PENAL POLICY FOR ENVIRONMENTAL CRIME IN REPUBLIC OF MACEDONIA

Aleksandar Ivanov, M. Sc.
University of St. “Kliment Ohridski” Bitola
Faculty of Security - Skopje
aivanov@fb.uklo.edu.mk

Marina Malis Sazdovska, Phd
University of St. “Kliment Ohridski” Bitola
Faculty of Security - Skopje
mmsazdovska@gmail.com

Darko Blinkov, Graduated Forestry engineer, M.Sc. Candidate
Ministry of Environment and Physical planning,
State Inspectorate for Environment,
blinkovd@yahoo.com

Abstract

In this paper the subject of scientific observation is the penal policy in relation to environmental protection in Macedonia. The paper presents theoretical basics that determine the subject of crime against the environment presenting the incriminations provided in Penal Code of the Republic of Macedonia.

Also, data’s for a period of ten years is being presented gathered from the statistical Yearbooks of the Republic of Macedonia State Statistical office. This data’s refer to the number of reported, charged or convinced persons presented for a period of ten years. The purpose of this paper is to raise questions about the most visible components of the penal policy related to the Environment in Republic of Macedonia. The Environmental protection is of particular importance for Macedonia and its integration into the European Union, given that environmental protection and sustainable development are high in the priorities of the Union. The environmental protection and the sustainable development in the future will only gain in importance as human right and also as imperative and necessity in the contemporary and future way of life.

Key words: Environment; Penal policy; Environmental crime;

INTRODUCTION

The Environmental protection is a matter of international, regional and state interest. Awareness for environmental protection is necessity and imperative for providing the condition known as sustainable development which primary refers to the optimal utilization of resources by establishing the desirable balance between economic activity and industrial development on one hand, and preserving natural equilibrium, biodiversity and space on the other. The level of Environmental protection (on declarative level) shows significant development and expansion on all sides in the world, but in fact the real level of protection is questionable. In Macedonia the first law that gives general framework for Environmental protection was adopted in 1996. The effective Law on Environment was adopted in 2005, modified and in complaints with European standards in this area.

ENVIRONMENTAL CRIME

Criminal behavior is defined by legal acts in a particular social community hence the different communities have different determinations of what constitutes a crime.¹ The negative social behaviors that can be determined as crime can be defined as:

1. Criminal offenses (most serious forms of violations that protect values determined by law);

2. Misdemeanors (minor degree of violation of norms of the society, but at the same time serious enough to be criminalized) and;

3. Deviant behavior (behavior that can often be assessed as immoral, dishonest, etc., e.g., prostitution, alcoholism, etc.).

The criminal offences are acknowledged as criminal behavior and term of crime undoubtedly understands the criminal offences as crime. But some Identifications in the term of crime besides Criminal offences (Criminal offences are unquestionable) are including also the Misdemeanors as one point of view or misdemeanors and deviant behavior (widest view) as widest point of view.

In this paper subject of scientific observation are the criminal offenses that as an object of protection have the Environment. Misdemeanors are not the subject of organized and systematic approach regarding data collection in this matter from the state administrative bodies.

A performed survey that includes 6,043 people from 11 countries which examines the attitudes of respondents about the meaning of crime in the people’s lives with following results: On the question: What is the greatest danger to them for their life, with results as follows: 1. 27% of people think that it is the crime, 2. 15% the terrorism; 3. 13% think it is health/economic uncertainty 4. 12% think that accidents/natural calamities are the greatest danger and; 5. 8% think it is war. Hence, the attitude of most people is that “crime is the greatest danger to their lives” shows that crime is being serious challenge for any contemporary state. For the purpose of this paper we consider Environmental crime as: "criminal acts that are criminalized in chapter 22 of the Criminal Code of the Republic of Macedonia and violations in the field of environmental protection provided in other regulations". Environmental crime in criminology is observed separately from other forms of crime. Environmental crime can be manifested as to be highly sophisticated in certain forms, even and yet links can be found between environmental and organized crime.

