

LAW N° 21.595 OF ECONOMIC CRIMES

TITLE IV AMENDMENTS TO OTHER LEGAL BODIES

Article 48.- *Amendments to the Criminal Code.*

The following amendments are hereby introduced into the Penal Code: (...)

8. *Paragraph 13 of Title VI of Book II is replaced by the following:*

“§ 13. Attacks against the environment

Article 305.- Any person who, without having submitted his activity to an environmental impact assessment, knowing that he is obliged to do so, shall be punished with a minimum to medium term of imprisonment:

1. Discharges polluting substances into maritime or inland waters;
2. Withdraws inland water, whether surface water, groundwater or seawater;
3. Dumps or deposits polluting substances on the continental or maritime soil or subsoil;
4. Dump soil or other solids into wetlands;
5. Extract components from the soil or subsoil;
6. Release pollutants into the air.

The penalty shall be imprisonment in the medium to maximum range if the offender commits the act while being obliged to submit his activity to an environmental impact study.

Article 306.- The penalties indicated in the first paragraph of the preceding article shall be applicable to anyone who, having an authorisation to dump, release or extract any of the substances or elements mentioned in numbers 1 to 6 of article 305, commits any of the acts provided for therein, in contravention of an emission or environmental quality regulation, in breach of the measures established in a decontamination prevention or environmental management plan, in breach of an environmental qualification resolution, or any condition associated with the granting of the authorisation, and provided that the offender has been administratively sanctioned in at least two different punitive procedures, for serious or very serious infringements, within the ten years prior to the punishable act and committed in relation to the same unit subject to the control of the authority.

Article 307.- The penalties set out in the first paragraph of Article 305 shall also apply to anyone who, having authorisation to extract inland, surface or groundwater, extracts it in breach of the rules governing its distribution and use in any of the following circumstances:

1. The authority having established the temporary reduction of the exercise of such rights of use;
2. In an area that has been declared a prohibition zone for new aquifer exploitation, has been declared a hydrogeological sector restriction area, has been declared a depletion of natural water sources or has been declared a water shortage zone.

Article 308: Anyone who, by pouring, depositing or releasing polluting substances, or extracting water or components from the soil or subsoil, seriously affects maritime or inland,

surface or underground waters, the soil or subsoil, whether inland or maritime, or the air, or animal or plant health, the existence of water resources or the supply of drinking water, or who seriously affects wetlands by pouring soil or other solids into them, shall be punished:

1. With the penalty of rigorous imprisonment or rigorous imprisonment in its minimum degree, if the serious affectation is perpetrated in the circumstances provided for in Articles 305, 306 or 307;
2. With the penalty of rigorous imprisonment or rigorous imprisonment in its maximum degree to rigorous imprisonment in its minimum degree in the cases not included in the preceding number, and provided that he was not authorised to do so.

Article 309: Anyone who, through recklessness or mere imprudence or negligence in breach of the regulations, commits the acts referred to in the previous article, shall be punished:

1. With the penalty of imprisonment or rigorous imprisonment in its maximum degree, if the serious affectation was perpetrated in the circumstances provided for in Articles 305, 306 or 307;
2. With the penalty of rigorous imprisonment or rigorous imprisonment in any of its degrees in the cases not included in the preceding number.

Article 310: Anyone who seriously affects one or more of the environmental components of a virgin region reserve, a national park, a natural monument, a national reserve or a wetland of international importance, shall be punished with imprisonment or rigorous imprisonment to the minimum extent.

The same penalty shall be imposed on anyone who, in violation of an environmental qualification resolution or without having submitted his activity to an environmental impact assessment when he is obliged to do so, seriously affects a glacier.

The penalty shall be imprisonment or rigorous imprisonment to the maximum extent if any of the acts referred to in the preceding paragraphs are perpetrated through recklessness or through mere imprudence or negligence in breach of the regulations.

