Executive Summary

1.1 Overview of national legislation in the environmental sphere

Historical background:

All five of the countries in this study have typical continental legal systems. Moreover, most countries share strong historical ties with the Austrian and German legal traditions. The historical period covered by the Austro-Hungarian empire, which lasted until 1918, has particularly influenced codification of criminal law in Slovakia, the Czech Republic and Hungary. One of the very first efforts to codify criminal legislation in the above-mentioned countries was the Austro-Hungarian 1852 Criminal Code, which referred to crimes (felonies), contravention (petty offences) and misdemeanours. In 1878 Hungary developed its own Criminal Code, which included the same categories. The 1878 model applied within the territory of the current Hungary and Slovakia, while the Czech Republic referred to the 1852 Criminal Code.

During the Soviet period that followed the Second World War and lasted until 1989 in Central and Eastern Europe, environmental protection was never ranked as a political priority. The only way to punish ecological harm was through the so-called economic crimes based on the damage to public property or public health.

From 1960 to 1980 legal measures to protect the environment were adopted via specific environmental legislation covering concrete sectors (e.g., 1961 Act on Protection of Water in Poland) or codification efforts (1961 Lithuanian, Slovak and Czech Criminal Codes, 1969 Polish Criminal Code, 1978 Hungarian Code). The above-mentioned Criminal Codes already referred to certain types of environmental offences, mainly against nature, but described constitutive acts of concrete endangerment (a crime could only be established when real harm had already occurred) for human health and safety (anthropologic conceptions of the offence).

Nowadays all targeted countries have progressively moved towards stricter systems of environmental protection. Such shift, along with change in political and sociological attitudes, has been largely influenced by both international (e.g., international conventions on environmental protection in the 1970s)[1] as well as national developments (e.g., citizens' green movements that arose in these countries in the 1980s to protest against communist regimes). Finally, the gradual approximation that these countries have undertaken to comply with the *acquis* communautaire, one of the conditions for accession into the EU, has significantly strengthened legal protection of the environment at both administrative and criminal levels.

Sources of environmental criminal law:

At present the national Constitutions of the Czech Republic, Hungary and Slovakia refer to the right to a healthy environment.[2] Moreover, in Poland the Constitution includes the duty of taking care of the environment. In Slovakia, it is also possible to

[1] The Principle I of the 1972 Stockholm Declaration (United Nations Conference on Environment, 5-16 June 1972) confirmed the relationship between the human being and the environment by referring to the term "human environment" and reflected the urgency to tackle environmental problems at global level in the benefit of future generations.

[2] It is to be kept in mind that the Constitutions of these countries were adopted in the early nineties and thus, all of them have introduced post-modernist values, including the so-called third generation solidarity or community rights.

find obligations towards the environment (such as to protect and improve or prudent exploitation), and indeed the environment is considered a public good.

In addition, most criminal codes have abandoned anthropological conceptions of environmental crime (where the criminal action resulted on danger to human health) and moved to a more ecocentric perspective based on the protection of the environment itself. Poland and Hungary still keep a dual protection of both subjects (human health and the environment) when defining the environmental criminal offence. The Czech Republic, Lithuania and Slovakia specifically refer to either the protection of the environment as a whole or concrete media (e.g., soil, land, water and air).

Criminal Codes are the primary legal source to define environmental crime and to set out penalties. There are nevertheless some sporadic exceptions and some crimes can be found in independent instruments (e.g., Nature Protection Act or Water Act in Poland). No secondary sources in any of the countries covered by this study contain criminal provisions to protect the environment.

Jurisprudence and legal precedents are not a source of law in these countries, but the decisions of the Supreme Courts may constitute the legal basis for further interpretation (removing legal doubts and hence providing legal certainty) and effective application of the criminal codes. Nevertheless, as section 4.3 on criminal jurisprudence highlights, no environmental case has reached the Supreme Court in any of the targeted countries.

The most recent Criminal Codes are the ones of Poland (1997) and Lithuania (which was published in 2000, but has only entered into force in May 2003). The Hungarian Criminal Code is dated 1978, but has been subject to subsequent amendments, the most relevant of which in the sphere of environmental crime took place in 1996. Finally, the Czech and the Slovak Criminal Codes are based on the same Act No 140/1961 Coll., which was adopted during the Soviet period and amended several times in the past twenty years.

