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Criminal climate protection as a challenge from perspective of Türkiye**

ABSTRACT: The challenges of environmental protection and the climate crisis cannot be addressed by any single state in isolation; they require a collaborative approach at the international level. To effectively tackle these global issues, it is essential to harmonize national legislation and judicial practices with international standards and the domestic laws of other nations. In accordance with the principle of 'common but differentiated responsibilities and respective capabilities,' it is expected that the objectives and legal frameworks established by each nation will exhibit considerable divergence. Consequently, disparate legal systems adopt various approaches to environmental protection through criminal law.

While most legal systems traditionally rely on administrative and civil law for environmental protection, there is a growing recognition of the role of criminal law as an instrument for safeguarding the environment. This shift presents several challenges at the national level regarding the application of criminal sanctions for environmental protection.

In the case of Türkiye, which is not a member of the European Union (EU), a comprehensive review of relevant legislation is required. Given its climate zone and rich biodiversity, Türkiye is particularly vulnerable to the effects of the climate crisis and has a significant stake in addressing this global challenge. However, there are notable deficiencies in national legislation and implementation of environmental protection compared to the EU.

The level of public interest in climate change and environmental issues in Türkiye is relatively low compared to that observed in EU societies. This study will initially examine the level of environmental

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awareness among the Turkish population. Subsequently, it will analyze Turkish environmental criminal law, focusing on how the environment is addressed within criminal law, the current state and deficiencies of Turkish environmental criminal legislation, and the challenges encountered in judicial practice. Ultimately, the study will offer recommendations to address these deficiencies and enhance Türkiye's contribution to the global climate effort.

KEYWORDS: Turkish environmental criminal law, environmental protection through criminal law, global climate crisis, environmental crimes, climate protection through criminal law.

1. Introduction

In order to provide a general framework for Turkish environmental criminal law, it is essential to first explore the perception of the concept of “environment” and the lack of public awareness regarding this issue among the Turkish population. This paper will begin with an overview of how Türkiye's geographical location and the lack of public awareness influence the country's vulnerability to the climate crisis.

The following section will examine the importance of the environment in national legislation, starting with a historical overview of the concept of “environment” in Turkish law. The paper will then analyze the acceptance of the environment as a protected legal value within Turkish Criminal law, particularly considering the international conventions to which Türkiye is a party aimed at environmental protection.

Subsequently, legislation pertaining to the environment in the general provisions of the Turkish Penal Code (Law No. 5237) and those concerning offences against the environment in its special provisions will be elucidated. Additionally, based on official justice statistics from the Ministry of Justice, the paper will highlight statistical data on criminal proceedings related to environmental offences and the challenges encountered in judicial practice. Ultimately, conclusions and recommendations regarding legislation and judicial practice will be presented.

2. The Level of environmental awareness in Turkish society

In this study, environmental awareness is defined as the sensitivity of individuals to the environment and the degree of care they demonstrate in protecting it.¹ The Ministry of Environment, Urbanization, and Climate Change has yet to publish any official statistical data on the environmental awareness of Turkish society. Similarly, the official statistical organization of the Republic of Türkiye ("TÜİK") has not released statistics about this topic.² Nevertheless, several studies on climate awareness in Türkiye have been conducted at various scales by private institutions, organizations, and non-governmental organizations. In academic research on the subject, the target group is often limited. For instance, some research findings concentrate on specific professional groups or restrict the scope to geographical areas, such as individual cities.³ Conversely, there is currently no scientific research specifically examining the environmental awareness of law students or legal professionals in Türkiye.

Since 2018, İklim Haber, an independent broadcasting organization, and KONDA, an independent research organization, have been engaged in a joint research initiative examining environmental awareness in Turkish society.⁴ The findings of this research are disseminated to the public annually in reports titled "Perception of Climate Change in Türkiye." These reports have revealed that members of Generation Z in Türkiye exhibit a heightened level of environmental awareness compared to preceding generations.⁵ Despite evidence of awareness regarding environmental pollution among the Turkish population, there is a notable lack of effort to effect meaningful behavioral change, particularly in private life. For example, although a significant proportion of the population aspires to use

¹ Örs, 2018, pp. 188 – 196.

² On the other hand, annual statistical data on environmental protection expenditures are shared with the public by TÜİK (*Turkish Statistical Institute*). The most recent data on this subject pertains to 2022. For further details, see TÜİK Environmental Protection Expenditure Statistics 2022 [Online]. (Accessed: 26 May 2024).

³ Doğan and Purutçuoğlu, 2017, pp. 389 – 405; Yalçın and Çaycı, 2018, pp. 578 – 590; Caba, 2021.

⁴ All reports [Online]. Can be accessed at: <https://www.iklimhaber.org/raporlar/> (Accessed: 26 May 2024).

⁵ "İklim Değişikliği ve Algısı Raporu (*Climate Change and Its Perception Report*)" by Konda, 2021.

heating methods that are less harmful to the environment, empirical evidence indicates that the predominant preference remains solid fuels, such as coal and natural gas.⁶ While air pollution and waste are often considered the most pressing environmental concerns, the percentage of individuals who separate their garbage is relatively low.⁷

On the other hand, an insightful outcome emerges when the responses to the issues concerning the linkage between ecological sustainability and economic advancement are scrutinized. Despite the majority of the population opposing the notion that "air pollution must be tolerated for economic development," the proportion of individuals who prioritize economic development over environmental concerns has doubled since 2012.⁸ This suggests that, although there has been a notable rise in public awareness regarding the environment and climate change in Türkiye in recent years, prevailing economic challenges significantly impede the prioritization of these issues.

3. Environmental Protection in Turkish Law

The Republic of Türkiye has undertaken significant international obligations by signing various conventions, resolutions, and protocols aimed at environmental and climate protection. Additionally, the Turkish Constitution explicitly safeguards the environment, with Article 56 establishing "the right to live in a healthy and balanced environment" for the first time in 1982.

