Study on Criminal Penalties in a Few Candidate Countries’ Environmental Law

Final Report
Volume I: Consolidated Report

For the European Commission (DG Environment)
Contract No. B4-3040/2002/342084/MAR/A3

6 October 2003
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Study on criminal penalties in a few candidate countries’ environmental law

Volume I: Consolidated Report

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ANNEX I: COMPLETE TEXTS OF CRIMINAL PROVISIONS ON ENVIRONMENT

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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) 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. Moreover, in Poland the Constitution includes the duty of taking care of the environment. In Slovakia, it is also possible to

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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

<table>
<thead>
<tr>
<th>Country</th>
<th>Criminal Code</th>
<th>Most relevant amendments</th>
<th>Provisions on environmental crime</th>
<th>Reference to administrative law</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>§ 181 a – intentional</td>
<td>yes</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>§ 181 b – negligent</td>
<td>yes</td>
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<td></td>
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<td></td>
<td>“specific types”:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>§181 c – forests</td>
<td>yes</td>
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<td></td>
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<td></td>
<td>§ 181 e – hazardous waste</td>
<td>yes</td>
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<td></td>
<td></td>
<td></td>
<td>§ 181 f &amp; h – flora &amp; fauna</td>
<td>yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>Criminal Code, Act IV of 1978</td>
<td>Act LII of 1996</td>
<td>“general threat to environment”:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>§ 280. 1, 2, 3, 4- intentional</td>
<td>yes</td>
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<td></td>
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<td></td>
<td>§ 280.5 – negligent</td>
<td>yes</td>
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<td></td>
<td></td>
<td></td>
<td>“specific types”:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>§ 281 – nature</td>
<td>no</td>
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<td></td>
<td></td>
<td></td>
<td>§ 281/A – waste disposal</td>
<td>no</td>
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<tr>
<td>Lithuania</td>
<td>Criminal Code, OJ No. 89-2741, 2000 (entered into force in May 2003)</td>
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<td>“general threat to environment”:</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 270</td>
<td>yes</td>
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<td></td>
<td></td>
<td></td>
<td>“specific types”:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 271 – protected areas</td>
<td>no</td>
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<td></td>
<td></td>
<td></td>
<td>Art. 272 – hunting &amp; fishing</td>
<td>no</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 273 – wetlands &amp; forests</td>
<td>no</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 274 – flora &amp; fauna</td>
<td>yes</td>
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<tr>
<td>Poland</td>
<td>Criminal Code, OJ No. 88, item 553, 1997</td>
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<td>“specific types”:</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 181 – flora &amp; fauna</td>
<td>no</td>
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<td></td>
<td></td>
<td></td>
<td>Art. 182 – media pollution</td>
<td>no</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 183 – waste transport &amp; disposal</td>
<td>yes</td>
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<td></td>
<td>Art. 184 – nuclear safety</td>
<td>no</td>
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<td></td>
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<td></td>
<td>Art. 186 – unsuitable management of facility</td>
<td>no</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Art. 181, 187, 188 – protected areas</td>
<td>yes</td>
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<td></td>
<td>§ 181 a - intentional</td>
<td>yes</td>
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<td>§ 181 b - negligent</td>
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<td>“specific types”:</td>
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<td>§181 c – flora &amp; fauna</td>
<td>yes</td>
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<td></td>
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<td>§181 d – hunting &amp; fishing</td>
<td>yes</td>
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<td></td>
<td></td>
<td></td>
<td>§181 e – transport waste</td>
<td>yes</td>
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<td></td>
<td></td>
<td></td>
<td>§181 f – waste treatment</td>
<td>yes</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>§181 g – water</td>
<td>yes</td>
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Study on criminal penalties in a few candidate countries’ environmental law

Milieu Ltd.
6 October 2003
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

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

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

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
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 perpetration 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.

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

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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*. 

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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.
1. Introduction and methodology used

1.1 Introduction

The European Commission, in its pursuit of an adequate environmental governance framework, is interested in gathering information concerning the enforcement responses to environmental violations in five candidate countries (Czech Republic, Hungary, Lithuania, Poland and Slovakia), and the extent to which criminal sanctions are used. This study on “Criminal Penalties in a few Candidate Countries’ environmental law”, carried out by Milieu Ltd. and a team of national experts aims to meet the Commission’s need for such information.

This Final Report provides a legal overview of the criminal systems in the sphere of the environment for each of the targeted countries. Each country report is structured using a common methodology in order to ensure comparability and completeness of all areas covered in the study. The Final Report is composed of two different volumes: Volume I includes a Consolidated Report and Volume II contains detailed Tables of Concordance (ToCs), which examine in detail the provisions of national criminal law for violations of specific EU acts including information on criminal penalties.

In particular, Volume I: Consolidated Report covers four main areas:

1) Overview of criminal legislation in the environmental sphere: This section provides comprehensive overviews of the criminal legislation and penalties in the environmental sphere for each of the targeted countries, addressing criminal responsibility of both natural and legal persons.

2) Criminal provisions and penalties for selected EU Directives: This section consists of consolidated tables that compile the findings provided by the national experts in their ToCs (included in Volume II). It reviews the status of transposition of the relevant EU Directives and subsequently compares criminal provisions and penalties for each of the EU legal acts targeted in the study.

3) National criminal jurisprudence in the environmental sphere: This section reviews national criminal procedures, including competent courts, costs, and average length of the proceedings. In addition, it includes relevant statistical data on the number of proceedings initiated/brought to trial, resulting in a judgement in each targeted country. Finally, the section look at actual court cases where criminal law principles have been applied for environmental protection purposes.

4) Conclusions and recommendations: This section provides overall conclusions and suggestions for future action in this area.

In addition, three Annexes are included. Annex I provides complete texts of criminal provisions in the sphere of environment in the national laws of each country studies. Annex II includes the bibliographies used by the national experts in their research. Finally Annex III contains Milieu’s detailed guidelines for each team of national experts on the methodology to be used when drafting their national studies.

Volume II includes detailed Tables of Concordance (ToCs) for targeted EU acts including information on criminal penalties. The ToCs focus on the targeted 10 Directives and 1 Regulation as specified in the Terms of Reference for this project. These acts deal with areas of
environmental protection where criminal penalties appear to be particularly appropriate, because of inherent economic incentives for violations and/or because of histories of repeated violations. They include as follows:


This Final Report is the product of a team effort orchestrated by Milieu Ltd. The individual members of the team include:

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1.2 Methodology used

This Final Report has been prepared on the basis of the methodology described below, according to the outputs specified in the Terms of Reference for this project.

(1) Examine in detail the provisions of criminal law in each State, whether national, regional or local, adopted in order to transpose 10 directives and give effect to one regulation in implementing the ‘acquis communautaire’ with a view to EU membership.

(2) Provide consolidated tables with the results of research;

The detailed analysis of criminal provisions in each of the targeted countries was achieved via Tables of Concordance (ToCs) developed by Milieu. These tables were based on the ToCs developed for a project carried out by Milieu for DG Environment’s Enlargement’s Unit on “Progress Monitoring Supporting the Accession Process of the Applicant Countries in Central and Eastern Europe”. The format of the ToCs also drew on the experience developed by the Maastricht European Institute for Transnational Legal Research (METRO) and in particular the system developed by France. This format enabled a detailed provision by provision analysis of each targeted Directive and Regulation with respect to the correspondent national law transposing the EC obligation and its associated criminal penalty.

Milieu first prepared two pilot ToCs for the Habitats and Waste Oils Directives, which were sent to the national legal experts whenever possible. These ToCs were subsequently sent to the national legal experts, along with detailed research guidelines for all components of the study (See Annex III on Research Guidelines). These ToCs were completed in preparation for an initial workshop that took place in Brussels in March 2003. The entire team and the DG Environment Task Manager came together at that time to arrive at a common understanding of tasks and deliverables and to discuss potential challenges and solutions when developing national studies.

Milieu then refined the two pilot ToCs and the initial research guidelines, and developed additional ToCs for the remaining EC acts in the study. These documents were distributed to the national legal experts, along with the texts of transposing legislation in the selected countries whenever available in house.

After all ToCs were completed by the national legal experts, they were re-formatted by Milieu to ensure consistency and more uniformity and comparability of results.

The ToCs for each Directive were then consolidated into comparative tables enabling direct comparison of penalties among Candidate Countries. These tables are included in Section 3 of the present study.

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4 Final Report on Criminal Penalties in EU Member States’ Environmental Law, co-ordinated by Prof. Dr. Michael G. Faure and Prof. Dr. Günter Heine. Maastricht European Institute for Transnational Research and Institute for Criminal Law (Maastricht, The Netherlands) and Criminology (Berne, Switzerland). 4 October 2002.

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(3) Provide a study of the criminal legislation in the environmental sphere for each country;
Previous studies of criminal penalties had experienced difficulties to gather comparable information for each country. Therefore, the research guidelines gave detailed guidance on which issues should be covered by the criminal legislation study.

(4) Provide a study of the criminal jurisprudence in the environmental sphere relating to the directives and the regulation covered by this study for each country.

The research guidelines also specified the points to be covered by the national experts in drafting their criminal jurisprudence studies. This part of the study required extensive investigation to compile legal practice in each Candidate Country covered but has proved to be of great importance.

In order to facilitate the efforts of the national experts in the course of their national investigations, Milieu requested DG Environment to send official letters of support to relevant officials in national courts in all targeted countries.

After the national experts prepared initial national studies, the drafts were revised, refined and edited by the Milieu team in order to ensure overall quality.

The Draft Final Report was submitted to DG Environment for comment. After Milieu incorporated all changes requested, the findings of the study were presented to the national experts and the DG Environment Task Manager at a final workshop, which took place in Brussels in September 2003.

