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## GREEN CRIMINOLOGY AND GREEN CRIME

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*Il negativo impatto sui fragili equilibri del bene giuridico “ambiente”, causato da una inesorabile quanto continua escalation del “potere inquinante” dell’uomo, vede il progressivo interessamento delle diverse branche del diritto nello studio di possibili soluzioni normative alla cd. “questione ambientale”: ovvero, la ricerca del giusto contemperamento tra la protezione dell’ecosistema e la contrapposta esigenza di assicurare lo svolgimento dell’attività produttiva umana, nonché della sua evoluzione. In generale, l’approccio criminologico tende ad analizzare le forze motrici alla base dello sviluppo di comportamenti devianti e le caratteristiche della vittima che, in genere, subisce i pericolosi effetti che sono tipico di questi comportamenti*

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## Abstract ENG

*The negative impact on the fragile balances of the legal right “environment”, caused by an inexorable and continuous increase of “human polluting power”, arouses great interest from a huge quantity of the multitude of fields of law in the study of possible regulatory solutions to the so-called “environmental issue”, thus the search for the right reconciliation between the protection of the ecosystem and the opposite need to assure the performance of the human productive activity and of its evolution. In general, the criminological approach tends to analyse the driving forces at the base of the development of deviant behaviour and the victim’s traits who, generally, suffers the dangerous effects which are typical of these conduct.*

**Summary:** 1. Historical background; 2. Green Criminology and Environmental Victimology; 3. The concept of green crime; 4. The environmental disaster: genesis and development. Monferrato and Land of Fires; 5. The fight against crime up to the present days.

## 1. Historical background

Historically the term “Green Criminology” was coined for the first time in 1990 by the American scholar MJ. Lynch who – wondering about how the excessive value attributed to the economic growth could, actually, cause more environmental damage - figures out how the criminological environment, in order to strike a balance, should not be limited to an economic and policy analysis with the aim of exposing the causes of environmental damage. On the contrary, it should offer solutions and programs based on socio-political actions.

Later, other scholars began to approach environmental problems, confirming the existence of a “Green Criminology”, but, at the same time, opening the age-old question of the correct definition of the term.

The formulated definitions are as many as the scholars interested in that issue: just think of Piers Beirne and Nigel South, who believed that the green criminology, according to an ecocentric conception, would represent an analysis to that damage to human beings, to animal species and to natural environment, done by not only ordinary people, but especially by powerful institutional actors.

That said, the green criminology, in the absence of an unequivocal definition, must be

simply considered a meeting point between the typical method of criminological investigation and the attempt to interpret and seek a solution to the environmental issue.

Firstly, the environmental criminology aims to analyse the engine powers, the behavioural profiles and the typical way of working of the so-called “environmental criminal”; after that, by using a broad definition, it leads the investigation towards the observation of the types of dangerous consequences caused by social or individual behavior realized in contrast to the ecosystem and the negative effects which are reflected on primary and secondary victims of these criminal actions, the so-called “studies of environmental victimology”.

According to a broad definition of green criminology, it studies environmental damage committed by powerful institutional actors - governments, multinationals, military apparatuses - but also by ordinary people.

In this specific breadth of horizon lie all the complexities and peculiarities of this new criminological approach to the environment.

A gaze which aims to broaden the concept of environmental crimes beyond the well-known perspective of the white-collar crimes, which remains crucial, but certainly does not exhaust the observational horizon.

Within it, some scholars have adopted a predominantly legal-procedural approach to environmental issues (legal-procedural approach), focusing the attention on the violations of norms established by the legislation (of criminal, civil or administrative relevance), whereas other – the great part of them- have had a social-legal approach which includes, in the field of observation and evaluation of the green criminology also actions that are not sanctioned by positive law.

## **2. Green Criminology and Environmental Victimology**

Victimology, according to Guglielmo Gulotta, can be defined as "a discipline related to the study of the victim of a crime, its biological psychological, moral, social and cultural characteristics, its relations with the criminal and the role which takes in the genesis of the crime”.

However, according to some guidelines, victimology does not only deal with victims of crime but, in a broad sense, affects all victims, also including people who are in a state of suffering, victims of natural disasters, and thereby including forms of victimization that

prescind from human arbitrariness, from the nature of voluntary action or the guilt of the officer.

