

## **The Aquatic Environment**

### **Protection through Criminal Law**

**Senior Lecturer Ion Rusu, PhD**  
*Danubius University of Galati, Romania*  
*ionrusu@univ-danubius.ro*

**Assistant Professor Varvara Licuța Coman, PhD in progress**  
*Danubius University of Galati, Romania*  
*varvara.coman@univ-danubius.ro*

**Legal Counselor Ioana-Minodora Rusu-Balan, PhD in progress**  
*S.C. Sotirex Srl. Bacau, Romania*  
*oana\_rusu86@yahoo.com*

**Abstract:** Over the recent years, amid unprecedented industry development, the environmental protection was a major objective for all EU member governments, including Romania. To this purpose, at the level of the European Union there have been adopted a series of laws designed to ensure a coherent set of legal rules, including in the criminal law. In this context, Romania, in order to meet the commitments in this area, and also following the needs of environmental protection objectives, adopted in turn a legislative package in the field; the most important piece of legislation is the Government Emergency Ordinance no. 195/2005 on environmental protection. The mentioned normative act provides a series of criminal sanctions where a series of facts found by the legal authorities are likely to endanger the life or human health, animal or plant. In this paper there are examined in general the main criminal facts relating to defending and protecting the aquatic environment, particularly the Danube, as provided in the mentioned legislative act. We also presented a series of critical remarks aimed at improving the legislation and thus ensuring a better protection of the aquatic environment.

**Keywords:** environmental protection; EU members; criminal law; aquatic environment

### **1. Introduction**

Since the second half of last century, amid unprecedented continental industry development, in Europe there have been adopted a series of laws aimed at insuring the protection of the environment. The normative adopted acts were meant to insure the environmental protection by measures mostly civil, administrative or

very rare criminal. The unprecedented development of industry in the last part of last century, the emergence of new forms of crime in this area, has prompted the EU to insist upon the adoption of new forms of environmental protection, namely the criminal ones.

Given the importance of social values for the development of European societies, there were incriminated as criminal offenses series of acts, of danger and injury, meant to ensure an adequate protection of the environment.

The most important normative act adopted in recent years at EU level is Directive 2008/99/EC of the European Parliament and Council of November 19, 2008 on environmental protection through criminal law.<sup>1</sup>

In Romania, the normative framework governing most of specific activities of the environment and the incrimination of acts as crimes is the Government Emergency Ordinance no. 195/2005 on environmental protection,<sup>2</sup> approved with amendments by Law no. 265/2006 approving Government Emergency Ordinance no. 195/2005 on environmental protection,<sup>3</sup> supplemented and amended successively by the following documents: Government Emergency Ordinance no. 57/2007, Government Emergency Ordinance no. 114/2007<sup>4</sup> and Emergency Ordinance no. 164/2008.<sup>5</sup>

With regard to water protection, through criminal law, we must mention that the intern legal framework is Law no. 107/1996 on the protection of waters<sup>6</sup> completed and modified successively by 11 (eleven) regulations, the latter being Law no. 146 of July 12, 2010.

Note that the legislative framework providing environmental protection and the normative act governing the activity in the water area provide a range of crimes specific to the domain.

In this paper we make a general review on how to ensure water protection through criminal law, in terms of the depositions of the first mentioned normative act.

Also, under the will of bringing a certain contribution to improving the legislation into force, we will make a critical examination of the current provisions.

---

<sup>1</sup> Published in the Official Journal of the European Union no. L 328/28 of 12.06.2008.

<sup>2</sup> Published in the Official Monitor, Part I, no. 1196 of 30 December 2005.

<sup>3</sup> Published in the Official Monitor, Part I, no. 585 of 6 July 2006.

<sup>4</sup> Published in the Official Monitor, Part I, no. 713 of 22 October 2007.

<sup>5</sup> Published in the Official Monitor, Part I, no. 808 of 3 December 2008.

<sup>6</sup> Published in the Official Monitor, Part I, no. 244 of 8 October 1996.

## **2. Legal Regulatory Framework**

According to current legal provisions, the environment is a set of conditions and natural elements on Earth: air, water, soil, subsoil, aspects characteristic to the landscape, all atmospheric layers, all organic and inorganic matters and the living things, natural systems in interaction, including items listed above, including some material and spiritual values, quality of life and conditions that may affect the welfare and the human health [art. 1 paragraph (2) of GEO no. 195/2005].

