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## CRIMINAL OFFENSE OF ENVIRONMENTAL POLLUTION IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA AND THE REPUBLIC OF CROATIA

**ABSTRACT:** Undoubtedly, one of the leading movements at the global level in the past few decades was the movement for the global and intensive protection of the human environment, that is, the affirmation of the right of man to a healthy environment, as a distinct right. Bearing in mind the importance of a healthy environment and the importance of its protection, which has grown from a social need into a legal imperative, it is certainly justified to establish the environment as an independent and primary collective object of protection within the domestic criminal legislation. Taking into account the tendencies on the international and comparative level regarding the regulation of the criminal law protection of the environment, the domestic legislator dedicates an entire chapter of the Criminal Code precisely to incriminations that have the environment as an object of protection, in various forms. As the first offense provided for in Chapter 24 i.e., Criminal offenses against the environment, the legislator defines the general and most significant criminal offense from the group of criminal offenses against the environment, namely, Environmental pollution. This paper is dedicated to the analysis of this criminal offense in domestic criminal legislation, with reference to individual solutions contained in the legislation of the Republic of Croatia and pointing out their differences.

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## 1. Introductory remarks

Environmental protection has been in the center of attention of the international community, both at the universal and regional level, for some time now. As early as 1998, this issue was on the list of priorities of the international community, and since then, ie. since the adoption of the Convention of the Council of Europe on the criminal protection of the environment on November 4 (which has not entered into force), international legal documents have been adopted and adopted with the aim of promoting and protecting the environment (Stojanović & Delić, 2017, p. 203).

On the domestic front, the Constitution of the Republic of Serbia ambitiously proclaims that *“Everyone has the right to a healthy environment and timely and complete information about its condition.”* *Everyone, especially the Republic of Serbia and the autonomous province, is responsible for environmental protection. Everyone is obliged to preserve and improve the environment.*”(Constitution, 2006, article 7). The creator of the Constitution was certainly aware of the importance of a healthy environment; not only for man, as an individual, but also for the state and society itself. Therefore, the constitutional maker proclaims the broad right of every individual to a healthy environment, as well as to be timely and fully informed about its condition. On the other hand, correlative to this right of people, the constitution maker establishes the obligation of everyone, especially the Republic and the autonomous province, to protect and preserve the environment – and which obligation, we believe, has a positive and negative aspect: the Republic and the autonomous province have a negative obligation – to refrain from any action that threatens, destroys, changes or otherwise damages the environment, while there is also a positive obligation to actively deter and discourage others from endangering, changing, destroying or causing other damage to the environment through legislative and administrative measures. In our opinion, the positive obligation would also include the obligation of state authorities to do everything reasonably possible to discover the identity of the perpetrator in the event of an environmental violation and to carry out criminal proceedings.

In this sense, the domestic legislator regulates the issue of environmental protection with many legal regulations – starting from the general regulation of the Law on Environmental Protection, to partial protection that is achieved through other legal regulations. Certainly, one of the strongest protections that

the state can provide is criminal protection. Bearing in mind the importance of a healthy environment for an individual, as well as society as a whole, the intervention of the legislator with this *ultima ratio* is not only justified, but also necessary. In this sense, while in most other areas of criminal law protection, there has recently been an effort to decriminalize certain behaviors, or to narrow the criminogenic zone by prescribing additional conditions under which someone can be punished, in the area of criminal law environmental protection the situation is different (Drakić, 2009, p. 222). Therefore, the crime of Environmental pollution has existed in our criminal legislation for some time.

This paper is dedicated to the analysis of the criminal offense of environmental pollution in the domestic criminal legislation, with reference to the individual solutions contained in the legislation of the Republic of Croatia and pointing out their differences, while relying on and using the normative, comparative and historical law method, with the logical rules of induction and deduction.

## **2. General criminal offenses against the environment and their legislation**

Drakić (2009) correctly notes that the “increasingly intense and reckless destruction of the environment has forced the domestic legislator, as well as other legislators and the international community, to apply a more radical approach to environmental protection, and to engage the most repressive branch to a greater extent than before rights – criminal law, in an effort to ensure environmental protection” (p. 223).