In the field of environmental criminology, the contribution of Lynch is fundamental.

In fact it draws a comparison between different levels of victimization; according to this scholar there is a huge quantity of victims who escape from the traditional criminological approaches, still unaccustomed to take due account of environmental crimes and their consequences.

There is an inverse relationship between green criminology and environmental victimization: as well as the first was widely explored in the study of crimes, the second one, on the other hand, is still little analyzed.

Among the first scholars who engaged in the issue of environmental victimization there is Christopher Williams, according to whom the environmental victimization deals with the analysis of environmental damage and health problems, so representing the other side of an enlarged definition of environmental crime.

Environmental victimisation launches a whole range of unprecedented and thorny issues compared to which criminal justice systems are unprepared.

First of all, damage taken may concern a large group or even a community of victims, sometimes stakeholder.

In secundis, those who damage or attack the ecosystem are often represented by states or corporations.

Finally, the causal link is extremely complex to reconstruct, leading to the conclusion that environmental crimes remain "without victim".

### **3. The concept of green crime**

In our country the history of environmental illegalities and environmental crimes and the history of environmental legislation are parallel in time and in the legal and social evolution.

The already mentioned stories have had two different speeds and two parallel paths, often

independent of each other; that of environmental crimes, and then illegality in general, is an abrupt story, while that of environmental legislation is very slow and noisy if commensurate with the debates and controversies that have accompanied its evolution, but not always connected with the emerging reality of environmental crimes, against which from a certain historical moment on it has not been able to follow evolution and dynamics anymore.

And in this historical moment a different, parallel and at the same time transverse story comes to light. It intersects continuously between the other two: the evolution of jurisprudence, legitimacy and merit in the criminal field in relation to offences against the environment and public health.

In parallel with the birth of the first environmental standards, emerges, in a gradual manner, a sort of widespread tendency intended to ignore the rules dictated by these new regulations that are perceived as annoying bureaucratic-administrative aggravation.

The perception of the damage caused to the ecosystem is completely missing. In fact there is no collective sense of the social disvalue of the violation of this category of laws.

As already mentioned, green criminology, or properly so-called environmental criminology, deals, among other things, with interpreting what are the elements such as the profile of subjects who commit the so-called "Green Crime", aka ecological crime.

Green crime can be identified with all activities in violation of law that give rise to harmful effects for the ecosystem, and that may occur through different types of criminal behaviour, lifestyle or disrespectful productive activities of environmental legislation, driven by different driving forces, such as deviance seeking and many more.

Therefore, green crime, consisting of all possible activities that violate the environmental legislation, can be identified not only in the material pipelines of illegal exploitation and trafficking of natural or dangerous resources, of the contamination of elements of the environment, illegal trade in wild animals, fish product and timber, traffic or illegal disposal of waste, but it may also include any damage caused to the ecosystem, so representing indirectly a result of other gainful activities carried out, in most cases, by organized forms, both criminal and non-criminal.

Having said this, on the basis of the heterogeneity of the possible pipelines put in place in damage to the environment, the criminological doctrine has formulated a definition of green crime, which highlights the existence of an anthropic engine that binds the

environmental crimes to the various forms of lawful or unlawful power present in the society, such as, for example, the crimes of the "white collar" or the "ecomafie", pointing out also conduct that - although not expressly violating rules aimed at protecting the ecosystem - they generate dangerous consequences.

In this regard, to better understand the dynamics of this type of illicit, it is necessary to recall the so-called "Power Crimes".

Derivations of them are the so-called "State-Corporate Crimes", ie conduct socially illegitimate and harmful, implemented by means of unethical ties between public institutions and private entities.

Another derivation consists of the "White-collar Crimes", known as crimes committed by people, apparently respectable, who commit an offence in the course of their professional activity.

The common denominator of all this is environmental legislation, which often appeared extremely cumbersome, incomplete and inconsistent, excessively abstract, thus creating gray areas without any protection, within which corruption is better hidden, favouring illicit private interests.

In addition to the green Crimes pipelines analyzed, also the environmental pollution, known as "Pollution Crime" represent the violation of the legal framework issued in order to contain the phenomenon of climate change, through environmental policies with the aim to weaken processes with hidden harmful consequences.

