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# THE DEVELOPMENT OF A CRIMINAL LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION: THE CASE OF KOSOVO

Vilard Bytyqi

Faculty of Public Safety, Kosovo Academy for Public Safety  
Str. Skënderbeu, n.n., 42 000 Vushtrri, Republic of Kosovo  
e-mail: vilard.bytyqi@aksp-ks.org

## Abstract

*Criminal legislation on environmental protection has undergone a natural evolution of development, with continuous qualitative changes in order to provide the most advanced approach to protection of the environment. The criminal legal framework for environmental protection in Kosovo has been exposed to these constant changes, which is reflected in all applicable laws in this field since 1977. This paper aims to highlight the manner of such development, respectively to describe the characteristics that have distinguished the legal framework for environmental protection, from the Criminal Law of 1977 to the currently applicable Criminal Code of Kosovo. The paper also sets out to cover the similarities and differences that these laws, namely criminal codes, have had over the years. In this study we used the qualitative method of legal analysis and comparison, and a review of relevant literature. Based on the results of this study, it can be concluded that the criminal legal framework regarding environmental protection has been continuously developed and undergone significant qualitative changes over the years. Initially, the criminal law rules for environmental protection in Kosovo appeared with the Criminal Law of 1977, but due to political circumstances, these rules remained unchanged and without any impact on the objective reality. During the time of international administration, and the issuance of the Provisional Criminal Code of Kosovo, some types and elements of these criminal offenses were inherited from the environment sector, but in general, the criminal legal framework has changed radically, taking as its reference the international standards and legal solutions provided by states with legislation developed in this field. Following Kosovo's declaration of independence, and even with the adoption of two criminal codes, the chapter on criminal offenses against the environment has been preserved and has not undergone any significant changes other than full recognition of the responsibility of legal entities for all criminal offenses.*

**Keywords:** Kosovo, criminal law, environmental protection, development of a legal framework

## 1. INTRODUCTION

Protection of the environment through criminal law has undergone significant substantive changes which were influenced by the ongoing consequences suffered as a result of severe, significant, and often irreparable damage to the environment. In order for these rules to have a full preventive effect and be applicable to an environmental crime, they have been exposed to these constant qualitative changes. The criminal legal framework

for protection of the environment in Kosovo has been subject to continuous legal changes since the 1970s, when criminal offenses against the environment were first defined, namely the incrimination of actions or omissions that caused serious damage or were irreparable to the earth, water, air, flora, fauna, or other natural resources.

The primary aim of this paper is to identify the evolution of the criminal legal framework in Kosovo, highlighting the characteristics of environmental protection that have been carried over during the development of these criminal rules through four criminal codes implemented over the years. This aspect is important as it will point out the causes and reasons that have had an influence on the development and advancement of the criminal legal framework for environmental protection.

Environmental protection through criminal law dates back to the 1970s when it was originally implemented through criminal rules which were mainly annexes to administrative laws (Faure, 2017:139-146). The introduction of criminal legislation complemented the conceptual approach of environmental protection, as criminal legal protection of the environment reduced the risk to human health and life, namely of earth, water, air, flora and fauna, and other natural resources (Salihu, 2014). Criminal protection of the environment through criminal law first appeared in Kosovo with the entry into force of the Criminal Law in 1977(OG 011-25/77), which provided for several criminal offenses related to environmental protection. These rules were applicable for a relatively long period, namely until 2004 when the Criminal Law was replaced by the Provisional Criminal Code of Kosovo (UNMIK, 2003). Until the final repeal of the criminal rules for environmental protection provided by the Criminal Law of 1977, these rules did not undergo certain additions or changes, although during this period in the global plan some international instruments were issued that had an important role in standardising and internationalising the importance of environmental protection through criminal law (Cho, 2000:11-47).

In this study, a qualitative method of legal analysis and comparison was used, combined with a review of relevant literature from this field. The qualitative method of legal analysis examined the legal framework that has been applicable over the years, respectively the legal rules which have been applicable since 1977, when Kosovo first enacted the criminal legal rules for protection of the environment. The comparison method helped to identify the similarities and differences that criminal laws have had regarding the issue of environmental protection through criminal law.

