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Illegal Fishing in Kosovo: An Examination of National Legislation and the Standards of European Union Law in This Field

Abstract

The issue of illegal fishing is being addressed through legal measures in the administrative and criminal fields. Kosovo has addressed this issue with special laws. The Law on Fisheries and Aquaculture has been implemented to regulate administrative violations, while the Criminal Code outlines the penalties for criminal offenses in this sector. This paper aims to address the aspect of regulating illegal fishing both from the perspective of administrative law and from the perspective of criminal law. The paper will address the issue of the elements that constitute the criminal offense of illegal fishing, analyzing all the objective and subjective elements that constitute this criminal offense. The analysis will also cover the administrative and criminal sanctions imposed for violations in the field of illegal fishing. The analysis will also address the issue of double regulation, as expressed in the Kosovo legal framework, where the same situation is addressed as both an administrative violation and a criminal offense without clear limits or criteria for division. The analysis will conclude with an examination of the standards promoted by the European Union in the field of illegal fishing, as well as comparative examples of some European Union countries that have adopted a more lenient approach to preventing and combating illegal fishing. These countries view administrative law as the most straightforward and least burdensome solution to address this issue.

KEYWORDS: illegal fishing, criminal law, administrative law, administrative and criminal sanctions

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1 | Introduction

Seas and oceans are being exposed to major pressures and threats, such as climate change, pollution, the introduction of invasive species, overfishing, and illegal, unreported, and unregulated fishing^[1]. Illegal fishing is one of the biggest global concerns for ecosystems. A 2008 study estimated that the annual global IUU catch was between 11 and 26 million metric tons. From an economic perspective, the annual value of this illegal fishing is estimated to range from 10 to 30 billion dollars^[2]. This type of fishing has made it a serious global problem, which has a profound negative impact on marine ecosystems and global food security, as well as on local economies, state governments, local communities, and, of course, on legitimate fishermen^[3].

In response to the challenge posed by illegal, unreported, and unregulated (IUU) fishing, legal frameworks have been established to prosecute implicated entities. Public and non-public authorities have collaborated closely in the drafting of rules and standards that have international, regional, or even national scope^[4].

Due to the specifics and consequences that illegal fishing causes, this phenomenon has been defined as an environmental crime by the United Nations Office on Drugs and Crime^[5]. Globally, illegal fishing is among the most lucrative activities for transnational criminal groups. These criminal organizations employ a variety of tactics, including poaching, to maximize profits. They utilize logistics, resources, and connections to move products from the source to the market for sale.

In 2008, the European Council adopted the Regulation on the Establishment of a Community System to Prevent, Deter, and Eliminate Illegal,

¹ Isabel Artime García, „Spain: A pioneering country in the fight against the infringement of the international legal regime for fisheries” *Marine Policy*, Vol. CXLIV (2022): 105230.

² Teale N. Phelps Bondarof, Wieste van der Werf, Tuesday Reitano, *The Illegal Fishing and Organized Crime Nexus: Illegal Fishing as Transnational Organized Crime* (Geneva: Global Initiative Against Transnational Organized Crime and The Black Fish, 2015), 1-84.

³ Ibidem.

⁴ Inma Valeije Álvarez, „The prosecution of fisheries crime in Spanish criminal law: The impact of European Union regulations” *Marine Policy*, Vol. CLXVII (2023): 105327.

⁵ Phelps Bondarof, van der Werf, Reitano, *The Illegal Fishing and Organized Crime Nexus: Illegal Fishing as Transnational Organized Crime*, 1-84.

Unreported, and Unregulated Fishing. This regulation aimed to address this issue at the European Union level.

Although Kosovo does not have a coastline, its water resources are primarily located in the western region, while the eastern region has limited water resources^[6]. In this direction, Kosovo has built important legislation in the field of regulating fishing activity but has also included in its legislation the criminal offense *illegal fishing*. This criminal offense is sanctioned according to the Criminal Code of Kosovo and is systematized in the chapter on criminal offenses against the environment. In terms of administrative regulation, fishing activity is regulated by the Law on Fisheries and Aquaculture.