Moreover, studies of green criminology have developed over time a dual concept, different from each other, and distinguished on the basis of the objective element of protection.

The knowledge of the so-called parallel levels of crime and their deviant pipelines, differentiated by time stages is central to the study of environmental criminology, with reference to green Crimes.

The first level is represented by "environmental crime for social sharing", dated back to the period of the 70s and 80s, which is identified with those social groups that tend to ignore and disregard systematically the legislation issued over those years for the protection of the environment.

The second level is represented by the "environmental crime associated with systemic environmental violations", which concerns deviant behavior of bands of illegality composed, however, not by gangsters, but by subjects apparently good, which are characterized by the presence of a high illegality permanent harbinger of significant environmental damage.

The second level is represented by the "environmental crime associated with systemic environmental violations", which includes deviant behavior of bands of illegality made up of not by gangsters, but by subjects apparently good, which are characterized by the presence of a high level of illegality, all this to the detriment of the environment.

The third and final level is represented by "organized environmental crime", also called "ecomafia", comprising that business of environmental violations carried out by the company within the production context, which, settling in a social and cultural substrate, operate with the ultimate goal of profit against all the rules.

The various international bodies responsible for preventing and combating various criminal phenomena (INTERPOL, EUROPOL, UNICRI), as well as bodies aimed to environmental protection (such as UNEP), for some time consider environmental crime as a dangerous and serious attack on development and stability and international security, in order to help to counteract environmental crimes through the establishment of a strong international network aimed to achieve a serious capacity to respond to these phenomena.

#### **4. The environmental disaster: genesis and development. Monferrato and Land of Fires:**

Among the most interesting figures of criminal offences in environmental matters, there is that of the disaster, that the legislative novella referred to in Law N° 68/2015, introduced in the Criminal Code under Title VI-bis.

However, before the legislator introduced the above rule, creating a case of an autonomous and precise crime, within the framework of the more general matter of environmental offences, was used the figure of the generic "disaster unnamed" or "other disaster" provided for in art. 434 of the Penal Code.

Unfortunately our country, over the years, has been the victim of notorious cases of mass disasters, which marked some of the blackest pages of the Italian history on the relationship between productive development and the opposing needs of safeguarding the environmental balance.

The social understanding and criminological of such events led the legislator to intervene with greater decision on legislation relating to the protection of the environment through criminal law.

As already mentioned, the initial absence in the Italian legal system of cases able to counteract the typical behaviour potentially detrimental to the balance of the ecosystem, has led the Judicial Authority to put in place a kind of activity of "substitution of parties", to the limits of the prohibited analogy of certain cases already present in the penal system, but formulated to provide a sanction response, thus filling the gap of protection of the interest to the health of the ecosystem.

Coming to the first case, Casale Monferrato started, from 19 March 1907, to host a very large factory, Eternit; the factory, extended over 94,000 meters square, is constituted in the industrial area of the Ronzone, area of approximately 200.000 meters square; Eternit occupies 47%20.

The Casalese factory is the materialization of the future, of progress, with its advantages, but, above all, with its disadvantages.

The long trail of deaths, before of workers or in any case of those who in some way had to deal with the company, and then of citizens who resided in the localities where these industrial typologies were located, gave rise to a sort of awareness of serious environmental and health consequences on the one hand, and the intervention of the judicial offices on the other.

In the last decade of the last century occurs what in sociology is known as the awareness-raising process of victims, whereby those affected by diseases deaths caused by asbestos and their families develop the awareness of being victims.

Their need for justice makes them converge in groups and associations that, with the indispensable support of doctors and lawyers, begin to fight for their right to health, a fundamental right recognized by our Constitution.

In 2004, the "Comitato Vertenza Amianto di Casale" lodged a complaint against the owners of the Eternit for the death of over two thousand people.

In 2007, the Public Prosecutor of Turin closes environmental disasters investigations towards top management.



To this timeline reduced to the minimum terms, it is necessary to add two dates that mark two historical moments, the beginning and the end of the "maxi-process" Eternit: 6 April 2009 and 13 February 2012.

The history of the Eternit of Casale can be read through the lenses of the principles of precaution, prevention and the "polluter pays".

