



## **The global environment is in violation of the rules**

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Man, when he lived in the midst of nature, kept the value of nature and if he saw it angry, he still did not allow himself to neglect the environment and to didn't allow himself to live kindly in the heart of nature.

With the transition of people to cities and their development, their attitude toward the environment has changed and has become minor less. In recent years, the task is to find the necessary balance between industrialization and environmental protection.

The most important shortcoming in the environmental laws in the world is that (mostly) the law doesn't provide for individuals and foundations of the people who have the right to sue legal persons and bring them to justice.

In other words, the head of a factory that does not comply with environmental laws and causes environmental problems for citizens, In the event of complaints from public organizations, must be called to court and held accountable. The existence of such a law seems to play an important and fundamental role.

Another issue of the law that appears to be ineffective from the law is that fines and damages from public institutions and bodies that violate environmental laws are from the budget and government resources while fines caused by the negligence of a government director should be paid by the same person.

For example, if the petrochemicals in the operation caused environmental damage due to mismanagement and negligence, the fine should be paid by experts and project managers and not from government sources.

If the director is fined or imprisoned, then we will never see the irresponsibility and neglect of some of the relevant environmental managers. Therefore, individuals should be accountable for deliberate damage to the environment.

Another point that seems to be one of the key points in the field of the environment is the discussion of standards. In this regard, the environmental organization has so far not formulated and approved any specific environmental standards, such as water and its pollutants.

So far, too much money has been spent in the world on the issue of environmental standards, but unfortunately, there is never any research on the correct output of this field. This is where environmental standards must be lawful and enforceable.

However, the environmental situation in our country is alarming and there is no hope for improvement. Of course, it may have prevented the speed of this destruction by effective measures.

But there is so much destruction that if we allocated 100% of the energy and budget of the country to the restoration of the environment, it would take us thirty years to go back to the starting point, some The destruction is not recoverable by any means and many of the damage to the environment and natural resources of the country is irreversible.

Therefore, the establishment of proper rules and programs in this area can reduce the rate of destruction and prevent them from occurring further, but we can by no means be able to return to the initial conditions. In addition, most of the destruction and damage that comes to our country's environmental resources is due to human actions and neglect. For example, when the country's forests are destroyed, it's just because of the illegal activities of humans and the cutting of trees.

### **Responsibility of companies**

In the United States, companies that are punishable as legal entities, are based on the grounds that penalties for high-ranking corporate employees are more effective than corporate penalties.

In Belgium, a judicial procedure has been accepted that the head of an institution must be held responsible for acts committed by officers under his or her authority, whether by order or with his explicit or implicit consent.

In the United States and the United Kingdom, the criminal liability of corporations and legal entities is an established tradition, while in others the old roman rules are preserved.

As the European committee wrote in its report on the environmental issue, "the lack of responsibility of legal entities creates important problems." The most dangerous types of pollution are caused by industrial complexes. The prosecution and condemnation of an institution's chief executive officer or director will not have any deterrent effect on that institution.

In addition, no one can be punished if the company is not punishable. The Minamata case for the environment introduced in Japan is a clear example of such a situation.

In countries of the second group, apparently, the situation is gradually changing. For example, in France, the new Criminal Law in its article 2-210 has accepted corporate criminal responsibility. Also in Belgium, according to the European Committee on Criminal Matters, criminal liability has been incorporated into some environmental laws, and according to some other laws in that country, a company is civilly responsible for fines paid to its employees.

In Germany, companies may be sentenced to pay administrative fines.

In Yugoslavia, a legal person is only punished for wrongdoing, not because of a criminal offense. According to Pyongyang's report in Poland, the theory is in favor of accepting corporate criminal responsibility.

Although the issue of the responsibility raises the philosophical aspects of the criminal liability, the essential issue is whether the punishment of the company's employees to pay fines has a deterrent effect.

As we know, it is often said that senior executives do not regard a cash penalty as anything other than "renting environmental pollution", because a cheaper payment is made compared to the cost of controlling the discharge of factory waste.

Separovic has reported an example of this current on Yugoslavia. Nevertheless, according to Maid's report in the United States, the situation is about to change.