The objective of this paper is to critically analyze and evaluate the administrative and criminal legal framework that regulates the issue of illegal fishing. This analysis will highlight the strengths and weaknesses of these laws, which aim to prevent and combat illegal fishing. The study will also assess the degree of harmonization among these laws and their alignment with EU instruments related to illegal fishing.

2 | Administrative and criminal system in the field of illegal fishing

Illegal fishing is governed by two sets of legal regulations: administrative and criminal. Administrative legal rules usually deal with lighter violations that do not cause major and serious consequences. In contrast, criminal legal rules deal with more serious violations that cause serious, or even irreparable, consequences.

Criminal offences are defined by criminal laws. In this regard, the Criminal Code of Kosovo stipulates *illegal fishing* as a specific criminal offence. While the Criminal Code defines this criminal offence, the presence of administrative law is strong since, as an element of the criminal offence, the situation is foreseen if the sectoral legislation that regulates the field

⁶ Valbon Bytyqi, *REGJIONI LINDOR I KOSOVËS: veçoritë fiziko-gjeografike, resurset natyrore dhe problemet gjeomjedisore* (Prishtinë: Akademia e Shkencave dhe e Arteve e Kosovës, 2017).

of fishing is violated. The Law on Fishing and Aquaculture is the primary legislation that governs fishing in Kosovo. There is a close relationship between the Criminal Code and the Law on Fishing and Aquaculture in that criminal offences related to illegal fishing cannot be established without the presence of legal administrative rules. The criminal offence of illegal fishing is systematised in Chapter XXVII, *Criminal offences against the environment, animals, plants, and cultural objects*. Almost the entire chapter on criminal offences against the environment stands out with the characteristic that these criminal offences cannot be formed without the participation of administrative legislation that regulates the field of the environment, animals, plants, or cultural objects. Consequently, these criminal offences are also known as criminal offences that are drafted according to the *blanket reference or legislation by reference* technique.

The criminal offense *illegal fishing* has two paragraphs. In the first paragraph of Article 353, it is foreseen that this offence can be committed by anyone who fishes during the time when fishing is prohibited or in the waters where fishing is prohibited^[7]. This rule criminalises actions that are carried out in a place and time period when fishing is prohibited. This criminal offence was drafted according to the *blanket reference or legislation by reference* technique, as the elements of this criminal offence are related to the preliminary assessment of whether the specific action has violated the sectoral legal provisions in the field of fishing, and then it can be assessed if the elements contained in this criminal offence have been consumed.

Fishing activity is a legal activity that is regulated by the Law on Fishing and Aquaculture. Many elements of the criminal offense *illegal fishing* are regulated by this law, including fishing place, fishing time, fishing tools, and other aspects that are regulated by this law but not by the Criminal Code. Therefore, the implementation of the Criminal Code is inherently linked to sectoral legislation in the field of fishing, particularly to the administrative regulatory aspects that govern this sector. This legislation governs the management of fish resources and the practices of fishing and aquaculture within the territorial waters of Kosovo.

The law contains several specific goals, which aim to:

- Ensure the sustainable use of fish in fishing waters to preserve biodiversity.

⁷ Article 353 (1), Criminal Code of the Republic of Kosovo. Official Gazette of the Republic of Kosovo, No. 2.14 January 2019, Code No. 06/L-074.

- Regulate fishing and cultivation activities in accordance with the conditions stipulated by this law and by-laws issued by this law.
- Establish the conditions for managing and supervising fish resources.
- Establish measures for protecting fish.
- Establish the rights and obligations of individuals or entities engaging in fishing and aquaculture activities^[8].

Two of the main elements that form this criminal offence are the time of commission and the place of commission. The sectoral legislation contains special rules that serve as an important basis for regulation. Specifically, the time period for allowing and restricting fishing activity is addressed in the Law on Fisheries and Aquaculture, but it does not specify the time period during which fishing activity can be exercised or when it is limited. According to articles 34 and 35 of the Law on Fisheries and Aquaculture, the time period for fishing is determined by a sub-legal act issued by the Ministry of Agriculture, Forestry, and Rural Development. The Law on Fisheries and Aquaculture addresses the matter of fishing locations in detail. While the specific countries or regions where fishing is permitted or prohibited are not explicitly outlined in the law, it is determined by a by-law. The Ministry of Agriculture, Forestry, and Rural Development is responsible for establishing the designated fishing areas. Even for operators with a license or entities with scientific or other permitted purposes, the relevant licenses or permits specify the permitted countries or regions for fishing activities^[9].

