protection of the environment through criminal law is Directive 2008/99 EC of 19 November 2008 *“On the protection of the environment through criminal law”*. The approval of this Directive, was the result of a consistent work of the institutions of the European Union to find the most adequate legal basis in order to establish unified legal standards (environmental criminal offences and the respective sanctions) for all the European Union member states. Case C-176/03, *European Communities Commission vs Council of European Union*, 13 September 2005:  
<http://ec.europa.eu/environment/legal/crime/index.htm>  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1246>

The above-mentioned constitutional provisions guarantee the right of anyone, as a right deriving from a lawful interest, to obtain information on the situation of the environment and also on the measures taken by the state authorities for its protection. In front of this right stands the constitutional obligation of the state to take all the necessary measures in order to guarantee a clean and healthy environment to the benefit of the society. The Constitution of the Republic of Albania affirms clearly the principle established in the Aarhus Convention for the public right to obtain information on environmental situation and also the principle of sustainable development which is internationally recognized in important European legal instruments and United National instruments.

Such constitutional obligations are elaborated in important legal acts including the Criminal Code of the Republic of Albania. The Albanian criminal law guarantees the protection of environment through criminal law while it undertakes the direct protection of legal relations established in the Constitution or other environment-related laws. Criminal law provisions ensure protection of the environment from all the acts or omissions which constitute a threat for the society such as illegal actions committed in guilt and followed by the dangerous consequences. In the framework of pro, there are foreseen concrete criminal sanctions imposed by the courts against the perpetrators of such criminal offences.

One argument in favour of public enforcement is that private law remedies will not sufficiently deter. The arguments are well known: environmental pollution often has no individual victim that could file a liability suit; causation may be difficult to prove and the long time lapse may make it impossible to recognize that, for example, health damage has been caused through environmental pollution, let alone that a tort claim could still successfully be brought<sup>17</sup>. Another example, more specifically related to the issue at hand, refers to the argument that civil law will often not be useful as a deterrent against environmental pollution since damage may be widespread, the whole community victimized or the damage caused to collective goods that are not owned by one individual<sup>18</sup>.

One of the other arguments made in favour of the use of criminal law for the purpose of environmental protection is that the severe types of sanction under criminal law are also used to protect classical interests such as health, property and honour. These were the interests that were protected by most of the penal codes that were enacted in the twentieth century. Under environmental legal doctrine, it is argued that given the deteriorating state of the environment in many industrialised countries, a clean environment is nowadays at least as important as the above interests are. Hence, if criminal law is used to protect these traditional individual interests, it should also be used to protect collective interests, such as environmental ones. This, it is argued, is

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<sup>17</sup> FAURE, *Environmental Crimes, Criminal Law and Economics*, Cheltenham, 2009, p. 322.

<sup>18</sup> *Ibid.*, p. 323.

because most of these individual interests (such as health and property) cannot be enjoyed if the basic requirements for a clean environment have not been met<sup>19</sup>.

Considering the period from the '90 up to now, it results that there is a positive and evident development of criminal law as regards protection of environment through criminal law. New criminal offences are foreseen. Before the '90, criminal offences in the area of environment were not foreseen in any separate chapter of the Criminal Code, as they are now. The previous Criminal Code (adopted by Law no. 5591 of 15 June 1977 and amended by Law no 6300 of 27 March 1981) in article 170 provided for the criminal offence "*violation of provisions on the plant quarantine*" article 173 provided for the criminal offence "*illegal cutting or damaging of forests*", and also the criminal offence "*illegal fishing*" in article 174. These were the only three criminal offences against the environment foreseen by this Code. The real protection of environment through criminal law is guaranteed by our criminal law after 1990 which provides in a separate chapter the criminal offences against the environment under article 201-207. The Criminal Code of the Republic of Albania provides for concrete figures of criminal offences against the environment and also the respective sanctions against the perpetrators of these criminal offences.