Up until about fifty years ago, in the comparative legislations, there were almost no criminal acts that primarily protected the environment, but the environment was protected by default along with some other – primary – object of protection. Only with the development of awareness of the importance of a healthy environment and its endangerment, criminal acts arise which, as the primary object, aim to protect the environment (Dragojlović, Pašić & Milošević, 2018, p. 54).

In the domestic criminal law, until the separation of the special criminal offense by which it is provided protection of the environment as such came in 1977 with the entry into the force of the Criminal Code of the Socialist Republic of Serbia, which was applied until the entry into force of the current Criminal Code of the Republic of Serbia from 2006 (Stojanović, 2017, p. 828). It should be pointed out that just before the adoption of this of the

penal code, and after the adoption of the Constitution from 1974, which expressly establishes the right to a healthy natural environment, opportunities for criminal law regulation have been created, i.e. it has been established that there is a need for regulation special incriminations that would provide criminal protection to the environment.<sup>1</sup>

The current legislator was reasonably active when prescribing criminal offenses that have a (healthy) environment as the primary object of protection, so inin the current Criminal Code of Serbia, there are eighteen criminal offenses against the environment, which are found in Chapter D twenty-four of the Code<sup>2</sup>, and which criminal offenses include: Environmental pollution (Article 260), failure to take environmental protection measures (Art 261), illegal construction and commissioning of facilities and equipment that pollute the environment (Art 262), damage to facilities and devices for environmental protection (Art 263), damage to the environment (Art 264), destruction, damage and export of protected natural property abroad (Art 265), bringing dangerous substances into Serbia, unauthorized processing, disposal and storage of dangerous substances (Article 266), illegal construction of nuclear facilities (Art 267), violation of the right to information about the state of the environment (Art 268), killing and torturing animals (Art 269), transmission of infectious diseases in animals and plants (Art 270), negligent provision of veterinary assistance (Art 271), production of harmful means for the treatment of animals (Art 272), contamination of food and water for consumption, i.e. feeding animals (Art 273), devastation of forests (Art 274), forest theft (Art 275), illegal hunting (Art 276) and illegal fishing (Art 277). Already from the very names of the criminal acts, we can determine their specific protective objects, so it can be concluded that the domestic legislator has cast a wide net of criminal environmental protection. From the incriminations themselves, it can be clearly determined that the object of criminal protection is the environment itself, or more precisely, the human right to a preserved environment (Stojanović, 2021, p. 869).

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<sup>1</sup> Certainly, the Constitution, as the highest legal act, regulates the most important human rights, including the right to a healthy environment. However, we do not believe that in order to prescribe every criminal incrimination in the area of criminal substantive legislation, it would be necessary to have previously prescribed a constitutional norm that would refer to a given incrimination. For an interesting discussion on the binding and limitation of the criminal legislator by the constitution, see: (Stojanović, 2008, p. 7.)

<sup>2</sup> In addition, some criminal acts that endanger or injure the environment are also included in secondary criminal legislation. Thus, there is one criminal offense in the Law on Production and Trafficking of Toxic Substances, three such crimes in the Law on Water, and three such criminal offenses in the Law on Mining.

In terms of the criminal incriminations themselves, in general, there are two approaches in incriminating certain behaviors, the so-called. “environmental crime” as criminal acts. On the one hand, there are criminal acts that have as their consequence an abstract danger to the environment, and for which a concrete danger or injury to the environment is not required for the criminal law reaction to occur, but behavior that regularly, as a rule, leads to such consequences, without waiting for them to occur in a specific case. On the other side, there are criminal acts that result in injury or specific endangerment of an “ecological asset”. While these consequences must be proven in criminal proceedings, abstract danger is not proven, it is irrefutably assumed, precisely because the action taken is a typical carrier of environmental danger (Drakić, 2009, p. 222).

Before proceeding to the consideration of individual incriminations, it should be noted that, although the environment is a legal good of the community (Drakić, 2009, p. 223), the object of protection of this group, the so-called “ecological” crimes must not be understood in a broader, non-substantial sense, but in the sense of different ecological media (such as water, soil, air) and their particular manifestations (flora and fauna) (similarly Stojanović, 2021, p. 872). As we will see, the criminal offense of environmental pollution from Article 260 of the Criminal Code refers explicitly to the environmental media of air, water and soil (Varađanin, & Stanković, 2022).