In the second paragraph of Article 353, some elements of *corpus delicti* and *modus operandi* are provided. According to this article, the offense in question can be committed by anyone who fishes using explosives, electric current, poison, or other harmful means and thereby causes the death of fish in a way that harms their reproduction^[10]. This provision addresses the means or manner of conducting fishing activities. This work is not related to the sectoral legislation that regulates the field of fishing, as the elements of this work can be formed independently. Also, this offense does not require causing any specific consequences; namely, it can be committed

⁸ Law on Fishery and Aquaculture. Official Gazette of the Republic of Kosovo, No. 24, 1 May 2008, Law No. 02/L-85.

⁹ Ibidem.

¹⁰ Article 353 (1), Criminal Code of the Republic of Kosovo. *Official Gazette of the Republic of Kosovo*, No. 2.14 January 2019, Code No. 06/L-074.

simply by using any of the tools or methods defined in the Criminal Code. While the *mens rea* is not explicitly emphasized, the elements and specifics of this offense indicate a requirement for intentional conduct^[11].

3 | Administrative and criminal sanctions of illegal fishing

The Law on Fisheries and Aquaculture has provided for the types of criminal administrative violations and, respectively, the administrative sanctions for these violations. This law has been supplemented and amended by Law No. 08/L-079, which was approved in 2022 by the Assembly of Kosovo^[12]. Amendments to this law were necessary in order to harmonize with Law No. 05/L-087 on Minor Offences, which has defined specific types of minor offences sanctions^[13]. Among the amendments is a revision of the minor offenses sanctions, which has prompted the necessary additions and changes to align with this law.

Law No. 08/L-079 for the amendment and completion of Law No. 02/L-85 on fishing and aquaculture has foreseen two categories of violations which can be committed by legal entities and by natural persons which are classified as *minor offence*. The law recognizes several violations that can be committed by legal entities, such as the following:

- Development of economic fishing activities in the region or fishing area that is not defined as a region for economic fishing;
- Development of economic fishing activity contrary to the law;
- Development of aquaculture activity without a license or with an expired license;
- Transferring the right of use to another person or entity;
- Conducting or enabling electro-fishing in violation of the law;

¹¹ Ismet Salihu, *E drejta Penale – Pjesa e Posaçme*. Prishtinë: Fama, 2014.

¹² Law on amending and supplementing the Law No. 02/L-85 on fishery and aquaculture. *Official Gazette of the Republic of Kosovo*, No. 27, 25 August 2022, Law No. 08/L-079.

¹³ Law on Minor Offences. *Official Gazette of the Republic of Kosovo*, No. 33, 8 September 2016, Law No. 05/L-087.

- Non-reporting to the ministry about the amount, type, time, place, and method of fishing, namely the tools and equipment used for fishing;
- Fishing contrary to the law;
- Carrying out fishing activities in places and times of natural reproduction of fish in violation of the law;
- Development of fishing activity in the season when fishing for different types of fish is prohibited;
- Introduction of new types of fish without the consent of the ministry in violation of the law or does not mark the region or the fishing zone;
- Non-providing of data according to the law by the user of the fishing right;
- Non-content of the program offered for management;
- Non-possession of evidence for the origin of fish during fish trading;
- Non-equipment of guards with identification badges and permits;
- Carrying out fishing for scientific-research purposes without the permission of the ministry;
- Organization of sport-recreational fishing at the time of natural reproduction;
- Non-implementation of measures for the protection of the fish stock;
- Organization of international competitions without the consent of the ministry^[14].

