SUMMARY

It is a widely known that a major concern for contemporary society is the improvement and protection of the environment required by the disastrous consequences of natural and anthropogenic ecosystem degradation, concern that has led to the recognition and consecration, initially legislative and afterward conventional and constitutional of the right to a healthy environment.

The theme of this work was inspired by the requirements of environmental protection by the most efficient form of repression and prevention known to contemporary legal systems namely by means of criminal law, given the alarming increase of environmental crime, in recent decades.

Equally, recent developments of national criminal law, have led, in our view, to change of perspective on the quality of criminal law making it compatible with the requirements of Article 73, paragraph 3, let.h the Romanian Constitution, which created a distinct approach to issues of criminal law based on incomplete norms, given both literature and jurisprudence of recent years.

This paper is structured in four chapters, the first of which concerns the particularities of criminal responsibility principles for crimes against the environment, on which occasion we proceeded to define the environmental crime and analyze how the basic principles of criminal liability were modified to meet the requirements of its protection. Equally, in this chapter we analyzed the challenges and appreciated timely remedies for framing the criminal liability of polluters in case of committing crimes against the environment.

The second chapter focuses on an analysis of the relevant offenses to ensure ecological balance and protection of human factors found in the current Penal Code.

The third chapter brings together the criminal provisions of sectorial regulations, and is devoted to analysis of each crime separately in order to determine weaknesses and proposing solutions to eliminate or reduce its effects.

Incriminations analysis of general rules in the field of environmental protection, is the substance of the fourth chapter, pointing out the relevant regulations of Emergency Ordinance no.195 / 2005 on environmental protection, Emergency Ordinance no.57 / 2007 concerning the rules protected natural areas Law concerning hunting and protection of hunting founds no.407 / 2006 Government Emergency Ordinance no.23 / 2008 on fisheries and aquaculture and Law no.101 / 2011 on preventing and sanctioning acts on environmental degradation.

In the research conducted we used bibliographic resources of Romanian and foreign legal literature, national law and regulations of the European Union, to which we added limited existing jurisprudence concerning the criminal liability for offenses against the environment. Besides legal practice we identified in published materials we used unpublished decisions obtained by consulting the file of Section I and Section II Criminal of Bucharest Court of Appeal, alongside comparative law issues.

In the final stage we presented considerations on current criminal regulations designed to provide environmental protection and presented proposals de lege ferenda that we have advanced in this paper.

To capture the essential elements that require the intervention of the legislator, as results of the analysis performed, we pointed out a number of relevant issues identified during the thesis.

In the first chapter, entitled "Criminal liability, form of liability in environmental law" we have pointed out the particularities of criminal liability of principles for crimes against the environment, we have formulated a definition of the environmental crime, which is actually represented by offenses committed

with guilt, unreasonable and attributable to the person who committed it, which adversely affected primarily social values regarding environmental protection.

I appreciated that the starting point should be represented by the provisions of Article 15 of the Criminal Code[1], where the definition of the crime can be found, the latter being the proxim type to the institution to be defined. Specific difference is the protection, primarily, of the environment, with all its components.

Taking the definition used by the legislator in defining the offense makes it accurate in the current regulation, with the reconfiguration of the legal definition of the Criminal Code 2009, but identifying the specific difference makes it appropriate to other national environmental regulations.

Please note it is essential to add the phrase "primarily", the latter being the difference between environmental crimes and other offenses with indirect effects on the environment (eg. The destruction of specimens of protected species of fauna is qualified as environmental crime by the provisions of Article 52 let.g of Ordinance no.57 / 2007 and not as a crime of destruction provided by Art.253, paragraph 4 of the Criminal Code, whether it is made in a qualified form required by law, such as the burning of an exemplary of such species).