The discussions and recommendations that materialised during that workshop were then incorporated into this Final Report and delivered to DG Environment on 6 October 2003.
2. Overview of criminal legislation in the environmental sphere

2.1 Czech Republic

By Eva Kruzikova and Eva Adamova, Institute for Environmental Policy, Prague, Czech Republic

2.1.1 Introduction

- Historical background of the Czech criminal legislation

Czech law, including criminal law, belongs to the European continental legal system. Under this system, acts are the prime sources of law and jurisprudence is not recognised as a source of law.\(^5\) Czech sources of law comprise acts (approved by the Parliament), governmental decrees, ministerial orders, and orders of regional and local authorities. Though court judgements are not a formal source of Czech law, court rulings are used to help interpret the law (see below the section on jurisprudence).

Bearing in mind the Czech Republic’s historical background\(^6\), Czech criminal (penal) law has common historical roots with the Austrian, and/or Austro-Hungarian monarchy\(^7\). The first modern criminal code to be considered in this respect was the West Galicia Criminal Code from 1796\(^8\) which from 1803 applied to the whole Austro-Hungarian monarchy. This criminal code was regarded as an excellent piece of legislation of its time, which influenced further development of criminal law in our country up until 1949. The Code contained two parts, one concerning crimes and the other concerning administrative offences (petty offences). Both parts of the Code included criminal procedure provisions. The Code stipulated that criminal liability should be based on the malicious intention of the perpetrator (offender). As regards penalties, it distinguished between penalties for crimes (life sentence and imprisonment) and penalties for administrative offences (mainly fines, forfeiture of goods, deprivation of rights, imprisonment, etc.).

The real basis of the Austrian criminal law and later of that of the Czechoslovak Republic was the Criminal Act No. 117 of 1852.\(^9\) It amended the Criminal Code of 1803 as follows:

- the procedural provisions were deleted;

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5 Knapp, V., p. 92.
6 From 1620-1918 the Czech lands (Bohemia, Moravia, Silesia) were part of the Habsburg monarchy. In October 1918 an independent Czechoslovak Republic was established comprising of Czech lands and Slovakia (and from 1919 Subcarpathian Russia the latter having been merged with the Soviet Union in 1945).
7 In 1867 the Austrian monarchy was transformed into Austro-Hungarian Monarchy consisting of two state units which had in common only the head of the state, foreign affairs, army and finances concerning these two areas.
8 Malý, K a kolektiv autorů, p. 162.
9 Malý, K. a kolektiv autorů, p. 237.
• the category of misdemeanours was added to the existing categories of crimes and administrative offences
• it introduced the principle *nulla poena sine lege*;
• it distinguished crimes according to the degree of their danger for society
• it introduced strictly defined penalties.

When Czechoslovakia came into existence in 1918, it adopted the Act of 1852 with a few modifications. Those provisions which were in contradiction to the new republican regime were abolished.

In the 1920s and 1930s several drafts of a new criminal code were discussed but none of them was enacted by the Czechoslovak parliament. During the Nazi occupation from 1939-1945, generally Czechoslovak criminal law applied in the Protectorate of Bohemia and Moravia (Slovakia had become a separate state). German law applied to specific cases. From 1942 until the end of war, the law of the Protectorate was adjusted to incorporate elements of the Nazi German law.

After the World War II, in the period from 1948 to 1989, the system of criminal law was influenced by the totalitarian system of rule. Criminal law became an instrument of repression which aimed to protect the Communist regime, by suppressing any political opposition and enforcing the political and economic reforms of that time. Also during this period, two criminal codes were enacted. Firstly, the Criminal Act No. 86/1950, which repealed the previous one from 1852. This Act was replaced by the Criminal Act No. 140/1961 Coll. After the fall of the Communist regime, in November 1989, the Criminal Act No. 140/1961 Coll. was substantially amended in 1989 and 1990 so as to reflect the requirements of a democratic society.

On 31 December 1992 the Czechoslovak Republic ceased to exist and two separate independent republics came into being- the Czech Republic and the Slovak Republic. The newly established Czech Republic took over all constitutional and other acts of the former Czech and Slovak Federative Republic unless the provisions concerned exclusively the existence of the federal republic. This meant that the Czech Republic transferred into its legal order the Criminal Act of 1961. The Act from 1961 remains in force today but it has undergone many amendments since 1993 modifying particular provisions due to social and economic developments.

However a re-codification of the Criminal Act of 1961 is now necessary and the work on a new Criminal Act has been launched. In 2001 the Government adopted a draft concept of the Act and now the particular provisions (sections) of the Act are being discussed.

The new criminal code will be based on the following principles:

• subsidiarity of the criminal law,
• a perpetrator can be found guilty for an act and criminal sanction can be imposed only on the ground of the law (*nullum crimen nulla poena sine lege*),

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10 E.g. in cases of defamation of the Reich, high treason etc.
11 e.g. to enforce the so called collectivisation of agriculture a special crime of endangerment of economic plan was introduced in the act from 1950. In: Novotný, O., Dolenský, A. Jelinek, J., Vânduchová, M., p.16
12 The most important amendments were included in the Act 159/1989 Coll. and 175/1990 Coll.
13 Constitutional Act No.. 4/1993 Coll. on measures related to the cessation of the Czech and Slovak Federative Republic, Article 1 par. 1.
14 There have been 32 amendments of the Criminal Act since the split of the Czechoslovakia.
• prohibition of retroactivity of a stricter act according with the Charter of Human Rights and freedom,
• inadmissibility of analogy in case of extending conditions of criminal liability and in case of stipulating crimes and protective measures (prohibition of analogy in *in malam partem*)
• individual criminal liability of natural persons only for own acts (excluding collective liability)
• criminal liability based on liability of both natural and legal persons (see par. 2.1.3).
• imposition and execution of sanctions according to the degree of the gravity of a criminal act and to the perpetrator.

• **Environmental criminal law**

Up until 1989 there was no specific provision on environmental crimes in the Czech Criminal Act. There were however criminal acts for damaging assets belonging to socialistic property or endangering the safety of the public or damaging the property of another person.\(^{15}\)

After 1989, three important acts amending the criminal act were enacted:

* • Act No. 159/1989 Coll.
* • Act. No. 175/1990 Coll.

*The first amendment from 1989* introduced a specific crime of threatening the environment which comprised of two sections. The first one (section 181a) dealt with intentional serious threatening of the environment while the second one (section 181b) dealt with negligent threatening of the environment. Both provisions set up criminal liability based on serious threat of the environment caused by violation of specific environmental legislation concerning air, waters, soil, fauna and flora protection, treatment of nuclear, radioactive, toxic or dangerous biological materials.

*The second amendment from 1990* replaced the original wording of the above-mentioned sections with more general wording although maintaining the principal of intention and negligence based criminal liability. It based the criminal liability on intentional/negligent exposition of environment to a danger of serious damage by violating legislation on environmental protection and management of natural sources.

These two provisions were found to be inadequate for efficient protection of the environment. During the 1990s many new environmental acts were enacted with newly established obligations for those harming the environment. Many of them implement the European Union’s environmental *acquis communautaire*. This complex new legislation required improvements in enforcement and this was tackled in two ways. One was by the introduction of stricter administrative sanctions embodied in the environmental legislation itself. The other way was by amending the Criminal Act in order to introduce new, more specific bodies of crime whilst maintaining the original body of general environmental crime.

*The third amendment from 2002* modified the original provisions 181a and 181b and introduced a further set of special categories of crimes.

\(^{15}\) Criminal Code No. 140/1961 Coll., as amended, sections 136 and 137.
Under the modified sections 181a (intentional act) and 181b (negligent act) environmental liability was based on polluting or other way of damaging the environment (see Annex II). The newly enacted environmental crimes were following:

- damaging forests by exploitation (§ 181c),
- dangerous waste treatment (§ 181e),
- illegal treatment of protected and wild fauna and flora (§ 181f - § 181h).

The provisions reflected the duties recently established in environmental legislation from the 1990s, and made it possible to react to new illegal activities.

Since these amendments of the Criminal Act only came into effect in July 2002 it is not yet possible to assess their impact on enforcement of environmental law and the efficiency of environmental protection in general.

The Constitution of the Czech Republic (Constitutional Act no. 1/1993 Coll.) as well as the Charter of Fundamental Rights and Freedoms (Constitutional Act no. 23/1991 Coll.) do not include any specific provision on environmental criminal law. They provide the general democratic principles of citizens status and of criminal liability.16

One of the principles of the Czech criminal law is that the only act that can establish criminal liability is the Criminal Act, i.e. the Act no. 140/1961 Coll. as later amended. The same also applies for environmental criminal liability. This is the only piece of environmental legislation existing - there is no secondary legislation. As regards particulars on the criminal liability of natural and legal persons, see points 2.1.1 –2.1.4.

- Relationship between criminal and administrative law

In 2.1.2.1 various categories of antisocial behaviour are listed. Crimes fall within the category of the highest level of social dangerousness. Among all other categories the closest one concerning environmental breaches of law are administrative offences. They are relevant both for natural and legal persons. This means, that so far breach of the environmental law provisions committed by a legal person can be punished only within the regime of administrative law – as an administrative offence.

As far as administrative offences are concerned, Czech law has established a specific relationship between this category of breaches of law and crimes. Administrative offences link to the system of crimes thus creating a logical and related legal protection of certain social values – both by criminal and administrative law.

16 Namely the following articles:
Article 8 par. 2:
"Nobody may be prosecuted or deprived of his or her freedom except on grounds and in a manner specified by law. Nobody may be deprived of his or her freedom merely because of his or her inability to meet a contractual obligation."

Article 35:
"1) Everybody has the right to live a favourable living environment. 2) Everybody is entitled to timely and complete information about the state of the living environment and natural resources. 3) In exercising his or her rights nobody may endanger or cause damage to the living environment, natural resources, the wealth of natural species, and cultural monuments beyond limits set by law."
Administrative offences of natural persons are provided for in the Act 200/1999 Coll. on administrative offences, as later amended. They are also covered by a range of other acts dealing with such specific issues like for example environmental ones.

