

Environmental Criminal Law and Human Rights (ECtHR)

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The Environment and Human Rights



HELP

Human Rights Education for Legal Professionals
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CONTENTS OF THE COURSE

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Definitions - Legal regimes for the protection of the environment

2: The human rights-based approach to environmental protection

Human rights and the environment – general overview
Legal background of the human rights-based approach
Substantive, participatory and procedural human rights
The right to a clean, healthy and safe environment

3: Green human rights in regional human rights systems

Regional human rights systems – an overview
The European system - The Inter-American System - The African System

4: Environmental degradation and corporate accountability

The impact of corporate activities on the environment
The concept of Corporate Environmental Accountability
Corporate Environmental Accountability in regional and national litigation



Grazia Scocca
Legal consultant

ENVIRONMENTAL CRIMINAL LAW & HUMAN RIGHTS (ECtHR)

VICTIMS of environmental harm	POLLUTERS accused of environmental offences	ENVIRONMENTAL DEFENDERS sanctioned for protests
EFFECTIVE INVESTIGATION & PUNISHMENT	ARREST & DETENTION	ARREST & DETENTION
	SEIZURE OF PROPERTY	PROSECUTION & PUNISHMENT

ENVIRONMENTAL CRIMINAL LAW & VICTIMS

EFFECTIVE CRIMINAL INVESTIGATION & PUNISHMENT

Öneryıldız v. Turkey [GC], 2004

Loss of life caused by an accidental explosion in a slum located on a rubbish tip (man-made disaster)

- legislative and administrative framework designed to provide *effective deterrence, repression and punishment*
- procedures for identifying shortcomings and errors committed by those responsible at all levels
- *adequate criminal law response* required in the context of dangerous activities under responsibility of public authorities



ENVIRONMENTAL CRIMINAL LAW & VICTIMS

Violation of right to life (procedural obligations)

- Prompt & diligent opening, of its own motion, of investigations to identify the responsible and determine the extent to which the authorities had been responsible for the accident.
- But charges against some government authorities dropped and the charge limited to “negligence”, precluding the examination of the life-endangering aspect of the case.
- At trial, 2 mayors sentenced to minimum penalty applicable - suspended fines of €10 for negligent omissions in the performance of their duties.

ENVIRONMENTAL CRIMINAL LAW & VICTIMS

Budayeva and Others v. Russia, 2008 & Kolyadenko and Others v. Russia, 2012
M. Özel and Others v. Turkey, 2015

Loss of life resulting a foreseeable weather or natural event
(natural disaster/hazard)

- adequate criminal law response required in the context of disaster relief & preventive action under responsibility of public authorities
- independent and impartial official investigation (min. standards of effectiveness), capable of ensuring criminal penalties if justified by the findings of the investigation
- min. standards of effectiveness applicable to trial stage
- no immunity from prosecution for people holding public office



ENVIRONMENTAL CRIMINAL LAW & VICTIMS

Cordella and Others v. Italy, 2019

Dioxine and benzopyrene pollution from Ilva steelworks plant

Violation of right to private & family life

- *Immunity* granted to those responsible for the implementation of the environmental plan
- Abrogation of the criminal and administrative immunity for the extraordinary commissioner and the buyer of the steelworks



ENVIRONMENTAL CRIMINAL LAW & POLLUTERS

ARREST & DETENTION

Mangouras v. Spain [GC], 2010

€3,000,000 bail set for release of Prestige Ship's master in case of accidental but massive maritime spill

- Bail may only be required as long as reasons justifying detention prevail
- The amount set for bail must be duly justified in decision fixing bail
- The amount of bail must take into account the accused's *means* & the *loss* imputed to the accused



ENVIRONMENTAL CRIMINAL LAW & POLLUTERS

No violation of right to liberty

- The amount of bail exceeded the applicant's own capacity to pay
- But the Spanish court took into account:
 - fact that the accused is a non-national
 - seriousness of the offences
 - national and international disaster caused by the oil spill
 - "public outcry"
 - *accused's professional environment (insurance of Ship's owner)*

growing and legitimate concern, both in Europe and internationally,
to suppress environmental offences

greater firmness required in assessing breaches of the fundamental values of
democratic societies



ENVIRONMENTAL CRIMINAL LAW & POLLUTERS

SEIZURE OF PROPERTY

Yaşar v. Romania, 2019

Confiscation of a vessel for illegal fishing in the Black Sea in the context of criminal proceedings against a third party

- procedures must enable reasonable account to be taken of the degree of fault or care attributable to the applicant boat owner or, at least, of the relationship between his conduct and the breach of the law which occurred (adversarial proceedings; without irrebuttable presumptions; good faith)
- procedures must afford the applicant a reasonable opportunity to put his/her case to the relevant authorities

ENVIRONMENTAL CRIMINAL LAW & ENVIRONMENTAL DEFENDERS

ARREST & DETENTION

Steel and Others v. the United Kingdom, 1998

Arrests and detention of persons impeding grouse shoot

- national law must be *foreseeable* = formulated with *sufficient precision* to allow citizens reasonably to foresee consequences of actions
- police action must be
 - justified in fearing breach of peace
 - proportionate for preventing disorder and protecting rights of others (peaceful vs violent protest)

Kieron John Bryan and Others v. Russia - pending

Miriam Friedrich v. Poland and 17 other applications - pending

Arrest and detention of the Greenpeace activists staging peaceful protests at sea - Right to liberty & Freedom of expression



ENVIRONMENTAL CRIMINAL LAW & ENVIRONMENTAL DEFENDERS

PROSECUTION & PUNISHMENT

Hashman and Harrup v. the United Kingdom [GC], 1999


Bound-over orders (£100 + 1 year of good behaviour)
for disruption of a hunt w/dogs
(blowing a hunting horn without breach of peace)

Violation of freedom of expression



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CONCLUSIONS

- Effective criminal response (investigation and trial) required for:
 - dangerous activities
 - foreseeable man-made disasters
 - foreseeable natural disasters

under responsibility
of public authorities
- Bail may be beyond accused's financial means if grave ecological disaster is caused and if bail can be paid by accused's professional environment
- Owner of property used in the commission of a crime must have access to fair proceedings to challenge impoundment
- Criminal repression of protests must be *foreseeable* and *proportionate*