Although in literature, the principles of criminal liability are not universally configured, relating to the requirements of environmental protection, we observe that criminalization is effective for attracting criminal liability ante factum, while the specific environmental damage, mostly irreversible, makes the liability, even exemplary, after the act, almost useless for the environment and for achieving general prevention. This distinction, at first glance, is incompatible with the classical form of criminal liability where the perpetrator can be held liable only post factum, but the remedy for this apparent contradiction consists in

[1]Law 286A / 2009 on the Criminal Code, published in the Official Gazette, Part I, nr.510 / 24.07.2009. Article 15, paragraph 1 of the Criminal Code. It states: "The crime is an offense under the criminal law committed with guilt, unreasonable and attributable to the person who committed it."

formulating the incrimination text in such a manner that the causing of a danger state is incriminated, therefore for the crime to be typical there is no need for an effective environmental damage to occur.

With the Constitutional Court, in particular Decision nr.405 / 2016[2], the doctrinal approach regarding the standard of criminal norm quality, namely the completing norm, which initially could be represented by any other law, regardless of its legal force, was called into question. In the field of environmental protection by means of criminal law, this change in approach was a new standard that affected a substantial part of existing regulations, mostly incomplete norms, dependent on technical provision found in other regulations.

To facilitate the analysis we achieved a classification of crimes against the environment as follows: 1. Complete norms, which contain all the elements on which legal classification in their text, 2. incomplete norms. The latter, in turn, are classified into three subcategories: a) norms criminalizing a conduct that is not determined wholly within the law at issue, where the essential request or premise situation depends on a different norm that is either determined or determinable starting from the frame regulation, b) norms criminalizing a conduct that is not determined wholly within the law at issue, where the essential request or premise situation depends on a different norm that is neither determined or determinable starting from the frame regulation, but can be found in an organic law or in an urgent ordinance of the Government and c) norms criminalizing a conduct that is not determined wholly within the law at issue, where the essential request or premise situation depends on a different norm that is neither determined or determinable starting from the frame regulation, and cannot be found in an organic law or in an urgent ordinance of the Government, but in a norm of inferior legal force.

We found that effectiveness of the incrimination, considering the

[2] Published in the Official Gazette of Romania, Part I, nr.517 / 08.07.2016

provisions of Article 73, paragraph 3, letter h of the Constitution, differs depending on the classification in any of the aforementioned categories.

Based on these coordinates, we analyzed the relevant offenses for the purpose of this thesis structured in chapters II, III and IV, as indicated.

Offenses appreciated by us to be mainly directed against the environment found in the Criminal Code (reviewed in Chapter II of this work) are circumscribed by a high level of generality to criminal offenses, these protecting directly fundamental values such as public health or safety public and indirectly the ecosystem.

Although most of these crimes are accompanied by sectorial regulations, we observed that the provisions of the Criminal Code, at first glance, have a character of a general rule that can be retained if no specific rules are issued.

The main practical problems likely to arise in implementing legislative provisions are circumscribed to the relationship between time frame, respectively the incomplete incrimination rule and completing technical regulations. Thus, the offense of breach of the regime of nuclear material or other radioactive materials, under art.345 Criminal Code, is required to achieve the essential requirement item "unlawful", since the quasi-unanimity rules in this field are technical, and are adopted by acts of lower legal force of the organic law, as well as Government decisions and orders of the President of the National Commission for Nuclear Activities control, or the Minister of Health.

Harnessing the categorization of offenses against the environment carried out in Chapter I of this paper, we observe that the offense in question falls within the latter category, assuming a real constitutional problem because Article 73, paragraph 3, letter h of the Constitution expressly states that the organic law governing criminal offenses, penalties and their execution thereof, and the meeting of the essential requirement attached material element of the offense under art.345, paragraph 1 of the criminal Code is circumscribed to rules

imposed by secondary legislation whose prescriptions complement criminal norm without being indicated in the incomplete norm.

A second problem identified was the fact that the technical norms nature, such as approved by ministerial orders, even those published in the Official Gazette, allow the incidence of error as a cause that removes criminal liability under Article 30, paragraph 3, based on Article 30, paragraph 1 of the criminal Code.