The criminal offences against the environment are foreseen in Chapter IV of the existing Criminal Code: Article 201 - Air pollution, Article 202 - Transportation of toxic wastes, Article 203 - Water pollution, Article 204 - Prohibition of fishing, Article 205 - Illegal forest woodcutting, Article 206 - Decoration and fruit tree cutting, Article 206/a - Forest destruction by fire, Article 206/b - Forest and forest environment fire destruction by negligence, Article 207 - Violation of plant and animal quarantine. Two new criminal offences "*Forest destruction by fire*" and "*Forest and forest environment fire destruction by negligence*" were added to this chapter of the Criminal Code with the latest amendments of the Code foreseen in article 22 of Law no.10023 of 27 November 2008. The Albanian Criminal Code classifies the criminal offences against the environment into crimes and misdemeanours considering the type of sentence. The sentence is more severe especially in case of grave consequences of the criminal offences for the life and health of human beings. The sentence is more severe for some criminal offences. It may be up to ten years of imprisonment for the criminal offence foreseen in the second paragraph of article 201 "*Air pollution*"; from one to five years of imprisonment for the criminal offence foreseen in article 202 "*Transportation of toxic waste*"; from five to fifteen years of imprisonment in case of grave consequences from the commission of the criminal offence foreseen in the second paragraph of this article; from one to five years of imprisonment for the criminal offence foreseen in article 203 "*Air pollution*", and from five to ten years of imprisonment in case of grave consequences from the commission of the criminal offence foreseen in the second paragraph of this article; from one to five years of imprisonment for the criminal offence foreseen in article 206/b "*Forest and forest environment fire destruction by*

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<sup>19</sup> FAURE-VISSER, *Law and Economics of Environmental Crime: a Survey*, 2003, p. 4-5.



*negligence*” and from two to five years of the sentence is imposed from one to five years and according to the second paragraph in case of imprisonment in case of grave consequences from the commission of the criminal offence foreseen in the second paragraph of this article.

The criminal offences of “*Prohibition of fishing*” article 204, “*Illegal woodcutting*” article 205, “*Decoration and fruit tree cutting*” article 206, “*Forest destruction by fire*”, article 206/a and “*Violation of plant and animal quarantine*” article 207 and the first paragraph of article 201 “*Water contamination*” fall under the category of misdemeanours and the sentence foresee ranges from imposition of a fine to two years of imprisonment. The environmental legislation before 1990 was poor. One could not even think of special environmental laws. “*During this period, the private legal entities were unknown and the biggest polluter was the state. The state was paying more attention to production than to pollution which began to emerge later and which was by then forgotten by the state*”<sup>20</sup>. Improvement of the environmental legal framework started in 1993 with the adoption of law no. 7664 of 21 January 1993 “*On protection of environment*” which has nowadays been subject to consistent improvement. It may be said that our country has an appropriate legal framework for the environment and all its components. The problem consists in the shortcomings related to its implementation.

The Albanian state is party to several Conventions in the environmental area. It has signed and undertaken the commitment to fulfil the obligations deriving from these Conventions. The requirements and obligations deriving from these Conventions are an integral part of the domestic legislation<sup>21</sup> which contains a considerable number of legal and subordinate legal acts. Moreover, considering the position of Albania as a candidate country for the European Union, the requirements of some European Union Directives in the area of environment are reflected in the Albanian environmental legislation. Our country is listed among the other countries of the world that have signed important Conventions in the area of environment. In order to fulfil the requirements of these Conventions, the Albanian environmental legislation is various and it has been very often subject to new amendments in order to be adapted as properly as possible for the protection of environment, issue of environmental permits, strengthening of competences of the environmental law enforcement agencies and inspectorates and also the administrative responsibility. The perpetrators of environmental criminal offences in Albania commit mostly the following: air pollution, water contamination and forest destruction by fire. It is worth mentioning the forest fires and national parks recently in Shkodra, Tropoja, Vlora, Korca etc and also air pollution because of illegal production of lime in Kruja. The judicial district court of Kruja in its decision no 4 of 13 January 2010 ruled “*...to declare guilty the defendant X.Y*”

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<sup>20</sup> GURI-GURI-KOÇI, *Environmental law – Basis of the Albanian and European comparative environmental law*, Tirana 2010.

<sup>21</sup> Article 122 of the Constitution of the Republic of Albania.