In Turkish law, environmental matters are primarily governed by civil and administrative law, which is common in many legal systems. The emergence of environmental criminal law is a relatively recent development. The current Turkish Penal Code ("TPC"), which took effect on June 1, 2005, represents the first formalization of environmental criminal law in Türkiye, addressing crimes against the environment. However, the scope of

⁶ Ibid.

⁷ Ibid.

⁸ KONDA, "Çevre Bilinci ve Çevre Koruma Araştırması (*Environmental Awareness and Environmental Protection Survey*)" March 2018, p. 26. [Online]. Available at: <https://konda.com.tr/uploads/tr1803-barometre85-cevre-bilinci-ve-cevre-koruma-3f00e4c6a34482a7e3414097ef5cbd0203b283d1c985bd09cb814cd8fcbd5a54.pdf> (Accessed: 24 May 2024). Additionally, insights from the report "Türkiye İklim Değişikliği Algısı 2023 (*Perception of Climate Change in Türkiye 2023*)" provide further context. [Online]. Available at: https://www.iklimhaber.org/wp-content/uploads/2024/03/konda-arastirma-rapor-2023_v2.pdf (Accessed: 22 September 2024).

protection for these offenses remains limited, and enforcement mechanisms are not particularly successful. There are also related environmental laws, such as the Animal Protection Law⁹ and the Forestry Law.¹⁰ When compared to the German Penal Code and EU law, it is evident that Turkish environmental criminal law, still in its early stages, needs to be aligned with EU legislation.

3.1. International environmental and climate agreements associated with Türkiye and their legal status

According to official data from the Ministry of Environment, Urbanisation and Climate Change of the Republic of Türkiye, the country is a party to numerous international treaties, agreements, and protocols, including the UN Framework Convention, the Paris Climate Agreement, and the Kyoto Protocol.¹¹

Article 90 of the Turkish Constitution states that ‘International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.’ Consequently, international treaties aimed at protecting the environment and climate take precedence over national laws within the hierarchy of norms, but only when they are related to fundamental rights and freedoms.¹² As a result, the protection of the “environment” or “climate” as a distinct legal value in Turkish law is quite limited. Current judicial practices often reflect a “human-centered” approach.

⁹ Law No. 5199.

¹⁰ Law No. 6831

¹¹ For the complete list of international treaties to which Türkiye is a party for the protection of the environment and climate. [Online]. Available at: <https://ab.csb.gov.tr/en/contracts-i-100216> (Accessed: 23 March 2024).

¹² In this context, the potential impacts of the ECtHR’s Case of Verein Klima Seniorinnen Schweiz and Others v. Switzerland decision on Turkish law will become clearer in the coming days.

3.2. Protection of the environment at the constitutional level: The right to live in a healthy and balanced environment

The Constitution of the Republic of Türkiye, enacted in 1982, was the first to explicitly protect the environment at the constitutional level. The previous constitutions of 1924 and 1961 did not contain any direct regulation of the right to a healthy environment.¹³ However, this is not unusual, considering that constitutional protection of the environment globally only emerged in the 1970s.¹⁴ Article 56 of the 1982 Constitution, which is still in force, is located in the section titled “Social and Economic Rights and Duties” and bears the title “Health Services and Protection of the Environment.” According to Article 56 of the Constitution:

Everyone has the right to live in a healthy and balanced environment. It is the responsibility of the state and its citizens to improve the quality of the environment, protect environmental health, and prevent environmental pollution.

In light of this, it can be seen that the protection of the environment and the prevention of pollution are associated with the “right to health” and are regulated with an anthropocentric approach.¹⁵

The Constitution explicitly imposes on both the state and citizens the duty to develop and protect the environment, as well as to prevent pollution. Those who are the beneficiaries of the right to a healthy environment are also the duty-holders concerning this right.¹⁶ The right to live in a healthy and balanced environment, which is a third-generation solidarity right, is both a right and a duty for citizens. In the doctrine, it is argued that the term “citizens” should be interpreted purposively and understood in the sense of “everyone”.¹⁷

Is there any valid rationale that the State could provide for failing to fulfill its constitutional obligation to protect the environment and prevent pollution? To address this question, an assessment of Article 65 of the

¹³ Although the 1961 Constitution did not directly mention the right to a healthy environment, there were views suggesting that this right was indirectly protected within the context of the right to health (Article 49, Paragraph 1). See Keleş, 1978, pp. 79 – 115; Çörtoğlu, 1982. Compare Gemalmaz, 1986, pp. 233 – 278.

¹⁴ Boyd, 2013, pp. 1 – 39.

¹⁵ Gemalmaz, 1986, p. 249.

¹⁶ Uygun, 2020, p. 587.

¹⁷ Güveyi, 2018, pp. 633–659; Özdek, 1993; Semiz, 2014, pp. 9 – 46.

Constitution, titled "The Limits of the Economic and Social Duties of the State," is necessary. This article stipulates that the State must fulfill its social and economic duties as defined in the Constitution, provided its financial resources are sufficient and that it considers the priorities aligned with these duties. At this point, it is essential to establish that the right to live in a healthy and balanced environment constitutes one of the social duties of the State. The State is required to adhere to priorities relevant to this purpose and to meet its obligations within the limits of its financial resources. However, the duties related to environmental protection do not always impose a financial burden on the State. It would be incorrect to view the limitation in Article 65 as a blanket justification for non-compliance, even when financial constraints are present.¹⁸ Regarding the right to a healthy and balanced environment, which is linked to fundamental rights and freedoms, especially human dignity, it is unreasonable to assume that financial limitations alone can exempt the State from fulfilling its obligations.¹⁹

In conclusion, the Constitution provides the State with a broad margin of appreciation. At this point, government policies play a crucial role in prioritizing the right to a healthy and balanced environment. The reliance on this policy mechanism poses an obstacle to the adequate protection of this right. To overcome this barrier, it is suggested that the existing provision in the Constitution, which is currently merely a guiding principle and almost a "wish", be made more binding, and that the right to legal recourse is explicitly stated in the Constitution.²⁰

3.3. Fundamental environmental protection laws in Türkiye

Turkish law encompasses numerous statutes that directly or indirectly contribute to environmental protection. This section will briefly highlight a selection of these laws. In addition to the TPC and the Environmental Law (Law No. 2872), which serves as a comprehensive framework for environmental protection, there are specific regulations governing forests and mining activities, as well as the Bosphorus Law (Law No. 2960), which addresses unique aspects of the region.

