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## MISDEMEANOR – A BASIS FOR (NOT) PROTECTING THE ENVIRONMENT

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**Abstract.** *In this paper, an attempt is made to delineate the criminal act from administrative infractions. This delineation is essential to the imposition of sanctions (criminal or misdemeanor) in cases of violations against the natural environment. All exposed elements support the quantitative differences between criminal acts and violations based on different levels, higher or lower, of violations of the legal good, which indisputably are treated as criminal offenses and not as part of administrative infractions and represent the basis for an integrative approach to criminal acts. All this does not exclude the need for the correction of certain disadvantages of their treatment as punishable offenses in the jurisdiction, emphasized by the fact that there are numerous lesser infractions. Thus a revision of the Act on Misdemeanors is more than necessary. In addition to decriminalizing such violations, the court can become disburdened by introducing alternatives to tortuous liability and introduction of procedures in the form of mediation in the Act on Misdemeanors. This would leave such procedures to be dealt with by competent police authorities and administrative authorities before they go to court, only leaving difficult and appealed cases to the judiciary. Likewise, changes in the Act on Misdemeanors should include further measures to simplify and accelerate the legal procedure for infractions and misdemeanors.*

**Key words:** *crime, administrative infraction, environmental protection.*

### DILEMMAS RELATED TO THE APPLICATION OF THE ACT ON MISDEMEANORS SO FAR

The Macedonian legal system defines two categories of punishable acts: criminal offenses and misdemeanors. Criminal offenses are regulated in the Criminal Code, while misdemeanors are covered in the Act on Misdemeanors. The 1995 Act on Courts abol-

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ished former magistrate judges and introduced a unified organization of the judiciary. Before this Act was passed, competences to adjudicate for less severe punishable acts had been conferred by the law upon magistrate courts, but also to public administration agencies and public offices, who were thus allowed to pronounce sanctions in this domain.<sup>1</sup>

In a 1996 resolution of the Constitutional Court of the Republic of Macedonia<sup>2</sup>, the provision of the Act on Courts that allowed for minor infractions to be decided on by other agencies (customs, foreign currency, foreign policy and tax agencies) was abolished. Such a decision was a result of the Constitutional Court's interpretation of the word of the Constitution, according to which only courts of law were allowed to decide on punishable acts. The basis for this was found in the fact that the Constitution does not make a gradation of punishable acts according to the degree of danger for the society they are posing, and also in Article 13 of the Constitution of the Republic of Macedonia stating that "a person charged with a punishable offense is considered innocent until his or her guilt is decided on by a final judgment."<sup>3</sup>

A consequence of such ruling of the Constitutional Court was an enormous increase in the number of misdemeanors to be tried before courts of first instance, which resulted in their lack of promptness. Since misdemeanors were not adjudicated in time, most of them became obsolete, and this put the expediency of such proceedings to question. The procedure in misdemeanor trials was slow and complex, and administrative tasks carried out in the courts were expensive. On the other hand, the public administration agencies which had now been rid of competences to reach decisions and pronounce penalties in misdemeanor procedures ended up in a passive position and became unable to efficiently perform their supervisory duties<sup>4</sup>.

In December 2005, when Amendments for the change of the Constitution of the Republic of Macedonia were adopted (in this particular case Amendment XX), the possibility was open that the penalty for a misdemeanor could be decided on by a public administration agency or organization, in cases defined by the law, where such final decision of this agency could be contested before a court of law, on conditions and in a procedure defined by the law. This constitutional provision was legally operationalized in May 2006, when the new Act on Misdemeanors was passed.<sup>5</sup>

It is prescribed that misdemeanor agencies shall conduct proceedings in accordance with the provisions of the Act on Misdemeanors or Act on General Administrative Procedure, unless substantive acts defining the misdemeanor explicitly instruct otherwise. The procedure conducted before misdemeanor agencies is urgent. Ex officio and without delay, the agency shall obtain evidence and decide on the actual condition needed to reach a decision. Before reaching a decision on the misdemeanor, the misdemeanor authority provides written information to the perpetrator, notifying him or her that he or she may provide a written statement on facts and evidence within 3 days.

Based on available data, it is rather difficult to make a general conclusion on the expediency and implementation of the 2006 Act on Misdemeanors. The data is lacking on

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<sup>1</sup> Stojkovska, R., judge in the Administrative Court of the Republic of Macedonia;

<sup>2</sup> Resolution of the Constitutional Court: No.313/95 of 10 July 1996;

<sup>3</sup> Article 13, the Constitution of the Republic of Macedonia.