According to Interpol Environmental Crime presents violation of national or international standards for environmental protection founded on providing protection and environmental sustainability in the world, biodiversity protection or preservation of natural resources. In Britain Environmental crime represents unlawful behavior designated as such by law. Environment is defined as everything that surrounds us. The first section of the 1990 Environmental Protection Act defines environment as: all, or any media, air, water and soil. Defining the legal terms and categories, this Act determines that pollution is: "any release of substances in any medium environment from any process that is able/has the potential to harm human or any other living organism in the environment". In Britain, as in our country, all activities related to environment are not codified in one act. According to the British competent authorities the crime investigations related to environment are about illegal activities/actions that directly threaten the environment. Such activities include: illegal trade in wild fauna and flora; Smuggling substances that are harmful to the ozone layer (ODS); Prohibited trade with hazardous waste; illegally undeclared or unregulated fishing, and illegal logging of forests and trade on timber from such an origin.

Environmental crime is a serious international problem that can directly and indirectly affect the economy, security, and even endanger the normal functioning of a particular state. The consequences of this kind of crime can be felt in many ways starting from a waste of resources and even human death. According to Interpol, the environmental crime of criminal perspective is characterized as a highly professional and low-risk crime. The low risk can be results of inappropriate location due to lack of expertise and professionalism of the services that are required to combat this type of crime or inadequate legal framework or ineffective penal policy in terms of small penalties for these perpetrators. Seriousness and profitability of this type of crime often leads to a situation where the performance of these crimes depends from some other activities such as: using certain tools, fraud or forgery of documents, forging passports, corruption, bribe, possession or use of illegal weapons and other items that are

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7 Ibid. (7).
smuggled, such as drugs, weapons and human beings, and even murders. Some peculiarities are being related to the Environmental crime. For example, the severity of this kind of illegal behavior may be the lowest level (throwing a cigarette butt) up to severe forms of organized crime (trade with radioactive materials). The high dark figure of this type of crime is presumed to be huge. In fact, most of unlawful behaviors in this area remain unknown to the legal-organized social response mechanisms. Regarding some Criminological foundlings according to the British experience there is even noticeable connection between environmental degradation at the local level and the proliferation of other forms and types of crime. Environmental crime is the least serious as any other form of crime. The leading motive in this kind of crime is an exceptional opportunity for financial gain, being characterized by: organized networks, improperly secured state borders, irregular migration, money laundering, corruption and exploitation of disadvantaged communities. Currently this type of crime is one of the most profitable forms of crime and not surprisingly, receives certain forms of organized crime. The value of this crime is difficult to be evaluated, but Interpol is assuming that only the part of human wildlife spins billions of dollars. Interpol has activities in this area, especially identifying the connection between environmental and organized crime.

LEGAL PROTECTION OF THE ENVIRONMENT IN THE REPUBLIC OF MACEDONIA

Crime legitimates the right of punishment, talks about an improper legal type of behavior, but also refers to a real criminal event, which is being characterized as formal, abstract type of prohibited conduct. The formal definition is strict and says that crime is unlawful conduct such defined by law as a criminal offense whose characteristics are determined by law.

Criminal Code is codified legal act containing all illegal types of behavior defining them as criminal offences. Criminal offences cause society’s institutionalized response in a form of punishment. The nature of the criminal offence is to protect some society’s good estimated as common value. Today we can agree that Environment is being object of protection in every contemporary Law, on international and national level. Theoretical arguments regarding Environment go to whether human life is an object of protection as threatened immediate object, or it is the environment and its media (air, water, soil) are the object of protection. The Criminal Code, in Chapter XXII, refers to acts against the environment (Article 218 to 234). The Constitution provides protection to the environment also and the ultimate organized legal protection is provided by the Law on Environment adopted in 2005, being systemic law in environmental protection modified many times. Other law which protects the Environment in particular areas are:

- Law on Waste Management (Official Gazette of the Republic of Macedonia no. 68/04, 107/07, 102/08, 143/08 124/10);
- Law on air quality (Official Gazette of the Republic of Macedonia no. 67/04 92/07 and35/10);
- Law on protection against noise in the environment (Official Gazette of the Republic of Macedonia no. 79/07 and 124/10);
- Law of Nature Protection (Official Gazette of the Republic of Macedonia no. 67/04 14/0684/07 and 35/10);
- Law on Management of waste packaging (Official Gazette no. 161/2009);


15 Criminal code of the Republic of Macedonia. (Official gazette of the Republic of Macedonia, number: 19 od 30.03.2004).
accumulators and waste batteries and accumulators. Common to them all is the protection of the environment, surrounding, or what surrounds us.

