



EUROPEAN

POLICY BRIEF



THE EU'S PROMOTION OF ENVIRONMENTAL PROTECTION IN KOSOVO: A CASE STUDY ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW IN KOSOVO

Policy Brief 6: Policy implications for the EU

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OVERVIEW OF CASE STUDY

The EU environmental action regarding Kosovo has essentially been aimed at transforming it into a country that would make an adequate transition into accession, promoting the incorporation of the EU environmental acquis in the Kosovo new policies and legislation. In this case study, the main legal instruments that have been adopted by Kosovo since its declaration of independence in 2008 have been assessed to evaluate their consistency with EU legal framework and the possibility of applying criminal law to enhance environmental protection.

Kosovo has adopted a wide environmental legal framework that however is suffering from serious problems of enforcement and compliance. The weak implementation is considered to be at the root of illegal practices that are openly carried on in most of the territory of Kosovo: illegal logging, illegal hunting, illegal waste management, illegal building, destruction of cultural heritage of minorities, etc.

In Kosovo, types of conduct that damage the environment can be sanctioned by administrative or criminal rules and proceedings. There is not a general environmental law but several fragmented administrative laws covering different sectors. The Criminal Code introduces a Chapter on crimes against nature that responds to the Kosovo context. The Environmental Inspectorate is the institution adopting administrative sanctions and initiating criminal procedures. However, the analysis of this Chapter considering its capacity to comply with the requirements of the EU Directive on Environmental Crime cannot be carried out now because Kosovo's legal system does not meet the basic requirements and needs, in particular, to establish secondary legislation stipulating threshold values and standards to determine infringement of environmental laws and to be capable of enforcing administrative law. Current institutions depend greatly on external experts in order to develop the secondary legislation and the required toolbox to implement it. This dependency conditions the timing of transposition and enforcement of the environmental legislation. Once these institutions are capable of performing the mandate that now is only on paper, then it will be possible to confront new tasks such as the criminal prosecution of those activities envisaged in administrative and criminal law.

The case study is analysed from a criminal legal perspective and using the legal rules applicable and professional literature.

POLICY IMPLICATIONS AND RECOMMENDATIONS FOR THE EU

The EU has helped to shape Kosovo legal instruments and institutions for the protection of the environment, being a model to follow and also providing funds and expertise to deal with problems at the regulatory level – e.g. harmonization with EU legislation- and at the enforcement level. However, the effectiveness of its help is quite limited in terms of positive outcomes because the weak enforcement constitutes by now an unresolved problem, which is even more severe in the Serbian municipalities of Kosovo due to the prevailing circumstances inherited from the war and the international administration.

The Kosovar environmental legislation has incorporated references to EU legislation as a legal horizon to be reached through further legal development. These environmental laws are going to be developed by the Government and Municipalities, monitored by the Kosovar Environment Protection Agency and enforced by the Inspectorate services with a broad mandate. The Inspectorate services will impose administrative sanctions and will initiate criminal procedures. However its full capacity for action will not be developed until the legislature adopts measures to determine special areas of protection or establishes thresholds values for standards of emissions when appropriate.

The analysis of the legal scheme adopted to protect the environment and to sanction the breaches of environmental laws has shown that Kosovo has a system that combines characteristics of both models of environmental protection in Europe and the USA, the Civil Law and the Common Law systems. Instead of adopting a general law or code for the protection of the environment, Kosovo has a wide variety of statutes to protect the environment by sectors that establish sanctions for their infringements and also refer to criminal investigations and procedures that can be initiated by the administrative authority, i.e. the Environment Inspectorate.

This new legal scheme for the environmental protection has been introduced from above into a less developed legal system straining its functionality and applicability by a meagre administration that needs financial and human resources. Special training has been facilitated through EU programmes that have financed networks that temporarily have benefitted human resources. However this aid has had a limited impact over time. For these reasons, the EU's strong commitment with Kosovo to guarantee environmental protection must be further developed through the Stabilisation and Association Agreement that was initialled in July 2014 and should be the tool to do it.

ABOUT EFFACE CASE STUDIES ON ENVIRONMENTAL CRIME

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