In this paper, we first describe how the criminal rules for environmental protection are included in the Criminal Law of 1977 issued by the Assembly of Kosovo (OG 011-25/77), including the duration of implementation of this law and the circumstances which influenced these rules to be applicable and unchanged for a relatively long period of time. We then address the criminal legal rules for environmental protection which were included in the Provisional Criminal Code of Kosovo of 2003 (UNMIK, 2003), which was the first material criminal act issued during the international administration of Kosovo, highlighting the characteristics that distinguished these rules, respectively the influence played by international experts and international instruments which already existed globally. Finally, we address the two Criminal Codes issued after Kosovo's

declaration of independence, one which entered into force in 2013, and respectively in 2019, wherein we address the characteristics of criminal legal rules for environmental protection, and the role played by international instruments in incorporating many important standards, in particular EU Directive 2008/99/EC (Official Journal of the EU, L328).

## 2. DEVELOPMENT OF A CRIMINAL LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN KOSOVO

### *2.1. Development of criminal legal rules for environmental protection in Kosovo within the former Yugoslavia*

Environmental protection has enjoyed legal protection through administrative laws, but because of the lack of preventive effect that these rules had, the need arose for the most serious damage to the environment to be qualified as criminal offenses. As such, during the drafting of the Criminal Law of the Socialist Autonomous Province of Kosovo (OG 011-25/77) that entered into force in 1977, several criminal offenses against the environment were included.

The Criminal Law of the Socialist Autonomous Province of Kosovo (OG 011-25/77) was the first criminal act issued by the institutions of Kosovo that regulated several categories of criminal offenses. At the same time at the federal level the Federal Criminal Law was in force which mainly regulated issues related to the general part of criminal law, whereas in a special part it only provided for criminal offenses that endangered or damaged the legal benefits that belonged to the whole of Yugoslavia, and the criminal offenses committed by officials in the federal bodies (Salihu, et al., 2014). The criminal laws of the federal units mainly regulated the special part of the criminal law, which respectively provided for a larger number of criminal offenses. The Federal Criminal Law did not specifically provide for criminal offenses against the environment, as it was anticipated that this issue fell within the scope of the federal units to determine the relevant criminal offenses in the field of environment taking into account the specifics of each region in relation to damages caused to the environment.

The Criminal Law of the Socialist Autonomous Province of Kosovo (OG 011-25/77) provided for several criminal offenses for environmental protection which were organised in two different chapters, namely the following criminal offenses: "Pollution of soil" (Art. 92), "Contamination of livestock feed or water" (Art. 127), "Destruction of plantations by the use of hazardous substances" (Art. 128), "Devastation of forests" (Art. 129), "Forest theft" (Art. 130). The criminal offense "Pollution of soil" (Art. 92) was systematised in Chapter XIII entitled "Criminal offenses against human health", while the criminal offenses "Contamination of livestock feed or water" (Art. 127), "Destruction of plantations by the use of hazardous substances" (Art. 128), "Devastation of forests" (Art. 129), and "Forest theft" (Art. 130) were systematised in Chapter XIV entitled "Criminal offenses against the economy".

The criminal offense of “Pollution of soil” (Art. 92) had as its object protecting the land, life, and the health of people, respectively the animal and plant world. This provision was a specific criminal rule because it was drafted according to the “blanket reference” technique or “legislation by reference” as it was conditioned by the preliminary violation of sectoral legal rules for environmental protection. The first two paragraphs of this offense define two different situations that damage the land, respectively in the first paragraph for a situation to qualify as a criminal offense there must be as an element present of the extent of damage caused to the land, as ordinary damages that could be caused to the land were excluded, there should be illegality, respectively the violation of sectoral legal rules for environmental protection should be ascertained, the damages should cause danger to human life and health, or the damages caused large-scale extinction of animal or plant life (Art. 92(1)). In the second paragraph, the provision refers only to the category of a “responsible” person acting under public authority, or under a legal entity. This offense also provides for the element of illegality, namely violation of the provisions of sectoral legislation in this case the provisions on the protection and advancement of the human environment, wherein the responsible person is one who allows the construction, operation, or use of installations that pollute the land, or does not take measures to prevent or deter soil pollution, or the pollution exceeds the permitted limits. These damages must cause danger to human life and health, or cause the destruction of wildlife or plants on a large scale (Art. 92(2)).