Environmental criminal offences:

In the Czech Republic and Slovakia the Criminal Code recognises only one kind of environmental offence, i.e., crime. The envisaged re-codification in Slovakia, which is planned to enter into force in early 2005, should re-introduce the historical types of crime and misdemeanour. The Hungarian Criminal Code classifies environmental offences into crimes and misdemeanours. Negligent offences are always regarded as misdemeanours irrespective of their associated penalty. The new Lithuanian Criminal Code classifies criminal offences into crimes and misdemeanours; this classification is mainly based on the extent to which the public is endangered ("major" and "minor" harm). Finally, the Polish Criminal Code distinguishes between crimes and misdemeanours, but serious environmental offences are always categorised as misdemeanours. In addition, the Polish Code of Petty Offences (1971) lists a number of criminal petty offences concerning the environment, which go beyond quasi-criminal administrative law as they apply criminal principles, procedures and penalties.

The degree of detail provided by the different articles of the Criminal Code for environmental offences varies among the targeted countries, as can be seen in the following table on environmental offences in the Criminal Codes.

Table on environmental offences in the Criminal Codes

Country	Criminal Code	Most relevant amendments	Provisions on environmental crime	Reference to administrative law
Czech Republic	Criminal Code No.140/1961 Coll.	Act No. 134/2002 Coll.	"general threat to environment":	
			§ 181 a – intentional	yes
			§ 181 b – negligent	yes
			"specific types":	
			§181 c – forests	yes
			§ 181 e – hazardous waste	yes
			§ 181 f & h – flora & fauna	yes
Hungary	Criminal Code, Act IV of 1978	Act LII of 1996	"general threat to environment":	
			§ 280. 1, 2, 3, 4- intentional	yes
			§ 280.5 – negligent	yes
			"specific types":	
			§ 281 – nature	no
			§ 281/A – waste disposal	no
Lithuania	Criminal Code, OJ No. 89-2741, 2000 (entered into force in May 2003)		"general threat to environment":	
			Art. 270	yes
			"specific types":	
			Art. 271 – protected areas	no
			Art. 272 – hunting & fishing	no
			Art. 273 – wetlands & forests	no
			Art. 274 – flora & fauna	yes
Poland	Criminal Code, OJ No. 88, item 553, 1997		"specific types":	
			Art. 181 – flora & fauna	no
			Art. 182 – media pollution	no
			Art. 183 – waste transport & disposal	yes
			Art. 184 – nuclear safety	no
			Art. 186 – unsuitable management of facility	no
			Art. 181, 187, 188 – protected areas	yes
Slovakia	Criminal Code No.140/1961 Coll.	Act No. 159/1989 Act No. 177/1993 Act No. 248/1994 Act No. 253/2001	"general threat to environment":	
			§ 181 a - intentional	yes
			§ 181 b - negligent	yes
			"specific types":	
			§181 c – flora & fauna	yes
			§181 d – hunting & fishing	yes
			§181 e – transport waste	yes
			§181 f – waste treatment	yes
			§181 g – water	yes

For example, the Criminal Codes in the Czech Republic, Hungary, Lithuania and Slovakia contain broad provisions for criminal acts posing a general threat to the environment. The Czech Republic and Hungary also stipulate specific criminal violations for nature and waste-related environmental offences. Protection of nature in Lithuania plays a very significant role, with five specific articles in the Criminal Code for this sector, and none for other environmental sectors such as waste management.

As the table in the previous page also shows, all countries define most of the environment-related criminal offences by reference to a violation of an administrative law provision (environmental framework legislation) to describe the illegal act.

The main issue in those cases where the constitutive act is described in wide and vague terms (general threat to environment) is that the principle of legal certainty (*lex certa*) is obviously jeopardised. The role of the judge becomes essential in order to interpret the criminal provision and effectively punish particular environmental offences.

Slovakia and Poland go further than the other countries in providing much more detailed provisions on different environmental offences, ranging from nature to waste, water or nuclear protection. The most remarkable case is Poland where codified criminal environmental law is much more developed than in the other four countries, reflecting the direct influence of the German Umweltstrafrecht or Droit pénal de l'environnement.

Most of the countries studied have moved from the material-type of concrete endangerment crimes, which may lead to a less efficient punishment of environmental offences (in such cases a crime would only be established when the environmental harm had effectively occurred), to abstract endangerment crimes (potential endangerment of the environment if an administrative provision is not respected).

However, in most cases it is not only required that a certain endangerment occurs (formal condition), but also that the act has a certain degree of dangerousness for the environment or/and human health (causal condition). This implies that if an action *per se* would have been able to significantly harm the environment, but because of circumstances this harm did not effectively happen, the environmental offence might not be deemed a potential endangerment. Only in Poland can more abstract concepts of endangerment be found (e.g., Articles 182 on environmental pollution, Article 183 on waste handling or Article 188 on construction of economic activities in a protected area).