The Criminal Code of the Republic of Macedonia establishes the following acts as Criminal offences:

- Pollution of the environment - Article 218;
- Pollution of drinking water - Article 219;
- Production of hazardous substances for treating livestock or poultry - Article 220;
- Unethical indication veterinary assistance - Article 221;
- Transferring infectious diseases in animal and plant life - Article 222;
- Contamination of feed or water - Article 223;
- Destruction of crops by the use of harmful material - Article 224;
- Usurpation of property - Article 225;
- Illegal exploitation of mineral raw materials - Article 225 - A;
- Devastation of forests - Article 226;
- Challenging wildfire - Article 227;
- Illegal hunting - Article 228;
- Illegal fishing - Article 229;
- Endangering the environment with waste - 2 Article 30;
- Unauthorized obtain and dispose of nuclear material - Article 231;
- Importing hazardous substances in the country - Article 232;
- Animal Torture – 233;
- Serious offenses against the environment - 234;

PENAL POLICY

Kambovski defines the penal policy as scientifically based activity of the society in the prevention and repression of crime, also as practice of crime prevention, and as a strategy for effective combat against crime inspired by the legislator. Other view specifies the penal policy as: enactment of laws in which criminal offences are being prescribed, and the penalties for such crimes also, then, the courts and the politics expressed through the practice of courts in applying sanctions against the perpetrators of certain law-breakings, at the same time taking into account the assessment of the social risk from certain types of crime which seeks to make criminal law more effective. In a broader sense, the term penal policy covers leading and parole, and the policy of granting pardons.

Therefore, we can conclude that the penal policy represents general term that covers the control and the suppression of crime. In this section, the authors mentioned above are interested in parts of the penal policy, especially regarding incriminations established by the Legislator (one dimension of the definition of Manev and in this paper listed as Criminal offences in the Macedonian Criminal code). This paper also refers to the penal policy reflected as data’s through the practice of the courts provided by the Yearbooks of the State Statistical Office analyzing numbers of reported, charged and convicted persons for the period of 2000-2009.

In terms of normative regulation on this subject, several important questions can be raised, such as:

- The Environmental protection is a relatively new area of scientific observation and it’s being subject to constant and intense evolution of the Criminal Law.
- The first law that regulates the Environmental protection (Law on the protection and improvement of the environment) was adopted by the Parliament of the Republic of Macedonia in 1996. For the first time this particular Law provided the necessary assumption for organized, state guaranteed Environmental Protection; This assumption also included configuration of the “institutional architecture” for achieving this protection;

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17 Available at: http://www.moepp.gov.mk/default-MK.asp?ItemID=B22EF3F504797B4DBA1360BEFFCCE102 (09.11.2010, 00:10)
“Law on Environment” was adopted in 2005 and we can say that this adoption has significantly upgraded the mechanisms for Environmental protection at the same time providing an organized approach in regulations of the issues related to the Environment, being *lex generalis* on this particular matter. This law complies with European standards in the field. Unfortunately we cannot speak for effective Environmental protection in Macedonia on this matter;

Law on Environment represents General law on the subject of regulations on Environmental issues (comparable in terms with the Criminal law, having the same role as the Law on Criminal Procedure regarding the procedural aspects of the fight against crime); numerous areas regarding Environmental protection are regulated by Special laws; Law on Environment is being *lex specialis vs. lex specialis* towards this special Laws;

Bylaws regarding the regulation of these areas are adopted and this assumption is provided.