The criminal offenses of “Contamination of livestock feed or water” (Art. 127) and “Destruction of plantations by the use of hazardous substances” (Art. 128) had as their object of protecting the animal world and water, respectively the plant world. Neither of these two criminal offenses refer to the sectoral legislation for environmental protection, as all elements of this criminal offense could be consumed independently. The criminal offenses of “Devastation of forests” (Art. 129) and “Forest theft” (Art. 130) had as their object protecting the forest that is exposed to the risk of causing damage. The criminal offense of “Devastation of forests” (Art. 129) was a provision that was drafted according to the “blanket reference” technique or “legislation by reference”, as an element of this offense it was foreseen those special elements had to be met, such as violation of provisions or other orders by competent bodies, which was not sufficient to apply as an independent provision. The criminal offense of “Forest theft” (Art. 130) is not conditioned by sectoral environmental protection legislation, rather it is a provision that can be implemented completely independently.

Although imprisonment was the only criminal sanction that could be imposed on these offenses, these sentences were relatively lenient, as the sentences were punishable by up to one year in prison, with the exception of the offense “Pollution of soil” (Art. 92) which provided for a maximum sentence of imprisonment for up to five years. Except intentionally, according to the Criminal Law, some criminal offenses could be committed through negligence, where for such situations a milder punishment was provided. Only natural persons could be held responsible for this category of criminal offenses, but not legal entities. Although the criminal offense of a legal person is any act or omission that is proven to

have been caused by this entity and sanctioned by the state (Simpson, 2005:7), in this case the criminal liability of legal persons for a criminal offense was recognised under the Law on Economic Crimes (OG FRY 4/1977), but since this law was limited in its scope only to economic crimes and did not include other criminal offenses, namely criminal offenses against the environment, consequently the criminal liability of legal entities for criminal offenses against the environment was not sanctioned under applicable laws.

This law, in the form of how it was issued by the Assembly of Kosovo, continued to be implemented until 1989 when Kosovo's autonomy within Yugoslavia was forcibly abolished. In 1990, the Constitution of Kosovo was repealed as an autonomous entity within Yugoslavia (HRW, 2001) with the consequence of repealing all of the laws that had been issued by the Assembly of Kosovo, including the Criminal Law. From this period until 1999, the criminal law of Yugoslavia and Serbia was enforced, which contained several types of criminal offenses against the environment. This period was characterised by the flagrant violation of freedoms and human rights against the Albanian civilian population in Kosovo. During the dictatorial regime of Serbia exercised in Kosovo from 1990 to 1999, human rights and freedoms were systematically and scandalously violated (Murati, 2005:99-116). Due to these events, attention to environmental violations and consequences was almost non-existent and was extremely irrelevant as an issue.

## *2.2. Development of criminal legal rules for environmental protection during international administration*

In 1999, UN Security Council Resolution 1244 established the UN international administration in Kosovo with its civilian mission entitled United Nations Mission in Kosovo (UNMIK). Given that there were no provisional Kosovo institutions and that the future transfer of competencies to these institutions remained unspecified, UNMIK took over all legislative, executive and judicial authority in Kosovo (Heinemann-Grüder and Grebenshikov, 2006:43-59). To eliminate the legal gap in the transitional period, the international mission with Regulation on the Law Applicable in Kosovo (UNMIK, 1999) issued by The Special Representative of the U.N. Secretary-General (SRSG) returned to fully implement the Criminal Law of 1977 (OG 011-25/77), which remained in effect until 2004. Shortly after the end of the war, and during the transitional phase, the construction of an independent legal system was started that took into account the circumstances of new rules created after the conflict, respectively the characteristics and social, cultural, or historical circumstances that the society presented in Kosovo.