The abstract-endangerment system found in most continental models provides for a higher degree of flexibility to punish environmental offences. This formula proves to be the most adaptable to sociological and technical progress without having to amend the Criminal Codes. However, on the other hand, it also brings a considerable degree of uncertainty as to which legislative or sub-legislative act has been infringed by the environmental offence. The uncertainty is increased by the lack of specialised courts and public prosecutors and the fact that the current judiciary bodies are not always well aware of the wide and, in most cases, very recently developed environmental legislation that could be linked to a specific criminal offence. Therefore, administrative law for environmental offences is most often applied, as it is certainly

easier to enforce a particular environmental provision, where penalties are already provided for a clearly defined offence.

In some countries, *i.e.*, Lithuania, Hungary and Poland, the more detailed articles for concrete environmental offences do not refer to other administrative provisions, but directly specify the conditions for their punishability. In some cases, when these articles refer to concrete endangerment offences, penalties may significantly increase as compared to abstract endangerment offences. This is for instance the case of Hungary where mass destruction of protected fauna and flora or irreversible damage or destruction of protected areas may increase the imprisonment penalty by two years (from three years to five years).

With regards to the classification of intentional and negligent offences, all countries studied punish both types of conduct, but assign lower penalties to negligent cases. For example, in Hungary negligent offences are always regarded as misdemeanours irrespective of their associated penalty. Periods of imprisonment are typically reduced by half as compared to intentional cases and range from 2 to 3 years – not including aggravating circumstances. Only Lithuania goes as far as punishing with the same penalty (fine, or restriction of liberty, or detention, or imprisonment during a period ranging from 2 to 6 years) intentional and negligent cases in those instances where the constitutive act provides for both types of conduct.

Criminal liability of legal persons:

The recent legal reforms in Hungary, Lithuania, and Poland have moved away from the traditional principle of *societas delinquere non potest* (societies are unable to commit a criminal action and so only physical individuals have the ability to infringe criminal law) and recognise now some sort of criminal liability for legal persons. Lithuania is the only country in which criminal liability of legal persons is expressly covered by its Criminal Code. Hungary and Poland have adopted specific legislation to address this sort of liability, while the Czech Republic and Slovakia are currently drafting legal provisions (a new law in the case of the Czech Republic and a new Criminal Code in Slovakia) to cover such cases. However, all of these efforts are only very recent and thus practice is so far limited.

Table on legal texts providing for criminal responsibility of legal persons

Country	Legal Act
Czech Republic	None at present – foreseen in Draft Act on Criminal Liability of Legal Persons to be discussed by the Government in September 2003
Hungary	Act 2001 of CIV on the Criminal Legal Measures for Legal Persons (24 December 2001)
Lithuania	Criminal Code (OJ No. 89-2741, 2000) - entered into force in May 2003
Poland	Act on Liability of Collective Entities (OJ No 197, item 1661, 28 October 2002) – will enter into force on 27 October 2003
Slovakia	None at present – foreseen in the future re-codification of Criminal Code to enter into force by January 2005

Direct criminal liability of legal persons is excluded as it is always required that a natural person's criminal responsibility is engaged and that this natural person is affiliated to the legal person and acts on its behalf (*culpa in eligendo or custodiendo*). Collective liability of State or municipal institutions is also excluded.

In addition, some countries accept the possibility of cumulative liability. The Polish Act on Liability of Collective Entities and the future Criminal Code in Slovakia provide that under certain circumstances criminal liability of certain natural persons within the corporation adds to the criminal liability of the legal person. Similarly, in Poland, criminal liability does not exclude civil or administrative liability.

Quasi-penal administrative law:

In three of the targeted countries (Hungary, Czech Republic and Slovakia), the role of quasi-penal law, *i.e*., the so-called system of petty offences, is remarkably important. Petty offence is a branch of administrative law which is intended to ensure a quicker punishment of those offences that are certainly harmful to the environment, but are not as dangerous as those specified in the Criminal Codes. The same administrative authorities that implement and enforce administrative environmental law handle the simplified petty-offence procedure, which nevertheless shares some procedural guarantees of criminal trials. However, the petty offence procedure obviously has a lower degree of independence than a judicial procedure and thus its degree of impartiality could be questioned.