*for the criminal offence of air pollution foreseen in article 201/1 of the Criminal Code and impose the fine of 200.000 ALL. From the judicial investigation it resulted that the lime kiln in possession of the defendant X.Y, through primitive technology and lacking filtration equipment during its work was releasing considerable polluted smoke and gas. The combustible substance used is synthetic waste, plastic-leather, wood material mainly poplar and beech. Because of the combustion of these substances for the production of lime without the respective permit for the exercise of this activity, air is polluted by the release of smoke above the allowed limit and it has detrimental consequences on the health of the employees and the inhabitants of the area, thus distorting the natural environmental balance. The environmental expertise confirmed environmental pollution and it identified the release of intoxicating substances such as smoke and soot 20 times higher than the accepted norm, while soot is recognised by the World Health Organisation to be a cancer substance...”.*

The court confirmed this position even in the decision no 6 of 21 January 2009 which ruled “...to declare guilty the defendant X.Y for the criminal offence of air pollution foreseen in article 201/1 of the Criminal Code and impose the fine of 400.000 ALL. From the judicial investigation it resulted that the lime kiln in possession of the defendant X.Y during its work was releasing considerable amount of smoke and soot. The combustible substance used is wood waste and also car tyres. Because of the combustion of these substances for the production of lime, lacking the respective permit for the exercise of this activity, air is polluted by the release of smoke above the allowed limit and it has detrimental consequences on the health of the employees and the inhabitants of the area, thus distorting the natural environmental balance, flora and fauna. The environmental expertise confirmed environmental pollution and it identified the release of intoxicating substances such as smoke and soot 30 times higher than the accepted norm. During this activity, CO, NO<sub>2</sub> and SO<sub>2</sub> was released”<sup>22</sup>.

## **5. Organised environmental crime – Ecomafia**

Organised environmental crime refers to the entirety of well-defined and organised criminal offences. Organised criminal groups profit billion of Euros from this illegal activity. Organised environmental crime “Ecomafia” as it is known in Italy is even more serious from the perspective of the social menace because the criminal consequences fall on many states and societies. Consequently, even cooperation at international level has been strengthened as regards protection of environment, through the provision of concrete sanctions against the perpetrators. International bodies including United Nations Interregional Crime and Justice Research Institute (UNICRI), G8, INTERPOL, European Union and the United Nations Environmental

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<sup>22</sup> Similar positions of the Judicial District Court of Kruja in the decisions taken for the criminal offence of air pollution during the 2009-2010 period, caused by the illegal production of lime in the area of Kameronas Fushë Krujë, Halil, Borianë, Krastë, Makarësh, Arameras, Zallë.

Programme defined the following crimes as crimes falling under the category of international organised environmental crimes<sup>23</sup>:

1. Dumping and illegal transport of various kinds of hazardous waste in contravention to the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal;
2. Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organizations (RFMOs);
3. Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of Fauna and Flora (CITES);
4. Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;
5. Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws

Given the above-said, organised environmental crime emerges in illegal actions such as: international illegal transport in wildlife or toxic wastes (pesticides) or hazardous radioactive substances, air pollution, water and soil contamination (because of release in air, discharge in water or transportation to open areas (illegal plants or landfills for their depositing) of hazardous substances which bring negative changes to the environment and which have dangerous consequences on the life and health of the community, illegal exploitation of fish (illegal fishing), theft of natural resources (forest woodcutting, deforestation and illegal transportation of wood materials). Organised environmental crime is extended and affects even the marine areas (environmental crime related to the marine environment). In addition to illegal fishing and coastal pollution, there is a widely known criminal phenomenon of trade in marine species including whales, sharks, corals, etc.

Organised environmental crime is committed for instance in one of the following cases:

- An organised criminal group of country A imports illegally 8097 kg of R-12 or CFC to sell it to companies manufacturing electrical home appliances or sprays. From the country of origin, such substance is transported through sea channels to country B and then to country C. The importers have no import licence and either fail to declare or declare another substance of this quantity to the customs authorities by presenting forged certificates.
- Criminal groups commit the criminal offence of woodcutting in a forest area in country A. The criminal activity of illegal woodcutting and illegal transportation of forest wood is also known as forest mafia. The persons close to criminal groups cut wood illegally and transport it to a certain destination in country B where it is used for furniture manufacturing.