In analyzing the same offense, we have seen an unusual situation generated by corroborating the provisions of art.345, paragraph 3 of the Criminal Code and art.345, paragraph 4 of the Criminal Code specifically, if the theft of nuclear material or radioactive materials causes an accident which results in the death of two people, a single offense under art.345, paragraph 4 of the criminal Code will be held, but if, instead, the same action has caused death of one person and injuring another, the perpetrator will suffer potential punitive treatment worse than if both victims had died, given the conditions and the effects of both offenses held in its liability. This seems unfair, therefore we proposed changes to the text during the analysis undertaken.

Regarding the offense of breach of the regime of explosive materials, found in art.346 Criminal Code, we noticed a unique position in the analyzes namely the frame did not refer to the completeness of the norm, but an organic law which contains provisions on conditions of use or circulation of explosives referred expressly determined at certain regulations and European Directives.

We found that offering for circulation of civilian explosives, while disregarding the provisions of European Regulations referred to in Article 5, paragraph 2 of Law no.126 / 1995 on the status of explosive materials, is typical for the purposes of criminal law as on compliance with the requirements of Article 73, paragraph 3, letter h of the Constitution, the norm will complete with of national organic law, Law no.126 / 1995 and regulations made reference explicitly to international standard, namely European regulations, if determined,

the legal force of the organic law as a result of national reference standard. If the deed in the form of putting on civilian explosives, in disregard of the provisions of a European directive referred to in Article 5, paragraph 2 of Law no.126/1995.

We believe that the provisions analyzed do not involve other issues of scale in terms of practical applicability, since the extreme poor jurisprudence in this area has had an impact on preserving the shape of these laws, some of which are very close, the manner of writing, with incriminations counterparts in the criminal Code in 1968, for example, to forestall crime of disease control provided by art.352 current and former criminal Code art.308 criminal Code in 1968, the crime of spreading diseases to animals or plants art.355 criminal Code criminalized the current and former art.310 criminal Code 1968 or offense infection water provided by art.356 current penal Code and Article 311 of the criminal Code in 1968.Given the fact that under the old indictments these crimes have generated only a small jurisprudence, it was predictable that the new texts will not be given special attention by the legislator.

With reference to the content of the third chapter, entitled "Protection of the environment through criminal law means provided for in sectorial legislation" we consider that the main problems of recriminations found in the Forest Code are founded manner specific drafting offenses dependent on the achievement of technical activity.

As we have shown, an intervention by the legislator to clarify the actual actions and essential requirements constitute the material element of the crime under Article 106, Paragraph 1 Forest Code is imperative.

Equally, the conditions under which one can proceed to the collection of wood without attracting incidence found incriminating text in article 107, paragraph 1 Forest Code, must be established especially since a classification of forests in functional types between I and VI is missing. The law refers to the algorithm calculating the damage as the essential requirement is differentiated according to this classification.

Attempts to conduct analysis from the perspective of active subject as a legal person have concluded that the committing of acts, although possible in theory, is extremely unlikely, like grazing in the forest where restricted or theft of timber fell natural causes.

On the other hand, the real environmental crime in the forest, is performed at organized crime level, relevant provisions are found in Article 106, paragraphs 1 and 2 and Article 107, paragraph 1 Forest Code whose application is limited by the new algorithm of calculating the damage to national forest with the entry into force of Law no.175 / 14.07.2017, cited above.

In connection with the regulations found in art.44-46 of Law no.111 / 1996 on safe deployment, regulation, authorization and control of nuclear activities[3], we have seen a number of adverse effects of successive legislative changes, which led to partial regulations made obsolete or redundant.

Thus, in its article 44, paragraph 1 of Law no.111 / 1996 we identified the most extensive regulatory content of this thesis, in which the material is determined by reference to Article 2 of the legislative act in question, which comprises total, 18 letters, each indicating the scope of the law, plus carrying out the activities specified in art.24, paragraph 1, article 28, paragraph 2 and article 38, paragraph 1 of the same law.

Our assessment is that such a manner of forms of criminalization does not meet normal clarity criminal provision as its addressee is not just a specialist in the knowledge of technical regulations, but a person with a level of ordinary skill that under normal circumstances could quantify the conduct prohibited and what and the conduct permitted in his business.