### **3. Criminal offense of environmental pollution in domestic legislation**

From an ideological point of view, the crime of environmental pollution would represent a fundamental and basic crime against the environment. This prescribed crime protects the fundamental human right to a healthy and preserved natural environment, which, as we have already pointed out, has been raised to the level of a constitutionally guaranteed human right, all with the aim of ensuring humane and healthy living conditions for current and future generations.

However, no matter how noble the reasons the legislator was guided by when prescribing the act and how much in line with the global trend, (Stojanović, 2017, p. 830 et seq.) points out that despite the long existence of this act in our criminal legislation (since 1977), it is extremely rarely applied in practice.<sup>3</sup>

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<sup>3</sup> Samardžić (2011) points out that, while conducting research, he came to the conclusion that no proceedings for this criminal offense before the court in Novi Sad have been legally concluded (p. 751).

When we talk about the incrimination itself from Article 260 of the Criminal Code, the basic form of the offense is committed by anyone “who, in violation of regulations on the protection, preservation and improvement of the environment, pollutes the air, water or soil to a greater extent or over a wider area.” There are three elements, therefore, that must be cumulatively fulfilled for the existence of this criminal act. First, the condition is that there has been air, water or soil pollution. Secondly, it is necessary that such pollution of some of the eco-media occurred by violating some regulation on protection, preservation and improvement of the environment. Finally, the third condition is that the pollution of air, water or land has occurred to a greater extent or over a wider area.

***a) The act of execution as an element of the criminal act***

The very act of committing this criminal offense consists in undertaking some activity that results in air, water or soil pollution. Thus, Criminal Code does not describe actions that can lead to the above consequences (Drakić, 2009; Vučković, 2014). On the contrary, this criminal law norm remains of a blanket in character, leaving the element of the action to be determined by some other regulation. That is why any human activity that, in itself, is capable of polluting one of the eco-media from Article 260 of the of the Criminal Code can be considered as the very act of committing this criminal act.<sup>4</sup> Stojanović (2021) “clearly defines that it is about the so-called consequent action – that is, any action that can cause the consequence of this act, which is reflected in the pollution of air, water or land to a greater extent or in a wider area, is to be considered an action of execution. Bearing in mind the importance of the protective object, thanks to the prescribed range of imprisonment (up to five years) for the basic form of the crime, the very attempt of any premeditated form of this criminal offense is punishable, according to the general rule on punishment for attempted criminal offense from Article 30 of the Criminal Code” (p. 872).

Bearing in mind the absolute impossibility of the legislator to determine in advance the catalog of possible actions for the execution of this criminal offense, the legislator’s approach to define the criminal offense itself as a blanket offense, referring to the relevant regulations on protection and environmental protection measures, is completely sleepless.

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<sup>4</sup> Drakić (2009) cites as examples the release of harmful waste water, the burning of dangerous substances that pollute the air, the pouring into water, a stream or a lake, that is, onto the ground, of toxic chemicals or other substances that thus make them dangerous for human life or health, ie for animals or plants. While Lazarevic (2006) states the failure to take the necessary protective measures against pollution or to install appropriate purification devices (p. 682).

Nevertheless, from the aspect of defining and differentiating the criminal offense, it is important to emphasize that if any of the actions causes the pollution of **drinking** water, there will not be this general crime from Article 260 of the Criminal Code, but a special criminal offense of “Polluting drinking water and foodstuffs” which falls under into the group of criminal acts against human health, due to the application of the specialty principle.

Defining the concept of the action of *pollution* depends to a certain extent on which eco-medium is involved in the specific case. Stojanović (2021) believes that, generally speaking, it is always about certain harmful changes that occur in the mentioned eco-media, i.e. in relation to the plant and animal world (p. 872). Drakić (2009) in principle accepting Stojanović’s position, under the pollution of water, air or soil, in the sense of the consequences of the crime in question, includes any artificial change in the natural characteristics of the mentioned eco -media that can threaten the psycho-physical integrity of a person or predict harm for plant or animal life (p. 224).<sup>5</sup>

With regard to the actual damage to the plant or animal life in terms of the incrimination in question, this consequence could not be caused by e.g. excessive exploitation of the land or its “burning”, because this incrimination protects the mentioned eco -media qualitatively, not “quantitatively” (Drakić, 2009, p. 225).