<sup>4</sup> *Ibid*;

<sup>5</sup> Act on Misdemeanors (Official Bulletin of the Republic of Macedonia No. 62/06);

the number of proceedings instituted against the misdemeanor decisions of misdemeanor authorities before the Administrative Court. This would help assess the quality of activities of misdemeanor commissions, and not only their timeliness or efficiency. A large number of initiated and completed misdemeanor procedures may indicate the insufficient capability of these institutions, and the other way round, fewer misdemeanor proceedings and misdemeanors decisions made can indicate thoughtfulness in decision making, which would suggest quality instead of quantity. Still, the lack of data on administrative resolutions pertaining to misdemeanor proceedings initiated as complaints against the decisions of state authorities (i.e. against the misdemeanor commissions established under the auspices of state authorities), which are now completed before the Administrative Court, does not allow one to reach a conclusion on the quality of their activities in this domain. This particularly applies if one takes into account that such a misdemeanor procedure is made up of a number of phases, which together comprise a unified procedural whole.<sup>6</sup>

In terms of the establishment of misdemeanor commissions (which is a legal obligation for state agencies), the general conclusion would be that, in spite of the fact they are often late and slow when developing the procedure, the legal obligation prescribed in substantive acts (grounded in the Act on Misdemeanors) has been largely observed. Competent state agencies have established committees for conducting misdemeanor proceedings. It is only logical that those agencies that established such committees earlier have proved to be more efficient in resolving individual cases. On the other hand, the fact remains that, in order to establish misdemeanor commissions within public administration agencies, amendments to the Act on Misdemeanors are not sufficient. Rather, changes of *lex specialis* regulations sanctioning the activities of competent administrative agencies are also required. Namely, the Act on Misdemeanors has provided a legal basis for changing substantive regulations, which would enable particular administrative agencies to declare themselves competent for conducting the misdemeanor proceedings. Thus, for all (competent) administrative agencies a change was initiated in the legal acts defining their activities, where provisions were added regulating the establishment of misdemeanor commissions and committees for mediation in a misdemeanor procedure. Most relevant acts have been changed this way, but the changes have come at different pace, which, for some administrative agencies, meant that a substantial amount of time elapsed between the passing of the Act on Misdemeanors and their getting concrete legal grounds to establish a misdemeanor authority. For all these reasons some such authorities started their activities quite later. It is important to notice that there are still substantive regulations which have not yet incorporated changes in this direction, i.e. which do not contain provisions prescribing the establishment of misdemeanor commissions. An example would be legal acts regulating healthcare: although they have been changed a lot since 2006, the changes

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<sup>6</sup> Quantitative data for the period 5 December 2007 – 5 April 2011 (from the moment when the Administrative Court became operational to the present day) suggest that the Court has received 10,600 new cases from the Supreme Court of the Republic of Macedonia. Of those, 2,787 (resolved and unresolved to date) pertain to misdemeanors. One should stress that these suits complain against the decisions of the committees of the State Labor Inspectorate, Ministry of the Interior, Customs, Public Revenue Office, State Trade Inspectorate, Committee for the Protection of Competition, communal services, etc. However, these data do not provide us with sufficient grounds to reach reliable conclusions on the quality of decisions given by misdemeanor commissions, or on the decisions of the Administrative Court in all these cases.

have not been aimed at harmonization with the Act on Misdemeanors. One can assume that competent agencies (in this case the Ministry of Health and Institute for Health Insurance of Macedonia) choose not to deal with misdemeanor procedures and pronouncement of misdemeanor penalties. As opposed to the Ministry of Health, those “classic” administration agencies, such as the Ministry of the Interior, immediately responded to the new development by proposing a change to all legal acts on which their activities are based. In this ministry, misdemeanor commissions were formed immediately after the amendments to the Act were passed in the National Assembly. Although there are no data on the number of initiated and completed proceedings in the domains in which the Interior Ministry is competent, when one compares the most recent period and the equally long period in which such misdemeanors were the jurisdiction of the magistrate court (1995-2006, before the Act on Misdemeanors was passed), a strong impression remains that the multitude of misdemeanor procedures resolved in the Interior Ministry significantly disburden the court, which was supposed to adjudicate on these matters in the past. The assumption is almost certainly true that the situation is quite similar with all other misdemeanor authorities that have started unhampered work in this (legal) capacity, thus facilitating the work of courts.

## 2. PARTIES IN ENVIRONMENTAL PROTECTION CASES BEFORE MISDEMEANOR AUTHORITIES

When discussing the environment, one should particularly stress that the Ministry of Environment and Spatial Planning, a body of state administration competent to regulate the protection and promotion of the environment in the Republic of Macedonia, established its misdemeanor commission only in May 2007. At the same time, a Committee for Mediation in the Misdemeanor Proceedings was formed. The State Inspectorate for the Environment, which is itself an agency working under the auspices of the Ministry of the Environment, a Misdemeanor commission and a Mediation commission were established in October 2008.

In its activities, the Misdemeanor commission of the Ministry of Environment applies: Environment Act, Waste Management Act, Nature Conservation Act, Ambient Air Quality Act, Noise Protection Act, Water Act, Act on Genetically Modified Organisms and Act on Packaging Management and Packaging Waste.

In terms of the activities of this Committee, we wish to stress that in the period 2008-1 October 2010, the Ministry of Environment initiated a total of 636 misdemeanor proceedings, of which most pertained to issues regulated by the Waste Management Act, as follows: 76% in 2008, 71% in 2009, 55% in 2010. In this period, the State Environment Inspectorate made motions for as few as 39 misdemeanor proceedings.

Worth noticing in favor of this Ministry is the high percentage of decisions reached, once the misdemeanor procedure has started. As we have pointed out, in the Ministry of Environment, out of the total of 636 procedures that were initiated, decisions were made in 537 cases, or 84%. A similar efficiency rate is found with the State Environment Inspectorate which, out of 39 procedures that were initiated, made decisions in 85% (or 33) cases.