A real problem that we have identified in the analysis of crime is determined by the lack of correlation between the acts that constitute the material element, all 18 letters of the article 2 and the actual offending or article 2, letters

[3] Republished in the Official Gazette, Part I, no.552 / 27.06.2006

a, b, c, d, e, f, g. in this situation, 11 potential legal options, the text of the law refers to establish the material element have no counterpart in punishment. Although I explained that it is the effect of successive legislative changes, we considered de lege ferenda, it is necessary to reformulate the norm incriminating the conduct prohibited by indicating each part, explicitly, as we stated in its analysis undertaken.

Regarding legislation on the legal regime of waste, Law no.211 / 2011, as amended and supplemented, it incriminates one offense referred to in Article 63 in six different normative ways. As noted at the time of the analysis undertaken, the first two normative methods are not applicable in practice, with respect variant under Article 63, paragraph 1, letter, the material element consists in an operation import of prohibited waste import, though the content regulation is not determined or determinable regarding the prohibited to import waste category.

Arrangements for importing waste and residues of any kind and other dangerous substances to health and the environment is regulated by Government Decision No. 340 / 06.20.1992, which is now repealed. The only law that sets conditions directly applicable import of waste is Regulation (EC) No. 1013/2006 of the European Parliament and of the Council, but an exhaustive list of prohibited waste that cannot be found either.

Under these circumstances, I felt that the provisions of Article 63, paragraph 1, letter of the Law no.211 / 2011 are not likely practical application. In the paper we proposed de lege ferenda to establish a basis for determining the category of prohibited waste import either by regulating their content of organic laws or of an emergency ordinance or by a direct reference made by the legislature to a criminal an act of reduced legal force.

The fourth chapter was devoted to the analysis of specific regulations environmental law since the 20 offenses under Article 98 of GEO no.195 / 2005 on environmental protection, as amended and supplemented, noting that the Romanian legislator to when adopting and amending the item in question, gave

expression to a specific regulation manners depending administrative offenses, even in the absence of such provisions constitute administrative regulation whose touch can be characterized as unlawful conduct.

I noticed that all incriminations have been imposed on the same essential requirement that the act be "likely to endanger the life or health of human, animal or plant" elements that give rise to a margin consistent appreciation from the judge invested applying the legal provision. We believe we have found a different way of formulating this requirement that is essential because about any action outside the care, against a plant seen *ut singuli* is able to endanger its health. Therefore, the text would lead us to think that breaking a flower, outside areas or protected species, endangering the life or health of the plant in this manner would be activate the essential requirement in question.

De lege ferenda, as the legal act in question, aimed at protecting the environment, we propose that the essential requirement to be reformulated in a manner adequate for the purposes of criminal protection: "to effectively jeopardize the balance of environmental factors existing at the time of the offense". In this regard, it will be necessary to activate criminal liability of a person, whether natural or legal, to be jeopardized, even if a more serious offense has not occurred, the balance of the environment affected by the act or omission complained of. We believe that the danger must be effective, because it cannot attract criminal liability for committing an offense with potentially dangerous effects assessed in the abstract in an extensive manner. Thus, insistence criminal legislature to provide protection at all costs,

As appreciated when analyzing the constituent elements of the crime provided by Article 98, paragraph 4, letter b of the GEO no.195 / 2005 as amended and supplemented, which states that "An offense punishable by imprisonment from one year to five years following acts, if they were likely to endanger life or human, animal or plant: discharging wastewater and waste from vessels or floating platforms directly into natural waters or the challenge of

science, pollution through discharge or immersion in natural waters, directly or from ships or floating platforms substances or hazardous waste", we appreciate it is necessary to repeal this legal text, as the area of criminal protection offered by criminalizing mentioned overlaid regulations under Article 92, paragraph 1 of the Water Law no.107 / 1996 and art.356 Criminal Code, and double incrimination is not allowed, especially since the penalty limits are the same.