Legal entities that commit one of these violations are expected to be fined in the amount of 1,000 to 10,000 euros. Whereas, the violations that can be committed by natural persons—fishers—are as follows:

- Fishing in the fishing region or zone without a permit;
- Fishing with tools and equipment prohibited by law;
- Fishing in a way that prevents the development of aquaculture activity in violation of the law;
- Exceeding the allowed amount of fishing in violation of the basic law.^[15]
- Trade in fish caught by sport-recreational fishing in violation of the law;
- Natural persons who commit any of the aforementioned violations are subject to fines ranging from 300 euro to 1,500 euro.

¹⁴ Article 2 (1), Law on Fishery and Aquaculture. Official Gazette of the Republic of Kosovo, No. 24, 1 May 2008, Law No. 02/L-85.

¹⁵ *Ibidem*, Article 4.

For *illegal fishing*, the law provides for two types of punishment: a fine and a prison sentence. According to Article 353, paragraph 1, the possibility of imposing a fine or a prison sentence of up to three months is foreseen. According to Article 353, paragraph 2, the possibility of imposing a fine or a prison sentence of up to two years is foreseen. It is important to note that a fine and a prison sentence cannot be imposed together for the same criminal offense; they must be imposed separately. The amount of the fine is not specified for this particular offense, so the general provisions of the Criminal Code that set the minimum and maximum fine amount must be applied. According to the official data provided by the criminal evidence of the judicial system, for the period 2008–2020, these convictions were pronounced for the criminal offense under Article 353.

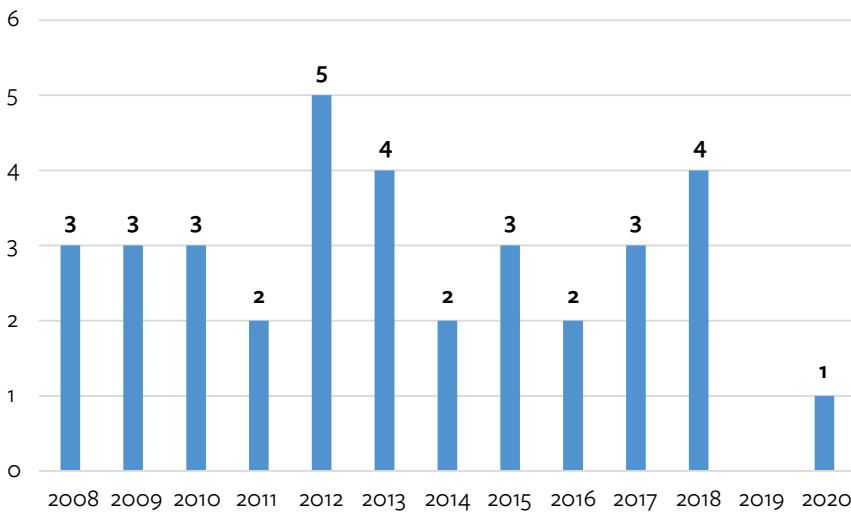


Diagram: The number of convictions for the criminal offense illegal fishing (Article 353)

From the review and analysis of these data for the period 2008–2020, a very low number of cases registered in the courts resulted. Although Kosovo does not stand out for its water resources, including access to international waters or any large river within it, in its rivers and lakes there are species of fishing resources that are very characteristic. Therefore, non-care and non-prosecution, either by undertaking preventive or reactive measures, will greatly damage the stock of fish in rivers or lakes. Also, the substantial pollution of Kosovo's rivers, particularly the discharge

of nearly the entire sewerage network, has had deleterious effects on both fish populations and the overall level of pollution, thereby compromising the safety of people and animals.

4 | European Council Regulation Standards on Illegal, Unreported, and Unregulated Fishing

The purpose of Council Regulation (EC) No. 1005/2008 of September 29, 2008 on the establishment of a Community system for the prevention, deterrence, and elimination of illegal, unreported, and unregulated fishing was to establish a common system within the European Union to prevent, deter, and eliminate illegal, unreported, and unregulated fishing. In this regard, this instrument contains minimum rules and standards for many important situations and obliges the Member States of the European Union to take appropriate measures to ensure the effectiveness of this system.