After long work, a draft Criminal Code was drafted, which was also reviewed by local institutions established under the Constitutional Framework of Provisional Self-Government in Kosovo (UNMIK, 2001), and in July 2003, the Provisional Criminal Code of Kosovo was approved and entered into force in 2004 (UNMIK, 2003). This act was drafted with international assistance and expertise provided by the Council of Europe and represented an advanced legal act that was comparable to many criminal laws of states that had a genuine criminal tradition. Its core models and principles were comparable to the criminal codes of France, Germany, Switzerland, and Italy, as well as many

international instruments for the protection of human rights and freedoms, and other international instruments for preventing and combating crime (Salihu, 2005). With this act, the environment also enjoyed special protection, where a special chapter was reserved for the protection of this sector and entitled “Criminal offenses against the environment, animals, plants and cultural objects” (Chapter XXIV in UNMIK, 2003). Unlike the Criminal Law of 1977, this code expanded the number of criminal offenses against the environment, respectively making their systematisation in a separate chapter, supplementing them with many important elements which had as a reference international standards and best practices of other countries.

Chapter XXIV entitled “Criminal offenses against the environment, animals, plants and cultural objects” contained many criminal offenses in the field of environment, where earth, water, air, flora and fauna, and other natural resources in particular enjoyed criminal protection (UNMIK, 2003). The Provisional Criminal Code of Kosovo (UNMIK, 2003) contained the following types of criminal offenses pertaining to the environment: Pollution or destruction of the environment (Art. 276), Unlawful handling of hazardous substances and waste (Art. 277), Unlawful operation of hazardous installations (Art. 278), Pollution of food and water for animals (Art. 282), Destruction of vegetation by harmful substances (Art. 283), Devastation of forests (Art. 284), Forest theft (Art. 285), Unlawful hunting (Art. 286), Sale or removal of wild animal trophies from Kosovo (Art. 287), and Unlawful fishing (Art. 288).

Conventions aimed at protecting the environment require State parties to adopt legislation that incorporates the conduct described in these instruments, giving them broad discretion as to how they are to be preserved in domestic criminal law (Cho, 2000:11-47). In this regard, internationally in 1998, the Council of Europe drafted the Convention on the Protection of the Environment through criminal law (Council of Europe, 1999) which contained many important standards for environmental protection and was the first international instrument in this field that served as an important basis for the development and advancement of national legislation. In the national legislation concrete initiatives were taken within the legal framework for environmental protection, in order to advance and adapt to developments in this field. Some states have systematised criminal offenses against the environment in criminal codes, others have enacted special laws, while others have included criminal laws in sectoral environmental protection legislation (Faure, 2017:139-146).

The dynamic and substantive developments that took place at the international level, including those within the national legislations, had a significant impact on the expansion of the types and content of criminal offenses, respectively their division and systematisation in a separate chapter of the Provisional Criminal Code of Kosovo (UNMIK, 2003). The criminal legal framework has preserved the unique character of the definition of criminal offenses in the environmental field since the Criminal Code is the only act that incriminates criminal offenses in this field. The importance of the laws that regulate environmental issues in the administrative aspect is very important since some criminal offenses sanctioned by the Criminal Code include “unlawful” as a necessary element in the definition of

the criminal offense. In addition, there are other necessary elements that are included in the definition of the criminal offense, e.g., the extent of the damage, the type or nature of the damage caused to the environment, namely land, water, air, flora and fauna, or other natural resources. Most of these offenses provided for a fine and imprisonment. Imprisonment could go up to eight years for some types of offenses.<sup>1</sup> It also sanctioned any actions or omissions that could violate criminal rules for environmental protection, including two types of guilt, intent, and negligence. The maximum sentence for all criminal offenses against the environment classified according to the Articles and paragraphs of the Provisional Criminal Code of Kosovo will be reflected in the table below.

Table 1. *Maximum sentence of imprisonment (UNMIK, 2003)*

	<b>Para. 1</b>	<b>Para. 2</b>	<b>Para. 3</b>	<b>Para. 4</b>
<b>Art. 276</b>	2 years	1 year	2 years	5 years
<b>Art. 277</b>	3 years	5 years	1-2 years	8 years
<b>Art. 278</b>	3 years	1 year	-	-
<b>Art. 282</b>	1 year	1 year	3 years	-
<b>Art. 283</b>	2 years	-	-	-
<b>Art. 284</b>	2 years	3 years	-	-
<b>Art. 285</b>	1 year	5 years	-	-
<b>Art. 286</b>	6 months	2 years	3 years	-
<b>Art. 287</b>	2 years	3 years	-	-
<b>Art. 288</b>	1 year	-	-	-