The trial against the owners of the Italian factories of the Eternit industry and the historical-social reconstruction of asbestos pollution in Italy are two areas on which it is necessary to reflect and from which it is possible to bring out interesting insights on the environment for different disciplines, from law to sociology.

Of particular relevance is what happened in the Campania Region, also known as "Land of fires", a phenomenon that, unfortunately, ramped up at national level.

Several judicial investigations, starting from the early 1990s, also thanks to the contribution of some repents, have brought out different disposal methods used by organised crime to dump toxic waste, which over time are changed a lot.

The description of the disposal techniques is important to understand the criminological and sociological context of such conduct, that lead to a real "differential social organization".

All of these modes are particularly alarming because they could be exported to any other context or area, as it has already happened.

According to the doctrine, an individual is nothing more than a product of socio-economic context.

In contact with specific environments characterized by specific models of delinquent behavior, an individual can assimilate them and make them their own when they prevail over examples of integrated conduct.

Systematic criminal behavior is due to differential association in a situation in which there is a cultural conflict, as well as, ultimately, to the social disintegration present in that situation.

Criminal behavior is learned through association with other parties through an interactive communication process that consists not only in processes of verbal communication, but also in the communication of gestures and signs.

Through differential association, the necessary techniques to put in place criminal behavior and the definitions that support it can be clearly learned.

The techniques represent the "how" of a specific action, while the definitions constitute the "why" or the reasons why it is put in place.

The different degree of social disintegration, the individuals with whom you come into contact, the shared values within a given context, may justify different behaviour in relation to whether or not to comply with the law.

## **5. The fight against crime up to the present days.**

The problem of the fight against “environmental crime” has now acquired a central relief in the world because of the urgency to contain the effects of global pollution, as well as the need for the societies of the countries to implement economic models that are capable of reconciling development and growth with environmental protection.

A sharp acceleration of this still long and arduous process of change in the approach to the environmental issue comes from the Covid 19 pandemic, which has tragically revealed how the long-term survival chances of the human species are subject to a radical rethinking of the supremacy relationship established by man on nature.

The awareness that the success of a new "green deal" on a global level depends not only on the actions taken in the field of prevention and of the economy but also on strategies to combat all the environmental crimes, seems to be more and more clear: in fact over the course of the last year and half an important process of reform of European and international criminal law has begun.

Its successful outcome could lead – hopefully as soon as possible - to a significant strengthening of supranational penal measures against this phenomenon and to a more penetrating harmonization of national legislation.

With the opening, in 2021, of the so-called "European Green Deal", the Commission has started to promote the EU action, its Member States and the international community in

order to intensify efforts against environmental crime and review the whole EU legislation regarding waste issue.

In addition to a political and international context which has undergone a huge quantity of changes, the process of revising the Directive has become necessary because the adoption of that act took place before the entry into force of The Treaty of Lisbon, namely under the existence of a regulatory framework very different from the current one which assigns to the EU clearer and wider criminal powers.

The final assessment document from the Commission revealed a picture quite discouraging compared to the achievement of the set goal which consisted on the achievement of sufficient harmonisation of national criminal law.

The implementation of the text was achieved in a rather heterogeneous way because of the wide margin of discretion with which Member States have been able to interpret the vague terms used by the Directive for the description of criminal conduct.

Different approaches have been used, for example, in the reception of the element of illegality.

Many jurisdictions have employed all-encompassing definitions such as "contrary to rules of law" or the "decisions of an authority", which determine, in the application field of the criminal law, updating or modification of the national criminal law, due to the considerable fragmentation of legal acts implementing the framework of European sources.

In view of this, in the final report published at the outcome of the procedure of assessment of Directive 2008/99/EC, the Commission has suggested a series of strategic actions to overcome the main dysfunctions of the current legislation.

It determined the need for a future new Directive on the protection of the environment through criminal law which should use language formulations less vague in terms of typing of criminally relevant offences and in terms of the content of the unlawfulness clause expected as an element of the fact.

Particularly stringent is the invitation to the institutions of the EU to proceed to a more penetrating work of harmonization of sanctioning response.

In fact, the high degree of inhomogeneity between individual member states is considered one of the main causes of the ineffectiveness of the efforts in contrasting environmental crimes at European level.

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## Note e riferimenti bibliografici

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