

**GENERAL ELEMENTS THAT HAVE TO BE ESTABLISHED
WHEN INVESTIGATING THE OFFENCES CONSIDERED IN THE
SPECIAL LAWS OF THE ENVIRONMENTAL PROTECTION
DOMAIN**

**ELEMENTE GENERALE CE TREBUIE STABILITE ÎN CAZUL
INVESTIGĂRII ÎNFRACĂȚIUNILOR PREVĂZUTE ÎN LEGILE
SPECIALE ÎN DOMENIUL PROTECȚIEI MEDIULUI**

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The development of the infrastructure and production capacities of the economical entity doesn't have to alter the quality of the human life and to bring negative consequences on long and medium term on the environment. The investigation at the crime scene has to be done considering the following: all the preparing measures of the research at the crime scene, of the general applicable rules for any crime scene research, as well as introducing all the necessary measures for limiting the pollution effects when necessary, determining and prevailing the proofs in security conditions both not to be destroyed, and not for affecting the health and life of the staff that perform the respective activities of other people or animals and nor to destroy or alter goods. The technical-scientific observations working out and of the biological chemical expertise, as well as of the establishing of the prejudice are necessary for determining the real conditions in which the offence was done.

Key works: law, investigation, and environmental protection

I.GENERAL CONSIDERATIONS

The development of the infrastructure and production capacities of the economic entities doesn't have to alter the quality of the human life and to bring negative consequences on long and medium term the environment.

Among the generator causes and conditions of offences in the domain, we mention: the reduced amount of the punishments related to the considerable gains on short term and to the long term consequences on the environmental factors, lack of operative collaboration among the offices

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with responsibilities in the domain and of information change for the common capitalization, administration in unsatisfactory conditions of the refuse and dangerous substances, performing superficial controls on the raw materials and substances import that are introduced in the country for eliminating.

One of the most important human activities is connected with the energy and oil products producing like: drilling/extraction, processing/refining, transport, as a result the following will be obtained – petroleum, petrol, fuel oil, kerosene, textile products, shoes, building materials, home utilities, plastics, packing, etc.

All these activities produce refuse, accidental of planed pollution. The hydrocarbons pollution is persistent, toxic, visible, affecting the environment, all the other economic activities and human relationships. That is why in the pollution case it is necessary to interfere quickly and efficiently to minimize these effects with lowest costs possible.

The pollution has an economic, ecologic and social impact. The hydrocarbons pollution of the inhabited area can have negative effects on the health of the human body, the inhaled gas in over limit admitted quantity have cancer effect.

II. THE JURIDICAL WAGE-CLASS OF THE ACTIONS

1. Accidental pollution. Accordingly with the 98 article's regulations, par. 1, pct 2 from OUG nr. 195 from 22 December 2005 considering the environmental protection approved and completed by the Law nr. 256/2006, constitutes offence and it is punished with prison from 3 months to a year or with criminal fine from 30.000 lei (RON) to 60.000 lei (RON) the act, if it endangered the human, animal or vegetation's life or health: the accidental pollution caused by the lack of supervising the new performed workings, the functioning of the installations, the technological equipments and treatment and neutralization, mentioned in the stipulations of the environmental agreement and/of the authorisation/environmental included authorisation".

The accidental pollution are caused mainly by the negligence in the use of the equipments, of the technological equipments, their negligence, using the moral and physical worn out equipments and also due to the lack

of a strict control from the behalf of the company's management and of their superior forum.

2. The refuse import for their commercialisation and/or their elimination

In accordance with the art. 98 regulations, par. 2, pct. 9, 10 and 11 from OUG nr. 195 from 22 December 2005 considering the environmental protection approved and completed by the Law nr. 256/2006, the following are considered offences and are punished with prison from 6 months to 3 years or criminal fine from 50.000 lei (RON) to 100.000 lei (RON), if they endangered the human, animal or vegetation's life or health:

„The production and/or import with the aim of the introduction on the market or use of some dangerous substances or products, violation of the present normative documents regulations and introduction on the Romania's territory of refuse of any nature on the purpose of their elimination”;

“The import and export of dangerous and restricted substances or products.”