**Table 1.** Yearly overview of misdemeanor proceedings in the Republic of Macedonia initiated in each separate year, in misdemeanor commissions working under the auspices of the Ministry of Environment and State Environment Inspectorate, from their establishment up until October 2010.

Ministry of Environment	2008 – total 109 (76% Waste Management Act) 2009 – total 447 (71% Waste Management Act) 2010 – total 80 (55% Waste Management Act) entire period total of 636 proceedings
State Environment Inspectorate	2008 – 11 2009 – 23 2010 – 5 entire period total of 39 proceedings

**Table 2.** Yearly overview of decisions made after misdemeanor proceedings in the Republic of Macedonia, in misdemeanor commissions working under the auspices of the Ministry of Environment and State Environment Inspectorate, from their establishment up until October 2010.

Ministry of the Environment	2008 – total. 58 2009 – total 301 2010 – total 178 entire period total of 537 decisions or 84%
State Environment Inspectorate	2008 – total 9 2009 – total 22 2010 – total 2 entire period total of 33 decisions or 85%

One should notice the piece of data that, from the establishment of the Mediation commission in the Ministry of the Environment up until 1 October 2010, only two procedures ended in mediation, while in the Mediation commission in the State Environment Inspectorate not a single case was adjudicated by means of the mediation procedure.

**Table 3.** Yearly overview of lawsuits filed by persons who had been penalized by misdemeanor commissions, from their establishment up until 1 October 2010

Ministry of Environment	Total 15
State Environment Inspectorate	2008 – total 57 (39 misdemeanors and 18 criminal offenses) 2009 – total. 6 (criminal offenses) 2010 – total. 4 entire period total of. 43 misdemeanors and 24 criminal offenses

In terms of the strictness of penalties for perpetrators of acts against environmental protection, the highest fine ordered by the Misdemeanor commission in the Ministry of the Environment has been decided on in relation to a misdemeanor from the so-called second category (from the Environment Act). It amounted to EUR 6,000. The Misdemeanor commission working under the auspices of the State Environment Inspectorate has ordered the highest fine amounting to EUR 3,000.

In the domain of environmental protection, in the Republic of Macedonia an important role is played by the Ministry of Transport and Connections. In fact, in this ministry a total of 6 misdemeanor commissions covering public hygiene have been established (2 in July 2009, 2 in October 2009, 1 in February 2010 and 1 in May 2010). Likewise, committees for mediation in the domain of public hygiene have been formed.

One should note the fact that in the period July 2009 – 1 October 2010 in the Ministry of Transport and Connections a total of 29,042 misdemeanor procedures were initiated, of which 28,854 or 99.35% were related to public hygiene, while insignificant 188 were in the domain of transport.

As to efficiency, in the domain of public hygiene the Ministry of Transport and Connections resolved 9,300 or 32% of all cases, while in the domain of transport 41 cases were solved, or 22%. The said numbers must be interpreted in the context of facts that in a bit more than a year of work misdemeanor commissions in public hygiene (there is a total of six, of which the first was established in July 2009) managed to resolve one third of misdemeanor proceedings. Even more interesting is the condition related to misdemeanors in the field of transport, where (only) two committees were formed, in July 2010. For a bit more than three months of activities (July – 2 October 2010) they managed to make decisions in almost one fourth of cases.

A major deficiency is noted in the activities of the Mediation commission within the Ministry of Transport and Connections. From its establishment up until October 2010 a total of 46 requests for mediation in misdemeanor proceedings were petitioned, of which only one was settled.

### 3. PROTECTION RELATED TO MISDEMEANORS AGAINST THE ENVIRONMENT IN ADMINISTRATIVE LAW

According to Article 67, Paragraph 3 of the Act on Misdemeanors, a lawsuit against the decision of the misdemeanor authority can be filed, requesting an administrative procedure. Such a request can be filed by a natural person or legal entity against whom the penalty was sentenced, their legal representative or attorney, the injured party and their attorney and the owner of confiscated possessions. The suit postpones the execution of the decision imposing a fine.<sup>7</sup>

Grounds for filing a lawsuit are defined in Article 69 of the Act on Misdemeanors, as follows: A decision of the misdemeanor authority may be contested by filing a lawsuit: if the decision breached the substantive provision of the act prescribing the misdemeanor; if regulations related to the procedure have been breached, if the decision has been made by

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<sup>7</sup> Article 67 Paragraph 2 of the Act on Misdemeanors;

an agency which is not competent, or if the decision does not contain all prescribed elements; if the facts have been erroneously or incompletely determined, in which case in the lawsuit new facts can be listed and new evidence proposed only if the plaintiff proves it probable that he or she was not able to present the new evidence during the original proceedings and that he or she was not responsible for this; due to the height of the fine pronounced, if circumstances have aroused based on which Articles 28<sup>8</sup> and 31<sup>9</sup> can be applied and due to penalties pronounced, confiscation of property and expenses of the procedure. The lawsuit is filed within eight days from the day of submitting a decision on the misdemeanor, and the decision on the lawsuit is the responsibility of a court competent to make decisions in administrative proceedings.<sup>10</sup>

In the period we have analyzed, the misdemeanor commission working under the auspices of the Ministry of the Environment made 537 decisions, against which 15 lawsuits were filed (2.8%). On the other hand, out of the total number of decisions made by the State Environment Inspectorate, lawsuits have been filed against 43 decisions pertaining to environmental misdemeanors<sup>11</sup>.