This instrument contains twelve separate chapters dealing with different situations that fulfill the goal of preventing, deterring, and eliminating illegal, unreported, and unregulated fishing. The rules and standards of this instrument focus on the following areas:

- Inspections of fishing vessels of third countries in the ports of Member States;
- Fish certification scheme for import and export of fishery products;
- Community alert system;
- Identification of fishing vessels engaged in fishing;
- Non-cooperating third countries;
- Measures regarding fishing vessels and states involved in fishing;
- Immediate enforcement measures, sanctions, and supplementary sanctions;
- Implementation of the provisions adopted in some regional fisheries management organizations related to the sighting of fishing vessels; and
- Mutual aid.

According to Article 44 of this instrument, Member States have the authority to impose sanctions for severe violations. Member States are obligated to hold individuals and legal entities accountable for each serious violation that is committed and to implement administrative sanctions that are effective, proportionate, and convincing. The instrument establishes minimum standards for these administrative sanctions, determining that for certain violations, the minimum sanction must be at least five times the value of the fishery products obtained. In the event of a recurrence of the violation within a five-year period, the sanction amount should be increased to eight times the value of the benefited products^[16]. Also, it is foreseen that criminal sanctions should be included as measures against serious violations. The issue of including criminal sanctions for environmental violations remains at the discretion of states, whether they want to impose them or not, as this instrument does not necessarily oblige them to do so. However, in situations where criminal sanctions are foreseen, they must be effective, proportionate, and convincing^[17].

The sanctions outlined in this document may be imposed in conjunction with other measures, including the seizure or confiscation of vessels or other equipment used for fishing activities. Additionally, the license for fishing activities may be revoked, and the individual may face penalties for related activities conducted by a legal entity against which sanctions have been imposed in the fishing sector^[18].

Regarding the implementation of Article 44 of this instrument, the 20 Member States with powers over sea fishing have chosen to implement mainly administrative law and not criminal law. Ireland is the only country that has only imposed criminal sanctions, while Lithuania, Poland, and Slovenia apply only administrative sanctions, while the other countries apply a combined system of sanctions. This situation can be considered reasonable since, in general, administrative procedures are faster, less

¹⁶ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. Official Journal of the European Union Legislation 2008, 286, 1-32.

¹⁷ Ibidem.

¹⁸ Ibidem.

costly, and more effective. Moreover, this approach is also in line with the fulfillment of the principle of minimal intervention in criminal law^[19].

The approach of the European Union to such fishing is a soft approach that is related to administrative sanctions and much less to criminal sanctions. In 2021, the draft amendment to the Directive on Environmental Crime was reviewed. This proposal included illegal fishing as one of the forms of environmental crime, but the final version did not incorporate this stipulation^[20]. However, states can independently take legislative measures that independently regulate the issue of the criminalisation of illegal fishing. In this regard, Council Regulation No. 1005/2008 can serve as an important reference for building effective legislation against illegal fishing. In addition to the administrative or criminal sanctions that can be imposed on entities that commit violations, complementary sanctions can also be imposed on them. In addition to natural persons, this instrument foresees the possibility that legal persons may also be held responsible for violations caused by illegal fishing.

5 | The need for harmonization of violations, administrative sanctions, and criminal sanctions

Although the administrative law and the criminal law address illegal fishing from different viewpoints, they are largely aligned. However, there are some areas where there is a lack of legal harmonization between the two fields. This is mostly expressed in the double definition of concrete situations, when both the administrative law and the criminal law have provided for the same situation as a legal violation, and for this violation, legal sanctions have been provided both by the administrative law and by the criminal law. This confusion comes as a result of an unclear approach that most states have, as some states are reluctant to criminalize illegal fishing; namely,

¹⁹ García Carlos Teijo, „Criminal sanctions and IUU fishing: The case of Spain” *Marine Policy*, Vol. CXLVII (2023): <https://doi.org/10.1016/j.marpol.2022.105341.105341>.

²⁰ Teresa Fajardo Del Castillo, „To criminalize or not to criminalize IUU fishing: The EU’s choice” *Marine Policy*, Vol. CXLIV (2022): 105212.

they try to deal with illegal fishing only with an administrative approach. This situation is at least expressed in some European Union countries^[21].