“ The transport and transit of dangerous substances and products, by violating the present normative documents regulations”.

In this domain we can notice the introduction in the country by some economic agents, both from the European Union as well as from China, refuse or dangerous substances, on secondary raw materials form or other products, using for this false provenience documents or quality certifications.

3. Not respecting the security conditions for the refuse and dangerous substances storehouses, as well as the inadequate organization and displaying of the activities regarding the administration of the garbage pit.

In accordance with the art. 98 regulations, par. 2, pct. 9 and 10 from OUG nr. 195 from 22 December 2005 considering the environmental protection approved and completed by the Law nr. 256/2006, the following are considered offences and are punished with prison from 6 months to 3 years or penal fine from 50.000 lei (RON) to 100.000 lei (RON), if they endangered the human, animal or vegetation's life or health:

“The lack of supervising and of the refuse storehouses and dangerous substances assurance, as well as the non-observance of the storage obligation of the chemical fertilizers and of the plants' protection products only wrapped and in protected places”;

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4. *Offences considering the regulations documents in the environmental domain:* the non-observance of the legal regulations referring to the authorisation procedures of the socio-economic activities with impact on the environment on the base of some corruption deeds for obtaining the notifications/the environmental authorisations; initiation and displaying of some activities without the environmental notification or without impact evaluation achievement on the environment; the activity continuation after suspending the environmental notification or of the authorisation/environmental included authorisation; presentation, in essays considering the environmental evaluation, the evaluation of the impact on the environment, of the environment survey or of the location account of false conclusions or information;

In concordance with the article nr. 98 regulations, line 2, from OUG nr. 195 from 22 December 2005 considering the environmental protection approved and completed by the Law nr. 256/2006, the following are considered offences and are punished with prison from 6 months to 3 years or criminal fine from 50.000 lei (RON) to 100.000 lei (RON), if they endangered the human, animal or vegetation's life or health:

„The activity continuation after suspending the environmental notification or of the authorization/environmental included authorization”.

“Presentation, in essays considering the environmental evaluation, the evaluation of the impact on the environment, of the environment survey or of the location account of false conclusions or information”.

III. GENERAL ACTIVITIES IN THE ENVIRONMENTAL OFFENCES RESEARCH

For a better understanding of the operative situation in the environmental domain, and for the identification and examination of the accused people for performing activities under the penal law, but also for the identification of proofs and proofs means (written, audio-video recordings, materials, technical, auxiliary and conclusive methods) necessary for the offence activity documentation for the examined people and to clarify the situation on all its aspects, it is necessary to be performed an operative exchange of data and information among the institutions that have responsibilities in the domain.

In the notification situation when criminal activities are mentioned, addressed directly to the police or transmitted through the prosecutor's office, the following activities are proceeded, for their solving: the notification is analysed, specifying its characteristics and the department it refers to; the complain (file) is studied; the accuser is identified and he is asked to complete the notification with proof means documents of the claimed offences, both orally and in written containing data about the possible doers or witnesses; it is analysed considering the claimed aspects, the accused people position and the notified prejudice amount and in accordance with the art. 210 regulations Cod criminal procedure, that specific situation research competence is checked; when the criminal research responsibility belongs to another office, the notification is sent to it; in the situation of application for specific verifications (technical, economic etc.), these will be done on the base of some themes and written addresses; the people involved are examined; in the same time with the preparatory documents working out, identifying measures will be taken of the real and personal estates as well as of the owned goods by the perpetrators, to inform the prosecutor who supervises the researches, on the eventuality of introducing the assurance execution measure at the criminal investigation starting moment.

The criminal investigation is displayed without starting the criminal action in the simpler situations and which can be analysed without the necessity of the preventive arrest of the accused in contrast with the situation in which the criminal investigation with started criminal action is displayed in complex situations and the preventive arrest of the accused is necessary.

If during the displaying of the „criminal investigation without starting the criminal action” it is appreciated that it is necessary to start the criminal action and there are reasons for these, an essay is worked out containing specific proposals, and which is forwarded to the prosecutor together with the offence file.

