DOI: 10.36719/AEM/2007-2020/52/100-103

Nigar Fazil Mammadova
Baku State University
nigar.mammadova9@mail.ru

ENVIRONMENTAL CRIMINAL LAW IN THE EUROPEAN UNION

Key words: *European Union, environmental, crime, environmental law, develope*
Açar sözlər: *Avropa Birliyi, ətraf-mühit, cinayət, ətraf-mühit hüququ, inkişaf etmək*
Ключевые слова: *Евросоюз, экологическая, преступление, экологическое право, развивать*

Introduction

What is Environmental crime? - Environmental crime is an illegal act that causes direct harm to the environment. Environmental crime is a serious and growing international problem, with criminals violating national and international laws put in place to protect the environment. These criminals are polluting the air, water and land. They are pushing commercially valuable wildlife species closer to extinction and they are significantly impacting the biological integrity of the planet. International bodies such as the G8, Interpol, United Nations Environment Programme and the United Nations Interregional Crime and Justice Research Institute have recognised environmental crimes such as illegal wildlife trade in endangered species in contravention to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES), smuggling of ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, dumping and illicit trade in hazardous waste in contravention of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal, illegal, unreported and unregulated fishing in contravention to controls imposed by various regional fisheries management organisations, illegal logging and the associated trade in stolen timber in violation of national laws. [1, p.2]

These crimes are liable for prosecution. Interpol facilitates international police cooperation and assists its member countries in the effective enforcement of national and international environmental laws and treaties. Interpol began fighting environmental crime in 1992. [2] One of these international bodies is European Union.

Environmental crime is at least as serious as any other crime affecting society today. In contravention of numerous international treaties, the principal motive for environmental crime is, with rare exception, financial gain and its characteristics are all too familiar: organised networks, porous borders, irregular migration, money laundering, corruption and the exploitation of disadvantaged communities. Wildlife felons are just as ruthless as any other, with intimidation, human rights abuses, impunity, murder and violence the tools of their trade.

There are therefore still important challenges to be met with respect to the system of environmental criminal law in Europe. In this article, I will sketch how environmental criminal law in Europe emerged and developed.

I. Legal aspects of directive 2008/99/ec

Environmental crime is a serious and growing problem in the world including European Union. Environmental crime generates tens of billions of dollars in profits for criminal enterprises every year, and it is growing. In part, this is due to the proliferation of international and regional environmental agreements, leading to more controls on a range of commodities. It is also due to mutations in the operations of criminal syndicates, which have been diversifying their operations into new areas like counterfeiting and environmental crime.

The problem of environmental crime has been discussed in many international and European fora for many years. Building on this work, the European Commission adopted a proposal for a directive aiming to ensure the protection of the environment through criminal law. After lengthy institutional discussions and two judgments of the European Court of Justice on the extent of the Community's competence in the area of criminal law, the Council and the European Parliament agreed on the text of the directive on the protection of the environment through criminal law.The Justice and Home Affairs Council formally adopted the directive on 24 October 2008 which had to be transposed by EU Member States by December 2010. Environmental law needs to be implemented in an effective way. That is the reason why the Commission proposed a directive which requires the Member States to provide for criminal sanctions for the most serious environmental offences because only this type of measures seems adequate, and dissuasive enough, to achieve proper

implementation of environmental law. The available information shows that there are large differences between the criminal sanctions provided for environmental offences in the Member States. The existing criminal sanctions are not sufficiently stringent to ensure a high level of environmental protection throughout the Community.

Main content of the Directive is minimum requirements to be implemented in national criminal laws. The proposed directive lays down a list of environmental offences that must be considered criminal offences by all of Member States, if committed intentionally or with serious negligence. This directive does not create a list of new illegal acts. The existing law already provides for these prohibitions. The Member States are required by the Directive to attach to these existing prohibitions criminal sanctions. Inciting, aiding and abetting the commission of these offences must be punishable as a criminal offence as well.[3, p. 294-306] Member States must ensure that legal people can be held liable for offences committed for their benefit. This responsibility can be of criminal or other nature. Member States must make certain that the commission of the offences is subject to effective, proportionate and dissuasive criminal sanctions. For legal persons the sanctions can be of a non criminal nature. The directive only sets a minimum standard of environmental protection through criminal law to be adopted by the Member States. The Member States are free to maintain or introduce more stringent protective measures. The directive does not lay down measures concerning the procedural part of criminal law nor does it touch upon the powers of prosecutors and judges.

