



## Legal Aspects of Environmental Protection

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### **Abstract**

The paper analyzes the importance of imposing mandatory treatment measures for perpetrators of criminal offenses and the factors that affect the mental state of perpetrators. In the occurrence of crime in a society, great influence have also sociopathological factors, in particular drug and alcohol addiction. Drug and alcohol addiction is defined as a chronic recurrent disorder and is a medical condition caused by repeated misuse of one or more narcotic substances. Due to the use of narcotic substances, a large number of criminal offenses or crimes occur. The number of drug users in Kosovo is increasing, especially from a young age. Compulsory treatment measures apply only to perpetrators with mental disorders because sentencing to imprisonment or other criminal sanctions would not provide an opportunity for re-socialization or reintegration of this category of offenders into society. For the treatment of offenders with mental disorders, the criminal legislation of Kosovo contains provisions for special procedures, for the very fact of sensitivity and care that should be exercised towards these persons. Although the imposition of compulsory treatment measures is of great importance, especially to perpetrators addicted to drugs or alcohol, the application of these measures in our country is not finding much application in practice.

**Keywords:** *Environment; Environmental Protection and Criminal Legislation; Phenomenological Aspects of Criminal Offenses against Environmental Protection; Preventive Measures; Repressive Measures and Legislation*

### **Introduction**

Environmental protection at the level of the European Union is given great importance, so the goals and principles of environmental protection policy implementation are defined in the EC Treaty itself (Chapter XIX). The implementation of the environmental protection policy is based on: the preliminary principle and the principle of preventive action, the integration of environmental protection into all other development policies, the polluter pays principle, the prevention of pollution at the source, joint responsibility and the promotion of the development of stable. No country is spared from criminal offenses (Maloku, 2015: 119 which is also the Republic of Kosovo from the criminal offense against the economy. Regarding the fight against and prevention of environmental pollution, the authors Jasarevic and Maloku (2021) make an extremely large contribution in their book criminology (etiology and phenomenology of criminality), it seems to elaborate the etiological and phenomenological factors of

criminality towards the environment. The same authors Jasarevic and Maloku (2021) in their book *The Right of Criminal Procedure I and II* analyze the procedural steps during the entire phase of the pre-criminal and criminal procedure. However, in the sociological aspect (Shabani & Maloku, 2019) through sociological theories, they clarify the occurrence and extent of criminality in urban and rural areas. In terms of social pathology (Shabani & Maloku, 2019), they clarify the phenomenology of pathological social phenomena, criminality and the sociological typology of criminality. When a country decides to become a member of the EU, it must meet certain criteria for membership. These are: the political criterion - to achieve the stability of institutions that ensure democracy, the rule of law, respect for human and minority rights and acceptance of the Union's goals; These are: the political criterion - to achieve the stability of institutions that ensure democracy, the rule of law, respect for human and minority rights and acceptance of the objectives of the Union; economic criteria - to establish an efficient economic market and the ability of market factors to cope with competitive pressures and market laws within the EU; the administrative criterion - to adapt the appropriate administrative structures to ensure the conditions for gradual and harmonious integration and the legal criterion includes the adoption of the entire *acquis communautaire* and its implementation and enforcement. (Marquita, K., Hill. (2015). *Understanding Environmental Pollution*, Published in the United Kingdom by Cambridge University Press, Marquita K. Hill 1997-2015). Coexistence with nature is a way of creating human relations with the natural environment, which is based on the principles of human life, which must be harmonized with nature, that is, natural human needs. Life has changed man's attitude towards nature. The main industrial development is the restoration and protection of nature, which has led to a critical point of vulnerability of the natural environment. Statistics show that the ecosystem threatens in many ways, and thus human survival. This suggests that you need to change your attitude towards the natural environment. Regional strategy paper (2002-2006) Environmental infrastructure and sustainable development Economic rationality must give way to ecological rationality. These two categories must achieve a balance that will ensure the further development of society as a whole. Ecology is trying to find an answer and solution to many environmental problems that always surround us. Unfortunately, many of today's problems are anthropogenic in origin. Transportation, power plants and the burning of fossil fuels for various purposes cause more than 50% of air, water and soil pollution containing increasing amounts of various heavy metals and pesticides. Nuclear power plants produce large amounts of radioactive waste treatment, the disposal of which requires compliance with very precise standards. Such problems are just some of the examples. Ecology deals with the problems of the interaction of living and non-living nature in its environment, locally and globally. (Kosova Government, 2004, "Kosova Government 2004 Budget" Pristina, Kosova Government. KTA, 2004). Environmental protection at the level of the European Union is given great importance, so the goals and principles of environmental protection policy implementation are defined in the EC Treaty itself (Chapter XIX). 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This paper contributes to existing scientific literature, especially in the fields of criminology, victimology (Maloku, Jasarevic & Maloku:52) and criminal law.