Article 310 bis: For the purposes of the three preceding articles, a serious impact on one or more environmental components shall be understood as an adverse change in one of them, provided that any of the following circumstances are met:

1. Having a spatial extension of relevance, according to the ecological or geographical characteristics of the affected area;
2. The effects are prolonged over time;
3. Be irreparable or difficult to repair;
4. It must affect a significant group of species, according to the characteristics of the affected area;
5. Affect species categorised as extinct, extinct in the wild, critically endangered, endangered or vulnerable. critically endangered, endangered or vulnerable;
6. Placing the health of one or more persons at serious risk of serious harm;
7. Significantly affect the ecosystem services or functions of the environmental element or component.

In the case of the acts provided for at no. 1 of article 308 and in the first and second paragraphs of article 310, if the serious damage causes irreversible damage to an ecosystem, the maximum of the penalties provided for therein shall be imposed.

Article 310 ter: Article 310 ter.- In addition to the penalties indicated in the provisions of this Paragraph, the court shall impose the penalty of a fine:

1. From 120,000 to 60,000 monthly tax units, if the maximum penalty indicated is less than the maximum term of imprisonment or rigorous imprisonment;
2. From 12,000 to 90,000 monthly tax units, if the minimum penalty is less than the maximum term of imprisonment or rigorous imprisonment;
3. From 24,000 to 120,000 monthly tax units, if the minimum penalty is equal to or higher than the maximum term of imprisonment.

The amount of the fine paid shall be credited to the non-penalty fine imposed for the same offence. If the convicted person has paid a fine not constituting a penalty for the same offence, the amount paid shall be credited to the fine imposed.

Article 311: In the case of the acts provided for in Articles 305, 306 or 307, the penalty shall only be a fine of 120 to 12,000 monthly tax units when:

1. The quantity discharged, released or extracted in excess does not significantly exceed the permitted or authorised limit, taking into account the characteristics of the substance and the condition of the environment that may be affected by the excess, and in addition;
2. The offender has acted diligently to restore the emissions or extractions to the permitted or authorised value and to avoid the harmful consequences of the act.

The court may impose a fine lower than the above, starting at one monthly tax unit, when the act was perpetrated by abstracting inland, surface or groundwater, the condition set out in number 1 is fulfilled and the abstraction was intended for drinking and domestic subsistence uses.

Article 311 bis: In the case of the acts provided for in article 310, the court shall impose on the convicted person, as an accessory penalty, a perpetual ban on entering the affected area, and may extend it by means of a substantiated decision to other areas of those indicated in said article that exhibit similar ecosystemic characteristics.

The court may authorise entry to the area for the sole purpose of travelling between two places outside the area, when there are no alternative routes available.

Article 311 ter: Apart from the cases referred to in Article 310, the court may consider the existence of a highly qualified mitigating circumstance in accordance with [Article 68 bis](#) where the offender repairs the environmental damage caused by his or her actions.

Article 311 quater: The penalties foreseen in the provisions of this Paragraph for environmental violations perpetrated by extracting inland, surface or underground waters

shall be imposed without prejudice to the application of the corresponding penalties for the crime of usurpation.

Article 311 quinquies: When the person bound by the environmental regulations or the offender referred to in the provisions of this Paragraph is a legal person, it shall be understood that this status is conferred with respect to those who have intervened on its behalf in the punishable act.

Article 311 sexies: For the purposes of the provisions of this Paragraph, the person who has the corresponding authorisation at the time of the act has it, even if it is subsequently declared invalid.

An authorisation that has been obtained by means of deception, coercion or bribery shall not be valid, nor shall an authorisation that the authorised person knows to be or has become manifestly improper.

The administrative declaration of not being obliged to submit the activity to an environmental impact assessment exempts from liability under article 305, unless the circumstances indicated in the preceding paragraph are present.

Article 312: If, on the occasion of the investigation or trial for the facts provided for in the provisions of this Paragraph, the court considers it appropriate to impose on the accused or convicted person conditions aimed at preventing or repairing environmental damage, it shall consult the competent technical bodies. If it imposes such conditions, it shall notify the relevant regulatory authority for the supervision of their compliance, and the latter shall be obliged to inform the court. The requested authority may exercise all the supervisory powers established by law for this purpose, and shall be obliged to inform the court.”