

**THE REPORT OF THE TURKISH GROUP
TO THE PREPARATORY COLLOQUIUM
FOR XVth INTERNATIONAL PENAL LAW
CONGRESS
ON
Crimes Against The Environment
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I. ENVIRONMENTAL LAW IN GENERAL¹

1. Does your law contain provisions protecting the environment?:

There are many legal provisions protecting the environment. They relate to specifics (e.g. air, water, etc.) and also to the environment generally.

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(1) Milletlerarası Ceza Hukuku Derneği (Association Internationale de Droit Penal International Association of Penal Law), 4-10 Eylül 1994 tarihleri arasında Rio De Jenario'da XV. Milletlerarası Ceza Hukuku Kongresi'ni tertiplemiştir. Bu Kongrenin hazırlanması amacı ile ön çalışmalar yapılmıştır. Prof. Dr. Erol Cihan ve Prof. Dr. Feridun Yenisey bu ön çalışmalar çerçevesinde yapılan iki adet toplantıya Türkiye Raporu göndermişlerdir. Ön Kongrelerden birincisi Kanada'nın Ottawa şehrinde 6-10 Kasım 19 tarihleri arasında yapılmıştır. Kongrenin konusu 'Çevre Aleyhine İşlenen Suçlar'dır. Raporun metni burada yayınlanmaktadır. Prof. Dr. Erol Cihan ve Prof. Dr. Feridun Yenisey tarafından düzenlenen ikinci rapor Toledo'da 1-4 Nisan 1992 tarihleri arasında yapılan Ceza Muhakemesi Reformu ve İnsan Haklarının Korunması konulu Ön Kongreye sunulan rapordur. Bahsi geçen ikinci rapor da Milletlerarası Hukuk Bülteni'nin gelecek sayısına yayınlanmak üzere verilecektir.

There is an Act consisting of 6 parts and 34 articles named "Act of Environment" (Law Number: 2872 of 1983). Above mentioned act regulates environmental protection in all aspects. Human health, economical benefits and the welfare of the future generations are within the scope of environmental protection. Environmental protection covers the actual and the future damages.

2. Are the provisions penal or administrative?:

Basically, administrative sanctions. Mainly penal aspects are not dominant our law has no distinction between administrative misbehaviors and penal sanctions. These provisions are in the category of administrative penalties in the sense of quasi crime specifications Such deeds are not out of the main principles of penal law.

Administrative authorities decide on such administrative penalties (Environment Act Article 24). However, individuals may go to the administrative courts within seven days (Environment Act Article 5).

3. By what legislator are such penal provisions enacted?:

Jurisdiction of penal provisions are in the authority of the Parliament ie. the central authority.

4. How do such provisions relate to higher constitutional law?:

The Constitution of 1982 covers environmental protection through articles 56 and 63. The environment is directly or indirectly protected. Furthermore, the Constitution restricts the basic rights like property right for the purpose of protecting the environment (Constitution, Article 44 etc.).

5. Is your environmental law currently under review?:

The line of progress concerned with environmental protection is in a progressive direction. Although there are no criminal provisions the Doctrine stresses on penal provisions.

There is no penal provision and also the fact that administrative sanctions are not sufficient Turkey has joined international treaties concerned with the subject matter: 1. European Cultural Treaty 2. Convention for the Legal Responsibilities Related to Nuclear Energy Areas 3. Convention for the Protection of Birds 4. Protocol to Legal Responsibilities Related to Nuclear Energy Areas Convention 5. Convention for the Protection of Mediterranean Sea Against Pollution 6. Convention for the Protection of World Cultural and Natural Inheritance 7. Convention on Long Range Trans Boundary Air Pollution 8. Convention for the Protection and Maintenance of European Natural Life 9. Convention for the Physical Protection of Nuclear Substances 10. Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft

11. Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency.

II. CRIMINAL LAW : GENERAL PART CONSIDERATIONS

A. Liability

1. To whom is criminal liability imputable under law?:

In our law the penal responsibility vests on physical individuals. In our law, mainly physical personalities are liable for penalties. Legal entities face special penal provisions. Legal entities have no penal responsibility in a narrow sense.

2. Under your law can criminal liability be imputed to persons other than prime offenders?:

Apart from the actual person the following may also be liable for penalties
1. aiders and abettors, 2. incites 3. attemptors, 4. conspirators.