## **2. Methodology**

The defined object of research requires the use of different methods and scientific knowledge from many scientific disciplines, in particular, the paper will use theoretical analysis methods, comparative methods and the unity of inductive-deductive methods. (Maloku, 2021:76)

From the aspect of the application of research methods, we can say that the qualitative method of document content analysis (Maloku, 2020, p. 323) was used for the needs of the paper from the following scientific fields: methodology, security, criminology, etc., (Maloku, Kastrati, Gabela & Maloku, 2022:141)

## **3. Results and Discussion**

### **3.1. Stockholm Conference on the Human Environment**

More intensive development of international environmental law began with the Stockholm Conference on the Human Environment, which was held under the auspices of the UN in 1972, when a non-binding Declaration of Principles and Program for Action were adopted. After that, an auxiliary body, the United Environment Program (UNEP), was established, with headquarters in Nairobi - Kenya, which coordinates all UN plans, provides advice to international organizations, ensures the cooperation of world scientists and proposes one-term and long-term UN action plans. This body encouraged the adoption of the 1985 Vienna Convention on the Protection of the Ozone Layer, its 1987 Montreal Protocol, and the 1992 Convention on Biological Diversity, in accordance with their own policies for the protection of the human environment, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the human environment of other states".

### **3.2. Conference on Environment and Development in Rio de Janeiro**

On the twentieth anniversary of the Stockholm Conference in 1992, a Conference on Environment and Development known as the Earth Summit was held in Rio de Janeiro. The summit was attended by representatives of 178 countries, NGOs and the media to find solutions to global problems such as: poverty, wars and the growing gap between developed and developing countries. The results of this conference are the adoption of the Rio Declaration on Environment and Development, Agenda 21 and the Declaration of Principles for Sustainable Forest Management, which were adopted by consensus without a vote. The Convention on Biological Diversity and the General Framework Convention on Climate Change were also open for signature. (United Nations Declaration on the Protection of the Environment, Stockholm, 1972, Declaration on Environment and Development (1992), United Nations Conference on Environment and Development, Rio de Janeiro). This conference also resulted in the creation of the United Nations Commission on Sustainable Development (CSD). It was agreed that after five years, a review of the progress made would be carried out at a special UN meeting held in 1997.

### **3.3. Development of Environmental law - Kyoto Agreement**

The Kyoto Protocol to the United Nations Framework

Convention on Climate Change is an annex to the International Agreement on Climate Change, signed to reduce emissions of carbon dioxide and other greenhouse gases. So far, it has been signed by 182 countries and governmental organizations (as of May 2008). The Protocol entered into force on February 16, 2005, when it was ratified by Russia. States that have ratified it cause 61% of the pollution that leads to the greenhouse effect. The Protocol was opened for signature in the Japanese city of Kyoto under the auspices of the United Nations Convention on Climate Change (UNFCCC) on 11 December

1997. Its entry into force required ratification by at least 55 States and ratification by the States comprising the at least 55% of pollutants. This happened on February 16, 2005, when Russia ratified the Protocol. In recent decades, the concentrations of these gases in the atmosphere have increased due to the use of fossil fuels in industry, transport, etc., which has contributed to global warming and climate change. The United States and some smaller countries have refused to ratify the Kyoto Protocol.