It is necessary to emphasize that the action of execution does not have to be undertaken once, but the action of execution of this part can also be understood as onecontinuous activity, which consists of several individual actions that, each by itself, they are not capable of causing the consequence of the act, provided that they are in their cumulative resulted in air pollution, water or soil in the aforementioned sense (Stojanović, 2017, p. 830).

### ***b) The blanket nature of the provision from Article 270 of the Criminal Code***

In order for us to be able to talk about this part in general, it is necessary that the pollution of air, water or land happened to someone caused by human action in violation of regulations on protection, preservation and improvement environment, which results from a simple linguistic interpretation of this provision.

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<sup>5</sup> Drakić goes a step further and states that he deliberately used the term “psycho-physical integrity of a person” and not “health”, so as not to get into a situation where whenever this criminal offense is involved, medical expertise is ordered and determined. In this regard, the medical concept of illness or health is not relevant for assessing whether a consequence has occurred.

As a general consequence of the trend of hyperinflation of legal regulations, in our legal system there are a large number of legal and bylaw regulations that aim to ensure environmental protection, that is, to preserve and improve it.

In order to those goals have been achieved, these regulations, among other things, require certain persons to behave in a certain way in certain situations, or prohibits all or only some persons to undertake certain activities which oppose the interests of protection, preservation and improvement of the environment (Drakić, 2009, p. 225; similarly Stojanović, 2021, pp. 871-872).

In this regard, violation of regulations, in terms of this condition, can be done as follows undertaking a prohibited activity, as well as not undertaking an activity which had to be undertaken. Therefore, it is possible to commit the act passively, i.e. by refraining from doing it, i.e. by omission. This model of criminal responsibility, of course, implied an obligation prescribed by law, the omission of which would constitute a violation of the regulations, and, with the occurrence of the consequences, there would be a criminal act. It should be pointed out that, by the very nature of things, an attempt of this form of criminal offense is not possible.

In any case, in order to determine the existence of this criminal offense, it is necessary to first consult the corresponding non-criminal, administrative law regulations.<sup>6</sup>This is a feature of most blanket legal norms.

In this sense, it should be pointed out that the current Law on Environmental Protection gives the concept of environmental pollution as the introduction of polluting materials or energy into the environment, caused by human activity or natural processes, which has or may have harmful consequences on the quality of the environment and human health (Law on Environmental Protection, 2004, article 3, point 11). However, for the purposes of criminal law, i.e. the incrimination of any conduct, and even for low standards of blanket norms, this provision is too broad, i.e. too general, to be directly applicable for the purposes of the criminal offense under Article 260 of the Criminal Code. For these reasons, various obligations and requirements are prescribed in various,

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<sup>6</sup> Stojanović (2021) “points out that the dependence of the existence of the crime in question on the corresponding non-criminal regulations is not as great as it seems at first glance, because when the other elements of the criminal offense have been realized (pollution of air, water or land on a larger scale or in a wider area) as a rule, the condition regarding the violation of regulations on protection, preservation and improvement of the environment has been met“ (pp. 871-873). Drakić (2009) “takes a somewhat different position and believes that the violation of administrative law itself does not always represent an element of the existence of a criminal act, but an element of its illegality“. We believe that both positions are partly correct, and that one should certainly not approach generalizations, nor draw conclusions about the fulfillment of one element just because of the existence of other elements of the crime (p. 225).

larger numbers of other legal regulations from the administrative law field (e.g. the Water Act), the violation of which would fulfill the elements of the offense from Article 260 of the Criminal Code (similarly Stojanović, 2021, p. 872 ).

To this approach, as to most other blanket criminal norms, a general remark can be made that the nature of the act, i.e. the act of execution, is set too broadly due to the fact of the appearance of hyperinflation of legal regulations in various areas, so it is sometimes unrealistic to expect that everyone is familiar with their obligations and orders issued to him by certain legal texts.