In addition to the Act 200/1999 Coll., administrative offences of natural persons are defined in several sectoral environmental acts (for example in the Construction Act, Act on the Protection of Nature and Landscape, Act on Forests, Act on Waste, etc.). In these acts the bodies of offences are usually more precisely defined than in the general Act 200/1999 Coll. Also sanctions are different in those acts.

The bodies of administrative offences of natural persons against environment can be divided into three groups:

a) special offences (stipulated by sectoral legislation),

b) basic offences (stipulated by provisions of the Act 200/1999 Coll) for example:
   • offences in the field of public health (section 29),
   • offences in the field of water management (section 34),
   • offences in the field of agriculture, fishery and hunting (Section 35).

c) residuary offences (stipulated by the Act 200/1999):
   • offences in the field of environmental protection (section 45),
   • other offences against order in public administration (section 46).

The common features of a crime and administrative offence of the natural person:

   • both are acts against social interests,
   • both are based on fault, which is their obligatory feature,\(^\text{17}\)
   • both have to be defined by an act, not by a secondary legislation.

The difference between crimes and administrative offences is in the so called material aspect of the behaviour – in the level of dangerousness for the society. If for example an offender, according to the section 181a of the Criminal Act, intentionally pollutes or damages soil, water, air, forest or other part of the environment as a result of breach of environmental law, it is a crime. An administrative offence, according to section 45 of the Act 200/1999 Coll., would be committed if the environment would be impaired by a breach of the sectoral environmental law.\(^\text{18}\)

The differences between crimes and administrative offences of natural persons are as follows:

   • in case of crime also the preparation and the attempt are considered a crime, while in case of the administrative offence this is not possible,
   • the consequences of both are different – the scale of sanctions that might be imposed for an administrative offence is narrower and sanctions are less stringent (admonition, fine, ban of an activity, confiscation of a thing), and imprisonment is not possible,
   • the difference of condemnation consequences – condemnation for a crime is registered in a special Criminal Register while this is not the case for administrative offences

\(^{17}\) In case of crime an intention is required by the Criminal Act if it does not stipulate differently. In case of administrative offences negligence is sufficient if the Act explicitly does not stipulate differently.

\(^{18}\) Novotný, O., Dolenský. A., Jelínek, J., Vanduchová, M., p. 82.
the competent authorities are different – courts in case of crimes, administrative authorities in case of administrative offences.

Administrative offences for legal persons is a relatively new part of Czech legislation. They appeared for the first time in the middle of the 1950s. The need to introduce this category into the legal system has stemmed both from a large number of legal persons breaking their legal duties and from a high level of social dangerousness of their behaviour. Their technical, financial and personal opportunities to endanger or threaten environment cannot be compared to those of natural persons. Therefore the category of particularly environmental administrative offences has been growing significantly and the sanctions have been made stricter.

These offences are not codified in a single piece of legislation. Also their procedural rules are not unified. Provisions concerning these offences are found in a sectoral legislation (Act on Air, Act on Water, Act on Waste, e.g.).

In contrast to administrative offences of natural persons those of legal persons have two important features:

- they are based exclusively on strict liability,
- fines are the only sanctions imposed according to sectoral laws
- the fines differ according to the amount of damage caused and they are usually very high (up to several millions CZK).

2.1.2 **Criminal responsibility of natural persons**

2.1.2.1 Classification of criminal offences

Under Czech law a crime is an act, which is dangerous for a society and has the elements which are stipulated in the Criminal Act (section 3(1)). Acts that have a low level of dangerousness for society are not considered crimes although otherwise they possess the properties of a crime. This definition is based on the so-called material/formal understanding of crime. This means that the crime is constituted by two properties that must exist at the same time: the act must have properties of crime stipulated by the law (formal condition) and at the same time it must be dangerous for the society (material condition). The level of dangerousness for society is assessed according to the individual circumstances of a particular case.

Crimes are not the only types of antisocial acts. They are one of the categories of such acts distinguished from others especially by the level of dangerousness for society. Their level of dangerousness is higher than that of other antisocial acts. Antisocial behaviour can be distinguished according to its gravity as follows:

- crimes pursuant to the Criminal Act,
- administrative offences of natural persons, particularly petty offences, disciplinary, offences in breach of procedure,
- civil offences,
- other acts that are unwanted for a society, that have damaging effects but that cannot be classified as illegal.
Under the Czech legal system it is possible to categorise according to the level of dangerousness for society:

- crimes of an exceptionally high level of dangerousness – only for those it is possible to impose a life sentence;
- crimes of a very high level of dangerousness – sanction of imprisonment of 15 to 25 years;
- crimes of a lessor level of dangerousness – under certain conditions it is possible to refrain from sanction or to refrain from sanction and at the same time to impose supervision over an offender;
- crimes of a small level of dangerousness – in case of adolescents they do not have the level of dangerousness of crimes and therefore they are not punishable.

The categories of crimes are important also from the point of view of procedural consequences, i.e. from the point of view of differentiated approach from the side of a court or a judge.

The so-called “social dangerousness” (the gravity of an act) is specified by the Criminal Act. The criteria are primarily the importance of the protected interest, the way and the conditions under which a criminal act was carried out, consequences of a criminal act, the character of the perpetrator herself/himself, extent of her/his fault and her/his motive.

The Criminal Act distinguishes the following categories (groups) of criminal offences:

1. Criminal acts against the Republic
2. Economic criminal acts
3. Criminal acts against order in public affairs
4. Generally dangerous criminal acts
5. Serious criminal acts against social cohesion
6. Criminal acts against family and youth
7. Criminal acts against life and health
8. Criminal acts against freedom and human dignity
9. Criminal acts against the right of property
10. Criminal acts against humanity
11. Criminal acts against military service and civil service
12. Military criminal acts

The order of categories of criminal offences reflects the kind of value that is protected by the law. Environmental criminal offences are included in category 4 - generally dangerous criminal acts. This chapter contains also such criminal acts as for example general threat, illegal acquisition and possession of arms, illegal production and holding of radioactive material and highly dangerous substances, dissemination of drug addiction, endangering health due to defective food and other goods, etc.

All the above mentioned criminal acts are dealt within the procedure regulated by the general Criminal Judicial Procedure Act (Act no. 141/1961 Coll., as amended).

Criminal acts concerning environment can be divided into two groups, the first one being a general criminal act consisting of threatening and damaging the environment as a result of breaching environmental legislation. The second group of environmental criminal acts comprises specific criminal acts: damaging forests by exploitation, dangerous waste treatment and illegal treatment of protected and wild fauna and flora.
Provisions concerning criminal acts of the first group are very general. They cover violation of environmental legislation on environmental protection and natural resource management without specifying particular violated duties. In contrast, the provisions concerning the criminal acts of the second group are more specific, but still apply only to particular sectors of environmental protection (dangerous substances, wild fauna and flora, forest exploitation) without specifying violated duties. The result of this is that the Criminal Act does not go into details concerning for example defining criminal acts concerning operation of a plant without a licence, etc.

Environmental criminal acts are defined as violation of legal obligations that result in threatening or damaging the environment. The mere violation of a legal obligation is not in itself considered to constitute a criminal act. In such cases, the administrative responsibility applies. Pursuant to general provisions of the Criminal Act, in order to be qualified as a criminal act, the act must cause danger to society, the features of which are defined in this Act (§ 3.1). An act with an insignificant degree of dangerousness is not considered a criminal act even if it otherwise shows other elements of a criminal act.

In general, criminal liability is based either on intention or on negligence. Those based on intention are regarded as more dangerous for society. This rule follows the concept of a subjective relationship of the acting person towards his/her act and on the intensity of the protected interest, i.e. environment in this case. As to the subjective relationship, negligence is generally regarded as a less dangerous act than an intentional behaviour. For this reason the Criminal Act stipulates that the criminality of the behaviour is based on intention. Only in cases where the Act lays it down explicitly is a negligent behaviour considered as criminal. This is the case where the intensity of a protected interest is higher. In relation to environment the Criminal Act applies the principle of negligence in most cases. The concept of intention relates to the threatening and damaging of the environment in general (§ 181a) and to illegal treatment of protected and wild fauna and flora (§ 181f).

2.1.2.2 Criminal penalties in environmental law

- **Criminal penalties in general**

Penalties are means of the enforcement used by the State to fulfil its functions. The penalty represents a severe intervention into citizen’s rights. However, Czech law follows principles of humanism. The punishment must be reasonable and it is allowed to cause harm only if so far the purpose of the punishment requires that. This means that the harm should not exceed a inevitable need to protect the society. Therefore measures that are not connected with the loss of freedom shall be applied wherever possible. Accordingly the Charter of Human Rights and Freedoms prohibits cruel, inhuman or humiliating penalties (Article 7(2)). The Criminal Act prohibits violating human dignity through execution of a penalty (section 23(2)).

Penalties are imposed only by courts as a result of criminal trial on behalf of the State. Penalties can be imposed only for a committed crime and on the basis of the law (Article 39 of the Charter of Human Rights and Freedoms nulla poena sine lege). Therefore it represents a legal consequence of a crime and it must be adequate to the level of social dangerousness. The penalty also represents a negative evaluation of the crime and of its offender on behalf of the State.
The aims of penalties are:

- to protect the society against wrongdoing,
- to prevent further criminal activity of a wrongdoer,
- to educate a wrongdoer,
- to educate other members of the society,

The Czech Criminal Act lists the following kinds of penalties:

- financial penalty/fine,
- publicly beneficial work,
- imprisonment,
- prohibition (ban) of activity,
- prohibition of residence,
- confiscation,
- confiscation of property,
- expulsion from the country,
- loss of honourable titles and honours.