A common characteristic of this legislation is that it primarily imposes administrative sanctions, with few criminal sanctions that are often not

¹⁸ Yalçın, 2021, pp. 89 – 115. Also see Dinler, 2008, p. 1 – 19.

¹⁹ It can be argued that a prioritization should be made to allocate financial resources. See Güveyi, 2018, pp. 648–649.

²⁰ Güveyi, 2018, p. 653.

sufficiently deterrent. Thus, it can be argued that these laws function as supplementary environmental criminal laws.²¹

3.3.1 Environmental Law (Law No. 2872)

The Turkish Environmental Law serves as the principal legislation within the Turkish legal system aimed at protecting the natural environment. This legislation seeks to ensure the safeguarding of the environment, regarded as a shared asset for all living organisms, in alignment with the principles of sustainable development and environmental sustainability. Predominantly, the sanctions outlined in this legislation are administrative, with only a limited number of offenses subject to criminal penalties.

According to Article 26, titled "Criminal Penalties," the provision of false or misleading information in violation of the notification and information obligations established by this law is classified as an offense warranting imprisonment for a term ranging from six months to one year. Additionally, in instances involving the issuance of false and misleading documents, the relevant provisions of the TPC regarding document forgery will be applied. Article 27 further clarifies that administrative penalties imposed under this law do not preclude the application of penalties prescribed by other legislation. It is evident that the administrative sanctions under this law do not have a *ne bis in idem* effect concerning criminal law penalties.²²

In accordance with Article 28, individuals engaged in activities leading to environmental degradation and pollution are held liable for the damages resulting from their actions, regardless of any contributory fault. Additionally, the polluter is responsible for compensating any damages incurred, in line with general legal provisions. A claim for compensation for environmental damage is subject to a statute of limitations of five years, commencing from the date the injured party becomes aware of the damage and the identity of the liable party.

²¹ Balci, 2022, p. 52.

²² Taneri, 2021, pp. 393 – 454.

Furthermore, according to Article 3 of the Turkish Law on Misdemeanours²³, this legislation is classified as a general law concerning administrative sanctions. Consequently, the provisions of the Law on Misdemeanours relating to legal recourse against decisions imposing administrative sanctions apply to all actions that necessitate the imposition of administrative fines or property confiscation, unless otherwise specified in other laws or general provisions.

3.3.2. Turkish Law on Misdemeanors (Law No. 5326)

Article 1 of the Turkish Misdemeanours Law defines the following:

(a) general principles concerning misdemeanours, (b) the types and consequences of administrative sanctions that may be imposed for misdemeanours, (c) the decision-making process for such violations, (d) legal remedies against administrative sanction decisions, and (e) principles for the enforcement of these sanctions, along with various misdemeanours. These provisions are established to safeguard public order, public morality, public health, the environment, and economic order.

Article 2 defines a "misdemeanour" as an unlawful act for which the law prescribes the imposition of an administrative sanction. This law, considered a general law regarding misdemeanours requiring administrative sanctions in Turkish law, has a complementary function, it is applied in cases where no specific provision exists under Environmental Law, which is a special law for environmental protection.

The legal reforms introduced in 2005 established a clear distinction between misdemeanours and criminal offences. This was achieved by excluding misdemeanours from the TPC and the Misdemeanour Law, thereby avoiding criminal penalties. To sum up, the Turkish Misdemeanour Law establishes the framework for administrative sanctions and serves as secondary legislation in relation to the Environmental Law. Criminal offences related to environmental protection are addressed within the TPC, while additional criminal sanctions for environmental offences are stipulated in other special laws.

²³ Law No. 5326.

3.3.3. Other Laws

Turkish law encompasses numerous legal regulations that directly or indirectly contribute to the protection of the environment and climate. The laws highlighted below offer a general overview of this framework.²⁴

The Forestry Law No. 6831, specifically Article 91 and the subsequent provisions, contains penal sanctions. Notably, the Forestry Law stipulates a broader range of criminal offences compared to the Environmental Law. Furthermore, the final paragraph of Article 83 designates proceedings related to forest offences as urgent matters.

The Mining Law No. 3213 imposes administrative penalties, without prejudice to the provisions of the TPC.

The Bosphorus Law No. 2960 was enacted to establish and regulate zoning legislation for the Istanbul Bosphorus Area, with the aim of preserving and enhancing its cultural, historical, and natural values in the public interest. The Law also seeks to restrict construction activities that would lead to increased population density in the region. Article 18 outlines the criminal sanctions for violations of this legislation, including imprisonment and fines.

Similarly, Law No. 2863 on the Protection of Cultural and Natural Heritage focuses on safeguarding Türkiye's cultural and natural assets. It specifies the procedures for identifying and registering cultural and natural properties requiring protection, along with the measures necessary for their preservation. The Law also details the authorisation process for conducting works or restorations within protected areas and prescribes penal sanctions for actions that cause damage to these assets, as outlined in Articles 65 and following.