On the other hand, note that according to the law, the environmental protection is the objective of major public interest, based on the principles and strategic elements that lead to a sustainable development.

The principles and strategic elements underlying the general concept of the state on environmental protection are: precaution in decision-making, preventive action, withholding at source pollutants, polluter pays, preserving bio-diversity and ecosystems specific to natural bio-geographic framework, sustainable use of natural resources and information and public participation in decision making, and access to justice in environmental matters and development of international cooperation for environmental protection (article 3 of GEO no. 195/2005).

In this context, the state recognizes every person the right to a healthy and ecologically balanced environment and guarantees:

- a) the access to environmental information, respecting the conditions of confidentiality under the current law;
- b) the right of association in organizations for environmental protection;
- c) the right to be consulted in making decisions on development policy and environmental legislation issuing regulating documents, drawing up plans and programs;
- d) the right to address, directly or through environmental organizations, administrative authorities and / or court, as appropriate, in environmental issues, whether the injury occurred or not, and
- e) the right to compensation for the damage (article 5 of the GEO no. 195/2005).

On the other hand, in addition to the guaranteed rights, the environmental protection is an obligation and a responsibility of central and local public authorities, as well as all natural and legal persons.

Coordination, regulating and implementation in environmental field become obligations for environmental protection of the central public authorities, namely the National Environmental Protection Agency, regional and county agencies for environmental protection and Biosphere Reservation "Danube Delta".

Regarding the waters, as component element of the environment, this is a natural regenerative source, vulnerable and limited, indispensable element for life and society, the raw material for productive activities, energy source and means of transportation, a determinant factor in maintaining the ecological balance. Water is not just a commercial product as any another, but it is a natural heritage that needs to be protected, defended and treated as such. Waters are part of the public domain of the state (article 1 of Law no. 107/1996).

Preserving, protecting and improving the aquatic environment in terms of sustainable use of water resources, based on principles of precaution, prevention, avoiding damage at source and polluter pays and it must be taken into account the vulnerability of aquatic ecosystems located in the Danube Delta and Black Sea, because their balance is strongly influenced by the quality of inland waters that flow into them.

The goal of legal regulation of water protection is to:

- a) preserve, develop and protect water resources and to ensure a free flow of waters;
- b) protect against all forms of pollution and of change the characteristics of water resources, the banks and beds or basins;
- c) attain the environmental objectives for surface and groundwater water bodies;
- d) preserve and protect the aquatic ecosystems;
- e) insuring the supply of population's drinking water supply and public sanitation;
- f) manage sustainably the water and to distribute rationally and balanced these resources, maintaining and improving the quality and natural regulation of water;
- g) defend against floods and any other dangerous hydro-meteorological phenomena;

g<sup>1</sup>) manage flood risk in order to reduce negative consequences for human health, environment, cultural patrimony and economic activity;

- h) meet the requirements of water for agriculture, industry, energy, transport, aqua-culture, tourism, recreation and water sports, like any other human activities;
- i) integrate the quantitative and qualitative aspects of both surface and groundwater water of the same ecological, hydrological and hydro-geological system;
- j) protect the aquatic ecosystems in the immediate vicinity of the coast, in bays or in the Black Sea;
- k) promote the sustainable water use based on long-term protection of available water resources;
- l) preserve, protect and improve the aquatic environment through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and ceasing or phasing out the discharges, emissions and losses of priority hazardous substances;
- m) progressive reduction of pollution of groundwater and prevent further pollution;
- n) achieve the objectives of the Convention for the Protection of the Sea against pollution on the cessation or gradual elimination of discharges, emissions and losses of priority substances in order to achieve in the marine environment concentrations of these substances close to valuing the natural fund to near zero for synthetic substances, and
- o) prevent further deterioration, protect and improve the status of aquatic ecosystems and, in terms of water needs, of terrestrial ecosystems and wetlands that directly determine the aquatic ecosystems (article 2 of Law no. 107/1996).