Financial penalty/fine

The Czech Criminal Act makes it possible to impose fines in the range from 2,000 CZK to 5 million CZK (€ 65 – € 161,000). The fine can be imposed if the Act allows it to be imposed or if the sanction for the crime is up to 3 years of imprisonment and the court does not impose the imprisonment taking into account the nature of the crime and opportunities of the offender’s correction. In other cases it is possible to impose a fine if the offender obtained a benefit by his illegal behaviour.

The Criminal Act does not specify the rate of fines in particular bodies of crime. It is up to the court to decide according to all the circumstances of the case. It is not possible to exceed the fine thresholds set up by the Criminal Act. The court has to take into account the level of social dangerousness of the crime, opportunities of the offender’s correction and his property status. The court can decide that the fine will be paid in adequate instalments. The court has to be concerned not to make reaching compensation for a damage impossible for an injured person by imposing the fine. The fine revenue belongs to the State.

When imposing the fine the court may decide to impose an alternative sanction of imprisonment of up to two years. The purpose of this measure is to ensure that the offender will be punished even in cases where the fine is not paid on time.

If the fine was imposed for a negligent crime, the offender is considered innocent after the fine is paid.

Financial penalties are provided for by all the provisions of the Criminal Act concerning environmental crimes - sections 181a, 181b, 181c, 181e, 181f, 181g, 181h.

Publicly beneficial work

Publicly beneficial work is an alternative penalty replacing short-term imprisonment. Offenders of less dangerous crimes are typically given the sanction of public work. The penalty consists in carrying out certain work set up by the court. The offender shall carry it personally, free of
charge and in his/her free time (section 45(3) and 45a(3) of the Criminal Act). It is an intervention into the offender’s free time and constitutes an obligation to work free of charge. The penalty is usually carried out on public places and should serve publicly beneficial purposes. This means it is to be carried out for the benefit of educational, environmental, public health, youth and other non-profit organisations, municipalities, etc.

The penalty shall last from 50 to 400 hours (section 45a(1) of the Criminal Act).

This penalty can be imposed:

- if the offender committed a crime for which the imprisonment of up to 5 years can be imposed pursuant to the Criminal Act,
- if a reasonable presumption exists that, taking into account the nature of the crime and opportunities of the offender’s correction, imposing of other penalty is not necessary to reach the purpose of the penalty (section 45(1)).

**Imprisonment**

The penalty of imprisonment is a universal one – the Criminal Act provides for it in all the legal criminal sanctions. At the same time it is the strictest penalty and therefore it is to be imposed only when one of other penalties cannot serve the purpose of punishment.

The duration of the imprisonment is set up generally by maximum limit of 15 years (section 39(1)) of the Criminal Act) and specifically by particular provisions concerning individual crimes. It is possible to exceed the maximum 15 years threshold exceptionally, only under conditions set up by the Criminal Act. In such case either the imprisonment up to 25 years can be imposed or imprisonment for life (as a replacement of the death penalty).

The maximum threshold can be exceeded in two cases: i) particularly dangerous offender, ii) crime committed for a benefit of criminal association. The maximum rate can be exceeded by one third. However, even in such cases it should not be higher than 15 years or 25 years respectively.

The minimum level of imprisonment is not generally set up by the Czech Criminal Act. It is up to the court to decide about it taking into account circumstances of the case and of the offender.

The Criminal Act distinguishes between two categories of imprisonment: suspended and unsuspended. Suspended imprisonment is considered as a special kind of penalty. It can be imposed only if the maximum limit of the penalty set up by the Criminal Act does not exceed 2 years (section 58(1)). The court can impose the suspended imprisonment if it is convinced that the purpose of the punishment will be achieved this way - taking into account the nature of the offender, his way of life and environment and the circumstances of the particular case.

Within the framework of the decision the court set up the probation period from one to five years (section 59(1)). The court can also set up certain adequate limitations and obligations for the offender (to do something, to abstain from carrying out certain activity, e.g.).

The Criminal Act provides that imprisonment may be a penalty for all environmental crimes (sections 181a, 181b, 181c, 181e, 181f, 181g, 181h).
**Prohibition (ban) of activity**

The purpose of this penalty is to prevent the offender to further committing crimes. The activity to be prohibited consists either in carrying out a certain job, profession or function or an activity that needs a certain special permit or the carrying out of which is defined by a special law. This penalty is typical for environmental crimes as it can be demonstrated by description of bodies of crime in particular sections of the Criminal Act.

The court can impose the penalty for 1 year to 10 years.

This penalty is appropriate for environmental crimes as stipulated by all the sections of the Criminal Act concerning this category of criminal activity – (sections 181a, 181b, 181c, 181e, 181f, 181g, 181h).

**Prohibition of residence**

This penalty has a significantly preventive function. Its imposition must be necessarily linked with regard to the place of the crime or to the protection of public order, family, public health, morals or property. It consists of a prohibition on dwelling in a certain place or district. The court can accompany the penalty by imposing adequate limitations and duties.

The court can impose this penalty for an intentional crime if it is necessary from the point of view of the offender's behaviour until now and of the place of the crime.

The penalty can last from 1 to 5 years.

**Confiscation**

The purpose of this penalty is to confiscate objects that could be used to further criminal activity, to make conditions of further criminal activity more difficult and to dispossess the offender of a benefit from the crime.

According to the section 55(1) of the Criminal Act the court can declare as confiscated an object that:

- a) was used to commit a crime,
- b) was intended to be used to commit a crime,
- c) the offender obtained by the crime or as an award for a committed crime,
- d) the offender acquired under c).

The Act does not limit application of this penalty only to intentional crimes. However, it is obvious that the confiscation of an object under b) is not applicable in case of negligent crimes.\(^{19}\)

This penalty can be applied for environmental crimes, particularly for those connected with the protection of endangered species section (181f(2)).

\(^{19}\) Ibid, p. 307
Confiscation of property

Confiscation of property is a very serious penalty. It can be imposed only under certain limited conditions set up by the Act. It concerns the whole property of the offender or the part of the property designated by the court. It concerns only the property that the offender possessed in the time of the decision, not the property of other persons.

The confiscated property belongs to the State. This penalty is not applied for environmental crimes.

Expulsion from the country

The purpose of this penalty is to prevent further criminal activity on the territory of the Czech Republic by persons who are not Czech citizens. A prerequisite to impose such a penalty is that it is necessary to ensure the safety of persons or property or of other public interest.

The penalty can be imposed for the period of 1 to 10 years or for an indefinite period. It is possible to impose it as an independent one for any crime although the Criminal Act does not stipulate it in its special part (dealing with particular bodies of crime) - section 28(1). It is also possible to impose this penalty together with other penalties (except for publicly beneficial work, suspended imprisonment, or prohibition (ban) of activity).

Loss of honourable titles and honours and the loss of military rank

This penalty can be imposed only together with another one. Its aim is to protect the integrity of public life. It can be imposed together with imprisonment for minimum 2 years for an intentional crime committed with extremely infamous motives (such as for example an effort to avoid criminal liability for a previous criminal activity even if at the expense of a destruction of life - section 46(1) of the Criminal Act).

The court can impose either a basic penalty, a stricter one or a moderate one. The court’s decision depends on the assessment of specific circumstances of individual crime.

• Mitigating circumstances

The Criminal Act provides a demonstrative list of mitigating circumstances that influence the type and rate of the penalty (section 33). The court will take into account that the offender for example

- committed the crime was in a strong distraction,
- committed the crime being at the age close to the age of adolescent,
- committed the crime under threat or pressure,
- was behaving properly before committing the crime,
- deeply regretted his act,
- was helpful while investigating the crime.
• **Aggravating circumstances**

The Criminal Act provides a *demonstrative* list of aggravating circumstances that influence the kind and rate of the penalty (section 33). The court will take into account that the offender for example

- committed the crime with extremely infamous motive,
- committed the crime in a cruel way, insidiously, by a particular deceit or in another similar way,
- committed the crime misusing the vulnerability, dependence or subordination of somebody,
- seduced somebody else, particularly the adolescent, to commit a crime,
- committed the crime during the natural disaster or other event threatening life, public order or property.

Only those facts that pertain to the degree of social dangerousness and that have an undoubted importance for attaining the purpose of a penalty and therefore also for its rate can be considered as a mitigating or aggravating circumstance.

• **The aggravating and mitigating situations in the field of environment**

  a) *aggravating situations*

- repetition of a crime,
- causing permanent or long-term environmental damage,
- causing environmental damage that requires *significant* costs in order to remedy,
- causing environmental damage that will require significant expenditure in order to remove the damage, causing damage especially to a protected area or a water resource which is a buffer zone which means that the damage will cause significant weakening of the special protection of such an area,
- breaching an important duty connected with one’s job, profession, position or function or imposed by an Act,
- criminal act committed with intention to obtain *significant* benefit,
- criminal act committed with intention to obtain benefit of *large extent*,
- criminal act committed together with an organised group acting in several states.

  b) *mitigating situations*

The Criminal Act does not stipulate any special mitigating situation in case of penalties imposed for the reason of an environmental crime. The Criminal Act lays down only conditions for imposing less strict penalties in specific cases. From the point of environmental penalties, mitigation could apply to imprisonment and would consist of a reduction of the term of imprisonment (section 48), of release on suspended sentence of imprisonment or of parole (release) before the termination of sentence (sections 58 -64).

On the other hand, there are no specific possibilities to apply alternative means of settlement when imposing environmental penalties.
2.1.3 Criminal responsibility of legal persons

The current Criminal Act does not apply criminal liability to legal persons. So far, the Czech system of environmental legislation can impose sanction on legal persons only within administrative law. In cases where a natural person within an organisation commits a crime, his/her act is assessed under the particular provisions of the Criminal Act and bears criminal liability as any other natural person.