For example, Elite Comics has been fined \$ 2.13 million in fines, and General Electric has been fined \$ 7 million.

In countries where the amount of fines is not as large as the United States, such penalties may be problematic. This is probably why the European Committee of the Commission has recommended criminal procedures for imposing various types of financial penalties, such as daily fines, suspended fines and conditional fines.

Marcus believes that because punishment is the last resort, legal entities should not be included. Obviously, in many cases, corporate controls are more effective than non-punitive measures, especially administrative measures.

But it should be noted that the punishment of a company as a legal person may play a useful role, which is to prevent the punishment of high ranking corporate executives, and in particular the head of the company, who are usually struck by the results of the misconduct.

However, as recommended by the European Committee on Criminal Matters, the principles of criminal liability, especially with regard to the possibility of applying these principles to some private and public companies, must be reviewed.

### **Negative responsibility**

When a crime involving environmental pollution is committed by a company, it is usually difficult to identify who was responsible for the criminal offense. Usually the closest person is responsible for the main cause of pollution as the direct agent (material agent). Usually in a large institution, a special officer is assigned to the pollution prevention officer. At the same time, given the nature of the crime, it is often demanded that the supreme authority, especially the head of the company, at least be identified with the criminal.

The traditional theory of participation in crime does not properly resolve this problem. In countries where corporations are not subject to a penalty, the belief that the boss or other top

officials of the company is responsible for their acts of subjugation is through criminal law, or through court rulings.

For example, Delmas Marty reports that in France, the head of the company was responsible for violating the rural law by giving his authorization to the employee under his own control.

Konstanth says: In Belgium, a judicial decision has been made that the head of an institution should be held responsible for acts committed by officers under his or her authority, whether by order or with his explicit or implicit consent.

In the Federal Republic of Germany, in the law of the prohibition of fair competition, there is a provision whereby the head of a company is punishable if he is aware of an act committed by one of his employees contrary to the law.

In the United States, companies are punishable as legal persons, and the reasons are that penalties for high-ranking corporate employees are more effective than corporate penalties.

This argument is more convincing in the case of pollution crimes because the psychological response to pollution is more severe and people want to punish those accused of such crimes.

Mida reports that there is a comparison between the duty of army officers to discover facts and control on one side and the duties of high ranking corporate managers on the other. (See Yamashita, United States, 1946).

The head of a company is not omnipotent, just like Yamashita. In order to defend the head of the company FROM being charged, it must at least be accepted that what appears to be apparent in his authority and authority is beyond his control, and to prove his failure to perform his duties in terms of overseeing the affairs of the company It must be based on decisive reasons.

### **Penalties for environmental pollution offenses**

Since offenses environmental pollution involve a variety of violations of the administrative rules to the detriment of the lives and health of individuals, penalties should be different according to the importance of different offenses.

#### A) Cash penalty

There is no doubt that criminal penalties are the most commonly used punishments for environmental pollution offenses. Criminal penalties are appropriate in that the practice of pollution is usually due to economic activity; however, in most socialist countries, criminal penalties are not foreseen for environmental crime delinquencies.

#### B. Imprisonment

Although the laws of most countries provide for prison sentences for major environmental pollution offenses, it is unclear to what extent these regulations are actually enforced. It is likely that the type of punishment in the laws is incorporated into the rules for psychological reasons, in order to illustrate the importance of the pollution offenses, as reported in the European Committee's Subcommittee on Criminal Matters.

### (C) Administrative or civil penalties

On the other hand, in the case of minor offenses, condemning the offender to criminal penalties due to the fact that he is defamed is considered too heavy.

In addition, formalities for sentencing to complex criminal offenses are intrusive. As a result, some countries resort to non-criminal fines such as administrative and civil fines that can be obtained at a faster rate and simpler procedures.

Now, if the methods used in this area are widely used in different countries, it will be seen that in Bulgaria, for example, there is a general rule of administrative offenses period in Bulgaria, according to who is the offender, in addition to being blamed for the public, and deprived of some of his rights, an administrative agency can condemn him to fines, and even punish the perpetrator that is foreseen in the Penal Code, rather than condemning the offender to minor offenses. He was sentenced to a fine.