In terms of environmental objectives for the water bodies of surface and groundwater, there are:

- a) prevent the deterioration of all bodies of surface water;
- b) protect and improve surface water bodies in order to achieve their best state, in accordance with Annex 1<sup>1</sup> until December 22, 2015;
- c) protect and improve all artificial water bodies or heavily modified in order to achieve a good ecological potential or a good chemical status in accordance with the provisions of Annex 1<sup>1</sup> until 22 December 2015;
- d) progressive reduction of pollution due to priority substances and to cease or phase out the discharges and losses of priority hazardous substances;

- e) prevent or limit the inputs of pollutants into groundwater and to prevent deterioration of all water bodies of groundwater;
- f) protect and improve the underground water bodies and ensure a balance between intake flow and groundwater recharge in order to achieve good status of groundwater in accordance with the provisions of Annex 1<sup>1</sup> until 22 December 2015, and
- g) reverse any significant and sustainable tendency of increased concentrations of any pollutant resulting from the impact of human activity, in order to progressively reduce the groundwater pollution [art. 2<sup>1</sup> line (1) of Law no. 107/1996].

The above legal regulations represent the current legal framework establishing the principles and objectives of the state environmental policy.

Given the theme of the paper, we will examine the main groups of offenses provided in the first act.

### **3. Offences under the GEO no. 195/2005 on Environmental Protection**

The offenses under the normative act are mentioned in article 98 and they are grouped into four distinctive categories, depending on the importance of social value protected also by their seriousness, in line (1) - (4) being provided and worse ways in line (5).

Note that although these crimes have such a group, they are not structured according to the environment value generally protected, i.e. soil, water or air.

Thus, the crimes, which are directly related to waters, that cause great harm to the aquatic environment, are mentioned only in the article 98 line (2) - (4).

A first group of offenses are provided in the article 98 line (2), the group where most crimes are listed, namely:

- a) pollution or discharges in water knowingly in the atmosphere or soil waste and hazardous substances [art. 98 line (2) point 1];
- b) failure to restrictions or prohibitions established to protect water and the atmosphere, provided by the current legislation [article P8 line (2) item 2];
- c) the use of dangerous baits and electrical means to kill wild animals and fish for consumption or sale [article 98 line (2) section 3];

- d) failure to respect the restrictions and prohibitions on hunting and fishing of protected species or temporarily forbidden by law in strictly protected areas, according to specific rules [article 98, line (2) point 5];
- e) failure to immediately report any major accident [article 98, line (2) section 12].

According to the provisions of the law these crimes are punished with imprisonment from six months to three years or criminal fine from 50,000 lei to 100,000 lei, if they were likely to endanger the life or health of the human being, animal or plant.

In article 98 line (3) it is mentioned only an offense which consists of the knowingly discharge of wastewater and waste from ships or floating platforms directly into natural waters or causing knowingly pollution by discharging or immersion in natural waters, either directly or from ships or platforms floating of substances or hazardous waste [article 98 line(3) Section 3]. This offense is punishable with imprisonment for 1-5 years, if the offense was likely to endanger the life or health of the human being, animal or plant.

The last group of offenses mentioned in line (4) provides for two offenses that are punishable with imprisonment for 2-7 years, namely: denial of intervention in case of accidental pollution of waters and coastal areas [art. 98 line (4) Section 3] and provoking knowingly, pollution by exhaust or immersion in natural waters, either directly or on ships or floating platforms, of dangerous substances or hazardous waste [art. 98 line (4) Section 6].

According to the provisions of article 98 line (5) of the law, where the offenses punishable according to line (3) and (4) have endangered the health or physical condition of a large number of people, having any of the consequences provided for in article 182 of the Criminal Code or have caused significant material damage, the punishment is imprisonment from 3-10 years and interdiction of certain rights, and in case of causing death of one or more persons or serious damage to national economy, the punishment is imprisonment from 7 to 20 years and interdiction of certain rights.

Line (6) provides that the attempt is punishable.

### **3.1. General Aspects and Peculiarities**

The presented offenses have some specific characteristics which distinguish them significantly, from other offenses in the Romanian Criminal Law.

First we mentioned that by committing these crimes it brings the prejudice of one of the most important rights at the present, namely the right to a healthy environment. In fact, this right is expressly mentioned in the Constitution, where the article 35 provides that the state recognizes the right of every person to a healthy and ecologically balanced environment.

Secondly, compared to other categories of crimes, by committing them, it brings prejudice to the most important social values, that of human life or health.

Another peculiarity represents the fact that this time there are protected also two more essential values, namely the animal and plant life and health. This is a special characteristic which we do not in any other category of crime.