Only very recently (in the end of July 2003) was a draft Act on criminal liability of legal persons presented by the Ministry of Justice to the Government. One of its proposed alternatives would allow also for environmental criminal liability of legal persons.

The draft Act suggests the following categories of sanctions:

- abolishment of the legal person,
- confiscation of property,
- fine,
- confiscation of a thing,
- ban of activity,
- ban of participation in a public tender,
- ban or restriction to accept public subsidies,
- publishing the judgement in mass media.

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20 However, this situation is going to be changed. The Czech Ministry of Justice has prepared a draft on legal person’s liability - Act on criminal judiciary relating to legal persons and on amendments of the Trade Act, as amended which is on the agenda of the Cabinet’s Legislative Board in September 2003..
2.2 Hungary

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2.2.1 Introduction

- **Short history of Hungarian environmental crime regulation**

In general, Hungarian criminal law can be said to have German-Austrian roots since the first modern Hungarian criminal code was created in 1878 during the Austro-Hungarian Empire. In the socialist era, the code had strong French influences due to the Russian-Soviet transfer. Environmental criminal sections first appeared in the code in 1978 as part of the major recodification of Hungarian criminal law. The conclusions of the 1972 Stockholm Conference were influential in this new development.

The environmental criminal regulations found in the 1978 codification received considerable criticism on account of the strict requirement of environmental harm resulting from the crime. A crime could only be established when environmental harm occurred. This focus on results almost totally stopped any practical use being made of the environmental criminal provisions.

The Act LII of 1996 heavily modified the two existing sections (Harming the Environment, and Harming Nature) and inserted a new section (Illegal Deposition of Waste that is Dangerous to the Environment). The three new environmental criminal sections of the Criminal Code provide a more detailed description of the constitutive parts of a crime. A shift towards the establishment of immaterial crimes can be detected. The new sections contain the possibility for the crime to be constituted by mere disobedience of the regulations or decisions of the authorities. New elements were added to one of the two older crimes whereby mere endangerment of a protected area suffices to establish a crime (the Annex contains translations of the whole text of the Code on Hungarian environmental crimes).

- **Sources of rules of Hungarian environmental crimes**

The Hungarian Constitution (Act XX of 1949) contains the right to a healthy environment (Article 18 and Article 70/D), but there are no explicit provisions providing criminal law defences to this right. The only human right at the time of writing which enjoys a separate criminal law protection in the Constitution itself is the prohibition against discrimination (Article 70/A, Paragraph (2)).

In the Hungarian legal system, there is not a distinction between primary and secondary criminal legislation. The Criminal Code is the unique source of criminal stipulations. However, one special type of administrative law specifies so-called “petty offences” that are very similar to crimes. A detailed description of these is below.

As a general rule, jurisprudence is not a source of criminal law, under continental-style Hungarian criminal law. However, the so called “Legal Unity Decisions”, “Supreme Court Directives” and “Principle Decisions” of the Supreme Court are legally binding upon the courts.
Owing to the high prestige of the Supreme Court, lower courts usually follow the pattern of Supreme Court decisions. To date no Supreme Court decisions have directly related to the field of environmental criminal law.

- **Relationship between environmental criminal law and environmental administrative law in Hungary**

Two aspects of the relationship between environmental administrative law and environmental criminal law should be examined. Firstly, the quasi-penal law administrative system of petty offences, and secondly the background rules of environmental protection administrative law that determine the content of the framework criminal regulations.

Petty offence law is a branch of administrative law, which is intended to ensure a quick and effective quasi-penal law system against acts that are harmful to society but are less dangerous than crimes. The process of petty offences is mainly handled by administrative bodies such as the town clerk, but the police and even Nature Protection Directorates can also have petty offence procedural responsibilities. The decision of these petty offence authorities can be appealed at the Criminal Law Chambers of regular courts.

The petty offence process is similar to the criminal procedure in terms of the order of the procedural steps, the rights and obligations of the participating persons, but the petty offence process is somewhat simplified. Coercive measures can be involved in the petty offence procedure, such as custody or bodily search. The sanctions imposed for committing petty offences are also similar to those imposed by criminal law, namely, confinement, a light regime of imprisonment or fine.

The other connecting factor between environmental criminal law and administrative law is that the description of the three environmental crimes frequently refers back to administrative environmental protection laws or to decisions based upon these laws (see the similar phrases “those who… act with infringement of the obligations determined by law or by administrative decision…” for instance in the second Turns of Article 280, Paragraphs (1) and (2) or both Turns of Article 281/A, Paragraph (1) in the Annex). The interpretation rules found in Article 286/A do not, however, refer to the parallel definitions found in the Environmental Code, but rather repeat them, almost word by word. The slight differences between the terms, naturally, might cause difficulties in legal practice21.

An evaluation of the framework nature of environmental crimes in the Criminal Code would have to conclude that the framework is far from clear. Strictly speaking, a framework regulation should directly refer to concrete pieces of administrative law. For example, the provisions in the Code on traffic crimes contain a direct reference to the Minister of Interior Decree on Traffic Rules. In the case of environmental criminal law, the reference is less concrete, and in fact the entire environmental administrative law is referred to in Article 280, Paragraph (1) and (2) and in Article 281/A, Paragraph (1) as we could see from the citations at the previous paragraph.

- **Peculiarities of the Hungarian environmental criminal law**

Since Hungarian environmental criminal law has resulted from internal development rather than from an external harmonisation process, the laws may be of interest (containing both good and bad experiences) for the EU and for other countries.

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21 We analyse this problem in detail in the section on conclusions.
Article 280, Paragraph (1), Turn II stipulates that persons also commit the crime of harming the environment if they “act with infringement obligations determined by law or by administrative decision in a way that might harm the environment or any elements of it”. This provision was introduced as a response to the ineffective previous, material-type environmental crime regulation. Unfortunately, the legislator did not go far enough, and failed to attach criminal responsibility solely to infringement of (the most important) environmental administrative rules. The provision is a compromise - formal acts, which infringe administrative rules combined with the abstract presence of danger to the environment, will result in criminal responsibility.

The peculiarity of this solution lies in its compromise nature. The Hungarian legislator was not content with the solution to simply enlist the most important environmental administrative legal provisions whose infringement could have constituted a crime, but rather encompassed the whole environmental administrative law (including the individual decisions based on these norms, too). Yet, to confine the criminal solution only to the most dangerous infringements of environmental administrative law, the legislator added another element: causing danger (with the phrases “might harm the environment” and “might significantly pollute the environment”). The positive side of this compromise is that it accommodates to the quickly changing nature of environmental protection law. Environmental administrative law is rapidly developing. It is difficult to collect the most important elements and it is not certain that what we collect today will be amongst the most important elements in a year’s time. The negative side of the compromise is the creation of a degree of uncertainty: criminal legal practice shall develop the idea of the level of significant harm from which criminal law shall be applicable to environmental administrative infringements.

Another peculiarity of Hungarian environmental criminal law was the selection of the subjects of regulation in Article 281/A on the crime “Depositing Wastes Dangerous to the Environment”. The Hungarian legislator decided to protect the environment with criminal law not only from hazardous waste, but from all types of waste that can be, in certain individual situations, dangerous to the environment.

2.2.2 Criminal responsibility of natural persons

2.2.2.1 Classification of criminal offences

Hungary has two categories of crimes - felony and misdemeanour. They are distinguished by the level of seriousness. Felony is the category for more serious crimes with penalties of over 2 years imprisonment. Misdemeanours refer to less serious crimes. Negligent crimes are always regarded as misdemeanours irrespective of the penalty.

Criminal offences can also be classified according to the manner in which the criminal offence is defined. There are simple, descriptive, referring and framework regulation types. Simple criminal offences are those old, historical crimes whose detailed description is unnecessary. Descriptive offences are the crimes that are defined with many details on the possible perpetration. When using the referring type, the legislator simply refers to the description of another crime. With framework regulations the legislator refers to another piece of regulation concretely or to other branches or areas of law more generally.

Finally, there is an important classification of crimes according to their constitutive acts. Some crimes can be committed only by active behaviour, others only by omission. There are also
crimes that can be committed either way. Some criminal offences require a specific result to be constituted (material crimes), whilst others do not (immaterial crimes). Material crimes can require harm as a result or only a certain danger of that harm. The results could be biological, harm to assets and social harm (for instance significant harm of interests, serious disadvantages or disturbance of public order). Danger on the other hand can be direct or indirect. Naturally, the concrete constitutive acts could also be a combination of these various elements.

Environmental crimes are all felonies, except the negligent forms of harming the environment and harming nature (Article 280, Paragraph (5) and Article 281, Paragraph (3)). The complete text of such provisions is included in Annex II.

With regard to the type of regulations, we do not find simple regulations amongst the historically new environmental criminal offences. Instead there are descriptive regulations, like Article 281, paragraph (1) points a) and b) or Article 281/A, Paragraph (1). There are also “referring” criminal offences in case of Article 280, Paragraph (2) and in Article 281/A, Paragraph (2). Their “referring” nature is determined by the fact that the referred Paragraphs (Paragraph (1) in both cases) are so complicated that it is not useful to repeat them. Finally, there are also framework regulations (mentioned above) which refer basically to the entire body of environmental law and in addition to the binding decisions of environmental (nature protection) administrative bodies.

The majority of the environmental crimes can be committed by both active and passive behaviour. Some of the Sub-Turns of Article 281 and Article 281/A, however, can be committed only by active behaviour, like acquiring living organisms, exporting or importing them or collecting and disposing of waste in a way that is dangerous to the environment.

Article 280 contains material crimes, where the required results can be either actual harm or endangering the environment. Endangering, according to the Hungarian terms, could be concrete or abstract (endangering is abstract when the danger is rather indirect, i.e., there are significant factors in the causational processes other than the activity of the perpetrator). As we noted earlier, the legislator has weakened the material nature of the text of Article 280.