When one views the structure of the Directive one can ask the question to what extent it has taken into account the criticism that was formulated in the literature regarding on the one hand the need for a more independent, autonomous formulation of environmental criminal law and on the other hand the trend towards a 'toolbox' approach, not just focusing merely on enforcement through the criminal law. It seems that those recommendations were not followed in the Directive. [4, p. 193] Article 3 of the Directive holds that the measures shall ensure that particular conducts will constitute a criminal offence 'when unlawful and committed intentionally or at least with serious negligence'. [5] Article 2 defines unlawfulness as meaning an act which violates: the legislation adopted pursuant to the EC treaty and listed in annex A; or with regards to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in annex B; or a law, and administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the community legislation referred to in (i) or (ii). 34 The provision refers to either a violation of the European environmental directives or a violation of domestic (usually administrative) environmental law, implementing European environmental directives. There is no role for autonomous, independent crimes whereby the criminal law could be applied even in the absence of a violation of administrative obligations.

II. The development of environmental criminal law in the eu and its member states

There were three specific features of environmental criminal law in that period that are worth mentioning:

- criminal law limited itself largely to penalizing the violation of these administrative obligations
- environmental criminal law did not have a very prominent place in the criminal law system
- this traditional approach towards environmental crime was that there was a strong reliance on criminal law as an enforcement instrument.

Those three key features of environmental criminal law in many Member States were strongly criticized. The critique was of a theoretical as well as of an empirical nature. The critique on the administrative dependence of the criminal law was that ecological values were not directly protected through criminal law. A consequence could be that there could be a case of serious endangerment of the environment or even pollution, but if it did not at the same time constitute a violation of an administrative obligation, intervention by the criminal law would be impossible. But the reverse was true as well: there could be cases where administrative obligations were violated as a result of which the criminal law would automatically be applicable, without any regard for the question whether this violation also caused serious danger or harm to the environment. In short, the problem with this (absolute) administrative dependence of environmental criminal law was that ecological values were not protected in an autonomous, independent manner. It seemed that criminal law was only used to back up the correct functioning of the administrative law system. [7, p.699]

There have been rather spectacular changes in environmental criminal law in many European Member States over the past 30 years. The criticisms of the way in which environmental criminal law was originally formulated have seemingly been heard in many Member States, leading to important legislative reforms. Examples of important changes can be provided for the three specific features of traditional environmental criminal law and for the related critiques. Environmental criminal law, both in the Member States and in the EU, has gone through a remarkable development over the past decades. Environmental criminal law has

changed from a system where its role was originally reduced to back up administrative obligations as a supplement to sectoral environmental legislation, towards more autonomous provisions with a more prominent place in either criminal codes or special environmental statutes. Moreover, based on empirical research showing that large amounts of criminal cases were dismissed, many countries have introduced a toolbox approach, providing for other remedies as an alternative to the criminal law, thus allowing criminal law to play its role as ultimum remedium. Environmental criminal law in that sense has grown up. More formal harmonization (e.g., of criminal sanctions, which is now also possible after the Lisbon Treaty) will probably only lead to more symbolic legislation without clear effects on improving environmental quality. A much more effective tool would be the imposition of a duty on Member States to provide verifiable information on effective enforcement. The Recommendation of 2001 providing for minimum criteria for environmental inspections in the Member States is in that respect an important tool. If Member States really take European environmental law seriously, they should stop their opposition against attempts to change that Recommendation into a binding directive. And if that were a step too far as far as political feasibility is concerned, it remains important to think about adequate second-best solutions which allow the European Commission to obtain more accurate information on the real and actual enforcement of environmental directives in practice. That seems to be a crucial step to transform all those symbolic steps taken so far into an effective harmonization of environmental quality in Europe.

Literature

1. Banks D., Davies C., Gosling J., Newman J., Rice M., Wadley J., Walravens F. (2008) Environmental Crime. A threat to our future. Environmental Investigation Agency.
2. Interpol (2009) Environmental crime online Archived 2006-03-15 at the Wayback Machine.
3. Tomkins, Kevin. Police, Law Enforcement and the Environment. Current Issues in Criminal Justice, 2005.
4. M.G. Faure. The Environmental Crime Directive 2008/99/EC, 1 European Journal of Consumer Law, 2011.
5. Environmental Crime Directive, n. 29 above, Article 3.
6. White R. Environmental Issues and the Criminological Imagination, Theoretical Criminology, 2003.
7. M.Prabhu, General Report. English Version, International Review of Penal Law 1994.