4. Historical development and current legal framework of Turkish environmental criminal law

4.1. Evolution of Turkish environmental criminal law

In Turkish law, as in many other legal systems, environmental protection and pollution prevention are primarily governed by administrative and civil law. Criminal law, in this context, plays a secondary role, adhering to the

²⁴ For a detailed examination of other laws aimed at environmental protection, as well as various administrative regulations (by-laws) stemming from administrative obligations, see Aygörmez, 2021, pp. 10-13.

principle of *ultima ratio*.²⁵ Moreover, Turkish environmental criminal law demonstrates a significant *administrative dependency*.²⁶

In 2005, significant reforms were enacted in Turkish criminal legislation, introducing a series of innovations as part of the harmonisation process with the European Union. As a result, the evolution of Turkish environmental criminal law can be categorized into two distinct phases: pre- and post-1 June 2005.²⁷ This date marks the enactment of the Turkish Penal Code No. 5237, which remains in force today. Notably, this legislation was the first to recognize the concept of "environment" as a "protected legal value" within the framework of criminal law.²⁸ The section titled "Offences against the Environment" outlines various offenses, including intentional and negligent pollution, noise pollution, and zoning violations.

In contrast, the previous Turkish Penal Code No. 765 did not contain specific offenses aimed at directly protecting the environment; it included only a few provisions that served an indirect protective function.²⁹

The TPC, currently in force, places a particular emphasis on the direct protection of the environment through the criminalisation of offences against it. In addition to specific offences, the general provisions of the law also include regulations related to environmental crimes. Turkish environmental criminal law encompasses not only the norms found in the TPC but also various legal texts, such as the Environmental Law and the Law on the Protection of Cultural and Natural Assets.³⁰ However, due to the scope of this study, these subsidiary criminal law regulations will not be addressed, and the regulations within the TPC will be deemed sufficient.

²⁵ Turgut, 1998, p. 613.

²⁶ Balcı, 2022, p. 52; Özgüç, 2020, p. 34.

²⁷ Savaşan and Sümer, 2020, p. 41.

²⁸ Balcı, 2022, p. 52. Also see Aygörmez, 2021, pp. 24 and following.

²⁹ For detailed explanations on this topic, see Savaşan and Sümer, 2020, pp. 41–45.

³⁰ Talas, 2013, pp. 1147–1150.

4.2. Regulations related to "environment" in the general provisions of the TPC

4.2.1. Protection of the environment as one of the objectives of the TPC

Article 1 of the TPC outlines the purposes of the law and explicitly includes the "protection of the environment" among them.³¹ Following this purpose, various environmental offenses are specifically regulated under the title of offenses against the environment in the special provisions of the Law. During the legislative process, these offenses, initially omitted from the Government draft, were incorporated at the commission stage. According to the General Grounds of the Justice Commission³², several factors heightened the legislator's awareness of the "environment":

- [1] A prevailing trend towards the criminalization of acts against the environment in contemporary penal codes, which prompted the Turkish legislator to transition from administrative to criminal sanctions.
- [2] Increased social sensitivity due to incidents involving the dumping of radioactive and chemical waste on Turkish shores during the law's enactment period.
- [3] The realization that environmental pollution occurring outside the country's sovereignty can reach its borders through various means.
- [4] The operation of aging atomic energy power plants in neighboring countries, which lacked adequate technology and equipment to prevent environmental pollution during the same period.

In addition to the explicit recognition of environmental protection as one of the legislation's objectives, two additional regulations related to offenses against the environment are included in the general provisions. These regulations will be outlined below.

³¹ Article 1 of the TPC states that the purposes of the Code include the protection of individual rights and freedoms, public order and security, the rule of law, public health, and the environment, as well as the maintenance of public peace and the prevention of offenses. To achieve these objectives, the Code outlines the fundamental principles of criminal responsibility and regulates the types of offenses, penalties, and security measures.

³² For detailed explanations on this topic, see TBMM, 2021, p. 224 and following. Also see Talas, 2013, p. 1150; Özgenç, 2021, p. 1088.

4.2.2. Application of the principle of universal jurisdiction concerning the offence of intentional pollution of the environment

Pursuant to Article 13 of the Law, the offence of intentional pollution of the environment³³ is classified among those to which the universal jurisdiction rule applies. Accordingly, if this offence is committed by either a citizen or a foreigner in a foreign country, legal proceedings may be initiated in Türkiye at the request of the Minister of Justice, and Turkish laws will be applicable. Furthermore, Article 13/3 of the TPC states that ‘even if a conviction or acquittal decision has been made in a foreign country for the offences specified in subparagraphs (a) and (b) of the first paragraph, a trial shall be held in Türkiye upon the request of the Minister of Justice.’³⁴ Notably, the offence of intentional pollution of the environment is not included among the offences referenced in these two subparagraphs. Thus, from the contrary interpretation of Article 13/3, it can be concluded that for prosecution under the universal jurisdiction rule for the offence of intentional pollution of the environment, there must not have been a prior conviction or acquittal in a foreign jurisdiction.³⁵

Although the explicit condition of the defendant's presence in Türkiye is not stipulated for the prosecution of the offence of intentional pollution of the environment within the framework of universal jurisdiction as per Article 13 of the TCP, Turkish criminal procedure law prohibits trials in absentia. Therefore, it is not feasible to prosecute a defendant who is not present in Türkiye.³⁶

Furthermore, paragraph 4 of Article 15 of the Turkish Code of Penal Procedure³⁷, which describes the jurisdictional rules for offences committed on or by sea, air, and rail vehicles, stipulates that ‘if the offence of polluting the environment is perpetrated by a ship flying a foreign flag outside Turkish territorial waters, the court closest to the site of the offence or the

³³ Article 181 of the TPC.

³⁴ These crimes include international offenses (such as genocide, crimes against humanity, human smuggling, and human trafficking), crimes against the state's symbols and the dignity of its organs, crimes against national security, crimes against the constitutional order and its functioning, crimes against national defense, crimes against state secrets, and espionage and offenses related to foreign relations.

³⁵ Aygörmez, 2021, p. 73.

³⁶ This point is also explicitly expressed in the preamble of the article. For detailed explanations on this issue, see Özgenç, 2021, pp. 1085, 1095 - 1096.