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<sup>23</sup> GAYMAN-BRACK, *International Environmental Crime - The nature and Control of Environmental Black Markets, Workshop Report*, Royal Institute of International Affairs, 2002, p. 5.

- Criminal groups through a network of collaborators of the country of origin commit the criminal offence of illegal fishing in the seas and lakes, and transport the fish to EU and USA markets.

- Criminal groups import and export illegally the exotic flora and fauna from the exotic countries towards Europe. Snake or crocodile skin from Africa is imported to be used for the manufacturing of bags and shoes. Criminal groups in addition traffic illegally tigers' skin from Asia to China to be used for bags and clothing.

Organised environmental crime is serious, international and well organised.

- *serious* because it is characterized by sustainability and continuation of a clearly determined role structure and strict hierarchy. Environment becomes constantly "hostage" of organized crime. The sole purpose of such criminal activity is economic and financial profit.

- *international* because it is committed in many states. For instance, criminal groups of country A in collaboration with other criminal groups of country B employ persons of this country to cut forest wood illegally in order to use it in the wood industry. The wood cut illegally is then transported to country A or traded to other countries D and F.

- *well-organised* because the trafficking groups consists of 5-10 persons who have ethnical links with the destination countries. This criminal activity is performed without any licence and contrary to the national or international legal norms.

EUROPOL report "Organised Crime Threat Assessment" (OCTA 2011), underlines that the focus of the activity of organised environmental crime is the illegal depositing of hazardous wastes (which may be pesticides, radioactive substances or e-waste, trading of substances that deplete the Ozone layer (for instance. CFC), illegal damaging of natural resources (illegal forest woodcutting, illegal fishing and protected wildlife)<sup>24</sup>. Organised environmental crime, considered as an activity of "low risk and high profit" is "extremely attractive" for the mafia criminal groups in their money laundering, financing of crime and trafficking of narcotic substances in the European Union countries<sup>25</sup>. It means that criminal groups for purposes of financial profit may consider environment to be "an additional source" of profit as they may be involved for instance in trafficking of drugs and also illegal trafficking of hazardous wastes or illegal trafficking or trade in protected wildlife. The organised criminal groups do not act completely alone. In order to perform their criminal activity through their networks they corrupt the officials of the forest police, port officials, customs employees, officials of the Ministry of Environment etc in order to have long-term cooperation that facilitates their criminal actions. In most of the cases, the criminal offences committed against the environment in an organised way are offences linked to other criminal offences including: smuggling, fraud, money laundering, fiscal evasion, forgery of documents, specifically because of cooperation and corruption of state officials. This happens for instance in the issue and signing of forged certificates for the

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<sup>24</sup> EUROPOL Report, *EU Organised Crime Threat Assessment*, OCTA 2011, p. 40.

<sup>25</sup> *Ibid.*

transportation of hazardous wastes (for instance the real name of the product is not declared but the certificate is issued under the name of another non-hazardous product). The officials are corrupted for instance for the issue of the forged licence for transportation of wastes, wood, species, etc. Similarly, the customs officials are corrupted and enable the smuggling of hazardous wastes, protected species or substances that deplete the ozone layer by the organised criminal groups. It is because of this situation that the risk of apprehending criminal groups is low. Roberto Scarpinato a well know Italian magistrate regarding to this issue explains that *“Criminal systems consist of politicians, entrepreneurs, traditional mafia, but the nervous system that establishes communication for this network consists of the white collar officials, without whose help the performance of the criminal activity could not even be imagined”*<sup>26</sup>.

