A criminological study of crimes against the environment as economic crimes

Seyed Mojtaba Saessi, Seyed Mahmood Mirkhalili PhD
Tehran University, Tehran, Iran.

Abstract

The environment has been one of the fundamental values in human societies throughout the world as human survival is based on protecting it and such a position regarding the environment, cannot be created and it result in providing protection just by simple expression of principles and objectives. Here, the exact legal allocation is required as the law has stability and continuity characteristics and it has binding and coercive weight. Thus, lawyers in turn, have paid a special attention to protecting natural environment of humans and they have put efforts in this regard both at national and international levels. In this regard, criminal sanctions for this shared human heritage are very important. The law should use all of its power and capacity for protecting and preserving the environment. An important aspect that is very clear is that the environmental crimes can be measured based on various criterion. For example, for maintaining public interest environmental can be paid attention to or the crimes related to the environment can be interpreted as economic crimes. The present study aims at clarifying this issue that environmental crimes can be regarded as economic crimes and different legal mechanisms like those for countering economic crimes can be employed for countering and preventing the occurrence of environmental crimes. Therefore, clarifying why is the main focus of the present paper.

Keywords: environmental crimes, economic crimes, punishment, environment, criminal law

1-Introduction

With the expansion of different technologies and the full domination of human on the force of nature, human was able to highly change the natural environment to his interest in a way that by some important discoveries of human, the nature was increasingly dominated by human. Over time with excessive use of different fuels and the entering of various pollutants into the soil, air and sea, all the attentions were attracted to the issue that human is destroying the natural environment of the earth by every progress. Nowadays major problems such as global warming, Ozone layer hole, rise in the sea levels are complicated problems that have occurred due to the advancement of technology. It is repeatedly talked about the warning of scientists in the media. Of course, it should be pointed out that the international community has become sensitive to the environment nowadays and it tries to control the pollutions. And this importance can be mentioned in international context as currently the international environmental organizations do various activities for preventing the pollution of earth and warn about its consequences. In addition to international dimensions, a lot of attention has been paid to the environment in national dimension and different countries are after passing legislations to limit the destruction of the environment.

Generally the law can be regarded as the science of regulating social behaviors and it regularly tries to prevent damage to people and society by creating social order. Therefore, one of the duties of jurists in national and international level should be focused on the occurred problems in the society. As protecting the environment is highly important, the jurists in this filed should try to regulate the relationships by using the achievements of other sciences. Thus, obstacles can be created against the destructors of the environment through different legal means. Altogether the
law should create a circumstance in which no one tries to destruct the environment and it can use sanctions for preventing the environment destruction. Due to the importance that protecting the environment has gained, sanctions for protecting it have also gained criminal aspect and the violators of environmental regulations and standards can be punished. This indicates the importance of the environment. Now this issue should be paid attention to that the environment can be regarded as important in different aspects. One of the issues that has a special importance regarding the environment is its economic aspect. Without doubt, the natural environment of any region can be considered as the creator of economic opportunities for those who live in that region. In other word, it can be claimed that if the environment is destructed and its benefits are eliminated, economic damages is created to the society and thus, the crimes against the environment in a way can be also regarded as economic crimes. The question that the present study is going to answer is how environmental crimes can also be regarded as economic crimes? For answering this question it is necessary to determine the importance of countering the destructor or damagers to the environment punitively. Then the environmental crime and economic crime concepts are clarified so that we can be able to match the shared aspects of economic and environmental crimes and to clarify the economic approach to environmental crimes. In the third discussion of the present paper it is tried to investigate some economic crimes that have environmental nature and vice versa and finally it is tried to get the result of the focus of the discussion which is a criminological study of the environmental crimes as economic crimes.

2-First discussion) the reasons for punitive attitude for protecting the environment

As it was pointed out, the function of the law is regulating social relations and giving order to new issues in line with public interest. Due to the importance that protecting the environment gained in the recent decade especially after the 1960s, the international communities and national legislators became aware that it is necessary to legally protect the environment. For providing such protections various legal mechanisms can be employed. For example, those who damage the environment can be administratively fined or they can be dealt with through their civil liability. It is possible that such mechanisms do not have a result and the legislator may find it necessary to give criminal aspect to the violations by individuals and entities and prosecute the violator for the fulfillment of the objectives. There are various reasons for regarding the violation of environmental standards as having criminal liability. On one hand it is possible that civil code could not prevent the destruction of the environment and enough protection could not be provided for the environment this way. In this regard the civil code can be used to an extent that effective compensation can be provided for those who have suffered the damages. One reason for using criminal law is that civil punishments that have been predicted for the damagers to the environment have not preventive capabilities to prevent the reoccurrence of these violations and the satisfaction of all those who have suffered damages cannot be obtained. The acts that result in the destruction and damage to the environment as an important factor in human life can negatively affect the life of a major part of people. On one hand it is said that the aim of applying criminal punishment for environmental criminals is not compensation of the damage and that the preventive aspect of these punishments are important. The economic theory of crimes and punishments emphasizes that the destructive impacts and the damages that are occurred as a result of the acts of individuals against the environment is very high and it cannot be compensated financially. For example when we