From the period of entry into force of the Act on Misdemeanors and Act on Administrative Court up until 31 December 2010, the Administrative Court received a total of 4,797 appeals against decisions of misdemeanor authorities, of which<sup>12</sup>:

- A total of 32 were filed against the Ministry of Environment and Spatial Planning;
- A total of 141 were filed against the Ministry of Transport and Connections;

Of these total appeals against the decisions of misdemeanor authorities before the Administrative Court, until 31 December 2010, 1,423 were resolved,<sup>13</sup> amounting to 30.87% of the total number of suits filed against the decisions of misdemeanor authorities. Individually, the data on resolved cases look as follows:

- A total of 22 appeals against the Ministry of Environment and Spatial Planning have been resolved (68.75% of all such lawsuits);
- A total of 127 appeals against the Ministry of Transport and Connections have been resolved (90.07% of all such lawsuits).

<sup>8</sup> Article 28, Act on Misdemeanors: (1) The Court, i.e. the misdemeanor authority may exempt from penalty the perpetrator of the misdemeanor only when the law explicitly prescribes so; (2) When the court, i.e. the misdemeanor authority is authorized to relieve the perpetrator from the penalty, it can mitigate the penalty without limitations prescribed for penalty mitigation or only pronounce the penalty forbidding the control of a motor vehicle or expulsion of a foreigner from the country;

<sup>9</sup> Article 31 of the Act on Misdemeanors: When the misdemeanor was made under exceptionally extenuating circumstances, and the law prescribes a minimal fine, the fine may be mitigated for up to one third of the minimally prescribed fine;

<sup>10</sup> Article 68 of Act on Misdemeanors;

<sup>11</sup> See Table 3;

<sup>12</sup> Administrative Court: No. 03-5/4 of 1 March 2011;

<sup>13</sup> Administrative Court: No. 03-3/4 of 1 March 2011;

## 4. INSTITUTIONAL FORMS OF ENVIRONMENTAL PROTECTION

In compliance with the positive law of the Republic of Macedonia, protection of the environment is a competence of the Ministry of Environment and Spatial Planning and State Environment Inspectorate<sup>14</sup>.

The State Environment Inspector is authorized to do the following with regard to the party he or she is supervising: temporarily confiscate their equipment, products, devices and machines causing pollution or degradation of the environment, or such machines and devices which do not meet the prescribed criteria and standards of environmental protection, until that moment in which the deficiencies have been removed or an irrevocable verdict of a competent court or misdemeanor authority has been reached<sup>15</sup>. The Inspector issues a written decision stating the said measures.<sup>16</sup> The Inspectorate is authorized to limit or forbid the business activities of a legal entity or natural person who has not submitted a request for getting an integrated environmental license within a maximum of 90 days, during which period causes of the (potential) environmental pollution must be eliminated. If the party fails to comply with the decision of the state environment inspector or if causes for the condition found in the decision are not eliminated, the state environment inspector is legally obliged to file a request for initiating a misdemeanor procedure before the competent agency - a misdemeanor commission working under the auspices of the Ministry of Environment and Spatial Planning. Depending on the nature of the condition that has aroused, the suit can be filed before a competent magistrate court, or, in situations in which there is a criminal responsibility of parties, the suit is filed before a competent criminal court (or agency). Simultaneously, the procedure for revoking the party's permits and authorizations starts<sup>17</sup>. If it is found that the deadlines defined in the law are obviously not enough for legal entities and natural persons to undertake all actions necessary to harmonize their activities with legal acts and other regulations, and with the technical regulations and standards, the State Environment Inspector may allow additional time for this process, which cannot exceed 120 days.

If the Inspector finds irregularities in the work of the natural person or legal entity of such nature that they pose a threat to the environment and people's health, he or she immediately issues a verbal command forbidding the activities of installations, facilities, devices or the use of agents and equipment (if necessary, the Inspector simultaneously notifies a competent state agency, for instance the State Sanitary Inspectorate). Within 48 hours the Inspector is obliged to issue a written decision accompanying this command<sup>18</sup>.

More concretely, the environmental misdemeanor proceedings in the Republic of Macedonia are organized, and penalties are pronounced, by the same misdemeanor authorities<sup>19</sup> - the Misdemeanor Commission working under the auspices of the Ministry of Environment and Spatial Planning, established in May 2007, and the Misdemeanor Commis-

<sup>14</sup> Environment Act (Official Bulletin of the Republic of Macedonia No. 53/2005);

<sup>15</sup> *Ibid*: Article 198, Paragraph 1 Clause 49;

<sup>16</sup> *Ibid*: Article 200.

<sup>17</sup> *Ibid*: Article 200 Paragraphs 4-12;

<sup>18</sup> *Ibid*: Article 200 Paragraph 13: Confiscation and treatment of property is conducted in accordance with the Act on the Management of Confiscated Property, gain based on such property and objects confiscated in a criminal or misdemeanor proceedings.

<sup>19</sup> *Ibid*: Article 212-a;



sion working under the auspices of the State Environment Inspectorate, established in October 2008. Within them, there have been formed committees authorized to run the mediation procedure. The misdemeanor commission (in both agencies) is made up of authorized professionals employed in the given public administration agency, of whom one person is appointed president of the misdemeanor commission. The misdemeanor commission has three members: two hold L.LBs, of whom one of them must have passed bar examination and must have five years of professional experience in the field; one holds a university degree in the natural sciences and must have five years of professional experience in the field.