³⁷ Law No. 5271 - “TCPP”.

court located at the first port of call of the ship in Türkiye shall have jurisdiction.’ This provision is inadequate as it only addresses environmental offences committed by ships, thereby limiting the scope of universal jurisdiction in this context.³⁸

4.2.3. Prepayment as a Procedural Condition in Cases of Negligent Environmental Pollution

Prepayment is an alternative dispute resolution method under Turkish law and serves as a procedural condition in offences that fall under this procedure.³⁹ If an indictment is issued before the prepayment process has been attempted, the indictment must be returned⁴⁰. Upon successful completion of the prepayment procedure, a public case cannot be initiated, and a decision of non-prosecution is issued during the investigation phase. In cases where a public prosecution is launched without applying the prepayment process, or where the nature of the offence changes during prosecution, the court will apply the prepayment procedure during the prosecution phase, resulting in a dismissal if successful. Successful completion of the prepayment process requires the suspect or defendant to pay the prepayment amount within the specified timeframe.⁴¹ Except for negligent offences, the amount of the prepayment to be offered pursuant to this paragraph shall be increased by half to the perpetrator who commits an offence subject to prepayment within five years from the date of the decision of non-prosecution or dismissal of the public case based on the prepayment.⁴²

Except for the crimes within the scope of reconciliation⁴³, crimes that require only a judicial fine⁴⁴ or for which the upper limit of the prison

³⁸ While noting the deficiencies of the regulation, it also represents a significant advancement (see Yenisey and Nuhoğlu, 2021, p. 285.); Özgenç, 2021, p. 260.

³⁹ Öztürk and Erdem, 2023, p. 189; Öztürk et al., 2023, p. 57; Yenisey and Nuhoğlu, 2021, p. 606. In doctrine, there are differing views on the legal nature of the pre-payment institution. For discussions of these views and critiques, as well as regarding the argument that this institution possesses a "hybrid" structure (see Özgenç, pp. 798–799). Also see Yenisey, 2021, pp. 193 – 194.

⁴⁰ Article 174/1, c of the TCPP).

⁴¹ Öztürk et al., 2023, pp. 187 –189.

⁴² Öztürk et al., 2023, p. 59.

⁴³ The offences falling within the scope of reconciliation are defined in Article 253 of the TCPP.

sentence stipulated in the article of the law does not exceed six months, and the crimes included in the catalogue in Article 75 paragraph 6 of the TPC are subject to prepayment.⁴⁵

The fundamental form of the offence of environmental pollution by negligence, along with the qualified forms that are aggravated by the consequences outlined in the initial paragraph, are subject to prepayment. Article 182/2 of the TPC does not mandate the utilisation of the prepayment procedure in instances where the qualified form of 'causing the negligent release of wastes or residues into the soil, water or air, which have the qualities that may cause the emergence of diseases that are difficult to treat for humans or animals, atrophy of reproductive ability, change the natural characteristics of animals or plants' is concerned. Furthermore, prepayment is not a prerequisite for prosecution in relation to the other offences outlined in the section on environmental offences.

4.3. Crimes against the environment in the special provisions of the TPC

There are four types of offenses in Articles 181 to 184 of the TPC, which are included in Chapter titled "Offenses against the Environment" of Part titled "Offenses against Society". These are, respectively, intentional pollution of the environment, negligent pollution of the environment, causing noise, and pollution caused by construction. The effective dates of these offenses differ from each other. While the effective date of the offences of intentional and negligent pollution of the environment was set at two years after the entry into force of the Code, the articles on the offences of causing noise and pollution caused by construction entered into force on the date of the entry into force of the law.

The first notable aspect of environmental offences is that they are classified as "offences against society" within the framework of the law, which is based on the protected legal value. This may suggest that the Turkish criminal legislator adopts a human-centered approach to environmental protection.⁴⁶ According to a particular perspective, however, a closer examination of the articles reveals that the offences in this category

⁴⁴ Accordingly, all offences that require only a judicial fine, regardless of the amount, fall within the scope of prepayment. See Özgenç, p. 801.

⁴⁵ In cases where an offence is punishable by both a judicial fine and imprisonment, or where both of these forms of punishment are permitted as optional penalties, pre-payment may be applied. This is provided that both forms of punishment fall within the scope of pre-payment. See Özgenç, p. 801.

⁴⁶ Özkurt, 2023, pp. 167 – 168.

are framed as crimes of danger, primarily targeting flora and fauna, regardless of whether they cause direct or indirect harm to humans.⁴⁷

Since a thorough analysis of the types of environmental offences, including all their elements, would exceed the scope of this study, the following section will provide general information while highlighting the specific aspects of these offences.

4.3.1. Intentional pollution of the environment

The offense of intentional pollution of the environment is regulated in Article 181 of the TPC. According to the first paragraph, intentionally discharging waste or residues into the soil, water, or air in a manner that violates technical procedures determined by relevant laws and causes harm to the environment constitutes this crime. The penalty is imprisonment for a term of six months to two years.

According to the second paragraph, smuggling waste or residues into the country without permission is punishable by imprisonment from one year to three years. The third and fourth paragraphs address aggravated circumstances of the crime. If the waste or residues exhibit permanent characteristics in the soil, water, or air, the penalties are doubled (third paragraph). If the acts defined in the first and second paragraphs are committed with waste or residues that can cause serious diseases in humans or animals, impair reproductive capabilities, or alter the natural characteristics of animals or plants, the punishment shall be imprisonment for no less than five years and a judicial fine of up to one thousand days (fourth paragraph).

The fifth paragraph stipulates that specific security measures shall be imposed on legal entities for the acts described in the second, third, and fourth paragraphs.⁴⁸ The absence of a provision for security measures against legal entities concerning the regulation in the first paragraph is considered a deficiency.⁴⁹ It is also noteworthy that a similar provision has not been included for other types of crimes regulated in the section on environmental offenses.

⁴⁷ Taneri, 2021.

⁴⁸ Legal persons are not criminally liable under Turkish criminal law; however, they may be subject to special security measures.

⁴⁹ Özgüç, 2020, pp. 273 – 274.