Although there is full agreement that criminal sanctions should only be included as a last resort for these violations^[22], this aspect has not been reflected in the legal administrative, and criminal rules. No boundaries have been carefully set, nor have clear and precise criteria been established to define all the necessary elements constituting either an administrative legal offense or a criminal offense. In the absence of a clear dividing line between these violations, law-enforcement institutions may face challenges in applying the law accurately and objectively. At the same time, individuals or entities involved in illegal fishing activity may be exposed to legal uncertainty or even arbitrariness during the enforcement of the law.

The legislation of Kosovo prioritizes the treatment of illegal fishing from the perspective of administrative law, as this law is more readily implementable. Additionally, the Criminal Code contains provisions that define this criminal offense, but these provisions are very abstract and difficult to implement. This approach aligns with the practices of many countries^[23]. Kosovo's criminal legislation in the field of illegal fishing is very old and underdeveloped.

The administrative and criminal legislation in the field of illegal fishing do not reference the standards or rules promoted by the European Union regarding illegal fishing. Additionally, the criminal sanctions outlined in the administrative legislation, as well as in the criminal legislation, do not align with the standards established by Council Regulation (EC) No. 1005/2008 of September 29, 2008, which aims to establish a community system to prevent, hinder, and eliminate illegal, unreported, and unregulated fishing^[24]. This instrument establishes standards requiring states to

²¹ Blaise Kuemlangan, Amidjogbe Elizabeth-Rose, Julia Nakamura, Alessandra Tomassi, Rudolph Hupperts, Buba Bojang, Teresa Amador, „Enforcement approaches against illegal fishing in national fisheries legislation” *Marine Policy*, Vol. LXCIX (2023): 105514.

²² Fajardo Del Castillo, „To criminalize or not to criminalize IUU fishing: The EU's choice”, 105212.

²³ Teijo García, „Criminal sanctions and IUU fishing: The case of Spain”, 105341.

²⁴ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. Official Journal of the European Union Legislation 2008, 286, 1-32.

ensure that sanctions against illegal fishing are effective, proportionate, and convincing. However, the sanctions outlined in both the administrative and criminal legislation do not adequately reflect these standards, hindering the effective prevention and combating of illegal fishing.

6 | Conclusion

The legal framework of Kosovo in the field of illegal fishing is handled from the administrative and criminal aspects. Both categories of laws provide for illegal activity if it is exercised in violation of the legal rules in force. In the administrative aspect, the Law on Fisheries and Aquaculture is an act that regulates the field of fishing and provides special rules on how this activity can be exercised in Kosovo. It determines the manner of its exercise, the conditions under which this activity can be exercised, the subjects who are authorized, the places, time, tools, methods, and a host of other important aspects. The law also stipulates the possibility of imposing a fine through an administrative procedure in cases where fishing activities are conducted in violation of its provisions. Conversely, the Criminal Code delineates *illegal fishing* as a distinct criminal offense. This criminal offense is closely related to the sectoral legislation that regulates the field of fishing, namely the Law on Fisheries and Aquaculture.

In administrative procedure, the Law on Fisheries and Aquaculture provides that entities that violate the rules contained in this law may be sentenced to a fine, which is the only punishment that can be imposed. Meanwhile, the Criminal Code foresees both a fine and a prison sentence. However, the length of the prison sentence is very low; namely, it is one of the criminal offenses for which very low penalties are foreseen when the criminal responsibility for these criminal offenses is established.

One of the issues that presents a challenge in itself for the implementation of the legal framework in the field of illegal fishing is the field of implementation, namely the limits of the implementation of administrative laws and criminal laws. According to the principles of criminal law, double punishment is prohibited, so it is very important to have limits that are foreseen in an accurate and objective manner. In the current situation, we find that many situations are provided as violations, both by the Law on Fisheries and Aquaculture and by the Criminal Code. To that end, it is

imperative to define these aspects with greater precision, in accordance with the principle of legal certainty.

The standards promoted by European Union instruments in the field of illegal fishing represent one of the least developed areas in terms of alignment with EU policies. It is crucial to adopt a cohesive approach to tackling illegal fishing, specifically ensuring that Kosovo's legal framework complies with EU standards.

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