The misdemeanor commission is appointed for a period of at least three years, with a possibility of reappointment of its members. Only a person holding an L.LB may be appointed president of the misdemeanor commission. Against decision of the misdemeanor commission stating a penalty for the misdemeanor an appeal can be submitted to initiate administrative proceedings before the Administrative Court of the Republic of Macedonia.

According to the Act on the Environment of the Republic of Macedonia, alternatives may be offered to the perpetrators of misdemeanors against the environment in the misdemeanor proceedings, as follows: the settlement procedure, the mediation procedure, and community service.

#### **4.1 Settlement**

In accordance with the Environment Act, state inspectors and other authorized inspectors are due to propose a settlement procedure to the perpetrator of the misdemeanor before they file a request to start misdemeanor proceedings.<sup>20</sup> When the perpetrator complies with the settlement procedure, the inspector compiles a record listing all relevant elements of the misdemeanor, the time, place and manner in which the misdemeanor was made, a description of the act and persons found on the spot. In the record, the way in which the harmful effects of the misdemeanor will be removed is stated along with the way to remove the consequences arising from the misdemeanor that has been made. The state and authorized inspector can propose to the perpetrator to compensate for the consequences of the event by participating in community service or donating funds for community service. Likewise, in the settlement procedure they can also issue a payment order to the perpetrator. If the perpetrator is a legal entity, the record and the payment order are signed by a responsible individual found on the spot during the supervision procedure conducted by the inspector or by another responsible individual stating that he or she has the right to sign the record and receive the payment order.

#### **4.2 Mediation**

In environmental misdemeanors, the state inspectors and other authorized inspectors in the Republic of Macedonia may offer a mediation and compliance procedure to the perpetrators, through which they would pay the fine prescribed for the given misdemeanor, cover other expenses and eliminate the consequences arising from the misde-

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<sup>20</sup> *Ibid*: Article 212-v;

meanor<sup>21</sup>. Contrary to the settlement procedure, which the inspector has to offer to the perpetrator, offering the mediation procedure is the discretion of the state or authorized inspector.

The inspector states in a written record that both parties are compliant with initiating the mediation procedure. The proceedings itself may be initiated within 8 days from learning of the misdemeanor through the request of the state or authorized inspector. Compliance must be reached within 8 days from the start of the mediation procedure. In cases in which there is compliance with the mediation, the fine for the perpetrator may be reduced at most by one half of the maximal prescribed fine for the given misdemeanor.

The mediation procedure is conducted before the Mediation Commission. This Commission is appointed by the Minister of Environment or Director of the State Environment Inspectorate. The Commission has three members, of whom one acts as its president. Commission members are appointed from within officials employed in the Ministry of the Environment or State Environment Inspectorate. One of the members of the Commission must hold an L.L.B.

#### 4.3 Community service

Beneficiaries of community service may be applicable state agencies, local self-government agencies, nongovernmental organizations, public companies, public institutions (healthcare and social security) and other humanitarian organizations with which the Ministry of Environment has made a contract for accepting community service.<sup>22</sup>

State and authorized inspectors assign community service based on the proximity of the party's seat to the location of the misdemeanor, or the proximity of the perpetrator's place of residence, based on the principle of equality of benefactors of community service.

The fine pronounced by the decision of the misdemeanor commission or agreed on in the settlement with the mediation commission may be replaced by community service. The replacement is made by the misdemeanor commission's writing a decision deciding on the misdemeanor based on the request of the perpetrator.

Community service may consist of: actual community work or providing funds for community work. When actual work is conducted, the fine for the misdemeanor pronounced in the settlement and mediation procedure is converted into 10 to 20 euro for 3 hours of actual work (depending on the difficulty of labor). Actual work cannot be appropriated to more than 90 days within a 270 day period.

In accordance with the seriousness of the misdemeanor, the Environment Act prescribes three categories of misdemeanors against legal entities and defines appropriate fines. The first category entails fines of up to EUR 3,000<sup>23</sup>, the second lists fines of up to EUR 6,000 and the third lists fines of EUR 70,000 to 100,000.

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<sup>21</sup> *Ibid*: Article 212-g;

<sup>22</sup> *Ibid*: Article 212-d;

<sup>23</sup> ...in denar equivalent value;

- First category misdemeanor, a legal entity shall be fined EUR 3,000 if it:
- 1) fails to prepare and submit an environmental impact elaborate for projects to the agency of the state administration responsible for the project implementation approval
  - 2) releases into circulation certain products, semifinished products and raw materials, as well as their packaging which have no label on the possible pollution or impact on the environment
  - 3) releases into circulation certain products, semifinished products, raw materials and chemicals in packaging that is not labeled in accordance with the Law
  - 4) during monitoring, fails to use devices and instruments approved in the procedure for verification of the measurement instruments, and fails to maintain the monitoring devices and instruments in proper working condition
  - 5) fails to submit data necessary for making and maintaining a Register of Pollutants and their properties;
  - 6) fails to submit data necessary for making and maintaining the Cadastre of Environment
  - 7) if parties... do not allow access to information on the environment they possess or do not do so in a predefined form and within predefined deadlines;
  - 8) if parties possessing information on the environment fail to update or maintain this information;
  - 9) if request for harmonization with the operational plan has not been submitted within the given deadline;
  - 10) if a permit for harmonization with the operational plan for the continuation or commencement of activities on an installation has not been issued;
  - 11) if a report has not been submitted on the implementation of operational plans and performance of obligations from the operational plan in order to receive an integrated environmental permit and/or if this has not been done within a predefined deadline; and
  - 12) if the operator has not submitted a report.