If from the initial documents result one of the situations of hindering the starting of the criminal investigation mentioned in the art 10 C.p.p., or other situations of hindering the starting of the criminal action, not mentioned in the art. 10, but contained in other legal provisions (in the

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criminal code in the art.22 par. 1, art.29 par..2, art.30, art. 221par.alin.2 or other special laws), an essay is worked out with the proposal of Not Starting the Criminal Investigation, which is forwarded together with the file, to the prosecutor, conform art.228 par.4, related to art.10 from C.P.P.

In the situation in which, during the researches done in the criminal investigation period, the accused or defendant is unable to participate to some criminal investigations activities, because of some objective independent reasons, the criminal investigation delay can be proposed.

In the situation in which, during the criminal investigation display it is established that there was not decided any natural person as the author of the offence, in spite of the fact that the offence was done, but it was not done by a natural person, an essay is worked out with the proposal of case definitely filed.

If during the criminal investigation is established that:

- The initial complaint is missing from the file of the hurt person, the authorisation or the responsible office notification, or any other condition mentioned by the law, necessary to start the criminal investigation;
- There is judgement-working authority;
- The perpetrator's amnesty, limitation or death;
- There is a reason for non-punishment mentioned by the law;

but there is an accused or claimed in the situation, an essay is worked out with the proposal of the criminal investigation suspending.

In the case when during the criminal investigation the following situations are notified: There is no deed; The action is not mentioned by the criminal law; The action doesn't represent the social danger of an offence; The action wasn't done by the accused or defendant; One of the constitutive elements of the offence is missing from the action; There is at least one of the reasons that eliminates the criminal character of the action and there is a defendant or an accused, an essay is worked out with the proposal of suspending the criminal investigation, and it is forwarded to the prosecutor together with the file, to dispose on the proposal. (art.249 alin.1 C.p.p).

In the competition situation between the suspending and those of stopping the criminal investigation procedures, the priority is applied to those that imply stopping the procedures; the proposed solution on their base is more favourable for the accused or defendant.

III. SPECIFIC PROCEEDINGS OF THE ENVIRONMENTAL OFFENCES INVESTIGATIONS

The offences in the environmental domain in the majority of the situations are resulted offences and can be the result of the action or of lack of it. As a result, for such an offence existence the consequences of the deed have to be proved, that is the human, animal or vegetation's health of life endangering.

The criminal investigation offices, in accordance with the legal competences, do the notification and investigation of the offences ex officio.

The identifying and establishing, in the practicing of the mentioned responsibilities by the law, by the National Environment Guard agents, the National Board for Nuclear Activities Control, the gendarmes and the authorised agents in the National Defence Ministry, of doing any of the environmental offences, it is informed first the competent criminal investigation office in accordance with the criminal procedure law.

The investigation at the crime place has to be done respecting: all the investigation preparations at the crime place (both of those from the judicial headquarters as well as from those of the crime place); the application of the general rules in any investigation at the crime place, as well as applying all the necessary measures to limit the pollution's effects when necessary, the identification and prevailing of the proves in security conditions both the evidences not to be destroyed, and in order of not affecting the health of life of the staff who execute the respective activities or of other people or animals and nor to the goods' alteration or destruction.

Also, the technical-scientific findings working out and of the biological, chemical etc. are necessary to establish the real conditions in which the offence was done.

It is recommended that the police to assist and accompany the prevailing of proves, that is why it is necessary that the people who do these activities to have a high level of training in the environmental protection

area. Determining the prejudice in the offences against the environment is of high importance, both for the evaluation of the effects, of the costs connected with the prevailing the proves, of the laboratory analyses, of the conservation, effects limiting, as well as for the deed classification.

Sometimes there are difficulties when their quantification is discussed, and the future costs including, for the rehabilitation of the affected areas.

Another aspect is that of the victims' requirement to become civil part in the criminal process, by mentioning the respective sums and of the quantification of the offence results determinate by the health improvement of the affected people or even of the death caused by it.

By applying the "the polluter pays" principle, to him belongs the whole duty of bearing the prejudice.

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