In continuation of this paper some indicators for penal policy in Macedonia for 10 years are going to be presented, which we think is sufficient to raise some questions and provide certain data’s as start on a long term organized and deepened observation on this field.

The observed period is suitable for analysis because it can be conditionally divided into two perfect halve, such as follows: first period, the period before and the period after the adoption of the Law on Environment in 2005, virtually dividing them into two ideal intervals. This chronological analysis allows assumptions regarding the results or the possible changes after adopting the Law on Environment in 2005. Also, we would mention the relatively small usability of data’s from State Statistical Office, which is primarily due as a results on inappropriate methodology for Data’s collection in relation with the Environmental crime (or crime against the Environment). Hence, this paper will only show the manifested forms of unlawful behavior that have been identified as such by the qualified state institutions, such as the State Statistical Office. However, the complete determination of the state penal policy is a scientific approach of a much larger scale, which this paper has not covered.

However, given that such analysis in the scientific community in Macedonia are not enough actualized this is going to be contribution towards achieving the actual state on this field.

Among other things, the State Statistical Office each year publishes statistical yearbook in respect of reported, accused and convicted persons.

Table 1.
Methodological framework of Statistical Yearbook of the SSO is established in a way that the indicators are divided into six groups according to incrimination in the criminal code of the Republic of Macedonia: 1. Pollution of the environment; 2. Illegal hunting; 3. Unauthorized disposal of nuclear materials; 4. Entering dangerous substances in the country; 5. Animal torture; and 6. Other;

We would say that the methodological framework of SSO is inappropriate. This claim is for the reasons that at least 50% of the documented, charged or convicted persons are documented in the category "Other"! 177 registered persons from total 214 reported in 2009 are registered as "other". For the observed period 2000-2009 from total 1437 reported perpetrators even 957 are registered in the category "other", which presents 66.59%, i.e. 2/3 of all reported perpetrators. Practically we do not know for what type of crime two thirds of the persons are being reported! Hence, we can talk about penal policy in relation to the total number of reported perpetrators, but with reservation in respect of specific phenomenology of crime, regarding that the most of the reported persons we do not know for what type of criminal offence are being reported.

In terms of trends of crime some conclusions can be extracted especially towards the fact that national legal response to this type of crime is constantly intensifying, but still, we would say very slowly, even getting the impression that this activity looks more as clumsy. The reasons for this situation we can find them in the mental structure of the citizens and economic situation in the country as two key indicators. Practical duplication of registered offenders in 2009 compared to 2000 is encouraging, but we would say not enough. We would say that increasing the number of registered is based on disclosure on the dark figure of crime, not on the effective increase in this type of crime.
Table 2 shows the structure of the number of charged persons for crimes against the environment. Regarding charged person we can say that the situation is almost identical with the reported persons, having in mind the identical participation structure of the number of accused persons in terms of total accused persons in Macedonia.

Subsequently, the share of reported and charged is almost identical for 2009.

The numbers of reported or charged persons is participating with under 1% and the maximum of 0.74% in the overall number of reported or convicted persons for the period 2000 - 2009. Conclusions based on comparison are going to be performed from the presented numbers in the graphic display below. In addition under identical methodological framework are presented tables of inmates for committed acts against the environment.
Table 4 presents the total number of reported, accused and convicted persons for crimes against the environment. The numbers show that a third of the registered persons are being convicted. Less than half, or 48.6% of registered are charged. This condition inspires some questions and future activities in a path for extensive analysis. This analysis should include relevant institutions that are authorized for charging persons for offenses against the environment (in this case: State Inspectors for Environment 2. Authorized Inspectors for Environment on local level, Ministry of Interior 4. Customs of the Republic of Macedonia 5. Other administrative bodies (e.g. Centre for Crisis Management and the Directorate for Protection and Rescue), public prosecutors and the third segment, the judiciary who should answer questions regarding penal policy towards acts against the Environment. Otherwise, 4/5 of the people who are charged for act against the Environment are being convicted, presenting 80.65%.

Table 5.

