

Fighting environmental crimes **Strategies and penal organization in France**

(10 – 15 minutes)

– A priority for France in Europe

The European Commission, in its work programme for the year 2021 published on October 19th, 2020, announced the revision of Directive 2008/99/EC on the protection of the environment through criminal law. The European Commission will present an amending text in December 2021 and its negotiation will therefore begin under the French Presidency of the Council in the first half of 2022.

France considers that the protection of the environment through criminal law is an issue, in line with its own national commitments, echoing the law passed on December 24th, 2020, but also echoing the global context of the fight against climate change with different resolutions adopted in UN fora.

France is not opposed to a further harmonisation of substantive criminal law in this area, nor to strengthening sanctions. Setting up minimum maximum prison sentences to be incurred and/or fines for natural persons, and minimum maximum criminal or non-criminal fines for legal persons, based on the initial proposal for a directive drafted by the European Commission in 2007, seems to me to be an interesting prospect for ensuring the effectiveness of the law throughout the Union.

The possibility of using special investigation techniques for particularly serious and complex offences, as well as the improvement of cross-border cooperation, are also decisive in this area.

Nevertheless, France is against a de-correlation between environmental criminal law and compliance with the applicable administrative regulations, and, in so doing, against the establishment of an autonomous environmental criminal law. France has always been opposed to such incriminations, which place excessive criminal liability on private actors, even when they comply with the administrative regulations.

– Fight against climate change Act

The French parliament is currently examining a bill aimed at strengthening penalties for crimes against the environment (Fight against climate change Act, examined since February).

This bill was redacted in response to the citizen's convention for climate proposals to reduce greenhouse gas emissions.

Several new criminal offences are created in this act :

- The pollution of air, soil, surfacewater and groundwater shall be subject to a penalty of up to ten years imprisonment and a fine of 4.5 millions euros when it is a deliberate offence. The amount of the fine will be up to ten times of the benefit for the parties generated by the infringement. This new offence will be called « ecocide » ;

- Endangering the environment through illegal behavior will be also punished, to deter risky behaviors which cause serious environmental deterioration.

These new offences may be modified by the Parliament.

- **The penal organization in environmental crimes**

In France, there are several specialized courts that deal with complex environmental cases.

Since the Environmental Justice Act, signed into law on December 24th, 2020, a tribunal is competent in each of the 36 courts of appeal to hear complex cases of environmental damage, such as pollution of waterways or offences relating to waste or industrial sites.

Eight interregional jurisdictions are competent for offences committed by criminal networks : waste trafficking, wildlife trafficking... As an example, in March 2021, the court of Bordeaux convicted three Chinese people to sentences of up to 5 years in prison for eel trafficking.

Six interregional jurisdictions deal with maritime pollution, such as illicit oil discharges. For example, in January 2017, the court of Brest sentenced a ship's owner to a fine of 1 million euros.

Finally, two judicial poles in Paris and Marseille are competent for highly complex cases, such as major industrial pollution or fraud in use of chemical products.

This specialization guarantees better handling of these cases by magistrates trained in the field and accustomed to using specific mechanisms (judicial convention of public interest...).

- **The coordination of the action of the judicial authority and the administrations**

The technical nature of environmental crimes, which involves several administrations (services of the Ministry of the Environment, the Office of Biodiversity, the National Forestry Office), requires close coordination between judicial and administrative authorities.

In several departments, committees have been set up and, under the direction of the prosecutor, bring together the investigation services and the various administrations involved in environmental policing.

These are operational structures, which enable better detection of environmental damage, exchange of information and coordinated responses. For instance, a committee has defined priority areas of intervention, such as the fight against illegal fishing or illegal construction. Some investigations are thus conducted jointly by the different services, which reinforce the quality of the procedures and enable all aspects of a situation to be apprehended.