---

1 For more information on economic come refer to: Roostai, Mehrangiz (2009), evaluating punitive intervention for economic crimes, Karagah, No 7, year 2, pp. 6-31.
consider long term imprisonment for environment pollutants we can have an effective prevention of the repetition of environmental crimes.\(^2\)

In addition, it should be pointed out that regarding the environment and criminalizing destructive acts against it, as one of the main duties of criminal law is guaranteeing the health, morality and collective interests of individuals, due to the increasing importance of this issue the criminal law is obliged to protect the environment for maintaining the higher social values.\(^3\)

From this perspective it is necessary that the criminal law should be after the best punishments for an act after its criminalization so that it can compensate the damages to a great extent and to restore the endangered interests in addition to its preventive aspect for the reoccurrence of such crimes. Thus, various mechanisms have been considered in different countries. For example imprisonment for violators can be preventive for these crimes. On one hand compensating the damages and restoring the condition are important issues. Thus, justice in developed countries usually forces the environmental offender to act to restore the environment and compensate the damages that are not compensable in other ways, in addition to punishments such as imprisonment and fine. For example, if a factory or a company destructively impacts the vegetation or the agriculture of a region, the judge requires him to mandatorily grow a specific number of plants and to do some activities for recovering the soil in the region and cleaning the pollution. Therefore, in terms of criminal law of the environment always various issues should be considered and these crimes cannot be dealt with unidimensionally. Thus, in addition to effective compensation of damage, individual punishments should be given to the criminals and efforts should be made for compensating the collective interests of people of a region. Thus, the judge should employ criminal punishments in addition to administrative punishments and etc.\(^4\)

3-Second discussion) defining environmental crime and economic crime

Nowadays, environmental misbehaviors are increasingly treated as crime. This approach to expanding the basic concepts of criminal liability, sometimes has led into decreasing the threshold in which the liability is put (for example decreasing the threshold from intentional or willing behavior to severe negligence or unintentional violation of the law), or extending the liability to legal individuals and their agents.

In fact companies and their agents are increasingly prosecuted for committing environmental crimes. The reason for such an increasing attitude was increasing acceptance of this theory in 1980 that passing criminal punishments against the aforementioned agents is one of the most effective ways for scaring companies for preventing the violation of environmental laws. The responsible agents of companies are expected to manage and control the affairs of their organization in an effective manner. In most countries these agents may be found liable for criminal acts of their company. Individuals that have an important share in the responsibility of a commercial company that has committed an offence are increasingly found to have criminal liability. The philosophy


\(^3\)Ibid

behind this approach is that a company can act only through individuals who determine and execute their policies.

Public disturbances involve violations that are in conflict with public rights such as the right of having a clean river. These violations can be resulted from acts such as discharging pollutants that result in a big stain or change in the transparency of the water. Though lawsuits and criminal prosecutions are usually done by the public authorities, currently many countries also permit filing lawsuits by the citizens. Pursuing sustainable development means that we accept this issue that the impacts of environmental violations goes beyond the individuals who are directly involved in the lawsuit. The consequences of environmental damages are usually extensive in terms of time and region and they face the neighborhood the whole specific region with damaging impacts that can be transmitted to several generations or it can even be non-restorable. Therefore, environmental crimes can be generally defined as crimes that due to committing them, negative impacts remain on the climate of a region and the natural process of ecosystem is destructively impacted in that region through damage to the environment. On one hand it can be said that like other crimes, for committing environmental crimes the mental element of the crime is needed and in this respect the general punishment law is dominant like in other crimes. Regarding these crimes it should be emphasized that the legislator in any country should consider the deterrent and punitive aspects of these crimes and by providing a reasonable model of criminal policy he should punish the violators of environmental standards to the extent that the values governing the society are violated.5 Now the concept of economic crimes is discussed.