It is widely known the international trafficking of hazardous wastes from the European developed countries towards the Asian or African countries, including Somalia, Nigeria, Mozambique, Senegal, Tunisia and Pakistan. Criminal organisations take advantage from the economic weakness of these countries and their “incapacity” to protect the environment and human health because of lack of technology of recycling and processing. EUROPOL report of 2011 describes the geographical transportation of hazardous wastes. Toxic wastes are trafficked from the southern part to the countries of South-east Europe and also from the Western Balkan countries (Romania, Hungary and Albania) to the other EUMS. Italy is a transit country for the e-waste towards African and Asian countries. The north-western part of Europe serves as an export zone of wastes to the third countries mainly to the Western Africa and Asia. Toxic wastes (pesticides, radioactive substances) and also e-waste are transported to Western Africa through the ports of north-western Europe<sup>27</sup>. Organised environmental crime is a considerably present phenomenon especially in Italy (it employs for this crime the term Ecomafia)<sup>28</sup>. The mafia criminal organisation Camorra or Ndragheta are known for the trafficking of drugs, but the illegal trafficking of industrial waste and cement constitute the second main source of their illegal profit.

*“Ecomafia involves those sectors of organised crime that have chosen as an illegal criminal activity the illegal trafficking and depositing of waste, illegal constructions as an increasingly developing business and also the illegal trafficking of stolen works of art and exotic animals”*<sup>29</sup>.

The Ecomafia organised criminal groups perform criminal activity which cause serious harm to the environment and has a great impact on the environment and its components.

In Italy there are around 290 Ecomafia groups<sup>30</sup>. *“Hazardous waste is transported to the Asian and African countries including China, Hong Kong, Malaysia, South Africa from the ports of Gioia Tauros, Tarantos, Catania, Naples and Venice. Such waste mainly consists in*

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<sup>26</sup> SCARPINATO, *Ecomafia 2011- Le storie e i numeri della criminalità ambientale*, p. 23.

<sup>27</sup> EUROPOL Report, *EU Organised Crime Threat Assessment*, OCTA 2011, p. 30-31.

<sup>28</sup> <http://www.legambiente.it/contenuti/articoli/ecomafia>

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ecomafia 2011, Le storie e i numeri della criminalità ambientale*, p. 419-426.

polyethylene rubber, plastics which after transport to these countries are then re-transported to Europe in the form of various plastic products that are widely used by consumers including toys, feeding-bottle, vessels etc”<sup>31</sup>. Income from Ecomafia in 2010 reached the amount of 20 billion Euros<sup>32</sup>.

The region of Campania, Calabria, Sicily, Puglia and Lazio<sup>33</sup>, are on the top position for their Ecomafia criminal activities during 2010. As regard to 2011<sup>34</sup> the situation in these regions remains the same. And 2011, focused mainly on illegal trafficking and depositing of wastes and also trafficking of cement (this is widely known as illegal cement cycle). Concerning the Ecomafia phenomenon in Albania there are no such cases except for any transit case. Organised criminal groups are mostly involved in trafficking in human being, trafficking of drugs, arms, money laundering etc. The perpetrators of criminal offences against the environment usually commit criminal offences foreseen in article 201-207 of the Albanian Criminal Code.

## 6. Jurisprudence of the European Court of Human Rights on environment

An important moment to be analysed is the position of the European Convention on Human Rights (ECHR) signed in Rome on 4 November 1950, about the environmental issues. As the most important corpus of the fundamental human rights and freedoms of man, this important legal document determines the entirety of rights and freedoms of man as a human being. The articles of the Convention and the relevant additional protocols have an important position in the legal systems and in the constitutions of the European countries. The European Convention on Human Rights in the framework of the legal regulations of these rights and freedoms does not contain, specifically defined or explicitly, any provision about the environment.

It is the case of a legal gap for the explicit regulation of environmental issues. It is for this reason that the first applications such as *Dr S. vs Federal Republic of Germany* (application no. 715/60, (decision for non-admissibility of 5 August 1969) and *X and Y vs Federal Republic of Germany* (application no. 7407/76 (non-admissibility decision of 3 May 1976), filed with the Court at the time were refused by the Court *ratione materiae* as it could not try the cases concerning any rights that were not foreseen in the Convention”<sup>35</sup>. Scholars and jurists argue that the Convention, even though not explicitly, it provides for the protection of environment indirectly by considering this protection as a general interest<sup>36</sup> of the society. Therefore, ECHR considering the

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<sup>31</sup> GRASSO, *Ibid.*, p. 8-9.