As stated in general explanations, the effective date of this article is set to be two years after the law's entry into force. However, the Court of Cassation (*Yargıtay*) has ruled that if acts constituting the offense of intentional pollution of the environment were committed before the effective date, but the environmental danger they caused continued after the effective date, liability for this crime still exists.⁵⁰

This offence is problematic in many respects, particularly with regard to the principle of legality.⁵¹ For example, although the first paragraph mentions "violation of the technical procedures regarding waste and residues determined by law" within the framework of a partial administrative obligation, none of these technical procedures are regulated by "law". All regulations in this area are made through regulations and communiqués. This situation has made the application of the article theoretically impossible. In practice, investigations and prosecutions have been carried out in violation of the principle of legality by concluding that the procedures established by regulations can be considered as offences on the basis of the references made in the relevant laws.⁵² In order to solve this problem, the doctrine suggests that either a special law should be enacted on these issues, or the phrases referring to the relevant procedures being regulated by law should be removed from the text of the law.⁵³ Another problematic issue regarding the principle of legality is that the concepts of waste and residues, which represent the means used in the offence, are not clearly defined.⁵⁴

Regarding the offence outlined in the second paragraph of the article, the unauthorized entry of wastes and residues into the country is punishable, while their removal from the country is not included within the scope of the offence. This regulation reflects a deficiency concerning Türkiye's international obligations, such as the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.⁵⁵ Additionally, since this second paragraph overlaps with the Anti-Smuggling

⁵⁰ Otacı, 2015, pp. 283–284; Özgüç, 2020, p. 266.

⁵¹ Taneri, 2021, p. 73.

⁵² This is explained by the fact that it is considered sufficient to refer to the regulation in the relevant law (e.g. Environmental Law). For a detailed explanation of the Court of Cassation's opinion together with its case law on the subject, see. Otacı, 2015, p. 282. Also see Özgüç, 2020, p. 270; Taneri, 2021, pp. 40 – 41.

⁵³ Özgüç, 2020, p. 271.

⁵⁴ Özgüç, 2020, p. 272; Taneri, 2021, p. 41.

⁵⁵ Özgüç, 2020, p. 272.

Law No. 5607 in many cases, its area of application is severely limited. To address this issue, it would be beneficial to clearly define this provision as a special regulation for wastes and residues.⁵⁶

In relation to the offence regulated in the first paragraph, it is possible to apply the simplified trial procedure introduced by Law No. 7188 on October 17, 2019.⁵⁷

4.3.2. Negligent Pollution of the Environment

The offence of negligent pollution of the environment is regulated under Article 182 of the TPC and shares many similarities with the offence of intentional pollution of the environment. Several concepts outlined in the offence of intentional pollution also apply to this offence. Notably, the entry into force of the offence is two years after the entry into force of the Code, as is the case with the offence of intentional pollution of the environment.

The offence of negligent pollution of the environment can be committed by negligently causing wastes or residues to be discharged into the soil, water, or air in a way to harm the environment. Only a judicial fine is provided for this simple form of the offence.⁵⁸ If the wastes or residues subject to the offence leave a permanent effect on the soil, water, or air, the perpetrator shall be sentenced to imprisonment from two months to one year.

An aggravating circumstance based on the consequences is included in the second paragraph of the article. Anyone who negligently causes the release of waste or residues into the soil, water, or air, which have properties that may cause the emergence of diseases that are difficult to treat in humans or animals, atrophy of reproductive capacity, or change the natural characteristics of animals or plants, shall be sentenced to imprisonment for a term of one to five years.

Unlike the offence of intentional pollution, this offence does not include the phrase "in violation of the technical procedures determined by the relevant laws". However, this is not considered to be a serious deficiency

⁵⁶ Özgüç, 2020, p. 273.

⁵⁷ Taneri, 2021, pp. 80 and following.

⁵⁸ This situation highlights the inadequacy of the regulation in terms of deterrence; see Maviş, 2021, pp. 316 – 317; Balcı, 2022, pp. 180 – 181. Also see Talas, 2013, p. 1156, and compare with Balcı, 2022, p. 168.

in the doctrine, as violations of legal norms are merely part of the broader breach of the duty of care and diligence.⁵⁹

Furthermore, the nature of the offence does not regulate the negligent form of the act of unauthorised import of waste or residues into the country, and security measures are not provided for legal entities within the scope of this offence. This offence is prosecuted *ex officio* and a simple trial procedure may be applied.⁶⁰

4.3.3. Causing noise

A person who causes noise in a manner capable to harm another person's health, in violation of the obligations established by the relevant laws, is punishable by imprisonment for a term of two months to two years or by judicial fines (Art. 183 of the TPC). As seen, the punishment for causing noise is only applicable if it is capable to harm another person's health. Therefore, noise that does not reach this level of severity is not subject to penal sanctions under this article. However, liability for administrative fines due to "causing noise in a way that disturbs the peace and tranquility of others" is preserved under Article 36 of the Misdemeanor Law.⁶¹ Additionally, making noise "persistently" with the sole intention of disturbing the peace may be assessed within the scope of the offence of disturbing the peace and tranquility of individuals, as regulated by Article 123 of the TPC.⁶²

The offence of causing noise is classified as a danger crime. Indeed, it is sufficient that the noise in question "is capable of harming the health of

⁵⁹ Maviş, 2021, p. 302.

⁶⁰ Taneri, 2021, pp. 151 – 152.

⁶¹ According to Article 36 of the Misdemeanor Law titled "Noise": '(1) A person who causes noise in a way that disturbs the peace and tranquility of others is subject to an administrative fine of fifty Turkish Liras. (2) If this act is committed within the scope of a commercial enterprise's activities, the owner of the enterprise, whether a natural or legal person, shall be fined between one thousand and five thousand Turkish Liras. (3) Administrative fines for this misdemeanor shall be determined by law enforcement or municipal police officers.'