In Slovakia it is only possible to appeal against a decision of an administrative body to a superior administrative body; whereas in Hungary, the administrative decision can be appealed at the Criminal Law Chambers of the regular Courts. However, in Slovakia the competent district court can still review the administrative decision provided that all administrative procedures had been exhausted.

Administrative penal sanctions are mainly fines (obviously much lower than those of environmental crimes), but in Hungary additional coercive measures may be taken, e.g., custody.

In most countries administrative penal sanctions are not recorded in a person's criminal record. However, in Poland if the penalty imposed by the criminal petty offence system consists of imprisonment, this is recorded in the criminal record of the convicted. On the other hand, although it stays in his/her criminal record, it does not constitute a ground for applying the aggravating circumstance of recidivism.

1.2 Criminal penalties in the selected accession countries

Penalties for natural persons:

The penalties most commonly used to punish serious environmental offences are imprisonment and fines. The principle of humanism applies in all cases and the severity of the sanction depends on the extent of the environmental offence committed. Moreover, all countries highlight the importance of judges having a degree of flexibility to choose and adjust penalties to the particular offences.

Imprisonment periods range from an average of two to five years, two years being the maximum imprisonment period for negligent offences and five years the maximum imprisonment penalty for intentional crimes. In those cases where aggravating circumstances apply, imprisonment penalties may reach a maximum of 8 years. In Slovakia, this maximum period is frequently laid out in the provisions for intentional crimes in the waste, water and nature sectors, but seldom applied in practice.

The maximum imprisonment penalty is to be found in the Polish Criminal Code (Article 185), which punishes aggravated figures of environmental crimes with an imprisonment from two to 12 years if the consequence of the illegal act is the death of a human being or serious bodily harm to many persons. However, as will be discussed in section 4.3 on criminal jurisprudence, such imprisonment penalties have never been applied in practice.

Fines are the most frequently applied penalty for environmental crimes and current judicial practice shows that they vary from 700 to 2,000 EUR, even though in theory the Criminal Code may stipulate maximum fines of 7,240 EUR (Lithuania), or even 120,400 EUR (Slovakia), 161,000 EUR (Czech Republic) and 180,000 EUR (Poland). As discussed in section 4.3 on criminal jurisprudence, most national experts noted that administrative authorities frequently give more severe penalties than the courts, notwithstanding that the reverse situation should apply. Furthermore, cumulative fines may apply for a single administrative environmental offence.

In some countries (Slovakia, Czech Republic) when the competent judge imposes a fine, the judge also provides for alternative imprisonment penalties to ensure that the criminal act is still punished if the fine is not paid within the fixed time limit. In the Czech Republic if the fine is imposed for a negligent crime, the offender is considered not convicted once the fine is paid or after refraining from carrying out further acts of the same type. In Slovakia, similarly, if the fine was imposed as the only penalty and the offender duly executes the penalty (pays the fine) or the judge refrains from the execution of the penalty, the offender shall be considered as not convicted.

Owing to the particular nature of environmental offences, additional penalties may be needed to provide effective deterrence (dissuasive component) of potential criminal acts or omissions. For example, some countries provide for bans of activity (suspension ranging from 1 to 10 years), forfeiture of objects that were used to commit the crime, revocation of special licences or benefits, etc. These sorts of penalties effectively show social disapproval of the serious environmental offence, and hinder any further violation of legal provisions.

Some countries (Poland, Hungary) also provide for the possibility to apply other punitive measures to redress the environmental damage entirely or partly, although

this kind of penalty is most frequently applied for legal persons.

A very interesting penalty is the so-called ecological punitive damages that can be applied in Poland. This is an economic penalty, not only to compensate the damage, but large enough to also have a punitive effect, because of the specific social purpose related to environmental protection. The maximum amount associated to this kind of penalty is ten times the lowest monthly salary.

Finally, the Hungarian Criminal Code allows for so-called measures sanctions, including reproof and probation, which seem to have a moral rather than penal character. In this context, the Hungarian expert highlights the greater use than desirable of such penalties for environmental offences. In such cases, judges and prosecutors fail to acknowledge the importance of environmental crimes and tend to use these "lighter" penalties when they are not fully satisfied by the level of proof, which may be all too often owing to the long-term character of environmental damage and the lack of specialised knowledge of technically complex environmental matters.