Another feature covers the issue that these crimes can be committed both by legal and physical entity. We appreciate however that often enough the active subject of any of these crimes can often be a legal entity.

Finally the last feature consists of the fact that most of the times the prejudices caused to the aquatic environment are stranded; their consequences being able to target not only the human, animal or plant life or health, but great financial prejudices.

Regarding the common general aspect of this kind of crimes, we should mention the following:

- a) for the existence of crimes specified in article 98 lines (2) and (3) it is necessary to have a special requirement, namely: the act was likely to endanger human, animal or plant life or health. The declaration of the absence of this requirement leads to the inexistence of such offense.
- b) for the two offenses provided in article 98 line (4), given their seriousness, it no longer requires the fulfillment of the application mentioned above;
- c) the crimes present simpler normative ways, and some more aggravated;
- d) a last peculiarity refers to the existence of two aggravated ways, but only for crimes under article 98 lines (3) and (4), namely: when the commission of a listed offense endangered the health or bodily integrity of a large number of people, and the result is one of those in article 182 of the



Criminal Code, or has caused important material damage and death occurred when one or more persons or serious damage to national economy (in this case the punishment is more severe).

### **3.2. The Purpose of Criminal Protection**

*The generic legal object* (group) of these crimes is represented by the social relations on ensuring a healthy aquatic environment, necessary to avoid endangering the human, animal or vegetable life.

We find that unlike other crimes, the criminal law does not protect one person, but a certain group of people, if their life or health was endangered. Another feature regards the protection of the health and life of animals and plants. We believe that in this case we have a generic legal complex object, that regards more important social values.

*The financial object.* For these crimes, in their simple ways, most often there is no financial object. In the both aggravated ways the existence of crimes is conditioned by the existence of the financial object, which can consist of human victims bodies whose health or life have been affected, and in the nature of major damages or of major damages to the national economy.

### **3.3. The Subjects of Crimes**

*The active subject* of crimes against the aquatic environment usually is not qualified and there can be any natural or legal person.

For these crimes, the active subject is not required to have some special quality, being able to fulfill the general conditions provided by law. Criminal participation is possible, for these crimes, both in co-authorship form and in the form of incitement or complicity. (Rusu & Rusu, 2010, p. 48)

But taking into account the specifics of this type of crime, most times we have an active subject as legal entity.

The conditions of criminal liability of legal persons are set out in article 19<sup>1</sup> of the Criminal Code which stipulates that *the legal entities, except the State, public authorities and public institutions engaged in an activity that may not be private, they are criminally responsible for crimes committed in achieving the object of*

*activity or interest or in the name of the legal person if the offense was committed with the form of guilt according to the criminal law. (Rusu, 2011, p. 333)*

*The passive subject* is represented in the case of these crimes by individuals or legal persons who had suffered the consequences provided by law. Also passive subject may be the state as well, when it caused a significant financial damage or just damage to the national economy.

### **3.4. The Objective Side**

The financial element of the objective side can be achieved through actions or inactions which present different variants, namely:

- Exhaust pollution, knowingly in water, air or soil of waste and hazardous substances;
- Use of dangerous bait and electrical means to kill wild animals and fish, for consumption or sale;
- Wastewater discharge and waste from ships or floating platforms directly into natural waters or provoke knowingly pollution by discharging or immersion in natural waters, either directly or on ships or floating platforms, of substances or hazardous waste;
- provoke intentionally pollution by exhaust or immersion in natural waters, either directly or on ships or floating platforms, of substances or hazardous waste.

Achieving the financial element through inaction consists of:

- Failure to immediately report any major accident;
- Refusal of intervention in case of accidental pollution of coastal waters, etc.

*Immediate consequence* consists of the simple possibility, in case the act was likely to endanger human, animal or plant life or health.

In the aggravating ways the immediate consequence is endangering the health or physical integrity of a large number of people with the consequences provided for in article 182 of the Criminal Code (serious injury), or when it is caused a significant material damage or death of one or more persons or serious damage to national economy.

We note that in this type of crime, the immediate result is uncertain, sometimes the financial in different ways, described above.