Ahler reports that, according to the German Democratic Republic's Criminal Code, non-criminal fines such as litigation and disciplinary penalties for crimes and offenses whose consequences do not significantly affect the rights and interests of individuals or the community in general are Applicable.

In the Democratic Republic of Germany, there is a kind of administrative fine for some of the offenses. The difference between these types of offenses and criminal offenses is a rather small difference, not qualitative. In some cases, the offender may be condemned arbitrarily to administrative penalties or to criminal penalties.

There is a civilian penalty in the United States. The government can lodge a lawsuit to condemn the offense to such a fine. To demonstrate the simplicity of the procedure, it is sufficient to say that the attendance is not mandatory in the court and the prosecutor is not obliged to summon witnesses. Using cybercrime instead of criminal penalties for environmental pollution offenses is recommended by American researchers, like Cowell.

Mida says that the current pattern of criminal penalties was established by the 1970 Infringement Act, which would result in criminal penalties being imposed on anyone who doesn't immediately report the discharge of oil or other harmful substances to relevant organizations; But all other anticipated punishments will be in this section of the Civil Penal Code.

Since there is no fundamental difference between criminal penalties and non-criminal fines, they must be guaranteed at least in defining crimes and interfering with the psychological element in them and in the proceedings in order to protect the accused. It would seem that, if these conditions are met, the application of non-criminal fines for small-scale violations of environmental pollution will be more effective and more effective than criminal penalties.

We will now examine the first aspect briefly. In some countries, the loss could be alleged to prosecute a criminal offender and to receive damages from him for a single court procedure (civil litigation). In this case, criminal prosecution plays the role of facilitating compensation.

In the countries mentioned, the question arises as to whether the environmental pollution offenses that plagued a large number of people could lead to civil and collective litigation for those who suffered losses.

Delmas Marty has recommended adopting such a method for France. Even in countries that have not opted for this, criminal prosecution may continue to play a role in facilitating redress, as the loss may be alleged in a legal dispute as a result of investigations conducted by the police in the context of prosecution.

Police investigations will help him to a large extent if the contaminating agent is an industry and harmed an industrial company and is not adequately informed about technical issues related to how the products are manufactured and discharged. Therefore, it has sometimes been argued that contamination of the environment must be recognized as an offense so as to facilitate compensation, as described, but this argument is not a legal argument. In addition, if environmental pollution is found to be criminal, the contamination agent will enjoy the rules that are anticipated to support the accused to the crime and it will be more difficult to prove his negligence in complying with the provisions for evacuation.

However, regardless of the veracity of these arguments, it seems that the second aspect of the relationship between compensation and punishment, as already mentioned, should be emphasized.

If we accept that penal punishment is the last resort, then we should opt for a civil sanction in order to reduce the damage suffered by the perpetrator, and, in the final stage, resort to criminal punishment. Recently, in some countries, a system of payment of damages to crime victims from public funds has been established.

This system also plays a role in reducing the footprint of the victims of the punishment of offenders but it is difficult to extend this system to environmental pollution crimes because most of the environmental pollution is done by the manufacturing institutions and it is not easy to compensate The taxpayer that paid for the damages they caused.

In this context, it is interesting to note that Japan has introduced an administrative compensation system from the funds provided by potential contamination environmentalists.

### **Conclusion**

When faced with a dangerous phenomenon, we usually resort to criminal law to counteract it, and we often assume that the problem will be solved by new criminal laws.

Criminal law created over the past two or three decades in order to protect the environment is a clear example of this kind of thinking, but since then we have had the opportunity to recognize the most appropriate and effective way of protecting the environment.

Of course, criminal law plays a role in environmental protection, but since the basic problem is the legal regulation of the activities of relatively large manufacturing enterprises, the most effective means to achieve this are to determine the precise criteria for the dissemination of infectious substances, as well as the criteria for the specification and application of these

criteria through administrative regulations. Criminal penalties play a limited role in this field, and they play the same limited role together with the enforcement of administrative regulations.

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