**v) Standards of “larger measure” and “wider space” as a qualitative condition of the criminal offense from Article 260 Criminal Code**

Finally, for the existence of a criminal offense it is necessary that the pollution of air, water or land occurred to a **greater extent** or in a **wider area**. The meaning of this condition is to distinguish the criminal offense in question from corresponding misdemeanors or economic offenses that also result in air, water or soil pollution (Stojanović, 2017, pp. 831-832). Thus, applying the rule of *argumentum a contrario*, if there was no pollution of the mentioned eco-media to a greater extent or in a wider area, there is a misdemeanor or an economic offense – and vice versa (Drakić, 2009, p. 227).

The legal wording of this feature is rather imprecise. It cannot be concluded from it in advance when this condition is fulfilled. The legislator left it to judicial practice to determine the criteria by which the appropriate conclusion will be reached (Drakić, 2009, p. 228; Stojanović, 2021, pp. 872-873).

Nevertheless, it can generally be said that it is a question of such pollution which “to a greater extent exceeds the limits of the tolerant concentration or which, although within the permissible limits, covers large areas” (Lazarević, 2006, p. 682). The most important orientation criteria for determining these imprecise concepts are certainly the limit values of the maximum permitted pollution of certain eco-media, which are provided by administrative regulations. In any case, ecological and not economic criteria and standards must be applied here (Drakić, 2009, p. 229).

Generally speaking, legal standards in criminal law, as necessary as they may be at times, represent a significant potential danger from the aspect of the *nullum crimen sine lege* principle. Although it cannot be disputed that the prescription by law existed, that regulation must also be of appropriate quality, i.e. it would have to be such that a reasonable and average person can conclude which and what kind of behavior is prescribed as a criminal offense, i.e. a certain degree of certainty is required, in the sense guarantees of legal certainty. Legal standards often lead to disruptions in that relationship.

The criminal offense from Article 260 of the Criminal Code is therefore committed when the act or omission causes air, water or soil pollution to a greater extent or over a wider area, in violation of regulations on the protection, preservation and improvement of the environment. The perpetrator of this act can be, both officially, and any other person.

The act can be committed intentionally or negligently. For deliberate execution of the act, the perpetrator can be sentenced to six months to five years in prison and a fine, and for negligence – a fine or imprisonment of up to one year.

This crime also has its more serious form. It differs from the basic form only in that its existence requires the occurrence of a more serious consequence, which is reflected in the fact that “there has been destruction or damage to the plant or animal world on a large scale or to the pollution of the environment to such an extent that for its removal requires a long time or high costs” (Criminal Code, 2005, article 260).

Even with this form of the crime, the Code calls into question the consistent implementation of the principle of legality with its vague and imprecise wording.<sup>7</sup> Therefore, here, as with the basic form, it is left to judicial practice to establish the appropriate criteria and to use them to arrive at an answer to the question of what is meant by the legal term “large scale”, i.e., the terms “longer time” and “large costs”. The interpretation of the first qualifying circumstance is particularly problematic (Drakić, 2009, p. 227).

Namely, the answer to the question, whether there has been destruction or damage to plant or animal life on a large scale, our judicial practice binds to a certain amount of money. Thus, if the damage occurred, when expressed in money, exceeds a certain amount of money expressed in dinars, this condition is met – and vice versa (Stojanović, 2006, p. 602).

Drakić (2009) strongly objects to this interpretation. Namely, ecological good is not something that can be expressed in money, so even the damage it suffered cannot be adequately expressed in that way. In this regard, there are endangered plants and animal species, the slightest damage or destruction of which would represent an irreparable loss for humanity, which loss cannot be expressed monetarily. Furthermore, there are some plants or animal species that have no market value at all (e.g. moss) or that value is so low that it would be necessary to almost exterminate certain animal or plant species in a certain eco-medium in order to apply the relevant legal provision, which

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<sup>7</sup> In other words, when prescribing certain incriminations, the legislator should avoid using unspecified norms, which, however, exist both in the basic and in the more serious form of the criminal offense of environmental pollution.

is practically impossible. All this speaks in favor of the fact that the current practice of tying the relevant qualifying circumstance to a monetary amount must be abandoned. The amount of damage expressed in money, when and if it is possible to carry out such a transfer in an individual case, is certainly an important parameter when assessing whether this condition is met, but not the only indicator on which the final judgment on this depends.