In analyzing the provisions of the Law of hunting and protection of hunting no.407 / 2006[4] we noticed that most of the legislative technique used by the legislator was that of complete rules, except as provided in Article 43 which refer to provisions of the same law. This law, also, is feeling the effects of the successive changes, which led to inconsistencies on issues of interest.

In this regard, we note that the text Article 42, paragraph 1, letter f of Law no.407 / 2006, as amended and supplemented, which states that "Poaching is an offense punishable by imprisonment from six months to three years or a fine, the following facts: hunting of game species strictly protected under conditions other than legal ones;" it is not likely to have practical effect, given that the verification of an essential requirement that the action is directed against specimens of strictly protected game cannot be achieved. Equally, the legislator, in the same law, sought to use different terminology, such as "strictly protected game species" and "species where hunting is prohibited," and we cannot believe that there is an identity between the two concepts. In these conditions, we made a proposal *de lege ferenda*, saying that emergency regulations should be strictly protected game species, preferably through an exhaustive annex to the Law no.407 / 2006, which takes into account the state regulations current other legal acts and Ordinance no.57 / 2007 on the regime of natural protected areas, conservation natural habitats, wild flora and fauna.

[4] Published in the Official Gazette, Part I, nr.944 / 22.11.2006

Referring to the crime provisioned by Article 42, paragraph 1, point h of Law no.407 / 2006, as amended and supplemented, which states that "Poaching is an offense punishable by imprisonment from six months to three years or a fine, the following facts: hunting area or fenced plot built otherwise than under art. 34" we observed that the text creates a confusion regarding the possibility of hunting roam dogs in the urban perimeter, but under the conditions defined by law notion of wanderer dog, they can only be identified on a hunting ground, not in the built-up area. De lege ferenda, we suggested that Article 34 will refer to dogs whose masters cannot be identified, instead of wandering dogs, which would eliminate the aforementioned inaccuracy.

The Emergency Ordinance no.57 / 2007 on the regime of natural protected areas which has transposed the provisions of Directive79/409 /EEC on the conservation of wild birds and Directive 92/43/ EEC on the conservation of natural habitats and of wild flora and fauna, criminal provisions were grouped in art.52.

By way of example, note that in the seventh normative manner found in the article 52, let.g of Ordinance no.57 / 2007 stipulates that "An offense punishable by imprisonment from three months to one year or with fine committing the following acts:capture or killing of wild fauna species listed in Annexes no. 5A, 5B, 5C, 5D and 5E and where derogations are applied, according to art. 38, taking, capture or killing of species listed in Annexes no. 4A and 4B methods or means provided in Annex no. 6" we noticed that although the text made reference to eight annexes, its constitutive content is clear and lacks confusion. Our assessment is that criminalization is justified, even while that seems to overlap with provisions of article 52, point h where both are made by illegal means, but we consider that the overlap is only apparent, as long as the text of Article 52 made circumstantiation, letter g higher than that made by text found in letter h, having the first special time value and the second general rule. Equally, other relevant distinction between the two texts arise from the fact that if the offense

under Article 52, item g is criminalized and the action of capture or killing is done by illegal means and methods, as opposed to criminalizing only the following capture or killing by unlawful means.

On the whole, we considered that the regulation Article 52 of Ordinance no.57 / 2007 is perfectible sense that we made a proposal de lege ferenda, but the current form of the legal act poses no problems in terms of constitutionality by reference to Article 73, paragraph 3, letter h of the Constitution.

Regardless of the personal contributions made to clarify some concepts of regulation and improvement of criminal responsibility in environmental protection and at the same time for their concrete application in practice made during the research topic of this thesis and presented selectively during this exposure, I made a series of proposals de lege ferenda, among which:

- the repealing of art 151, alin.1 of the Criminal Code, namely because the Romanian legislator should use a different approach when prosecuting legal entities, like an effective set of measures to prevent the movement of the patrimony to another legal entity.
- The additional punishment provided by art.142 of the Criminal Code namely the closing of some work points of the legal entity should be completed by the prohibition of opening a new business unit to cover even partially the activities performed at the work point closed as a result of the judgment.
- Regarding the normative variants under art.345, paragraph 3 and paragraph 4 of the Criminal Code, we proposed to exclude the incriminating texts that imply injury or death of several persons, each person being likely a secondary passive subject of the offense in part retained by a distinct offense in the contest or other form of multiple incident in particular.
- If the offense under art.346 Criminal Code in the seventh normative variant designated by the phrase "any other operations on their movements" seen

as imposing some clarifications of the legal text, the preferred method of adding this variant the phrase "under this law".