<sup>32</sup> *Ibid.*, p. 45.

<sup>33</sup> *Ibid.*, p. 38-41.

<sup>34</sup> *Ecomafia 2012, Le storie e i numeri della criminalità ambientale*, p.16.

<sup>35</sup> GARCIA SAN JOSÉ, *Environmental Protection and the European Convention on Human Rights*, Council of Europe Publishing, 2005, p. 7.

<sup>36</sup> DÉJEANT-PONS, *L’insertion du droit de l’homme à l’environnement dans les systèmes régionaux de protection des droits de l’homme*, *Revue universelle des droits de l’homme*, 1991, Vol. 3, No. 1, p. 461.

superior interest of the society, i.e the protection of environment, started to admit such applications.

Arguing that environment falls under the “*general interest of the society*”, ECHR considers the fair balance between the applications of the general interest of community and applications for the protection of fundamental human rights<sup>37</sup>. Therefore, notwithstanding the “lack” of a regulation explicitly foreseen for environment, the ECHR has settled the cases by applying the respective articles of the Convention including the general regulations concerning the protection and the entitlement to fundamental rights including the protection of environment and the right to a clean environment which is directly linked to the right to privacy, property, family life etc.

The applicants in their applications filed with the ECHR have claimed violation of article 1 of Protocol no 1 of the ECHR, article 9, 10, 11, 13 and especially article 8.

In the *Moreno Gomez vs Spain* case (Application no 4143/02 of 16 November 2004), the applicant complained of the noise caused by the night clubs in the vicinity of the residence. She claimed violation of article 8 of ECHR. In such case the Court underlined that the right of the applicant was seriously violated because the state authorities had failed to take the measures for the noise caused by the night clubs. Considering that such noise was beyond the allowed limit, and that it had been consistent for several years, the Court found violation of article 8 of the ECHR.

In the case *DEÉS vs Hungary* (application no. 2345/06, dated 09.11.2010) the applicant complained of numerous noise, vibration and pollution as a result of unregulated and heavy traffic on the road near his home. ECHR argued that Mr. Dees had lived for a long time exposed to the noise and pollution due to traffic. According to the ECHR was violated his right to enjoy private and family life, and so that was a violation of Article 8 of the Convention<sup>38</sup>.

## 7. Conclusions

Criminal groups or individuals commit criminal offences with an “organisational maturity” acquired from the long criminal experience in the criminal activity against environment. The soft system of criminal sanctions has a considerable impact on such long criminal experience because the perpetrators of such criminal offences after being punished are involved again in this criminal activity. Considering the nature of organised crime in general and environmental crime in particular, it can

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<sup>37</sup> GARCIA SAN JOSÉ , *op. cit.*, p. 53.

<sup>38</sup> See also *Powell dhe Rayner vs United Kingdom* (application no. 9310/81 dated 21.02.1990), *Kyrtatos vs Greece* (application no. 41666/98,dated 22.05.2000), *Fadeyeva vs Russia* (application no. 55723/00, dated 09.06.2005), *Giacomelli vs Italy* (application no. 59909/00 dated 02.11.2006), *Guerra and others vs Italy* (application no. 14967/89 dated 19.02.1998), *Öneryıldız vs Turkey* (application no. 48939/99 30, dated .11.2004), *Mangouras vs Spain* (application no. 12050/04) dated 28/09/2010).

be said that both investigation and prosecution of such criminal offences is more difficult because of their complexity and that makes their identification difficult. Sophisticated investigation techniques are required. Criminal groups manage to hide the profit deriving from this illegal activity by investing in other areas and objects or depositing such profit with different banking institutions all around the world. The investigation, prosecution and judicial cooperation for identification of environmental organised crime remains on the focus of the European Union Policy so as to ensure a clean environment for the community life.

The number of Criminal Offences against environment currently in Criminal Code of Albania is low compared with the provisions of Criminal Codes of other countries. In order to foresee a better protection on environment through criminal law it is needed to take other legal measures, possibly adding new criminal offences.



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