For the existence of a crime of this kind it is necessary to establish *the causal relation* between the incriminated action and inaction and following results. (Rusu, 2009, p. 153)

### **3.5. Subjective Side**

*The form of guilt* characteristic to these crimes is *the intention*, that is the offender must have realized the nature and consequences of his action and wanted these effects (direct intent) or having accepted them, indirect intention. (Diaconescu & Duvac, 2009, p. 624)

In the doctrine, in another opinion it is stated that the omission must be intentional, so being committed intentionally by the active subject of the offense. (Boroi, 2011, p. 490)

### **3.6. Forms, Procedures, Penalties**

**Forms.** Because these offenses are intentional, they are likely to preparatory acts or attempt. Preparatory acts are not sanctioned by the law and the attempt is punishable only if it is provided for in the law.

**Procedures.** In addition to simple legal procedures (type), the law provides two aggravated procedures, consisting of endangering the health or physical integrity of a large number of people, which resulted in a serious bodily injury or caused a serious financial damage, or in the case where the offense has caused the death of one or more persons or serious damage to national economy. It is worth mentioning that these aggravated procedures are applied only if the offenses are provided for in article 98 lines (3) and (4).

**Penalties.** The examined crimes are provided with imprisonment from 3 months to 20 years and the interdiction of certain rights or a fine from 30,000 lei to 100,000 lei.

#### **4. Conclusions and Critical Remarks**

Given the increasing number of environmental crimes, their effects that extend from growing beyond the borders of the states in which they were committed, and that in their essence they are a threat to the environment at EU level, it was adopted the European Parliament Directive 2008/99/EC and of the Council in 19 November 2008 on environmental protection through criminal law.

In carrying out the provisions of normative act, the Member States must bring into force the laws, regulatory legislation and administrative provisions necessary to comply with the Directive by 26 December 2010.

Being aware of the need to fulfill its obligations before and after EU accession, Romania has adopted the examined normative act, after which it modified it and supplemented by several successive normative acts.

By adopting this normative act, we can say that in general, the Romanian government defends the main values of the aquatic environment through criminal law rules, as well as others.

Note that due to their nature, of the importance of defended social values and the need to ensure a healthy aquatic environment; these crimes have certain features, which differentiate them fundamentally from others. Thus, in addition to the aquatic environment as a fundamental social value, we consider other values such as: life, physical integrity and health of community members, national economy, the patrimony of individuals or legal persons, life or health of animals or plants.

In this context, we underline that in the current regulations, there are some imperfections in our opinion that need to be legally solved.

A first problem is related to the way there are regulated the procedures of this type of aggravated offense. We believe that the provisions of line (5) of the regulatory framework act should be extended for the offenses provided for under lines (1) and (2), i.e. for all mentioned crimes.

Another issue concerns the extent of the prejudice, meaning that in some cases, the damage can be huge, and they can not only be reduced to the life loss or serious damage to national economy. We should take into consideration the possibility of extinction of species of animals, fish or plants, situations which are not covered by law.

We also believe that it is necessary to assess the death of certain animals, namely the need to provide some provisions regarding the aggravated procedures in this situation as well.

A final issue that we believe that it should be considered is represented by the need of a legal framework act that includes all crimes that are intended to defend the environment in general, not only the aquatic environment.

## **5. Bibliography**

Rusu, I. & Rusu, M.I. (2010). *Lipsirea de libertate în mod ilegal/Deprivation of liberty unlawfully*. Bucharest: Universul Juridic.

Rusu, I. (2011). *Individualizarea sancțiunilor de drept penal/ Individualization of criminal law sanctions*. Bucharest: Universul Juridic.

Rusu, I. (2009). *Infrațiuni specifice circulației și transporturilor feroviare/Crimes specific to circulation and rail traffic*. Bucharest: Pro Universitaria.

Diaconescu, Gh.& Duvac, C. (2009). *Tratat de drept penal, Partea special/Treaty of criminal law, Special part*. Bucharest. C.H.Beck.

Boroi A. (2011). *Drept penal, Partea specială, Curs universitar/Criminal Law. Special Part. University course*. Bucharest: C.H.Beck.

\*\*\**Directive 2008/99/EC of the European Parliament and of the Council, 19 November 2008, on environmental protection through criminal law.*

\*\*\**Government Emergency Ordinance no. 195 of 22 December 2005 on environmental protection.*

\*\*\**Law no. 107 of 25 September 1996, Waters Law.*