Article 281 contains both material and immaterial crimes, whilst Article 281/A contains only abstract endangerment that is, as we noted above, already very similar to immaterial crimes.

2.2.2.2 Criminal penalties in environmental law

Three types of sanctions exist under Hungarian criminal law: main penalties, side penalties and measures.

There are three varieties of main penalties:
- Imprisonment (lifelong or determined time imprisonments, with the shortest term one day and the longest term 15 years; with three regimes of gradual differences in seriousness)
- Public interest work (the perpetrator shall perform once a week a whole day of work determined by the correction judge; the shortest term of public interest work is one day, the longest one is 100 days) and
- Fines (the fine as main penalty constitutes of two elements: the term determined in days that is proportional with the seriousness of the committed crime and the daily rate that is a

22 Interestingly, there were some minor modifications on these texts in 1988 and the major feature of them was increasing their descriptive nature.
multiplier proportional with the financial status of the perpetrator; the smallest term is 10 days, the largest is 360 days, while the smallest daily rate is 50 HUF – 20 cents, the largest is 10,000 HUF – 40 Euro. Both public interest work and fine can be transformed into imprisonment in case of failure of execution out of fault of the perpetrator).

Side, or additional penalties as they are sometimes referred to, consist of bans on exercising public rights, bans from exercising one’s profession, bans from driving, expulsion from the country, expulsion from certain regions or cities, confiscation of the perpetrator’s assets and fines. For criminal offences resulting in not more than three years of imprisonment, a side penalty can also be used independently of a main penalty.

Measures consist of reproof, probation, mandatory clinical programmes, mandatory clinical programmes for addicts, confiscations and supervision programmes.

In the practice of environmental criminal law the following side penalties and measures are of the most practical importance. Bans from exercising professions connected with or making possible the perpetration of environmental crimes and confiscation of the tools of committing the environmental crimes from the list of the side penalties seem to be the most useful criminal legal tools (although the practice is not yet developed enough to enable us to say that they are frequently used). As concerns measures, our experiences say that the two lightest criminal consequences, reproof and probation, have a much bigger than desirable role in handling of the environmental crimes. Prosecutors and judges (both are entitled to use these measures and to cease the criminal procedure at the same time) sometimes fail to acknowledge the importance of environmental crimes and consequently they use the lightest measures in these cases. Sometimes the hidden reason of using these measurements is that the prosecutor or the judge is not one hundred percent satisfied by the level of proof in the environmental cases or they are not confident in using the terms in environmental crimes which would require the exercise of their discretionary rights (e.g. the level of harm or endangerment of environment).

The only penalty that can be imposed for committing one of the three environmental crime offences is imprisonment. Public interest work cannot be a sanction to these crimes. The minimum duration of imprisonment is one day in all the cases where the legislator did not specify what the lower threshold was to be (see in the Annex Article 280, paragraph (1), (2), (3) and (5), Article 281, Paragraph (1)-(3), Article 281/A, Paragraph (1)-(3)). There is only one paragraph (Article 280, Paragraph (4)), where the minimum duration is higher: 2 years.

The maximum duration of imprisonment is 2 years for negligent committing of environmental crimes: Article 280, Paragraph (5), Article 281, Paragraph (3) and Article 281/A, paragraph (3). It is a 3 year maximum in the basic case of the intentionally committed environmental crime: Article 280, Paragraph (1) and (2) and Article 281, Paragraph (1), and 5 years in the more serious forms (Article 280, Paragraph (3), Article 281, paragraph (2) and Article 281/A, Paragraph (1) and (2)). For the most serious cases, the longest possible imprisonment period is 8 years (Article 280, Paragraph (4)). In a table:

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23 However, in the General Part of our Criminal Code there are exceptional possibilities of using lighter sanctions, too. According to Article 87, Paragraph (2), point e), if the shortest term of imprisonment attached to a certain crime is less than one year, the judge can decide to impose on the perpetrator public interest work or fine, supposing that imprisonment would be too severe a sanction, taking into consideration the principles of sanctioning as they are set in Article 83.

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Study on criminal penalties in a few candidate countries’ environmental law

Milieu Ltd.
6 October 2003
### Table on imprisonment penalties for environmental offences

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The minimum level of imprisonment can be reduced one grade or in exceptional cases by two levels for attempted crimes or for supporting crimes. For environmental crimes this reduction is only possible under Article 280, Paragraph (4). Reduction of sentences can take place where the judge concludes that even the minimum level would be too stringent in the given case. Mitigating circumstances in connection with the objective side of the crime or in connection with the subjective side of the perpetrator can play a role in decisions to reduce sentences.

The maximum level of imprisonment can be reduced only for cases of cumulative perpetration and for cases of recidivism. The rule for cumulative perpetration is that the sentence should remain within the level for the more serious crime. However, if this would not satisfy the aims and principles of criminal law, the upper level of imprisonment for the most serious crime can be increased by half of that sentence again. The same rule exists for special and multiple recidivists.

On the objective side, mitigating and aggravating circumstances could be connected with:

- the stage (phase, in other words, the distance from the finished result) of the crime (attempt or even a distant attempt)
- the mode or the tool of the crime
- the consequences
- circumstances of the perpetration
- behaviour of the perpetrator after the crime (elimination of the harm, remedies etc.)
- time lapsed after the perpetration
- frequency of the crime (in statistical sense)
- whether perpetration was organised
- whether perpetration was carried out for material advantages (if it is not an element of the crime) or in connection with corruption

On the subjective side, mitigating and aggravating circumstances could involve:

- criminal record
- lifestyle (criminal, not working or position in society)
- public interest works
- leading status, responsibilities
Before discussing alternative means of settlement, we must refer back to side penalties that allow courts to “individualise” the sentence. We must also bear in mind that courts can use measures sanctions to try to remedy the situation caused by the crime or the situation of the perpetrator. Sometimes measures can be more effective than punishments.

Other than criminal sanctions, there is another way of redressing the damage the environmental crimes cause. This is via a decision on civil law claims. Article 215, Paragraph (1) of the Criminal Procedural Code prescribes that any civil law claims connected to the committed crime should be decided in the criminal sentence in merit. Only if this would cause significant delay in the criminal procedure can the judge direct the claim to civil law courts.

The Hungarian Criminal Procedural Code provides for one alternative settlement tool: waiver of the trial (Chapter XVII/B of the Code). The defendant has the option to initiate this procedural tool and it is left to the prosecutor to decide whether or not to accept it. If an agreement is reached, the perpetrator accepts the indictment’s content and the prosecutor will not have to present any further evidence against the perpetrator. The upper limit of imprisonment will be much reduced in these cases. Instead of 8 years it drops to 3, instead of 5 it is 2 and instead of 3 years it is only 6 months. The court arranges an open hearing in such cases and if the circumstances convince the judge, he/she will fix the length of the sentence appropriately.
2.2.3 Criminal responsibility of legal persons

Hungarian criminal law does allow for the use of sanctions against legal persons (according to a separate legislation: Act 2001 of CIV). However, the legislation requires that a natural person’s criminal responsibility is engaged and this person is affiliated to the legal person. A further condition for sanctions against legal persons is that the affiliated person committed the crime in order to acquire material advantage for the legal person.

There are three different sanctions for crimes committed legal persons:

♦ dissolution of the legal person,
♦ constraining the activity of the legal person and
♦ fine.

Dissolution will only take place if the existence of the legal person is closely related to the crime (crimes) in question – e.g. if the legal person was established to commit crimes or to hide them. In such cases it will not matter that the legal person otherwise obeys all the rules of bookkeeping, reporting etc. However, a legal person whose activity is important for public services or that performs important strategic tasks for the economy or national defence may not be dissolved.

A legal person’s activities may be constrained for a maximum of 3 years. Constraints could be: banning endowment building (i.e. banning to collect deposit or stake from outside sources), banning participation in public procurement processes or/and in concession processes, refusing registration as a public interest organisation, refusing to grant state and municipality subsidies and refraining from any activity the court prohibited to it.

Fines can ranges from 5000 HUF (200 Euro) to a sum three times the financial advantage the crime originally aimed at.

We have to note that the term “legal person” encompasses all the kinds of legal persons notwithstanding who is the owner (state owned and privately owned legal persons can equally be the subject of criminal responsibility) or what is the form of the legal person (companies, social organisations and even public bodies, too, can be the subject of criminal responsibility).
2.3 Lithuania

By Domas Balandis, Lithuania

2.3.1 Introduction

The Lithuanian legal system is based on the legal traditions of continental Europe. Naturally, during Soviet occupation it was significantly altered to conform to the “soviet” legal system. In 1940, a short time after Lithuania was declared as part of USSR, the existing legal system was changed into a system based on state ownership of natural resources and purely administrative economic management. According to principles of the USSR, Lithuanian legislation was subordinated to the central legislation of the USSR.

The Criminal Code of Lithuanian SSR of 1961 was fully subordinated to the USSR Foundations on Criminal Laws. If any provisions referred to in the USSR Foundations on Criminal Laws were not included in the Lithuanian Criminal Code, they were nevertheless legally binding in Lithuania directly (Art. 2 of the Criminal Code of the Lithuanian SSR).

The Criminal Code of Lithuanian SSR included several articles on offences against natural resources but not on offences against environmental protection. However, from 1974 the Criminal Code was amended and criminal liability for pollution of water, air and soil was established (Art. 2451 of the Criminal Code of the Lithuanian SSR).

On March 11, 1990 Lithuania re-established its independence, and it became evident that the legal system should be brought into conformity with the principle of the rule of law and international and European standards. Since 1990 the Lithuanian legal system has been reformed to meet the demands of social and economic changes. Legal protection of environment has been reformed simultaneously with the transformation of social and economic relations. The current priority of the ongoing legal reform is the harmonization of Lithuanian laws to those of the EU and improving the functioning of the court system. The reform has now entered its final stage.