The issue of including legal entities as being criminally liable entities continued to be a contentious issue during this period. On the one hand, the Provisional Criminal Code of Kosovo had provided for criminal liability for legal entities as well, as according to Art. 106 it was provided that legal entities could be held responsible and criminal sanctions could be imposed on them, but in the absence of a special law that would regulate them. In these respects, the issue of liability of legal persons for these criminal offenses was not covered by the applicable legal framework. This was one of the significant shortcomings identified in the legal framework at the time, as the issue of criminal liability of legal persons for environmental offenses had already been addressed internationally. Thus in 1978, the European Committee on Crime Problems of the Council of Europe recommended the recognition of legal persons responsible for environmental crimes. In 1985, this recommendation was confirmed by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Ladychenko et al., 2019:261-267). The issue of bringing legal entities under criminal jurisdiction thus gained international recognition and in the legislation of individual states (Ladychenko et al., 2019:261-267).

<sup>1</sup> For example: Article 277, paragraph 4 of the criminal offense “Illegal possession of hazardous substances and waste”.

### *2.3. Development of criminal legal rules for environmental protection after Kosovo's declaration of independence*

Following Kosovo's declaration of independence on 17 February 2008, the phase of issuing legal acts began independently of the state of Kosovo itself, whereby the role of UNMIK, which had provided interim administration in Kosovo from 1999 to 2008, continued its limited presence, although in terms of practical action it was almost completely inactivated and did not exercise as active a role as it had before the declaration of independence. An important dimension of strengthening Kosovo's statehood was given by the advisory opinion of the International Court of Justice, where according to this opinion, Kosovo's declaration of independence did not constitute a violation of international law (ICJ, 2010). The state of Kosovo continued to issue and amend many laws that were a basic quality of sovereign states, but the laws that were issued during the UNMIK administration continued to be applied, with the exception of laws that prejudiced Kosovo's citizenship. These were immediately supplemented and changed to adapt to the new political and legal reality. The Provisional Criminal Code of Kosovo, in addition to the change in name that removed the term "temporary" (OG 44, Law 03/L-002), continued to be an applicable act until 1 January 2013. Two criminal codes have been approved since the declaration of independence. The Criminal Law approved by the Assembly of Kosovo, respectively the Criminal Code that entered into force in 2013 (OG 19, Code 04/L-082) and the Criminal Code that entered into force in 2019 (OG 2, Code 06/L-074).

The Criminal Code (OG 19, Code 04/L-082) which entered into force in 2013 organised criminal offenses against the environment in Chapter XXVIII entitled "Criminal offenses against the environment, animals, plants and cultural objects". The Criminal Code provided for the following environmental offenses: Polluting, degrading or destroying the environment (Art. 347), Unlawful handling of hazardous substances and waste (Art. 348), Allowing unlawful construction or unlawful operation of plants and installations that pollute the environment (Art. 349), Damaging objects and installations for protection of the environment (Art. 350), Pollution of food and water for animals (Art. 355), Destruction of vegetation by harmful substances (Art. 356), Devastation of forests (Art. 357), Forest theft (Art. 358), Unlawful hunting (Art. 359), Sale or removal of wild animal trophies from the Republic of Kosovo (Art. 360), Sale or removal of protected natural goods, plants or animals outside the Republic of Kosovo (Art. 361), and Unlawful fishing (Art. 362). The transposition of the European Directives in the Kosovan Laws is also provided by the Assessment Report conducted within Component 5, in the corresponding Component section.

Although with this act were added several types of criminal offenses against the environment, the content of these offenses was expanded and supplemented with important elements which responded to the environmental damage caused in practice. The form and content of criminal offenses that were provided for in the Provisional Criminal Code of Kosovo of 2004 were largely preserved.