### 3.4. Climate Change, Global Demographic Trends and the Emergence of Pandemics

From the beginning of industrialization (mid-19th century) until today, industrialized countries have emitted large amounts of gases and particles into the atmosphere, which intensified the natural process of the "greenhouse effect" and contributed significantly to global warming. Temperature measurements have been the ten warmest years in the last two decades, and 1998 was the warmest year ever recorded. From the middle of the 19th century, the average annual temperature increased by an average of 0.5°C. It doesn't seem like much, but it makes a big difference on a global scale, "because a temperature change of just 3°C caused a bit of an 'ice age' from the 17th to 19th centuries and during the Great Ice Ages it was 'only' 8°C lower than today. By the end of the 21st century, the average annual temperature should rise between 1 and 3.5°C".

### 3.5. Ratification

The historic Paris Agreement, which was agreed last December, on November 5 passed the threshold necessary to enter into force. For the agreement to cross the threshold, it had to be ratified by 55 countries responsible for at least 55% of greenhouse gas emissions. The agreement came into force so quickly because of pressure and determination from a group of countries - small and large - who decided to step up and act to combat climate change. On September 21, the agreement was accepted by 55 countries, and now there are more than 70. (Understanding environmental pollution - 2004 (2nd edition) Marquita, K., Hill. (2015). Understanding Environmental Pollution, Published in the United Kingdom by Cambridge University Press, Marquita K. Hill 1997-2015). The European Union ratified the agreement with the UN this week, which also exceeded the threshold of 55% of emissions, 56.75% The agreement will enter into force on November 4, making it one of the fastest ratified agreements in the history of international agreements.

### 3.6. Research to Date

An efficient and flexible transport system is essential for the economy and for a better quality of life. The current transportation system poses an increasing risk to human health and the environment, due to the large increase in vehicles on our roads as the only mode of transportation. Access to better infrastructure is vital to the free movement of people and goods and is therefore essential to Kosovo's economic revival. (Lauri, Myllyvirta. 2022. Air pollution impacts of the Kosovo C, energy campaigner/4. Development of new Programmatic areas to Address). Kosovo covers an area of about 11,000 km<sup>2</sup> - with a position of 190 km North / South and 150 km East / West. The territory of Kosovo has a network of 1700 km, main and secondary two-way roads. 330 km of railway systems, to North/South and North-East/West of Pristina, Pristina International Airport and Gjakova Airport (military flights). The network is relatively undeveloped at approximately 0.35 km/km<sup>2</sup>. All these roads are in urgent need of reconstruction in order to meet the accepted standards, along with the means of transport. This situation is even more difficult today because we have inherited a road infrastructure destroyed by the last war, as well as lack of investment and inadequate maintenance in recent years. The vast majority of the road network is maintained, but to a very low standard. A quarter of the main and regional road network is in urgent need of rehabilitation. An attempt has been made in Kosovo, but it is not adequate, among other things, due to the lack of professional literature dealing with this problem. After the analysis, it will be clearer how the environmental issue is regulated from a legal point of view and to see a clearer picture of this, as well as what has not been adequately done in relation to the environment. (PART 6: Special measures for

environmental protection, Ligji per mbrojtjen e mjedisit i Republikes se Kosoves). The results of the research should serve as a recommendation for the appropriate measures, which will be taken to improve the situation in the field of environment. According to a report by the World Health Organization, air pollution from cooking smoke and exhaust fumes from cars contributed to 7 million deaths worldwide in 2012.