Economic crimes refer to a wide range of illegal behaviors against the economic system that its instances are generally different based on the economic system and even the type of the government. Though globalization first began and developed by economic globalization, however, economic crimes are highly dependent on the domestic law and the criminal policy of counties and for this relativity that governs the concept and instances of economic crimes, in United Nation criminal policy the impacts and consequences of economic crimes have been emphasized before emphasizing the economic crimes themselves.6 Economic crimes are technically crimes that are committed against the economy of a country or they are committed with this intention or crimes that in practice result in disturbance in the country’s economic system.7 Economic crime is not a crime that has economic characteristics but a crime that has negative economic impacts and consequences. Economy plays a unique role in the life of the individuals in the society and due to its direct impact on the peoples’ life, it is fundamental and absolutely it cannot be ignored; in a way that according to Holy religious individuals the chaos in the economic sector not only disturbs other sectors in life but also impacts the religion and the destiny of human too.8 Economic corruption is inclined towards concentrating wealth and it not only increases the gap between the

5Koshki, GholamHossein (2009), The Challenges of Iranian Criminal Law in the Field of Environmental Crimes, Law Journal, No 17 & 17, spring and summer, p. 89.
8 Imam Ali (PBH) says: من لا معاش له لا معاد له and in another Hadith it has been said that: فان الفقر منقصه للدين مدهشه للعقل داعيه للمقتله
rich and the poor but also provides an illegitimate means for the rich to protect their position and interests. Economic crime creates a condition in which other crimes are facilitated.\(^9\)

Without doubt creating and maintaining economic order requires combating the economic disturbers and economic criminals. Combating economic crimes results in economic order and also inhibits the harmful impact and consequences of disturbance in the country’s economy. In fact economic crimes are crimes that are committed against the economic security and international security of a country and as it was observed, no comprehensive definition of economic crimes has been provided and a comprehensive definition of it should be provided by jurists and most of these criminals are from the so called white-collar criminals that have connections with authorities and they are from people who have leverage in the government and who somehow have social image. No specific definition has been provided in criminal laws or other laws that specifies the boundaries of this crime and economic crimes can be somehow defined as crimes that are committed against the economy of a country or they are committed with this intention or crimes that in practice result in disturbance in the country’s economic system. In a verdict in the French court the economic crime has been defined as a crime that is related to production, distribution and the process and the consumption of goods and products. Therefore, generally it can be said that economic crimes refer to crimes that are massively committed against the economy of the country and committing crimes that damages the public economic interests. One of the aspects for differentiating economic crimes from some similar crimes such as crimes against properties is that in economic crime the economic interest of an organized group is commonly pursued. As the subject of the present paper is studying environmental crimes as economic crimes, it was necessary to clarify these concepts. Thus by using the elements of these two types of crime it is tried to explain this issue in the next discussion.

### 4-Third discussion) studying the reasons for generalizing criminal punishments of the environment

As it was discussed previously, environmental issues have gained a special place nowadays. The extent of the issues that have occurred regarding environment destruction has reached to the earth atmosphere and nowadays different cities and geographical regions have become polluted as a result of environment destruction. It should be pointed out that environmental pollution is more severe in developing countries and it is necessary that countries pay more attention to this critical issue. As it was pointed out, various legal means have been employed for combating this negative issue in a way that many national laws of different countries have criminalized environment destruction. In this part the discussion is about how the environmental crimes can be interpreted as economic crimes and how the mechanisms for combating economic crimes can be also used for countering environmental crimes. As it was discussed in the previous discussion, those crimes are called economic crimes that damage the country’s economy and its infrastructure and in fact the range of this crime is extensive and the differentiating point of these types of crimes with crimes against properties can be considered to be this extensiveness and that the economic criminals are in fact white collar criminals that are connected with higher levels of power. And regarding environmental crimes it was said that they refer to crimes that result in damage and destruction of

---

the environment and thereby create high costs for the interests of the public and for the public health.

Economic crimes are highly important due to the severe damages that create to the country’s economy. Environmental crimes may sometimes have many shared boundaries with economic crimes. For example when pastures and jungles in an economic section are given to some people and they use them for construction and their personal interests it cannot be regarded as only an environmental crime. As on one hand those individuals have trespassed jungles and pastures as public properties that have high economic value and on the other hand they destruct the environment by destroying jungles and pastures as national properties. The extent of such destruction my impact the lives of many individual in that region and by entering the resulted money to the economic system of the country many problems may be created. Thus, as it is clear, an economic crime of using national lands for one’s interest can occur together with an environmental crime and as a result, its importance increases. Another example can be provided. For example a big company or factory with high incomes and high production may continue its activity regardless of the pollution it creates for the region, by giving bribe to increase its profit and continue its economic activities. But as the result of the activities of this company or factory high levels of pollution may be imposed on the region that cannot be easily compensated. Bribery in an extensive manner is an economic crime and the result of this bribery can be the pollution and destruction of the environment. In addition, right to development can be regarded as one of the third generation human rights. In some countries there are many economic crimes that have environmental aspects, due to the high level of corruption in those countries. For example, some instance in developing countries can be pointed out in which the authorities in those countries bury industrial and dangerous wastes of developed countries in their lands by relieving bribe.In this respect it can be said that without doubt it can be concluded that over time this pollution will result in severe economic consequences for developing countries. Thus, receiving bribe by authorities can be considered as economic crime that has high economic costs for the country. In this way it can be concluded that protecting the environment especially in the future will have high economic costs for countries and environmental crimes can also be regarded as economic crimes due to the reason that was mentioned regarding economic crimes: that economic crimes damage the country’s economy for personal interests and objectives. Therefore, as environmental crimes have high economic costs for various countries for restoring the damages and destructions, they can also be considered as economic crimes. Nowadays the world goes in a way that continuously increases the pollutants that brings into the nature. It is due to this reason that environmental pollutions and climate change are of major problems in the world. The governments, with more cooperation, make efforts into passing conventions and signing agreements for countering the environmental pollution. In addition to international level, strategies and mechanisms have been adopted in national levels by different countries. The approach for using the legal power and criminal law against the violators of environmental regulations and standards and those who pollute the environment has been adopted due to the increased importance of preserving the environment. The reasons for the necessity of criminalizing some of the ways of polluting the environment can be various. Criminal justice policies in any system are employed for preventing some acts that are against the norms and regulative mechanisms. Using criminal justice methods is one of the ways