CONCLUDING OBSERVATIONS AND PROPOSALS

Social regulation is a challenge for every society. Further challenge concerns the establishment of an optimal level of regulatory mechanisms which will provide overlap on the normative regulations and actual behavior of subjects. Generally speaking, the criminal justice system in Macedonia is characterized with human dimension. This claim is supported by the fact that almost half of inmates in prison for the past ten years have been sentenced to a suspended sentence of imprisonment.

However, in smaller or greater society has need of "elasticity" of the criminal legal response to a certain criminal behavior, depending on many factors such as economic condition, manner of presentation of socially relevant issues in public, tradition, the usual threshold that is generally acceptable level of acceptability of criminal behavior as "normal and common occurrence," and so on. Thus, precise set rules established by normative society - the legal system are subject to specific "manipulation" or elasticity of the institutional mechanisms that state holders has as an organized response of the society.

Certain questions regarding the penal policy depending on many factors (parts of them are mentioned above) are receiving/losing on importance. For example, penal policy in the Republic of Macedonia related to sexual abuse of children is being tighten on all segments of the penal policy system.

Regarding the Environment we would say that the situation is opposite. 25 inmates for "environmental pollution" for a period of 10 years, 145 people for illegal hunting for 10 years! 957 persons under the category "Other" for a period of 10 years are being reported. 449 of them are being charged (less than half) and 279 persons being sentenced for the observed period (practically in this category, "other" only 29% of the total number of reported persons have been convicted)!
In terms of final observations we would say that this paper is limited for its scientific approach. Nevertheless, the figures provide some inputs in terms of criminal reaction. First, the methodology of tracking crime by the State Statistical Office does not correspond with the actual situation and does not provide the essential need for accuracy in this matter. This claim is supported by the fact that under the unfortunate defined category "other" is recorded half, and sometimes two-thirds of the total number of reported, accused or convicted persons for crimes against the environment. Secondly, the number of reported, accused or convicted persons for committed offenses against the environment is continuously growing, and simultaneously increasing its share of the total number of reported, accused or convicted persons. For example 0.37% for 2000 rises to 0.72% in 2009 reaching its maximum in 2007 with a share of 1.21% in term of total number reported, charged or convicted persons. These trends show that the share of crime against the environment in the Republic of Macedonia has constantly and steadily is increasing in terms of overall crime. This situation we would say that is result of mild penal policy and mild repressive policy of Macedonia regarding this particular type of crime, taking into account the habits of the past and the necessary balance to the parameters of economic development.

Thus increasing the participation of this type of crime in relation to total number of crime according to as is a results on the reduction of the dark figure, and not his real expansion. Third, after 15 years of implementation on the Law on environment we suggest that criminology can take actions towards making empirical overview and assessment of the applicability of this regulatory mechanism, particularly assessing the institutional capacities. In this sense the capacity should be evaluated especially in terms whether penal policy in this section meets the objectives of its existence and propose certain solutions on this matter. Fourth, given that the number of inmates threefold differ from those reported, it is necessary to ask questions why this is so? Especially questions should be raised in terms of quality of documenting the behavior of the competent institutions when they are reporting persons for committed crime in this case against the environment. In this section, the State Inspectorate for Environment, municipalities, the Ministry of Internal Affairs of the Republic of Macedonia and the Customs Administration of the Republic of Macedonia have a key role.

REFERENCES

- Akimovska – Malestiç I., Защита на животната средина и инспекцион надзор во Република Македонија, Зборник на трудови – објавено во:, Безбедност, еколошка безбедност и предизвиците на Република Македонија “, „Факултет за безбедност“, Скопје 2010.
- Assessing the Links between Organised Crime and Pollution Crimes, Interpol, Pollution Crimes Working Group.
- Каневчев, М., Кривичен законик – интегрален тест, со кратка упатства, објаснувања и регистар на поимите, 2 – ри Август, Скопје 2010.
- Ху, П., Поим за глобална безбедност, Табернакул, Скопје 2009.
- www.interpol.int
- www.moepp.gov.mk