- Modify the text of Forest Code Article 106, for the purposes of reference only to the provisions of Article 36, paragraph 1 Forest Code, instead of the entire Article 36 Forest Code.
- Replacing "protected areas" in Article 98, paragraph 1, letter of GEO no.195 / 2005, with the phrase "protected natural areas" for terminological consistency and correct application of the provisions in question.
- Regarding the offense under Article 98, paragraph 3, letter d of GEO no.195 / 2005, which states that "A crime and is punished with imprisonment from six months to three years following acts, if they were likely to endanger life or human, animal or plant: conduct activities with genetically modified organisms or products thereof without requesting and obtaining the agreement of import / export or authorization under specific regulations" it is necessary to return to the active subject circumstantiated, as foreseen by the law in its original form of the document, especially as the established legal obligations, the regulations are prerequisite for the typical offense in question, the legal responsibility of the person.
- Regarding the offense under Article 46 of Law no.111 / 1996 we consider that there are two options for improving text: 1. either by removing legal procedures devoid of purpose or detonation, development and export as immediate consequence more serious that previously was subject is covered now aggravated by the rules found in art.345, paragraph 3 and paragraph 4 of the criminal Code, previously analyzed; 2. or by reintroducing a variant worsening as the previous legislative amendment, the penalty limits would be higher if the offending actions have resulted in the death of one or more persons.
- All about crime provided by Article 46 of Law no.111 / 1996 on the determination of the penalty, it must be reduced punishment limits, so as to

lower the provisions of art.345, paragraph 4 of the Criminal Code, which is the general rule applicable to all situations where nuclear materials or radioactive materials causing the death of one or more persons or reinstatement of an aggravating within 46 of Law no.111 / 1996, the previously existing legislative amendment made by item 3 of Article 61 of Law no.187 / 2012, by deed of the previous paragraph, namely Article 46, paragraph 1 of Law no.111 / 1996 punishable in the upper limit or imprisonment from 15 to 25 years and removal of rights that resulted in the death of one or more persons. We believe the latter preferred embodiment, as it is clear that the production of the death of one or more persons by the use of weapons or nuclear explosive device is more dangerous in the abstract than the manufacture of the death of a person as a result of non-compliant use of radioactive materials example, in a medical radiology.

- For practical applicability of Article 63, paragraph 1, letter of the Law no.211 / 2011 is necessary to establish a basis for determining the category of prohibited waste import either by regulating their content of organic laws or of an order emergency or a direct reference to criminal legislature made an act of lower legal force.
- For practical applicability of Article 63, paragraph 1, letter b of the Law no.211 / 2011 requires delimit by law the concept of hazardous waste, possibly by setting up the reference system for this type of waste under Annex 4 of the Law no.211 / 2011, which would relieve other legislative changes.
- For practical applicability of Article 63, paragraph 1, letter c of Law no.211 / 2011, according to which "a crime and is punished with imprisonment from three years to five years or a fine following facts: sale, abandonment and / or failure to load waste time and during transit through the territory of Romania" Should be replaced by the term "and/or" with a single conjunction, namely "or ".

- As regards the provisions in Article 52, letter c of Ordinance no.57 / 2007 that provide "An offense punishable by imprisonment from three months to one year or with fine committing the following acts:noncompliance with art. 28par. (1)'Sit is necessary to amend their sense that we propose as follows: "Committing within natural protected areas of any act or omission, that predictably could cause pollution or deterioration of habitats and disturbance of species for which those designated areas."

I express my consent to this summary of the thesis,

Professor Steliana Daniela Marinescu