Aggravating and mitigating circumstances are commonly described in the general parts of the Criminal Codes and include objective (mode or tool of crime, circumstances of perpetration) and subjective (criminal record, lifestyle, mental status) elements. Nonetheless, some countries directly detail a number of aggravating facts for specific environmental offences. These aggravating facts impose more severe penalties, which mainly depend on the extent of the damage (long-term consequences and costs for removal of negative effects), the extent of the benefit linked to the criminal offence, cumulative perpretation and recidivism, and organised forms of crime. In Poland, as already mentioned above, very stringent imprisonment penalties apply for aggravated crimes occurring in human death or serious physical harm for a group of persons.

In Slovakia environmental criminal offences pursuant to Articles 181a and 181b (abstract endangerment cases) cease to be punishable as soon as the offender voluntarily restores the harmful consequences of the act or informs the competent authorities about the potential damage before such damage effectively occurs (active repentance). Similarly, in Lithuania a person who commits a crime or misdemeanour could be exonerated from criminal liability if the court recognises that before the case is heard in court the act lost its dangerous character due to a change in the circumstances.

Penalties for legal persons:

The character of the sanctions applied for serious environmental offences committed by legal persons is extremely important to prevent further criminal actions. Moreover, fines do not appear to have a significantly deterrent effect when financially powerful corporations are able to include such amounts as a cost of running the economic activity. It also seems inappropriate to simply fine a corporation when a natural person (e.g., manager of the corporation) could be subject to an imprisonment penalty for the same environmental offence.

Therefore, most countries provide for a wide range of penalties, including higher fines (e.g., 365,025 EUR in Lithuania, 1,250,000 EUR in Slovakia – as foreseen in the new Criminal Code to be in force from 2005), permanent or temporary dissolution of the legal person, forfeiture of property, restriction of activities and different bans (ban of participation in a public tender, ban on using grants, ban on promotion or advertisement, etc.).

These sort of penalties are also very useful for individualising and tailoring the sentence for a particular offence committed by a specific person and for providing exemplary punishments.

Alternative ways of settlement:

Some countries envisage the possibility of ending the criminal procedure through an alternative way of settlement. For example, Lithuanian courts may release a person who has committed a crime or a misdemeanour from criminal liability in those cases where the victim and the culprit reach reconciliation and voluntarily agree on restitution of the damage caused. Similarly, the Hungarian Criminal Procedure Code provides for waiving the trial if an agreement is reached between the perpetrator of the crime and the public prosecutor. In such case, the perpetrator accepts the indictment's content and there is no further need for the public prosecutor to present additional evidence. The maximum level of imprisonment significantly decreases in such cases; instead of eight years it drops to three, instead of five to two and instead of three years it decreases to six months.

In Poland discontinuance of the criminal procedure is possible for cases where the criminal offence is subject to a penalty of imprisonment less than five years and whenever the public prosecutor, with the defendant's consent, agrees to submit the case to a mediation body. Similarly, in Slovakia, a twinning project with the UK aims to assist in the introduction of mediation bodies for environmental disputes.

No alternative means of settlement were noted for the Czech Republic.

1.3 National criminal jurisprudence in the environmental sphere

Competent Courts:

None of the countries studied have specific or specialised environmental courts. In some countries, such as Hungary, a course has been offered for judges and prosecutors, already for eight years, but no criminal judges have attended the course. This is unfortunate, as one of the big problems to ensure enforcement of environmental law is the high technical nature of environmental law.

Although the structures of the judiciary vary across the five countries (either five, four or three level court system), in general environmental cases are heard in first instance before the district courts, and in second instances before provincial or county courts.

Criminal procedure:

In most countries studied, the public prosecutor has the exclusive right to initiate a criminal procedure, although in some countries, a victim may bring a second accusation. In general, citizens and NGOs can provide information to public authorities, but more innovative roles, such as a Hungarian proposal to allow NGOs to act as "the helper of the prosecutor", have failed to be adopted. In Poland, other authorities (e.g., forest rangers) have competence to initiate the procedure in the case of petty offences.

The principles of criminal law are applied in all countries. It is however important to note that in Poland the legal principle of *non bis in idem (*nobody should be prosecuted or judged twice for the same punishable offence) is jeopardised by the fact that the same act could be judged simultaneously via criminal and administrative judges. This situation should be remedied shortly as the jurisprudence of the European Court of Justice has also recently enshrined this criminal principle.[3]

In addition, as the Slovakian expert pointed out, progressive reduction of the differences between criminal offences and administrative infringements can undermine the principle of *nulla poena sine culpa.*

Other principles such as plea of bargaining or the principle of opportunity are not applicable in most countries studied. Plea-bargaining is possible only in Hungary but it has never been applied and most probably will never apply in the future due to the conservative nature of the judicial system.