The Constitution of the Republic of Lithuania was adopted by referendum on 25 October 1992 [1]. It created the legal basis inter alia for development, implementation and enforcement of environmental legislation. Article 54 of the Constitution provides:

‘The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilisation of natural resources as well as their restoration and augmentation.

The exhaustion of land and entrails of the earth, the pollution of waters and air, the production of radioactive impact, as well as the impoverishment of fauna and flora, shall be prohibited by law’.

Lithuanian Environmental Protection Law (Lietuvos Respublikos aplinkos apsaugos įstatymas // Official Gazette, 1992, No 5-75) is based on this constitutional provision. It laid the foundations for legal acts in environmental sectors (horizontal, air protection, water protection, nature protection, waste management, industrial pollution, management of chemicals and GMOs, noise and radiation). This framework act on environment protection also establishes tools for enforcement of environmental legislation. Article 32 of this law provides that violation of
environmental protection legislation shall be prosecuted in accordance with the laws of the Republic of Lithuania.

When certain offences breach the rules of Lithuanian environmental protection law, the new Criminal Code (Lietuvos Respublikos baudžiamasis kodeksas // Official Gazette, 2000, No 89-2741) or the Code of Administrative Offences (Lietuvos Respublikos administracinių teisės pažeidimų kodeksas // Official Gazette, 1985, No 1-1; 2002, No 112-4972) can be applied.

The legal reform has significantly influenced criminal law. The Seimas (Lithuanian Parliament) has adopted the new Criminal Code and the new Criminal Procedure Code (Lietuvos Respublikos baudžiamojo proceso kodeksas // Official Gazette, 2002, No 37-1341). These new laws entered into force in May 2003. Effective implementation of these codes is an important task for the judiciary at present.

The new Criminal Code is influenced by the criminal legislation of the European Union Member States, and in particular by German criminal law. The Criminal Code deals with offences, which endanger the public or harm or in some way disturb social harmony. Offences are sanctioned by penalties that include disqualification from a certain job or from holding a certain position, performance of public work, fines, restriction on liberty, detention, or imprisonment.

Criminal liability for offences against environment and human health are systemised and introduced in chapter XXXVIII of the new Criminal Code. The chapter includes articles on offences against the environment which may by classified into the following groups:
- Offences against environmental protection order (Art. 270). This chapter features a general provision on “violation of environmental protection laws”, thereby referring to the Environmental Protection Law or other environmental legislation for its content;
- Offences against the order on the use of natural resources: Art. 272 relates to hunting and fishing and Art. 274 relates to collection of flora and fauna;
- Offences against objects of special protection: protected areas (Art. 271), wetlands or forests (Art. 273).

The protection of environment through criminal law occurs rather infrequently. Environmental laws and regulations are enforced primarily by administrative law. Criminal penalties are generally seen as a way of providing some sort of threat which acts to deter people from breaching the law. Having said this, in some cases criminal penalties do apply.

The difference between administrative and criminal offence lies mainly in the degree of adverse effect of the unlawful act (or omission) rather than on the nature of the act. The Criminal Code provides for more severe sanctions for violation of environmental legislation than under administrative law.

The Code of Administrative Offences deals with offences which constitute punishable breaches of law but do not affect society to the extent that would deserve criminal law to be applied. Fines are the usual sanction for administrative offences in most cases. Deprivation of the right to hold a certain position or deprivation of hunting (fishing) licenses and confiscation may be applied in some cases for violation of environmental laws. Imprisonment sanctions cannot be applied for administrative offences.

In general, fines for a range of violations of environmental legislation may reach up to LTL 10,000 (EUR 2,896), including cases of unauthorised excessive pollution. In special cases, e.g. pollution of sea or felling of trees, fines may reach up to 60,000 LTL (17,377 EUR).
Paragraphs 56, 62, 62-1, 62-2, 85, 87, 87-3, 87-4, 87-5 and 87-6 of the Administrative Offences Code provide for confiscation of timber, cars, boats, hunting or fishing tools. Confiscation can be applied in addition to a fine. Confiscation may apply to things that were involved in the committing of the offence (e.g. hunting or fishing tools) or things that helped to commit the offence, provided that they belong to the offender (e.g. cars, boats) and also to objects produced by the offence (e.g. timber). Procedures for the application of confiscation are provided in the Administrative Offences Code.

Public prosecutors prosecute criminal offences but they do not prosecute administrative offences.

Under paragraph 242 of the Administrative Offences Code, in cases where environmental protection laws have been breached, but society has not been affected to any extent and hence, it is not legitimate to apply criminal law, Ministry of Environment regional agency inspectors can charge offenders themselves. The procedures for the application of penalties are provided in the Administrative Offences Code. Appeals against the decisions of regional environmental protection inspectors are possible to district administrative courts (apygardų administraciniai teismai). The second appeal level institution is the Highest Administrative Court (Lietuvos vyriausiasis administracinis teismas).

Administrative penal sanctions are not registered in the criminal record.

The new Administrative Offences Code is under preparation. It is not clear yet whether the changes will mean that penalties for administrative offences may only be imposed through the courts.

### 2.3.2 Criminal responsibility of natural persons

#### 2.3.2.1 Classification of criminal offences

- **General classification of criminal offences**

Criminal penalties are only applicable if an offender has acted (or omitted) in conflict with the law and if the Criminal Code provides sanctions for the offence in question.

The new Criminal Code classifies criminal offences into two groups: crimes and misdemeanours.

A *crime* is an act (or omission) that endangers the public, which is forbidden under the Criminal Code and is punishable with imprisonment (Art.11 of the Criminal Code).

A *misdemeanour* is an act (or omission) that endangers the public, which is forbidden under the Criminal Code, for which imprisonment is not provided by the code (Art.12 of Criminal Code).

The division of criminal offences into *crimes* or *misdemeanours* is based mainly on the degree of effect to which the public is endangered. Misdemeanours are specified directly in articles of the new Criminal Code. For example, in cases of violation of environmental laws, the Criminal Code provides:

‘Article 270. Violation of Rules on Environmental Protection and/or on the Use of Natural Resources’
1. “Any person who violates rules, established by the legal acts, on environmental protection and/or on the use of natural resources and thus causes major harm to fauna or flora or other grave consequences shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 6 years.

2. Any person who violates rules, established by the legal acts, on environmental protection and/or on the use of natural resources and thus causes minor harm to fauna or flora or other minor consequences, shall be punished by a fine, or restriction of liberty, or detention, commits a misdemeanour, and shall be punished by community service, or a fine, or restriction of liberty, or detention.

3. A legal person shall also be held liable for the acts specified in this Article.

4. Criminal liability for acts specified in this Article shall be incurred also in the event of a negligence.

The essential element of this offence is an action or omission which violates environmental legislation and which causes major or minor damages to environment. It is necessary that the offence has consequences - minor or major damage to any compound of environment (air, water, or soil, sea environment also continental shelf).

Article 270(1) of the Criminal Code relates to a crime and Article 270(2) relates to misdemeanour. On basis of articles 54 to 74 of the Criminal Code, judges have the power to transform a crime into a misdemeanour and limit the sanction applicable to misdemeanour.

According to Article 11(2) and Article 14 of the Criminal Code crimes and misdemeanours may be intentional or caused by negligence. Cases where criminal penalties are applied for crimes and misdemeanours caused by negligence are specified in articles of the new Criminal Code (see Art. 270(4) above).

Intentional crimes are classified on the basis of degree of seriousness as follows:

- **Minor crime** – an intentionally committed crime, for which the criminal law provides a sanction up to 3 years of imprisonment,

- **Major crime** – an intentionally committed crime, for which the criminal law provides sanction from 3 up to 6 years of imprisonment,

- **Serious crime** – an intentionally committed crime, for which the criminal law provides sanction from 6 up to 10 years of imprisonment,

- **Very serious crime** - an intentionally committed crime, for which the criminal law provides sanction for more than 10 years of imprisonment.

• Criminal offences for environmental law

Chapter XXXVIII of the new Lithuanian Criminal Code deals with environmental offences.

The General Part of the code (Chapters I - XIV) establishes general principles under which crimes or misdemeanours are defined and offenders can be held criminally liable. Conditions, which constitute the basis for excluding criminal liability and excusing such persons from punishment, are also established in the General Part of the code.
The special part of the code (Chapters XV – XLVI) establishes penalties for the commission of crimes and misdemeanours.

The Criminal Code does not specify environmental law offences in detail. There are only five articles in the code which directly provide sanctions for environmental offences.

Article 270 provides that any person who violates legally binding rules on environmental protection and/or on the use of natural resources and thus causes major (or minor) harm to fauna or flora or other major (or minor) consequences, commits a misdemeanour or a crime. Article 270 can be applied to violations of any law or regulation in the environmental sphere, e.g. operation of a plant without a permit, unlawful emission of pollutants into air, water or soil or unlawful disposal of waste. However, in accordance to the General Part of the code, a person shall not be held liable under criminal law for acts (or omissions) if an offence does not endanger the public, harm or in some way disturb social harmony. An administrative penalty will be given in a case when an offence does not significantly endanger the public. The degree of seriousness determines whether a crime or a misdemeanour has been committed. Article 270 can be applied also in the event of negligence. This article can be also applied to legal persons.

Article 271 specifies the criminal offences which can be applied for destruction of protected sites. The article provides that any person who destroys or badly ravages a national park, a reserve, a sanctuary, a protected landscape or other natural site, which is protected by the state, or a monument of nature, commits a crime.

The essential element of this offence is an action or omission violating environmental legislation which causes damage to a protected site or other protected nature object. It is necessary that the offence has the consequence of destruction of a protected area or other protected object.

An administrative penalty will be applied in a case when an offence is insignificant. Article 271 can be applied also in the event of negligence. This article can be also applied to legal persons.