A natural person shall pay a fine of up to EUR 200 in denar equivalent value (decided by a misdemeanor commission) if he or she:

- fails to allow insight to state and authorized inspectors for the environment;
- fails to provide all information necessary for monitoring in predefined deadlines;
- provides a false statement and inaccurate data, and
- fails to show ID at the location of inspection or fails to provide personal information upon such request of the state and authorized inspector.

If activities listed in clauses 2, 3 and 5 cause more substantial harm to people's lives and health, a penalty is prescribed accorded with the amount of the damage, up to three times the amount defined in Article 1.

When the purpose of the misdemeanor is for the perpetrator to gain financially (for him or herself or others), or when the misdemeanor has been committed by an organized group made up of at least three persons, the misdemeanor commission may pronounce a fine of EUR 15,000 in denar equivalent value.

Second category misdemeanor, a legal entity shall be fined EUR 6,000 if it:	<ol style="list-style-type: none"> <li>1) installations are constructed or reconstructed without a written permit and without complying with environmental protection norms and standards;</li> <li>2) vehicles are produced and imported not meeting criteria set for pollution and noise emission in mobile sources;</li> <li>3) the party produces, trades in and releases into circulation certain commodities and substances and performs certain activities and services in contravention of the prohibition made;</li> <li>4) uses substances depleting the ozone layer and/or products containing substances depleting the ozone layer in contravention of the law;</li> <li>5) uses national or imported technologies, a technological line, product, semi-finished product or raw material not meeting the prescribed environmental protection norms;</li> <li>6) technologies or technological lines, products, semi-finished products and raw materials are imported that are forbidden in the producer or exporter country for environmental reasons;</li> <li>7) the party fails to keep records on the use of natural resources, raw materials and energy in the emission of pollutants and substances, including types, properties and quantities of waste and other data required by the law;</li> <li>8) fails to comply with conditions defined in the voluntary contract;</li> <li>9) fails to conduct monitoring in accordance with the integrated environmental permit;</li> <li>10) fails to submit the data acquired during the monitoring in the way prescribed by the Ministry of Environment and Spatial Planning;</li> <li>11) legal entities and natural persons fail to submit data and information on the environment in accordance with the law;</li> <li>12) fails to notify the Ministry of Environment on its intention to implement projects;</li> <li>13) has not made a study to assess the influence of the project on the environment and has not submitted this study to the Ministry of Environment;</li> <li>14) has not received a decision complying with the implementation of the project, or the decision is not accorded with the law;</li> <li>15) has not received an A or B integrated environmental permit;</li> <li>16) it is found that during the validity of the A integrated environmental permit and five years after its expiry all legal documents and data related to the application, issuing and monitoring defined in the binding conditions for issuing an integrated permit are not kept or if they have not been made available to the Ministry of Environment upon request;</li> <li>17) if certain phases of operational plans are not implemented within predefined implementation deadlines;</li> <li>18) if the party has not acted in accordance with the decisions of the state or authorized inspector.</li> <li>19) if project activities have started without a decision on project implementation;</li> <li>20) if compensation is not properly calculated and/or if compensation is not paid within legally defined deadlines, and</li> <li>21) if report on the use of funds gained through the funding contract is not submitted.</li> </ol>
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For activities listed above the responsible official shall be fined EUR 800 in denar equivalent value. The responsible employee of the legal entity shall be fined EUR 700 in denar equivalent value. The natural person shall be fined EUR 500 in denar equivalent value.

A responsible official in the legal entity in charge of undertaking the said measures shall be fined EUR 600 in denar equivalent values if he or she:

- 1) fails to keep the data on the use of natural resources, raw materials and energy, on the emission of pollutants and substances, forms, properties and quantity of waste and other data defined by the law;
- 2) fails to submit the monitoring data in the way and conditions prescribed by the Ministry of Environment;
- 3) if the person authorized to disseminate information on environmental issues fails to act in accordance with the law;
- 4) if the responsible individual does not keep records in accordance with the law;
- 5) if the responsible individual fails to treat records as classified, and such treatment is defined by the law;
- 6) provides a false statement and gives inaccurate data during inspection;
- 7) fails to provide all information necessary for conducting inspection upon the request of the state or authorized environment inspector;
- 8) fails to provide insight to state or authorized environment inspectors;
- 9) fails to provide reports as defined in the law;
- 10) has not conducted general ecological revision and if report from the general ecological revision has not been submitted;
- 11) if the general ecological revision has been conducted by an unauthorized person, who is not registered and does not possess an applicable certificate;
- 12) if installation activities are not conducted in accordance with conditions defined in the permit and operational plan;
- 13) if information on security measures is not available in the way defined in the law;
- 14) if the responsible official does not appoint a person to be present during the supervision;
- 15) if all necessary information needed for supervision is not provided, and
- 16) if state and authorized inspectors are not allowed the right of insight.