Judges have used other ways of applying opportunity principles. Indeed judges have great flexibility to transform environmental crimes into inferior types or even into simple administrative infractions and to discontinue or cease a process when the offender agrees to voluntarily repair of the damage or when there is no social blame (e.g. Hungary, Lithuania, and Poland).

The presence of social blame can play a very important role. Crimes are supposed to be acts against society, so if society does not blame certain behaviours, the punishment is not justified. This happens when economic interests are considered more important than environmental protection and thus the behaviour of the

[3] In the joint cases C-187/01 and C-385/01 Gözütok-Brügge of 11 February 2003 (OJ C83, Volume 46, 5 April 2003) the European Court of Justice condemns double jeopardy in circumstances where the same act, fact or behaviour has the force of *res judicata*.

perpetrator is justified, as can often be the case in Poland. In other cases, the problem is to prove the causal link between the action and the damage caused and thus acquittals or cessation of the process is the final result. Finally, conciliation is possible in Slovakia.

Data on the cost of the procedures are only available for Hungary, and these figures are not very reliable. In this country the amount can range from 200 EUR to 4,000 EUR. For the other countries, there are not big differences regarding the costs to be included. The principle of free process seems to apply and the offender has to afford the costs if he/she appoints a special attorney or expert to aid in defence. Concerning the length of the process, the data are only available for Slovakia, where procedures last an average of 7 months.

Case law:

As mentioned in the previous sections, most of the countries studied have blanket provisions, which are constructed as abstract endangerment types and thus the jurisprudence shaping the scope and interpreting the articles plays a very important role. Jurisprudence is also important because of the flexibility to qualify actions as either administrative infringements or crimes.

In most cases, the same situation could be considered as either a crime or an administrative infringement due to the fact that most of the environmental crimes are based on the infringement of an administrative provision, and the infraction is pursued as a crime only when the offence is serious. This happens only when the act may significantly harm the environment or has seriously damaged the environment.

But in the countries studied, the judges seem to hesitate to use their discretionary powers and do not evaluate the possible damage that the act could have caused, sometimes because the environment does not seem to be something that needs criminal law protection because of the potential social harm. Even in Slovakia where the environment is considered a public good and as property of the State and where it might be expected that criminal law provide for more effective protection, the jurisprudence has considered the public good as not absolute and require identification of the property interest to be protected.

The national studies indicate that data on environmental crimes and their prosecutions and convictions are not easily found. There are no comprehensive databases, and in general no details are available on acquittals and the amount of the fines. This lack of statistics very much limits the theoretical public right to information on environmental matters. It should be noted that in Slovakia, the active gathering of information by the national expert and the lack of extensive resources to supply such information, has determined the decision of the public prosecutor's office to collect more complete data from 2004 on criminal environmental offences.

For example, in Poland, no statistics are available and even when inquiries were made to individual judges, no cases on environmental crime could be identified. In the Czech Republic the number of acquittals is rather high and the average amount of fines is 1677 EUR. There has been an increase in the number of prosecuted persons, probably linked to the increased awareness of police officials concerning environmental offences, which is very much connected to the active role that environmental NGOs play in this country for enhancing environmental protection.

In Hungary, a significant increase in the number of prosecutions for protection of the nature sector has taken place. Fines are the most frequent sanction (75% in 2002), but imprisonment has also been applied (34% in 2002). Nonetheless, the number of acquittals in Hungary is also relatively high (14%). In Lithuania, the expert highlights that the Criminal Code is rarely used, with the Code of Administrative Offences being the most important instrument. Moreover, the majority of criminal offences in Lithuania are linked to illegal hunting, fishing or felling of trees. In Slovakia, when criminality of acts has been considered, conditional penalties are most frequently imposed.

The analyses of the scarce jurisprudence available confirm the impression that environmental criminal cases are very rare and when dealt with, the penalties do not have much of a deterrent effect. This is for example the case of waste treatment offences in Hungary, where a fine of only 800 EUR was imposed, or in Lithuania with 750 EUR fine imposed.

Moreover, there are a number of problems that may condition and subsequently limit the discretionary powers of judges and the inquisitorial role of public prosecutors. Some examples include the impossibility of appealing against a decision in Poland because no person is considered affected in environmental crimes and therefore no legitimate party is legally entitled to claim a direct and personal damage. Similarly, the limitation of the concept of environment as a public good in Slovakia very much constrains the State's ability to pursue a criminal prosecution for an act against the environment.