Avropa birliyində ekoloji cinayət

Xülasə

Ekoloji cinayət ekoloji qanunvericiliyi pozan və ətraf mühitə və insan sağlamlığına əhəmiyyətli dərəcədə zərər və ya risk yaradan hərəkətləri əhatə edir. Ekoloji cinayətlər Avropa və dünyada ətraf mühitə ciddi ziyan vurur. Ekoloji cinayət təkcə Avropa səviyyəsində həll edilməli olan ciddi və böyüyən bir problem deyil. Buna baxmayaraq, Ekoloji cinayət qanunu son 30 ildə Avropada möhtəşəm bir təkamül yolu keçib. Bir məsələ sadəcə ekoloji cinayət qanunvericiliyinin yeri ilə əlaqəlidir. Artıq bir çox ölkələrdə müddəalar ya cinayət məcəlləsinə, ya da xüsusi ekoloji qanunlara daxil edilmişdir. Üstəlik, bir çox hüquq sisteminin cinayət hüququnda ekoloji cinayətlər daha sərbəst bir müdafiə altına alınmışdır. Digər vacib bir irəliləyiş Avropanın 2008-ci il Ekoloji Cinayət Direktivini qəbul etməsi ilə ekoloji cinayət qanunu məsələsində də tədbirlər görməsi həqiqəti ilə əlaqədardır. Bununla belə, üzv dövlətlərdə baş verən yuxarıda göstərilən bəzi hadisələrin Direktivdə əks olunmaması diqqət çəkir. Bundan əlavə, ekoloji qanunların icrası yalnız kriminallaşma ilə qarşı-qarşıya qala bilməyən bir çox problemlərlə üzləşir. Burada ekoloji hüquq pozuntularının effektiv tətbiq olunmasına zəmanət verilmədən kriminallaşdırıldığı, simvolik qanunvericiliyə doğru aparan ciddi bir təhlükə var. Buna görə də, Avropada ekoloji cinayət hüququ sistemində öhdəsindən gəlinməsi zəruri olan vacib problemlər hələ də qalmaqdadır. Həmçinin Azərbaycan Respublikasının qanunvericiliyinə nəzər yetirdikdə aydın olur ki, ekoloji cinayətə dair normaları tənzimləyən normativ hüquqi aktlar olsa da, praktikada bunun tətbiqində xeyli ziddiyyət və çatışmazlıqlar ortaya çıxır. Bu baxımdan, ekoloji cinayət hüququ Azərbaycan Respublikasında da ciddi tənzimlənən sahələrdən birinə çevrilməlidir.

Экологическое уголовное право в Европейском Союзе

Резюме

Экологическое преступление охватывает действия, которые нарушают природоохранное законодательство и причиняют значительный вред или риск для окружающей среды и здоровья человека. Самыми известными областями экологических преступлений являются незаконные выбросы веществ в воздух, воду или почву, незаконная торговля дикими животными, незаконная торговля озо-

норазрушающими веществами и незаконная перевозка отходов. Экологические преступления наносят значительный ущерб окружающей среде в Европе и мире. Экологическая преступность является серьезной и растущей проблемой, которую необходимо решать на европейском уровне. Несмотря на это, экологическое уголовное право в Европе за последние 30 лет претерпело впечатляющую эволюцию. Одно изменение касается просто места экологического уголовного права. Во многих странах положения в настоящее время включены либо в уголовный кодекс, либо в конкретные природоохранные законы. Кроме того, во многих правовых системах среда получила более автономную защиту в системе уголовного права. Еще одно важное событие связано с тем, что Европа также приняла меры в отношении экологического уголовного права в соответствии с Директивой об экологических преступлениях 2008 года. Однако поразительно, что некоторые из вышеупомянутых событий в государствах-членах не отражены в Директиве. Кроме того, обеспечение соблюдения права окружающей среды сталкивается с еще большим количеством проблем, которые не могут быть решены просто криминализацией. Существует серьезная опасность, что это приводит только к символическому законодательству, согласно которому нарушения экологического права криминализируются без какой-либо гарантии эффективного правоприменения. Поэтому все еще существуют важные проблемы, которые необходимо решить в отношении системы экологического уголовного права в Европе. Кроме того, если посмотреть на законодательство Азербайджанской Республики, то становится ясно, что, хотя существуют нормативно-правовые акты, регулирующие нормы экологических преступлений, на практике существует много противоречий и недостатков в их применении. С этой точки зрения экологическое уголовное право должно стать одним из строго регламентированных направлений в Азербайджанской Республике.

Rəyçi: prof. F.Abbasova

Göndərilib: 28.03.2020 Qəbul edilib: 31.03.2020