A responsible official in the public administration agency in charge of enacting provisions of the Environment Act, and the person in charge of executing provisions of the Act, shall be fined EUR 600 if:

- 1) the responsible official in the Ministry of Environment, including its constituent agencies, and responsible officials in municipal agencies and the agencies of the city of Skopje have not timely and efficiently taken all measures and procedures for implementing the Law;

- 2) the responsible official in the Ministry of Environment, including its constituent agencies, and responsible officials in municipal agencies and the agencies of the city of Skopje fail to notify the Minister of Environment that compliance with the contents of the operational plan or deadline for the implementation of the operational plan have not been met;
- 3) if the person authorized to disseminate environmental information fails to act in accordance with the law;
- 4) if the responsible official fails to keep records in accordance with the law;
- 5) if the responsible official fails to treat data as classified, and this is requested by the law;
- 6) if this person has not provided all information necessary for monitoring upon the request of the state and authorized inspector for the environment;
- 7) if the responsible official fails to allow state and authorized environmental inspectors insight into data;
- 8) if the expert provides incorrect data while preparing plans;
- 9) if the expert for assessing environmental influences provides incorrect data while preparing documents for assessing environmental influences;
- 10) if the responsible official signs a study of environmental influences without providing a list of experts to assess the study;
- 11) if the responsible official has made an environmental revision, and he or she is not registered and does not have a relevant certificate;
- 12) if he or she fails to submit a request to initiate misdemeanor proceedings when all conditions for it have been met or when it is determined that a fine previously decided on has not been paid, and
- 13) if he or she issues a certificate or report on completed community service when the community service has not been carried out by persons instructed to do so.

A request for initiating a misdemeanor procedure for violations listed above may be submitted by a responsible official in an agency competent to implement the Environment Act, the responsible employee's direct superior or a state official participating in the implementation of applicable procedures.

The misdemeanor commission is the agency competent to decide on second category misdemeanors. When the misdemeanor has been committed solely in order for a party to receive financial gain for him/herself or another person, or when it has been committed by a group of at least three individuals, the fine pronounced by the misdemeanor commission may be EUR 22,000 in denar equivalent value.

Third category misdemeanor, a legal entity shall be fined EUR 70,000 – 100,000 if it:

- 1) releases pollutants into the environmental media in a manner and quantity or concentration exceeding the prescribed norms and if it fails to treat them in a way defined in the law;
- 2) imports, exports and conducts transit into/through/out of the Republic of Macedonia of substances, harmful materials and products in contravention of the proscription, limitation or control defined by the law;
- 3) emits substances for which it has been given a permit in quantities not accorded with preset upper limits;
- 4) does not implement the project in accordance with measures defined in the decision consenting to the project implementation;
- 5) has not been granted an A or B integrated environmental permit in accordance with the law and/or operations in the installation are not performed in accordance with conditions defined in the integrated permits;
- 6) emissions of substances defined in the permits exceed the upper limits agreed on;
- 7) emissions of substances into the environment exceed the limits defined by the law or by regulations based on the law;
- 8) notification on the presence of dangerous substances has not been submitted or has not been submitted in the legally defined timeframe;
- 9) report on safety measures with appropriate contents has not been completed and/or has not been submitted in the prescribed timeframe and/or has not been adequately analyzed and renewed in the previously defined timeframe;
- 10) necessary measures have not been taken for preventing accidents and limiting the impact on people's health with regard to the production, transport and storage of dangerous substances in quantities exceeding or equaling legally defined values
- 11) an analysis or revision of safety measures and activities for preventing accidents has not been completed, a report on safety measures has not been completed either, and a competent agency has not been notified on this failure,
- 12) a competent agency has not been immediately notified on the accident that has occurred and has not been given data on the circumstances of the accident, dangerous substances present, information assessing possible effects on people's health, as soon as these data have become available
- 13) a competent agency has not been notified of the measures taken to remedy the midterm and long-term consequences of the accident and/or the planned activities have not been supplemented to include additional facts discovered during the investigation;
- 14) an internal plan for extraordinary situations has not been made and submitted to the competent agency, in accordance with the law;
- 15) internal plans for extraordinary situations have not been analyzed and tested, renewed and revised in accordance with new technological achievements in the domain of accident management, within a period not exceeding three years;
- 16) in spite of the limitation or forbiddance of activities issued by the state inspector to the natural person or legal entity, the person or entity have continued its activities or have not limited its emission to the extent in which the quality of the environment is not put into question and accorded with legally defined standards.

For actions listed above, a responsible official in the legal entity is fined EUR 8,000 to 13,000 in denar equivalent value. The responsible employee in the legal entity is fined EUR 5,000 in denar equivalent value for misdemeanors from clauses 3, 6, 8, 9, 10, 11, 12, 13, and 15.

The competent court shall decide on misdemeanor penalties from the third category. If the misdemeanor from this category causes a more significant harm to the lives and health of people, a penalty is to be accorded with the damage that has arisen, up to the sevenfold amount of the fine as defined above.

When the misdemeanor related to activities listed above has been carried out solely for the perpetrator or another person to get a financial gain, the competent court decides on the fine of up to EUR 130,000 in denar equivalent value. If it is found that the misdemeanor has been committed by an organized group of at least three individuals, the competent court shall set a fine of EUR 150,000 in denar equivalent value.