The *acquis communautaire* had a significant impact regarding environmental protection and climate change, below the relevant primary and secondary legislation on the



advancement of standards in these criminal offenses, in particular Directive 2008/99EC (Official Journal of the EU, L328) on environmental protection through criminal law. Art. 347, Art. 348, Art. 349, Art. 356, Art. 357, Art. 358, Art. 359, Art. 360, Art. 361, and Art. 362 of these criminal offenses were drafted according to the “blanket reference” technique or “legislation by reference”, as an element of these criminal offenses was the illegality of sectoral legislation, or acts issued by law enforcement institutions. The qualification of damage as a criminal offense is conditioned by the element of the amount of damage, or the type of damage caused to the environment, as the Criminal Code (OG 19, Code 04/L-082) sets a legal condition that the damage should not be ordinary. The extent of damage required as an element for the criminal offense, e.g., is expressed in these terms “with serious consequences” (Art. 347), “substantial damage” (Art. 348), “damage for 5,000 (five thousand) Euros” (Art. 349), while the type of damage as another element of these criminal offenses does not relate to the extent of the damage caused, but only to the particular type of damage caused to the goods enjoying legal protection, e.g., Art. 357, Art. 358, Art. 359, Art. 360, Art. 361, and Art. 362. The Criminal Code provided for two types of criminal sanctions, namely imprisonment and fines. For these offenses, the sentence was increased, respectively the maximum sentence was increased, where the average of the total maximum sentence of imprisonment for these criminal offenses varied from three to five years, while for certain criminal offenses the maximum sentence could go up to 12 years in prison.<sup>2</sup> The following table reflects the maximum sentence for all criminal offenses against the environment classified according to the Articles and paragraphs of the Criminal Code.

Table 2. *Maximum sentence of imprisonment for criminal offenses against the environment (OG 19, Code 04/L-082)*

	<b>Para. 1</b>	<b>Para. 2</b>	<b>Para. 3</b>	<b>Para. 4</b>	<b>Para. 5</b>	<b>Para. 6</b>
<b>Art. 347</b>	2 years	1 year	5 years	2 years	8 years	5 years
<b>Art. 348</b>	3 years	5 years	1 year	2 years	12 years	8 years
<b>Art. 349</b>	3 years	1 year	3 years	5 years	-	-
<b>Art. 350</b>	3 years	1 year	5 years	3 years	8 years	5 years
<b>Art. 355</b>	2 years	2 years	2 years	6 months	-	-
<b>Art. 356</b>	2 years	3 years	1 year	-	-	-
<b>Art. 357</b>	2 years	3 years	-	-	-	-
<b>Art. 358</b>	1 years	3 years	-	-	-	-
<b>Art. 359</b>	1 year	6 months	2 years	3 years	3 years	-
<b>Art. 360</b>	2 years	3 years	-	-	-	-
<b>Art. 361</b>	2 years	-	-	-	-	-
<b>Art. 362</b>	3 months	2 years	-	-	-	-

<sup>2</sup> For example: Article 348, paragraph 5 of the criminal offense “Unlawful handling hazardous substances and waste”.

A fine may also be imposed for natural people. This type of punishment does not apply to all criminal offences, but to certain criminal offences.

Article 40 of the Criminal Code provided for criminal liability for legal entities, whereas the Law on liability of legal entities for criminal offenses (OG 16, Law 04/L-030) that entered into force in 2013, for the first time comprehensively regulated criminal liability, criminal sanctions, and special provisions governing criminal proceedings against legal entities. The previous Law on economic delicts (OG FRY 4/1977) was a limited act in terms of scope, as it was limited to criminal offenses related to economic and financial issues. The Criminal Code (OG 2, Code 06/L-074) and the Law on liability of legal entities for criminal offenses (OG 16, Law 04/L-030) do not exclude legal entities from criminal liability for criminal offenses against the environment insofar as these offenses can be consumed by these subjects of law.

If it is established that these subjects of law have committed any of the criminal offenses provided by the Criminal Code, the law provides for the possibility of imposing the following sanctions: sentences, suspended sentences, and security measures. The types of punishment that can be imposed for criminal offenses of a legal entity are fines and termination of the legal entity (Art. 8). Fines are non-linear, whereby it is provided that the minimum fine cannot be less than 1,000 (one thousand) Euros and higher than 100,000 (one hundred thousand) Euros (Art. 9 (1)). Probation is provided for non-execution of the sentence for a period of one to two years, provided that during the verification period the legal person does not commit another criminal offense (Art. 12). In the imposition of security measures, the law provides that for criminal offenses for which legal entities are responsible the following security measures may be imposed: prohibition to perform certain activities and works; taking the item; confiscation of property, and public announcement of the judgment (Art. 13).