Environmental Act is a special law, where as penal code is a general law. Special Acts restrict the scope of the general acts/codes. If no rule exists in a special act rules of the general act are applicable. Therefore it is possible that an environmental crime be commonly committed.

B. The Material Element

3. What in your law is the requisite material element (*actus reus*) of a crime?:

Following are the material elements of a crime in our law, there are active or negligible crimes. Crimes of negligible deeds mainly result negligible damages. However the sole act of negligence does not generally create a crime. Basically, the source of passive action is a damage.

A single act may create a crime Repetition of the action increases the penalty (Environment Act, Art 23). In the case of damage resulted crimes, sometimes the damage is a crime factor and sometimes a factor for increasing the punishment.

In our penal law there is no distinction between single and cumulative harm. In our law, the environmental crimes are committed under the following manners a. negligence b. and c. There is no regulation concerned with systematic activity and mere endangerment without actual harm.

4. How does your law deal with causation?:

Penal Code covers provisions related to causation, restricted to particular crimes. They are related to special provisions of the Penal Code. In our law, determination of

causation is linked with logic and common sense. The dominant reasoning is the appropriate causation which is mainly based on statistical rules and observations.

From the view of evidence and proof the environmental crimes create some special problems. In fact, in penal procedure the matter of proof is a major issue. However, the proof of crimes is never impossible.

The break of causation creates problems between our penal law and civil law. On the other hand, the environmental law is very new. Therefore, such matters have not yet created substantial consequences.

C. The Mental Element

5. What in your law is the requisite mental element (mens rea) of a crime?:

Following are the rules concerned with mental element of a crime. Persons at no fault are not basically liable against crimes. This matter is very carefully protected in penal law. On the otherhand, civil law there are exceptional liabilities related to at no fault concept. In our penal law, no fault liability is considered as an out of age concept and defined as a shameful type of responsibility. This matter is regulated under as explicit provision in the Constitution (Art 38).

D. Defenses

6. Does your law allow defenses of physical impossibility, mistake or ignorance of fact?:

Following are the cases of legal conformity: Physical impossibility, Mistake of fact (Penal Code Article 52). Necessity (Penal Code, Article 49). Acting under legal authority. Acting under superior orders (Penal Code, Article 49).

Necessity is not only restricted to emergency cases. In the case of acting under the legal authority the law must regulate the case. Acting under superior orders, the superior authority must have the power of order provided that the order complies with legislation.

Related to environmental crimes any of the above cases may be applicable. Therefore, rules not present in penal legislation may create a legal basis for penal/environmental law. There are no special defense provisions in the Environment Act.

E. Sanctions

7. What sanctions are available for crimes against the environment?:

There are no sanctions related to Environmental Crimes parallel to General Penal Law. However, there are fines, bans, closing down the enterprise, etc. principally, no imprisonment is imposed on environmental crimes. The only case is, giving false knowledge to authorities faces with imprisonment (Environment Act. Art 26).

F. Jurisdiction

8. Over what crimes do your courts exercise jurisdiction?:

The courts are authorized to trial and judge on domestic or out of country matters. Crimes committed partly within and partly outside the country are not explicitly regulated in our laws. However, the Doctrine deals with the matter. And also the Supreme Court has ruled that in cases where the damage results in the country the Turkish Courts are authorized.

The Special Zones are considered within the territory of the Administrative/National Boundaries.

Any crime committed outside of the country damaging the authority of State or harming the citizens can be trailed and ruled before the Turkish Courts. Such Crimes which are due to imprisonment of more than 3 years are automatically trailed whereas of less than 3 years of imprisonment are trailed under the demand of the injured persons.

In cases of crimes committed by an alien against another alien out of Turkey, the criminal can be trailed in Turkey only under the condition that the crime is punished for 3 plus years imprisonment according to Turkish Law, that the convict is in Turkey and no legal possibility exists for extradition of the suspect or convict.

Finally, in our law since there is no penalty of imprisonment for environmental crimes, environmental crimes committed outside of Turkey can not be trailed before the Turkish Courts.

The Penalties may be transferred between the countries who have signed The European Convention on the International Validity of Criminal Sentences. Therefore in such cases Turkey may exercise the authority of punishments out of imprisonment.