### 3.7. Air quality situation in Kosovo

The Republic of Kosovo is located on the Balkan Peninsula, with an area of 10,887 km<sup>2</sup>. Its natural conditions are very favorable. They make Kosovo a crossroads between the Adriatic, the Pannonian Plain and the Aegean Sea. According to many estimates, it is estimated that the Republic of Kosovo has approximately 2,000,000 inhabitants, with an average population of 192 inhabitants per km<sup>2</sup>, which is the area with the highest 'density' in the Balkans, but also in Europe. Kosovo is located in the southern part of the average geographical area of the northern hemisphere and is subject to the influences of the Mediterranean-continental and European-continental climate. baric systems. (Marsden, B. (1997). Why care for nature. Quality nature and embeddedness: Some theoretical considerations in the context of the food sector). The main local factors that affect Kosovo's climate are: relief, water, soil and plants. The main factors affecting air quality in the environment are the rate of pollutant emissions, climate and topography. Their cooperation is very complex. Currently, the biggest air pollutants in Kosovo are stationary and mobile sources, urban sources, main energy production areas and industrial areas. (MASHT, 2003, "Strategic plan for development of education in Kosova (2002- 2007)", Pristina-Kosova, Degradation of land surfaces). These are energy production facilities, industrial facilities, the transport sector, agricultural activities and waste disposal sites.

### 3.8. The evolution of environmental crime in Kosovo

The phenomenology of criminality is also focused on the structure, structural changes and dynamics of criminality (Maloku, 2019:111). Kosovo is characterized by a difficult environmental situation, inherited mainly from the last century, but also by serious environmental interventions in the first 15 years of this century. Things that have led to an increase in primary and secondary victims (Maloku & Maloku, 2021: 97) from these environmental interventions, with the increase in crime, the fear of crime increases (Maloku, 2015), so preventing and fighting this form of crime also reduces fear of criminality.

Today's modern criminal law has come a long way through different historical periods (Karovic, et al, 2020: 108), therefore, undoubtedly these changes have been made in our criminal law as well. The Law on the Environment, which has been adopted since 2003, is quite in terms of its content in accordance with the requirements of EU legislation for certain areas of environmental protection. (Scott, P. (1993). Environmental education in the schools. Creating a program that works. J Braus, D Wood – 1993). Even the Criminal Code of the Republic of Kosovo contains a special chapter on environmental violations listed in categories of actions such as pollution, degradation or destruction of the environment, management of illegal substances and hazardous waste, permits, illegal construction and factory management pollutant. the environment, damage to environments and facilities for environmental protection, theft is discussed because it happens before our eyes. (Nexhat, Daci. (1998).

Kimia e Mjedisit (Ndotja Industriale, Parandalimi), Prishtinë) Construction of factories (including hydro) capacities that pollute even in protected natural areas, continuous and uncontrolled pollution of water, air and food from the strong economy, massive deforestation, hunting and fishing, uncontrolled species even protected with law, are just some of the visible actions, not to mention those that are "invisible" to the public and the authorities.(RBStevenson - Environmental and Sustainability Education ...,2018taylorfrancis.com... education to environmental education (Stevenson, 1

987). The case of three barges with hazardous materials, which entered Kosovo in 2008 from the Macedonian border (which was later denied permission by the same government and vice versa), was not treated as an environmental crime even though the reactions from the experts, the media, implied that we were dealing with toxic matter, called disulfuric oil. "The very fact that it belongs to the group of gaseous poisons shows us how present the danger is.