The Criminal Code (OG 2, Code 06/L-074), which entered into force in 2019 organises criminal offenses against the environment in Chapter XXVII entitled "Criminal offenses against the environment, animals, plants and cultural objects". This code also preserves the complete catalogue of criminal offenses as provided in the Criminal Code of 2013 (OG 19, Code 04/L-082). The content of these offenses is almost the same, with the exception of certain elements which do not make any significant difference that is reflected in the aspect of aggravation, punitive policy, as well as additions to the content in some paragraphs. There are also no changes in the responsibility of legal entities for criminal offenses, as the Law on the Liability of Legal Persons for Criminal Offenses (OG 16, Law 04/L-030) is still in force, which entered into force in 2013.

### 3. CONCLUSIONS

Environmental protection in Kosovo has enjoyed protection from criminal law since 1977 when the Criminal Law of the Socialist Autonomous Province of Kosovo (OG 011-25/77) was adopted. Initially, several criminal offenses were envisaged for the protection of the environment, which were mainly related to the element of illegality that

must be consumed in order to qualify an action or omission as a criminal offense. The damage caused must have certain qualities that were related to the type of damage and the size of the damage. The liability of legal persons for criminal offenses was limited to economic offenses and the Law on economic delicts (OG FRY 4/1977) was limited in scope and did not include environmental damage issues. The Criminal Law continued to be applicable for a relatively long time, conditioned by the objective circumstances which Kosovo underwent, respectively it was applicable until 2004.

During the international administration of Kosovo, several types of laws were applied which were applicable in Kosovo before 1989, and this was carried out with special regulations which were Issued by the SRSG. One such law that was reinstated to be implemented was the Criminal Law of 1977, and was applicable until 2004. In 2004, the Provisional Criminal Code of Kosovo entered into force, which reserved a special chapter for criminal offenses against the environment, respectively increased the number of criminal offenses, as well as supplemented the elements of some offenses which were previously included in the Criminal Law of 1977. In general, the legal framework for environmental protection was improved and advanced, giving more effective protection to the environment, where the international experts engaged in the drafting of this act played an important role, but also influenced the international instruments in this field that were transferred literally to the content of criminal offenses against the environment.

Even during this time, the Law on economic delicts (OG FRY 4/1977) was still not applicable, as it did not include criminal liability for legal entities for criminal offenses against the environment. After Kosovo's declaration of independence, two subsequent Criminal Codes were adopted, respectively Criminal Code of the Republic of Kosovo that entered into force in 2013 (OG 19, Code 04/L-082), and Criminal Code of the Republic of Kosovo that entered into force in 2019 (OG 2, Code 06/L-074). Despite the fact that with this act several types of criminal offenses against the environment were added, respectively the content of these offenses was expanded, supplemented with important elements which corresponded to damages caused in practice, and the form and content of criminal offenses provided by the Provisional Criminal Code of Kosovo of 2003 were largely preserved in Criminal Code from 2012 (OG 19, Code 04/L-082). The *acquis communautaire* had a significant impact on the advancement of standards in these criminal offenses, in particular, Directive 2008/99EC (Official Journal of the EU, L328) on environmental protection through criminal law. A significant change has been identified in the responsibility of legal entities for criminal offenses since the Law on Liability of Legal Persons for Criminal Offenses (OG 16, Law 04/L-030), even this category of legal entities can be held responsible for criminal offenses with regards to the environment. Criminal Code that entered into force in 2019 (OG 2, Code 06/L-074) fully preserved the catalogue of criminal offenses as provided in the Criminal Code of 2013 (OG 19, Code 04/L-082). The content of these offenses is almost the same, except for some elements which do not make any significant difference that is reflected in the aspect of toughening of the penal policy and some additions to the content of certain paragraphs.