When it comes to the other two qualifying circumstances, that is, that it takes a long time to remediate the pollution, or that it requires large costs, the situation is less delicate. Namely, “longer time” and “large costs” are terms that can be conceptually defined and meaningfully determined in the context of this incrimination, so here it is possible for judicial case law to take a principled position on certain quantification values that, if exceeded, indicate a special the social danger of environmental pollution (Stojanović, 2021, pp. 871-874). Nevertheless, here too, one should beware of “patternism” in solving individual cases, because each event is a “story for itself”, and during this assessment, all the circumstances of the specific case must be taken into account (Drakić, 2009, p. 228).

It is necessary to point out that in order to properly examine the existence of all the above-mentioned qualifying circumstances, it is necessary to determine the appropriate expertise, whereby the duty of the expert is to provide the court with useful data from his profession that will help him reach a final conclusion on whether it is a more severe form of the subject matter of a criminal offense or it is not the case. Therefore, the task of the expert is to present the facts to the court from the field for which he is the only expert, and the legal evaluation of the factual material submitted in this way is performed by the judge, who is the only one authorized to declare whether there was destruction or damage of plant or animal life “on a large scale”, or the environment is so polluted that it takes a “long time” or “high cost” to remove the pollution. Finally, it should be noted that the assessment of the mentioned legal standards is given by the court, given the fact that it is a legal issue. The expert must not go into this issue.

#### **4. Review of the prescription of criminal protection of the environment in the criminal legislation of the Republic of Croatia**

Just as in other branches of law, i.e. the entire legal system, there is a general rule, so in modern criminal legislation, albeit to a lesser extent, there is the adoption of legal solutions contained in foreign legislation, and especially

in the national law of the member states of the European Union, as well as the rules contained in the Community law of the Union itself.

For this reason, it is necessary to provide an overview of solutions related to the criminal law protection of the environment in other countries as well. At this point, we have decided to give an overview of the regulation of this matter in the penal legislation of the Republic of Croatia, as the youngest member of the European Union, and as the state of the Union which, according to its legal system, is closest to the Serbian legislation.

The Republic of Croatia is bound by over 50 international sources (Lončarić-Horvat et al., 2003, pp. 212-220) in the form of conventions, additional protocols to those conventions, multilateral and bilateral agreements that protect the air, ozone layer, water and sea, soil, animals, regulate trade waste and establish standards that must be respected by all signatory states, while their mutual cooperation is also regulated under the auspices of common interest for effective environmental protection.

In Article 3, the Croatian Constitution defines nature and the human environment as the highest values of the constitutional order, and then in Article 70 it states: “Everyone has the right to a healthy life. The state ensures the conditions for a healthy environment. Everyone is obliged, within the scope of their powers and activities, to devote special care to the protection of human health, nature and the human environment.” This proclaimed the right of everyone to a healthy life, but at the same time established the duty of everyone, starting with the state, to actively work on environmental protection.

Pavišić, Grozdanić & Veić (2007) “point out that in the Republic of Croatia, all criminal offenses against the environment are systematized in the Criminal Code, in chapter twenty under the title: *Criminal offenses against the environment*“ (p. 590-597). Several different criminal offenses are systematized here, of which the concept, characteristics and features of only the most significant offenses of this type will be presented.

#### ***4.1. Basic criminal offense – Pollution of the environment***

In contrast to the positive domestic criminal legislation, the current Croatian Criminal Code defines the basic environmental crime – environmental pollution – provided for in Article 193 of the Criminal Code of the Republic of Croatia, much more widely. This offense is committed by a person who “*contrary to the regulations releases, introduces or discharges a quantity of substances or ionizing radiation into the air, soil, subsoil, water or sea, which may permanently or to a considerable extent endanger their quality or may*

*be endangered to a considerable extent or in a wider area animals, plants or fungi, or the life or health of people may be endangered*” (underlined by the author). Paragraph two covers the situation when, as a result of one of the listed alternative execution actions, a consequence occurs, and pollution occurs. The perpetrator of this criminal act can be any person who acts against the regulations (Jovašević, 2010, p. 272).

