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Fighting Environmental Crime in Spain: A Country Report

Work package 2 on "Instruments, actors, and institutions"

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Abstract

The Spanish legislator has resorted to using criminal law to protect the environment, following the path settled by European Union through its Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law. The problems arising from its implementation in Spain serve to analyse the Spanish penal system and its ancillary relation with the administrative law, as well as the legal and practical consequences of a growing criminalization of environmental offences.

In the Spanish legal system, administrative law and criminal environmental law coexist. The criterion according to which the legislator differentiates between administrative and criminal sanctions is the seriousness or gravity of the attack and the degree of damage or endangerment. Criminal law has jurisdiction where the conduct is administratively unlawful and also exceeds the limits of such offence because of its seriousness. This necessary relation with the administrative regulations requires control of the activity of the administration. Lack of action or inappropriate behaviour may constitute an administrative or criminal offence, depending on the seriousness of the legal infraction or the environmental damage. This failure to act generates impunity. Cases of the so-called active tolerance of the Administration that in some cases lead to corruption are of particular concernThere is no specific Act containing all the sanctioning environmental regulations: Administrative sanctions are fragmented and laid down in different environmental laws and criminal infractions only appear in the Criminal Code that has transposed all the offences set out in Directive 2008/99/CE. Each crime has different levels of completion (presumed endangerment, demonstrated endargerment, damage) and also different objects affected (environment, water, etc, flora and fauna). This creates a very complicated system that lacks clarity when establishing the moment in which the crime is committed. Greater uniformity is needed to determine the protected object and the level of injury required for completion.

There is autonomous criminal liability for corporations and collective entities, allowing them to be sanctioned even when it is not possible to single out the criminal liaibility of a physical person. It must be highlighted that the reform of the Criminal Code of 2010 has excluded local public administrations and institutional government even though they also play an important role in pollution offences as authors or participants.

There are no relevant differentiating factors in the substantive and procedural aspects referring specifically to the environment in the fight against organized crime. The general rules apply. There is no definition of organised environmental crime. In Spain the main form of organized crime in these areas are identified with organized forms of corruption. There is a criminal liability of officials for illicit favourable reports, remaining silent on infringement of laws following inspections, omitted inspections, resolutions or votes in favour of granting illegal licences.

There is a specific police force (SEPRONA) and a public prosecutor (in each provincial headquarters) dedicated to the prosecution of environmentall crimes. There is a mixed system of accusation. The Prosecutor is responsible for the charge and the procedure is the responsibility of the Judge or Court. A private or popular accuser can also join in the trial. The trial is *ex officio*. There is no possibility of plea bargaining in environmental cases however offenders can accept an agreement with the Prosecutor's Office after accepting criminal responsibility.

The evolution of prosecution of environmental crime shows that a large number of the trials and sentencing focuses on urban problems. The conviction rate is very low in strictly environmental crime. It should be noted how such a fact may be influenced by the existence of authorizations and raise problems mainly related to the lack of inspections and technical personnel (experts).

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List of abbreviations

BOE	Boletín Oficial del Estado – Oficial Journal of the Spanish Government
CCAA	Comunidades Autónomas – Autonomous Communities
CrimC	Criminal Code
DP	Defensor del Pueblo - Ombusdman
EAELD	Ecologistas en Acción – Ecologists in Action
FGE	Environmental Liability Directive
INE	Fiscalía General del Estado – Public Prosecutor of the State
LECrim	Instituto Nacional de Estadística – National Institute of Statistics
LOPJ	Ley de Enjuiciamiento Criminal (Act of Criminal Procedure)
MF	Ley Orgánica del Poder Judicial - Organic Act of Judicial Power
	Ministerio Fiscal Ministery of Prosecutions
NGO	Non-governmental organisation
NMP4	Fourth National Environmental Policy Plan of the Netherlands
OSPP	Organic Statute of Public Prosecutions
SC/CE	Spanish Constitution/Constitución Española
STS	Sentencia del Tribunal Supremo (Judgment of the Supreme Court)
STC	Sentencia del Tribunal Constitucional (Judgment of the Constitutional Court)
WP	Work Package
WSR	Waste Shipment Regulation

Summary

1. In the Spanish legal system, the definition of environment has been conditioned by three different perspectives: the anthropocentric, the ecocentric and the mixed perspectives. The main interpretation line states that the SC and CrimC reject extreme approaches and favour a mixed concept.
2. In the Spanish legal system, administrative law and criminal environmental law coexist. The criterion according to which the legislator differentiates between administrative and criminal sanctions is the seriousness or gravity of the attack and the degree of damage or endangerment.

   Criminal law has jurisdiction where the conduct is administratively unlawful and also exceeds the limits of such offence because of its seriousness.

   This necessary relation with the administrative regulations requires control of the activity of the administration. Lack of action or inappropriate behaviour may constitute an administrative or criminal offence, depending on the seriousness of the legal infraction or the environmental damage. This failure to act generates impunity. Cases of the so-called active tolerance of the Administration that in some cases lead to corruption are of particular concern.
3. A clear and detailed definition of environmental crime is not given in the Spanish Criminal Code (CrimC, hereinafter), but instead it uses a broad definition that is, environmental crime is serious breaches of those legal provisions that protect the environment.

   Various groups of crimes are set out from a conception of the environment that recognizes it as an autonomous legal interest and that includes physical and biological factors of the violated ecosystem component:

   - Environmental violation through polluting acts of the resources of the ecosystem (such as pollution of the atmosphere and discharges to water, soil, - Arts. 325, 326, 328, 330, 343, 345, 348-350 CrimC).
   - Environmental violation through acts damaging manifestations of the ecosystem (flora and fauna, e.g. through illegal logging and illegal trapping, Arts. 332-336, 343, 345, 352, 353, 357, 632 CrimC).
4. The competence for the environment is shared between the State, which fixes the basic environmental law, and the Autonomous Communities which have the competence to develop it and may extend or improve the basic regulation but cannot restrict or diminish it.
5. There is no specific Act containing all the sanctioning environmental regulations.
   - Administrative sanctions are fragmented and laid down in different environmental laws.
   - Criminal infractions only appear in the CrimC.

   A mixed system would probably be the best solution: an Environmental Act for the administrative aspects which may be referred to by CrimC. CrimC establishes all crimes related to the environment.