Table 1. Place of committing criminal offenses related to pollution, deterioration or destruction of the environment of the Republic of Kosovo for the period 2013-2014

Description of the subjects. Article 358/285 theft of forests	2014				2013			
	Matters resolved at the end of the year	Subject at work	Prescribed Subjects	Total	Matters resolved at the end of the year	Subject at work	Prescribed Subjects	Total
Pristina basic court	40	287	8	335	55	236	33	324
Podujevë branch	773	2.107	276	3.156	656	1.970	362	2.988
Lipljan branch	22	29	0	49	38	55	0	93
Drenas branch	22	38	0	60	25	46	0	71
Gjilan basic court	166	417	48	631	146	455	89	690
Kamenica branch	58	208	7	273	67	196	25	288
Vitina branch	364	762	25	1.151	283	785	117	1.185
Novobrd branch	54	70	4	128	1	2	0	3
Prizren basic court	32	69	10	111	54	86	22	162
Suhareka branch	28	111	11	1.150	9	46	4	59
Suhareka basic court	61	141	37	239	68	176	4	248
Vushtrri branch	16	22	1	39	13	13	2	28
Branch Skenderaj	2	0	0	0	19	24	2	35
Gjakovo basic court	11	23	3	37	11	24	2	37
Malishevo branch	82	165	5	252	81	191	12	284
Rahovec branch	6	15	1	22	8	13	2	23
Peja basic court	42	90	1	133	32	56	0	88
Istog branch	191	544	38	773	328	754	211	1.293
Klina branch	46	233	0	279	170	334	11	515
Ferizaj basic court	320	821	93	1.234	223	784	51	1.058
Kaçanik branch	97	260	22	379	138	291	46	475
Shtërpce branch	80	143	4	227	9	46	3	58
Total	2.559	6.610	604	9.773	2.469	6.641	999	10.109

### 3.9. Report of the Cases in the Courts of Kosovo for Chapter Xxviii

#### 3.9.1. Criminal Offenses against the Environment, Criminal Code of the Republic of Kosovo

The reform of the judicial system in Kosovo, which began with the issuance of the law on courts, which was followed by the issuance of the new Criminal Code of the Republic of Kosovo as well as the Code of Criminal Procedure of Kosovo, brought changes to the courts of Kosovo, including their name and structure. All these documents, materials and procedures in the criminal field entered into force on January 1, 2013. As part of the reform of the judicial system, there was also an increase in the number of judges and prosecutors in the country's courts and prosecutor's offices. This increase in the number of judges measured the improvement of the performance of the courts, which were overloaded with a very high number of cases, accumulated over the years, and that many of them function with only one judge responsible for both criminal and criminal cases civil. (Strategjia dhe Plani i Veprimit për Cilësinë e Ajrit 2011-2021, Departamenti i Mjedisit. Prishtinë). In 2014, in all the courts of Kosovo, the total number of pending criminal cases of Chapter XXVIII – Criminal Offenses against the Environment, Animals, Plants and Cultural Objects, Criminal Code of the Republic of Kosovo, was 6794. Of the total of these cases, 6610 of them belong to only one article, article 358/285 Theft of the forest. So, 97.29% of the cases in this chapter belong to the criminal offense of forest theft. The total number of prescribed cases of this chapter was 607, where from this total 604 cases were forest theft and only 3 cases belonged to other articles of this chapter

### **Conclusion**

With this paper, I tried to point out the importance of the legal basis for the creation, preservation and protection of the environment in the most important environmental problems of the world, especially in Kosovo. The environmental field is considered a priority for harmonization with European Union regulations, international conventions, although it is a field that is very broad and requires major interventions, harmonization with international conventions and regulations. We can note that environmental protection is one of the most difficult areas for harmonizing domestic regulations with European ones, considering that the introduction of expensive and modern technologies that protect the environment is required for preventive purposes.

Protecting the environment means a series of different measures and procedures that prevent its endangerment in order to maintain the biological balance. A particular problem in environmental protection is the lack of a single definition of the concept of the environment, and the continuous development of technical and technological innovations, it is difficult to accept a comprehensive definition. In environmental protection, it is necessary to emphasize primary protection and criminal procedures in the field of environmental protection should be the last resort. The Republic of Kosovo has regulated the issue of environmental protection with a special law. However, in order to further implement this protection, the Criminal Code of the Republic of Kosovo, which entered into force on January 1, 2013, provides in a separate chapter for certain legal acts that cause damage to the protection of the environment.

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