From this legally established description of the offense, the conclusion emerges that, unlike the Serbian legislator, the existence of the basic form of this criminal offense does not require the occurrence of a consequence. In order for the basic form of a criminal offense to exist, it is only necessary to undertake an action which, by itself, is sufficient to cause a consequence, without requiring that the consequence actually occur. This clearly follows from the linguistic interpretation of the words “*which can*” and “*or can to a greater extent*” contained in the legal description of the act. So, one could say, the basic form of this criminal offense in Croatian legislation is, in fact, an offense with an abstract danger. Based on the importance of a healthy environment, as well as international obligations, and EU standards in terms of environmental protection, as well as the social danger of the act itself, the Croatian legislator cannot be criticized for defining the basic form of the criminal offense as an act with abstract danger, without requiring the occurrence of consequences. Such legislation is, in the light of the above, not only justified but also necessary.

On the other hand, if the act is consequently completed, i.e. if there are actual consequences of the act of committing the act, i.e. actual pollution of any of the listed eco-media, then there is a more severe form of this basic criminal offense against the environment, and what in Serbian legislation represents its basic form.

It follows from the above that the approach of the Croatian legislator and the criminal law response was stricter and more appropriate, at least on the legislative level, if one takes into account the importance of a healthy environment in everyday life.

When we talk about the qualifying elements from the legal description of the act, we can notice a partial distinction – the Croatian legislator opted for a combination of three standards: “significant measure”, “longer” and “wider area”. From a principle point of view, all criticisms expressed regarding the legal solution of the Serbian legislator also refer to the solution contained in the Croatian Criminal Code.

In terms of penal policy, by comparing the threatened penalties, it can be concluded that the Croatian legislator was stricter in this regard as well.

Namely, the basic form of this offense is punishable by a prison sentence of six months to five years, while the more severe form (where the consequence actually occurred) is prescribed by a prison sentence of one to eight years. For the negligent form of this act, a prison sentence of up to three years is prescribed. In contrast, the Serbian legislator prescribes a prison sentence of six months to five years for the basic form of this criminal offense (that is, where the consequence occurred), while for the negligent form of the offense, it prescribes a prison sentence of up to two years.

#### ***4.2. Endangering the environment with noise, vibrations or non-ionizing radiation<sup>8</sup>***

Endangering the environment with noise is a criminal offense, the features of which are determined in Article 199 of the Criminal Code of the Republic of Croatia. The offense consists in the illegal making of noise which is suitable to cause severe damage to the health of several people (Pavišić et al, 2007, p. 592). The act of execution is making noise in the sense of sound of high intensity that exceeds the maximum permissible height prescribed by law. Noise can be produced in different ways, by different means. The consequence of this act appears in the form of the creation of a specific health hazard (according to the sense of hearing) of a large number of people. A fine or a prison sentence of up to three years is prescribed for the willful execution of this act (Jovašević, 2010, p. 272).

#### ***4.3. Serious crimes against the environment***

The most serious criminal offense against the environment is the serious offense against the environment provided for in Article 214 of the Criminal Code of the Republic of Croatia. It is, in fact, a more difficult qualification for which the Code prescribes stricter punishment when certain environmental crimes have a more severe scope and intensity of consequences (Pavišić, 1991, p. 171 et seq.). Some of the crimes can turn into this most serious environmental crime, including environmental pollution (Environmental

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<sup>8</sup> Although it is not the subject of this paper in the narrower sense, it is worth pointing out and praising the Croatian legislator for prescribing this incrimination as well. In Serbian legislation, Stojanović (2017) points out for a long time, this incrimination, i.e. this form of criminal environmental protection, is missing: *“This important form of endangering the environment is not incriminated by any other incrimination from secondary criminal legislation, so it remained on the level of misdemeanor protection”* (p. 829).

pollution) (Matijević, 1988, p. 40 et seq.). In the event that as a result of the intentionally undertaken act of committing one of the aforementioned environmental crimes, a consequence has occurred in the form of: the death of one or more persons or serious bodily injury or serious damage to health or changes in environmental pollution that cannot be removed for a long time, or environmental damage has been caused unlucky then there is this hard work (Jovašević, 2010, p. 273).