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## RAZVOJ PRAVNOG OKVIRA KAZNENOG ZAKONODAVSTVA ZA ZAŠTITU OKOLIŠA: PRIMJER KOSOVA

Vilard Bytyqi

### Sažetak

*Kazneno zakonodavstvo za zaštitu okoliša prošlo je svoju prirodnu evoluciju kontinuiranim kvalitativnim izmjenama koje su vodile oblikovanju što naprednijeg pristupa zaštiti okoliša. Kazneno-pravni okvir za zaštitu životne sredine na Kosovu bio je izložen stalnim promjenama, što je vidljivo iz relevantnih zakona iz ovog područja od 1977. godine do danas. Cilj je ovog rada opisati taj razvoj, odnosno opisati sličnosti i razlike pravnih okvira i relevantnih kaznenih zakona za zaštitu okoliša, od Kaznenog zakona iz 1977. godine do Kaznenog zakona Kosova koji je trenutno na snazi. Korištena je kvalitativna metoda komparativne pravne analize kao i analiza postojeće literature. Na temelju rezultata može se zaključiti da se kazneno-pravni okvir u ovom području kontinuirano razvijao, prolazeći značajne kvalitativne promjene kroz godine. U početku su se kazneno-pravna pravila za zaštitu okoliša na Kosovu pojavila s Kaznenim zakonom iz 1977. godine, ali su zbog političkih okolnosti ostala nepromijenjena i bez ikakvog stvarnog utjecaja. U vrijeme međunarodne uprave, donošenjem Privremenog kaznenog zakona Kosova, neke vrste i elementi ovih kaznenih djela preuzeti su iz pravnog područja životne sredine, no kazneno-pravni okvir se radikalno promijenio, prije svega zbog preuzimanja međunarodnih standarda i zakonskih rješenja od država s razvijenim zakonodavstvom u ovom području. Nakon proglašenja neovisnosti, iako su donijeta dva kaznena zakona, poglavlje o kaznenim djelima protiv okoliša je sačuvano i nije doživjelo bitnije promjene osim potpunog priznavanja odgovornosti pravnih osoba za sva kaznena djela.*

**Ključne riječi:** *Kosovo, kazneno pravo, zaštita okoliša, razvoj pravnog okvira*

## ENTWICKLUNG DES RECHTLICHEN RAHMENS DER STRAFGESETZGEBUNG ZUM UMWELTSCHUTZ AM BEISPIEL VON KOSOVO

Vilard Bytyqi

### Zusammenfassung

*Der strafrechtliche Schutz der Umwelt machte im Laufe von kontinuierten qualitativen Veränderungen eine natürliche Evolution durch, die zu einem bestmöglich progressiven Ansatz zum Umweltschutz führten. Der strafrechtliche Rahmen für den Schutz der Umwelt in Kosovo wurde ständig geändert und das ist an relevanten Gesetzen auf diesem Gebiet vom 1977 bis heute ersichtlich. Das Ziel dieser Arbeit ist, diese Entwicklung, Ähnlichkeiten und Unterschiede von rechtlichen Rahmen und relevanten Strafgesetzen für den Umweltschutz zu beschreiben, vom Strafgesetz aus dem Jahr 1977 bis zum momentan geltenden Strafgesetz von Kosovo. Es wurde die qualitative Methode der komparativen Analyse angewendet und die bestehende Literatur wurde analysiert. Aufgrund der Ergebnisse kann man schließen, dass sich der strafrechtliche Rahmen auf diesem Gebiet kontinuierlich entwickelte und im Laufe der Jahre beträchtliche qualitative Änderungen erlebte. Die ersten strafrechtlichen Regeln für den Umweltschutz erschienen im Strafgesetz vom 1977, infolge von politischen Verhältnissen blieben sie jedoch unverändert und ohne jeglichen Einfluß. In der Zeit der internationalen Verwaltung wurde ein vorläufiges Strafgesetz von Kosovo verabschiedet und einige Arten und Elemente der Straftaten aus dem Gebiet des Umweltschutzes wurden übernommen, der strafrechtliche Rahmen hat sich auch grundlegend verändert, vor allem wegen der Übernahme von internationalen Standards und gesetzlichen Lösungen der Staaten mit einer für dieses Gebiet entwickelten Gesetzgebung. Nach der Unabhängigkeitserklärung wurden zwei Strafgesetze verabschiedet, aber das Kapitel über Straftaten gegen die Umwelt blieb bestehen und wurde nicht geändert, außer dass Rechtspersonen für alle Straftaten die Verantwortung übernehmen.*

**Schlüsselwörter:** *Kosovo, Strafrecht, Umweltschutz, Entwicklung des Rechtsrahmens*