## 5. CONCLUSION

A drawback of the Act on Misdemeanors is the fact its wording is technically incomplete. Likewise, its complexity is also a matter of concern, as the same legal act is attempting to systematize two quite different types of misdemeanor as punishable acts. Namely, court misdemeanors should still remain a subject matter regulated in this act and for them, the fundamental principles of the Act on Misdemeanors should apply, as they are close to the principles in judicial proceedings, most of all criminal proceedings. The very terminology used in the Act testifies to the said facts.

On the other hand, the professional community is in need of a clear distinction between the misdemeanor (as defined in the Act on Misdemeanors) and the so-called administrative infraction, which is regulated in the current Act on Misdemeanors only in principle, while its actual regulation is given in the Act on General Administrative Procedure, to which the very Act on Misdemeanors refers. At the moment, the Act on Misdemeanors makes an unnatural and artificial unification of two different types of proceedings conducted by completely different authorities: the judiciary and the executive as embodied in its representative – administration. Therefore, what is needed is a *de lege ferenda* consideration of passing a new Act on Administrative Infractions which will provide a detailed coverage of the rules of conducting a misdemeanor procedure before state agencies and organizations with public authority. In addition, the new Act on Administrative Infractions must create the basis for a new, second instance agency on the central level, which would adjudicate upon appeals against the decisions of misdemeanor authorities. At the moment, the Act on Misdemeanors does not allow the right to appeal against the decisions of state agencies. Rather, if not satisfied with the decision, parties must file lawsuits, initiating an administrative procedure before the Administrative Court. This puts us back to the situation in which the court is burdened by having to adjudicate on minor offenses: only this time it is not a magistrate court of first instance but the Administrative Court. If a single state authority/agency is made, competent to decide in the second instance administrative procedure initiated to contest the first instance decisions of



misdemeanor authorities, this will create a real filter for filing lawsuits before the Administrative Court. Even more so since in the latest amendments to the Act on Courts of 2010 the so-called Higher Administrative Court was established. This means that now the procedure to prove a perpetrator of an administrative infraction guilty will start in the administration in the first instance, and will continue in two instances in judicial proceedings, which will prolong the entire process considerably.

The symbiosis in the competences of the court and the administrative agencies (the misdemeanor commissions) may be resolved if:

- a new Act on Administrative Infractions is passed, to define the concept of “administrative infraction”, the Act on General Administrative Procedure as the act regulating the proceedings to resolve such infractions, commissions to decide in first instance and the State Commission to decide on appeals against the acts of administrative agencies and therefore also on appeals against administrative infractions, or
- a separate part is added to the current Act on Misdemeanors, to be dedicated to administrative infractions (the proceedings and competent authorities to decide in the proceedings), which would, again, imply the interference of judicial and administrative competences in deciding on misdemeanors or administrative infractions, a problem that is supposed to be resolved by this concept. However, given our experience and national theory in criminal law, this procedure to improve the current condition is more acceptable and presupposes smaller interventions in the current Act on Misdemeanors, rather than passing a new Act on Administrative Infractions.

Yet whichever model is used, in terms of environmental misdemeanors one must be careful to define more concrete and more accurate provisions in cases in which environmental regulations have been violated, whether the result is criminal responsibility or misdemeanor liability. This is undoubtedly important for the manner and methods of defining real protection.

#### REFERENCES

1. Act on Misdemeanors (Official Bulletin of the Republic of Macedonia No. 62/06);
2. Article 13, the Constitution of the Republic of Macedonia.
3. Environment Act (Official Bulletin of the Republic of Macedonia No. 53/2005);
4. Resolution of the Constitutional Court: No. 313/95 of 10 July 1996;

## PREKRŠAJ OSNOV ZA (NE)ZAŠTITU ŽIVOTNE SREDINE

**Borče Davitkovski, Dragan Gocevski**

*U radu, pravi se pokušaj da se razgraniči kazneno delo od prekršaja, koje je razgraničenje od esencijalnog značaja za izricanje sankcije (krivične ili prekršajne) kad je povređena životna sredina. Svi izloženi elementi idu u prilog kvantitativne razlike između kaznenog dela i prekršaja na osnovu različitog stupnja, višeg ili nižeg, povrede pravnog dobra, koje nesporno čine tretman prekršaja kao kažnjiva dela a ne kao administrativna nepravna i predstavljaju osnov za integrativni pristup kažnjivim delima! Sve ovo ne isključuje potrebu od korekcije određenih loših strana njihovog tretmana kako kažnjiva dela u sudskoj nadležnosti, izoštrjenih činjenicom da postoje brojni sitni prekršaji. Neophodno je potrebna revizija Zakona o prekršajima. Pored dekriminalizacije takvih sitnih prekršaja, rasterećenje*

*suda se može izvesti unošenjem alternativna za prekršajnu odgovornost i postupak u obliku medijacije u Zakon o prekršajima. Zatim, skretanje postupka i prethodno rasčišćivanje slučaja ispred policie ili uprave čime bi pred sud izlazili samo sproni slučajevi. Takođe, promene Zakona o prekršajima trebaju obuhvatiti i dalje pojednostavljivanje mera i ubrzanje prekršajnog postupka.*

Ključne reči: *krivično delo, prekršaj, zaštita životne sredine.*