⁶² According to Article 123 of the TPC titled "Disturbing the Peace and Tranquility of Individuals": "If a person makes persistent phone calls, causes noise, or engages in any other unlawful behavior with the sole intention of disturbing another's peace and tranquility, the offender shall be sentenced to imprisonment for a term of three months to one year, upon the complaint of the victim." See Özkurt, 2023, pp. 177–178.

another person"; no actual harm needs to occur in the concrete case.⁶³ On the other hand, it is evident that this provision is framed from a distinctly anthropocentric (human-centered) perspective; therefore, it should be reformed to adopt a more ecological approach, especially regarding its impact on animal health.⁶⁴

This offence was included within the scope of the speedy procedure established by Law No. 7188, dated October 17, 2019. If this procedure cannot be applied for any reason, the simplified trial procedure may be implemented in the court of first instance.⁶⁵

4.3.4. Pollution caused by construction

The offence of pollution caused by construction is the most common environmental offence encountered in Turkish judicial practice.⁶⁶ Various actions are defined as crimes in the different paragraphs of the article, and penalties are prescribed according to their severity.⁶⁷

First, constructing or having a building constructed without obtaining a building permit (paragraph 1) and allowing electrical, water, or telephone connections to construction sites initiated without a building permit (paragraph 2) are defined as offences. The penalty for these actions is imprisonment for a term of one to five years. In paragraph 3, it is stipulated that a person who permits any industrial activity in buildings that do not have a certificate of occupancy shall be punished with imprisonment for a term of two to five years.

There are restrictions on the application of the actions covered by this article in terms of location and time. According to paragraph 4, the provisions of this article, except for paragraph 3, shall only be applicable within municipal boundaries or in areas subject to special zoning regulations. Paragraph 6 includes a temporal condition for application; thus, the provisions of paragraphs 2 and 3 do not apply to structures built before October 12, 2004.

⁶³ Maviş, 2021, pp. 326 and following.

⁶⁴ Maviş, 2021, pp. 319 – 320. See also Yokuş Sevük, 2013, p. 372; Yenerer Çakmut, 2023, p. 96; Kaplan and Atladı, 2019, p. 633, and compare Hafizoğulları and Özen, 2017, p. 63.

⁶⁵ Taneri, 2021, pp. 190 and following.

⁶⁶ In the next section, where the deficiencies in practice will be addressed, statistics on this issue will be provided.

⁶⁷ Yıldız, 2019, p. 257. For criticism regarding the lack of balance in the penalties for the three offences regulated in the article, see Maviş, 2021, pp. 377 and following.

In the first two paragraphs, a provision for effective remorse is included as a restorative justice mechanism in the fifth paragraph of the article.⁶⁸ Accordingly, if a person brings a building constructed without a permit or in violation of the permit into conformity with the zoning plan and the permit, public prosecution shall not be initiated in accordance with the provisions of paragraphs one and two, any initiated public prosecution shall be dropped, and the imposed penalty shall be annulled in all respects. There is no limitation in the law regarding the application of this paragraph.⁶⁹ Therefore, it can be said that a person has the opportunity to benefit from this provision an unlimited number of times. This situation creates negative consequences regarding the deterrent effect of the provision. At this point, it is necessary to mention the provision commonly known as "zoning peace", which has been enacted several times in Türkiye and undermines the deterrent effect of the offence in question.⁷⁰ With the most recent "zoning peace (or amnesty?!)", illegal constructions made before December 31, 2017, have essentially been granted amnesty.⁷¹ Under this provision, the demolition orders issued under the Zoning Law for structures that have been granted building registration documents can also be annulled, along with unpaid administrative fines.⁷² In my opinion, such provisions, introduced under the name of "zoning peace" and essentially functioning as an

⁶⁸ According to the dominant opinion in the doctrine and the case law of the Court of Cassation, the legal nature of this provision is effective remorse. However, there is also an opinion that it has the characteristics of a *de facto* amnesty. Taneri, 2021, p. 205. For this reason, a request for the annulment of the provision was submitted to the Constitutional Court, but the request was rejected. For detailed explanations on this matter, see Maviş, 2021, pp. 373 and following.

⁶⁹ However, in Turkish law, provisions on effective remorse are limited in terms of the number of applications for certain offenses. For example, in the case of the offense of unjust enrichment, it is not possible to benefit from the provision on effective remorse more than twice (Article 168 paragraph 5 of the TPC).

⁷⁰ A provision regulating the procedures and principles for granting building registration certificates for structures that violate zoning legislation was added as a temporary Article 16 to the Zoning Law No. 3194 by Article 16 of Law No. 7143, published in the Official Gazette dated May 18, 2018, and numbered 30425, concerning the restructuring of taxes and other receivables. According to this article, for structures built before December 31, 2017, a building registration certificate can be granted if an application is made by December 31, 2018, the conditions set out in the article are fulfilled, and the registration fee is paid by December 31, 2018.

⁷¹ Özlüer, 2018, p. 317.

⁷² Temporary Article 16 of Zoning Law No. 3194.

“amnesty purchased by paying a fee”, significantly diminish the deterrent effect of the offence of pollution caused by construction.

4.4. Turkish Environmental Criminal Law Practice and Its Deficiencies

In Turkish judicial practice, offences against the environment remain relatively limited in application compared to all types of offenses. This situation can be easily understood by examining the justice statistics published annually by the Ministry of Justice. Despite the significant burden on the Turkish judiciary, the low number of investigation and prosecution files related to environmental offences is striking. This indicates that there is a need to enhance awareness of environmental offences, not only among the public but also within the judicial system.