## 5. Conclusion

The environment is of immeasurable importance for modern man, modern society and the modern international community. Bearing this in mind, states undertake diverse legal and institutional measures to protect one of the basic human rights, which is proclaimed and protected not only in international documents, but which, within the framework of national legal systems, is also elevated to the level of constitutionally guaranteed human rights, as we saw in the examples of Serbia and Croatia.

In domestic, as well as in comparative legislation, there is one basic, general criminal offense (in addition to other special and individual ones) that has the environment itself as its object of protection – in Serbia, it is the criminal offense of environmental pollution.

Criminal incrimination in Serbia only sanctions “actually” completed criminal acts – when the consequence of the legal description of the act has occurred. On the other hand, the Croatian legislator decided to treat the (basic) offense itself as it treats traffic safety offenses – as an offense with an abstract danger, without requiring that the consequences of environmental damage occur.

Considering the criminal and penal policy, it is certainly clear that the Croatian legislator was stricter and more determined in providing criminal protection of the environment – at least when it comes to the legislative aspect. By prescribing a relatively mild punishment for an act that requires the occurrence of a consequence, the Serbian legislator was somewhat inconsistent with the intention of the constitution maker who elevated the right to a healthy environment to constitutional rank.

In any case, both observed legislations have some common problems, which primarily relate to widely prescribed incriminations: 1) they refer to an unlimited number of regulations in the field of environmental protection and 2) they are used with more completely legally undefined legal standards and a lot of substantial acts of criminal norms are left to the discretion of court practice.

However, the biggest problem is the fact that these legal solutions, which, in truth, have their shortcomings, have found sufficient application in practice. *De lege ferenda*, in addition to correcting the deficiencies indicated in this paper, every legislator, and the Serbian one in particular, would have to take comprehensive and concrete measures to ensure effective prosecution for environmental crimes. Otherwise, elevating the right to a healthy environment to a constitutional rank and prescribing criminal acts will remain nothing more than a political statement, a mere proclamation.

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## **KRIVIČNO DELO ZAGAĐENJA ŽIVOTNE SREDINE U KRIVIČNOM ZAKONODAVSTVU REPUBLIKE SRBIJE I REPUBLIKE HRVATSKE**

**REZIME:** Svakako da je jedan od vodećih pokreta na globalnom nivou u prethodnih nekoliko decenija bio pokret za globalnu i intenzivnu zaštitu čovekove životne sredine, odnosno afirmisanja, kao zasebnog, prava čoveka na zdravu život u sredinu. Imajući u vidu značaj zdrave životne sredine, te značaj njene zaštite, koja je iz društvene potrebe prerasla u pravni imperativ, svakako je opravdano životnu sredinu uspostaviti kao samostalan i primarni grupni zaštitni objekt u okviru domaćeg krivičnog zakonodavstva. Vodeći računa o tendencijama na međunarodnom pravnom i uporednom planu u pogledu regulisanja krivičnopravne zaštite životne sredine, domaći zakonodavac posvećuje celo poglavlje Krivičnog zakonika upravo inkriminacijama koje za zaštitni objekat imaju životnu sredinu, u raznim pojavnim oblicima. Kao prvo delo predviđeno u okviru Glave dvadeset četvrte – Krivična dela protiv životne sredine – zakonodavac propisuje opšte i najznačajnije krivično delo iz grupe krivičnih dela protiv

životne sredine – Zagađenje životne sredine. Ovaj rad je posvećen analizi ovog krivičnog dela u domaćem krivičnom zakonodavstvu, sa osvrtom na pojedina rešenja sadržana u zakonodavstvu Republike Hrvatske i ukazivanju na njihove razlike

**Ključne reči:** *krivično delo zagađenja životne sredine, krivičnopravna zaštita, Krivični zakonik, krivična dela protiv životne sredine.*

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