10 For more information on the third generation human rights and the environment refer to: Moradi Node, Seirollah (2008). Benefiting from the Environment is Fundamental Human Right (by Emphasizing the Rights of Iran and India), the Quarterly of the Faculty of Humanity, year 3, No 10 & 11, fall and winter.
that is usually used in the last stages. Currently the air pollution in some city regions can be somehow regarded as silent death for the residents. This pollution that results in death or in other words slaughter of the citizens has been created by real individuals or entities. It can be viewed as if there is a massacre going on and it definitely has a causer. Now a criminal lawsuit for murder or at least damage to the individuals’ health can be filed. Thus, the legislator cannot easily ignore this issue as the security and safety of the citizens is endangered. Therefore, one of the ways which can be employed for preventing air pollution and destruction of the environment is criminal justice methods. In fact it can be said that this criminalization is done for maintaining the health of individuals and national interests for future generations. If punishment is not used for preventing this, it is possible that for gaining more profit, individuals undertake the financial fines and easily pollute the environment and go against the national interests and severely damage society and the values governing the society. Therefore, it is necessary for the legislator to use this method too and to protect the environment more.

5-Conclusion

Nowadays preserving the environment has reached a level of importance that international conventions have been passed on it by countries and international organizations have given serious and numerous warnings to countries, companies and etc. Thus, for countering polluting the environment cooperation of different countries is necessary. In addition to cooperation that has existed in international level, different countries have employed legal means for preventing the air pollution. These legal means range from civil liability of real individuals and entities to administrative punishments and criminal liabilities. But due to the importance of the environment, criminalizing the acts and behaviors that result in the destruction and damage to the environment is necessary. Countries use different strategies in this regard such as imprisonment, monetary fine and punishment actions for restoring the damaged environment. An important point regarding environmental crimes is that these crimes can also be considered as economic crimes. Aseconomic crimes refer to the crimes that damage the country’s economy and they are usually done in an organized manner and by white collar individuals, some instances of environmental crimes can be considered that economic aspects can also be found for them, in addition to the environmental aspect. Because environmental crimes can impact the country’ economy and it can destructively impact the public economic interests of the society. Therefore, it is necessary for the legislator to pay a special attention to the economic aspect of environmental crimes. Because due to the continuous and fast changes that is occurring in the world, the environment should be protected in the best possible way and the committers of environmental crimes should be treated with the best preventive methods in in terms of criminology. Without doubt in future, environmental crises will be more than ever and therefore the legislators and jurists in this field should legally adapt to the scientific and industrial transformations effectively and usefully and they should not ignore the role of the environment in the national economy. One of the reasons that results in criminalization of destruction of the environment is maintaining the health and lives of individuals. The individuals who pollute the environment and the air and the water can be considered as the individuals who have a role in the death of individuals and citizens and they must accept the criminal liability of these issues. In this regard more protection of the environment can be gained and activities can be done not to let this irrecoverable asset to be easily destroyed.

References


Koshki, GholamHossein (2009), The Challenges of Iranian Criminal Law in the Field of Environmental Crimes, Law Journal, No 17 & 17, spring and summer, p. 89.

Roostai, Mehrangiz (2009), evaluating punitive intervention for economic crimes, Karagah, No 7, year 2, pp. 6-31.


Moradi Node, Seirollah (2008), Benefiting from the Environment is Fundamental Human Right (by Emphasizing the Rights of Iran and India), the Quarterly of the Faculty of Humanity, year 3, No 10 & 11, fall and winter.