According to the 2023 Justice Statistics published by the Ministry of Justice, in the ranking of criminal case numbers that came before the Turkish judiciary last year, the top three categories were crimes against property (particularly fraud, theft, and robbery), crimes against life and bodily integrity, and crimes against liberty.⁷³ When examining the graph of crime rates in cases received by criminal courts under the TPC in 2023, it is observed that offences against the environment represent a very low percentage (approximately 0.2%) among these cases. Additionally, in 2023, a total of 38,891 cases related to offences against the environment were reported to public prosecutors, with public prosecutions initiated for 28,565 of these cases.⁷⁴ For the other cases, decisions were made indicating that there was no basis for prosecution or other resolutions (such as dismissal). Of the 23,837 cases that reached criminal courts, convictions were established in 15,979 cases, while 3,186 cases resulted in acquittals, 690 cases had the verdict deferred, and the remaining 3,982 cases ended with other decisions.⁷⁵

The offense of causing environmental pollution by negligence (only the first paragraph) is subject to a prepayment, as explained above. The General Directorate of Criminal Affairs of the Ministry of Justice has published a statistical report on the prepayment procedure for the year 2023. According to this report, in 2023, 27,034 cases were resolved through prepayments, while public prosecutions were initiated in 8,938 cases due to

⁷³ Turkish Ministry of Justice, 2024, p. 82, Graph 2b.

⁷⁴ Turkish Ministry of Justice, 2024, p. 72, Table 1.9.

⁷⁵ Ibid.

non-compliance with the prepayment.⁷⁶ The report includes a table listing the top five offenses resolved through prepayments, and the offense of causing environmental pollution by negligence is not among these offenses.⁷⁷

The combination of deficiencies in legislation, indifference in implementation, and a lack of specialization makes it challenging to combat environmental offences. The main deficiencies of Turkish environmental criminal law can be outlined as follows:

- The narrow scope of environmental offences within the existing legal framework, the lack of deterrent sanctions;
- the weakening of the threat of punishment due to the implementation of various legal mechanisms during investigation or prosecution stages, such as speedy procedure, simple trial, pre-payment, and postponement of the announcement of the verdict;
- the lack of sufficient expertise among legal professionals in environmental offences,
- the absence of criminal liability for legal entities in environmental offences and the limited nature of their liability in terms of security measures;
- insufficient opportunities for the public to play an active role in the prosecution processes of environmental offences;
- the lack of comparative legal studies on the subject, and
- weak environmental and climate awareness among the public, legal professionals, and academics.

5. Conclusion and Recommendations

According to data from the European Commission, environmental crimes rank fourth among the most commonly committed offences worldwide.⁷⁸ The top three are drug trafficking, human trafficking, and corruption/fraud crimes. As is well known, environmental offences are often committed as organized and transnational crimes.⁷⁹ Due to its unique geographical location straddling continents, Türkiye functions as at least a transit country for many environmental offences. Furthermore, due to its extraordinary

⁷⁶ Turkish Ministry of Justice, 2023.

⁷⁷ Ibid.

⁷⁸ European Commission, n. d. Also see UNEP & INTERPOL, n. d.

⁷⁹ UNODC, 2020.

biodiversity, it is at significant risk as both a target and source country, especially for offences against biodiversity. Despite this, an examination of the workload of the Turkish judiciary reveals that offences against the environment constitute a remarkably low percentage. This situation suggests that the public and the judiciary have not yet achieved the necessary level of awareness. Indeed, policies related to environmental protection are directly tied to the prevailing understanding within the country. Therefore, it is essential to conduct efforts aimed at increasing awareness regarding environmental pollution and climate change among both the public and the judicial sector in Türkiye.

The understanding of protecting the environment through criminal law in Turkish law has essentially developed since 2005. This can largely be attributed to the influence of the European Union's accession process at that time. Unfortunately, over the years, the suspension of full membership processes and the near end of hopes for accession have led to a slowdown in developments in this area.⁸⁰ Currently, discussions regarding the role of criminal law in addressing climate change have yet to commence in Türkiye, whereas this topic is actively debated within the European Union and German law.⁸¹ Even the topic of environmental protection through criminal law remains behind EU standards. Conducting a comprehensive comparative legal study on this issue could be beneficial in providing recommendations for Turkish law.

In order to Turkish environmental criminal law to align with international standards and potentially establish a climate criminal law, it is essential to prioritize environmental and climate issues. There is a need for efforts to raise awareness that these matters, beyond being political issues, are also crucial for the fundamental rights and freedoms of future generations.

It is indisputable that specialized judicial expertise is required to effectively address environmental and climate issues through criminal law, which are multidisciplinary challenges. Issues even arise in the processes of obtaining and preparing official expert reports in trials related to environmental crimes.⁸² Establishing specialized courts within the Turkish judiciary that serve the protection of the environment and climate, or at least

⁸⁰ Savaşan and Sümer, 2020, pp. 7 and following.

⁸¹ For discussions regarding these current debates, see Satzger, H. And von Maltitz, N., 2021, pp. 1 – 34.

⁸² Otacı, 2015, pp. 304 – 305.

achieving specialization within the existing system, could be a significant step toward ensuring that Turkish environmental and climate justice meets universal standards.⁸³

In conclusion, I propose the following recommendations for the enhancement of Turkish environmental criminal law, specifically addressing both substantive and procedural legal frameworks⁸⁴:

1. Redefining environmental offences to move away from a purely anthropocentric perspective.
2. Clearly defining the concepts related to environmental offences in the legislation, ensuring there is no uncertainty, while also considering all receiving environments and the implications of climate change.
3. Implementing all necessary measures that serve the preventive purpose of criminal law, including the “precautionary principle”.
4. Adjusting the sanctions prescribed for environmental offences to be sufficiently severe and deterrent, particularly in comparison to the costs associated with compliance procedures. It is important to note that excessively harsh penalties will not serve as an effective solution; imposing unpayable fines will not deter these offenses, as they will likely remain unenforceable. The key here is to achieve a balance.
5. Establishing the criminal liability of legal entities for environmental offences.
6. Providing in-service training to legal professionals, especially decision-makers, to enhance their expertise in environmental and climate issues.
7. Establishing specialized judicial branches focused on environmental and climate issues.
8. Revising participation rights to enable the public to play an active role in judicial processes.

⁸³ Güveyi, 2018, pp. 653 – 655.

⁸⁴ For detailed recommendations regarding this issue from the perspectives of substantive and procedural law, see also: Taşkın, 2015, pp. 119 – 166.

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