Article 272 of the Criminal Code specifies criminal offences for unlawful hunting and fishing. The article provides:

‘Article 272. Illegal fishing or hunting
1. Any person who hunts or fishes outside the allowed season or in prohibited sites or by prohibited means and thereby causes major harm to fauna, shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 2 years.

2. Any person who hunts or fishes when hunting or fishing is forbidden shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 3 years.

3. Criminal liability for the acts specified in this Article shall be incurred also in the event of negligence.

The essential element for this offence is an action that violates existing rules on hunting or fishing. There does not need to be any specific consequence for this offence to have been committed.

Article 272 can be applied to natural persons only.

Article 273 of the Criminal Code states the offences for illegal felling of forest or destruction of wetlands. The article provides that any person, who falls or otherwise destroys more than 1
hectare of a forest area or drains a wetland without a permit, commits a crime and shall be punished.

The essential element of this offence is an action that violates environmental legislation, which causes destruction of wetland or felling of forest. It is necessary for this offence to have been committed that the consequence of destruction of wetland or felling of forests takes place.

Again an administrative penalty will be applied in a case when an offence is insignificant, e.g. a person illegally fells less than 1 hectare of forest. This article can be also applied to legal persons.

Article 274 of the Criminal Code specifies offences for illegal collection of protected flora. The article provides that any person who collects protected flora or destroys its habitats without a special permit commits a crime and shall be punished by a fine or public work.

The essential element of this offence is an action that violates existing rules on collection of protected flora. There does not need to be any specific consequence for this offence to have been committed.

2.3.2.2 Criminal penalties in environmental law

The Criminal Code provides criminal penalties for violation of environmental legislation. These penalties are as follows: performance of public work, fines, restriction of liberty, detention, or imprisonment.

Pursuant to Article 36 of the Criminal Code a person who commits a crime or misdemeanour can be released 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 circumstances.

The court may release a person who commits a misdemeanour or a minor or a major crime from criminal liability, if the victim and the culprit reach reconciliation and voluntarily agree on restitution of the damage caused by the commission of the misdemeanour or the crime.

Pursuant to provisions of the General Part of the Criminal Code, courts shall impose a penalty within the scope of the sanction of the relevant Article, which provides for criminal liability for the committed crime or misdemeanour. When imposing a penalty, a court shall have regard to the following:

1) Degree of endangerment of the offence committed;
2) Form and type of culpability; the motives and objectives of the crime committed;
3) The personality of the offender;
4) The stage of the commission of the crime;
5) The manner in which the person participated in the crime;
6) Any mitigating or aggravating circumstances.

The courts normally impose a non-custodial sentence for a first offence if the offender commits a minor crime. If, in such a case, the court imposes a custodial sentence, it must justify its decision.
Mitigating or aggravating circumstances

Mitigating and aggravating circumstances are provided in the General Part of the Criminal Code. They are not specified for environmental offences.

The following circumstances may be considered as reducing the liability of the offender:
- An offender confesses to having committed an offence, expresses sincere regret or assists in solving the crime or finding the persons who participated in the crime,
- An offender voluntarily pays restitution for or removes the damage caused,
- Crime or misdemeanour is committed due to very difficult economic circumstances of the offender,
- An offender has committed the act under mental or physical coercion, where such coercion does not completely relieve him of criminal liability,
- Commission of crime or misdemeanour was influenced by provoking behaviour on the part of the injured party,
- Crime or misdemeanour is committed at the request of the victim who is in a desperate situation,
- Crime or misdemeanour is committed in violation of the conditions of direct necessity for performance of a professional duty or of a scientific experiment,
- Others which are provided in Article 59 of the Criminal Code.

The courts may define further mitigating circumstances.

The following circumstances may be considered as aggravating the liability of the offender for violation of environmental laws:
- Crime or misdemeanour is committed by a group of accomplices,
- Crime or misdemeanour is committed by an organised group,
- Crime or misdemeanour is committed taking advantage of a personal or community disaster,
- Crime or misdemeanour is repeatedly committed. This aggravating circumstance is a factor which is taken into account in fixing the penalty, but does not allow the possibility of exceeding the maximum penalty of the offended legislation,
- Crime or misdemeanour is committed in a manner which endangers all other people or by using explosives or explosive materials or firearms,
- Crime or misdemeanour caused grave consequences,
- Others which are provided in Article 60 of the Criminal Code [2].

In determining the penalty, the court has to take into account whether only mitigating circumstances or only aggravating circumstances or both have been detected. Having assessed the amount, character, significance and interrelation of the mitigating and aggravating circumstances, the court must make a justified choice of a milder or heavier type of penalty as well as the degree of severity of penalty with reference to the average penalty. Where there is evidence of special mitigating circumstances (an offender confesses to having committed an offence, expresses sincere regret and assists in solving the crime) and there are no aggravating circumstances, the court has to impose punishment not stricter than the average penalty.
• Types of penalties

Application of public work penalty

Article 46 of the Criminal Code establishes general provisions for application of public work as a penalty for the crime or misdemeanour. Article 270 (section 2) of the code provides that performance of public work can be applied to a person who commits a misdemeanour for violation of environmental law. The court may impose performance of public work on the accused only if he consents. Public work may be imposed for a period from 1 month to 1 year. A person sentenced to perform public work is obliged to work for the community without payment for 10 to 40 hours per month. The term of the sentence may not exceed 240 hours for a misdemeanour.

Fines

Article 47 of the Criminal Code establishes general provisions for application of fines as a penalty for a crime or misdemeanour. Articles 270, 271, 272 and 273 specify application of fines for violation of environmental legislation. Fines vary up to 25,000 LTL (7,240 EUR) for natural persons and up to 1,250,000 LTL (362,025 EUR) for legal persons. The Criminal Code does not specify a minimum fine - only a maximum. The amount of the penalty is left to the judge’s sole discretion. Courts have the power to impose a fine taking into account the mitigating or aggravating circumstances.

There is no Lithuanian sentencing practice concerning application of fines pursuant to the new Criminal Code yet, but a low rate of application of fines in Lithuania is currently being discussed among lawyers.

Restriction of liberty

Restriction of liberty for violation of environmental legislation are among the sanctions that can be imposed by courts in the cases specified in Articles 270, 271, 272 and 273 of the Criminal Code. Restriction of liberty may be imposed for a term from 3 months to 2 years. Persons sentenced to restriction of liberty are obliged: not to change their place of residence without the knowledge of the court or the body responsible for the execution of the penalty; to comply with prohibitive and mandatory injunctions of the court; and to give an account in the prescribed manner of compliance with the prohibitive and mandatory injunctions of the court. The court may require that the offender inter alia make payments in partial or full restitution for damage caused by the crime or misdemeanour or to repay the damages with his own work. If a person maliciously avoids fulfilling the prescribed obligations or issued prohibitive or mandatory injunctions, detention shall be substituted for the sentence of restriction of liberty in compliance with the provisions stipulated in Articles 49 and 65 of the Criminal Code.

Detention

Detention for violation of environmental legislation can also be imposed by courts in the cases specified in Articles 270, 271, 272 and 273 of the Criminal Code. Detention is imprisonment for a short period of time and is served in a detention house. Detention can be imposed for a period of 15 to 90 days for a crime and for a period of 10 to 45 days for a misdemeanour. The time to be spent in detention for a criminal act is not specified in the relevant Article. The court sets the time when determining the penalty.
**Imprisonment**

The courts can also impose a sentence of fixed term imprisonment for violation of environmental legislation in the cases specified in Articles 270(1), 271, 272 and 273 of the Criminal Code. The term of imprisonment is set from 3 months to 20 years, but for offences against environment the maximum imprisonment is 6 years (Art. 270). Convicted persons shall serve their sentences of imprisonment in open colonies, correction houses and prisons. Lithuanian legislation sets a maximum penalty regarding imprisonment.

**Application of penal sanctions, which contribute to achieving the purpose of the penalty**

Pursuant to Article 39 of the Criminal the court may release a person who commits a misdemeanour or a minor crime from criminal penalty provided that at least two mitigating circumstances apply to him/her. In such a case the court imposes another penal sanction, which contributes to achieving the purpose of the penalty. Other penal sanctions, which may be relevant in cases of violation of environmental legislation, are revocation of special licenses, removal of material damage or confiscation of property.

**Revocation of special licenses**

The court may revoke a special license (hunting, fishing) in cases if the license has been used to commit the crime or misdemeanour. Revocation of special license may be imposed for a period of 1 to 3 years.

**Removal of material damage**

Pursuant to Article 69 of the Criminal Code the court shall order the offender to remove the material damage when damage is caused to property or the environment by a crime or misdemeanour. When calculating the amount of restitution for damage, the amounts received by the victim or the enterprise from insurance or other institutions to cover the damage incurred are not included. The fixed sum of restitution must be paid within the time period set by the court.

**Confiscation**

Procedures on confiscations are provided in Article 72 of the Criminal Code. Pursuant to Article 67, section 3, confiscation may be imposed together with a criminal penalty. It is important to note that confiscation is the only non-criminal penal sanction, which contributes to achieving the purpose of the penalty, which may be imposed as well as a criminal penalty.

Confiscation of property is the compulsory and uncompensated requisition by the State of property held by the accused. Property can only be confiscated if it has been used as an instrument or a means to commit the crime (e.g. hunting or fishing tools, cars, boats) or which is acquired as the direct result of a criminal act (e.g. timber if it has been gained from a criminal act committed). If property which is subject to a confiscation order is then concealed, used or sold, and is thus not available to be taken in kind, the court shall recover from the accused a sum of money equivalent to the value of the property subject to confiscation.
2.3.3 Criminal responsibility of legal persons

Article 20 of the Criminal Code establishes general conditions for criminal responsibility of legal persons. Legal persons are responsible for commission of a criminal act if sanctions are provided for in articles of the Criminal Code. Criminal penalties may be imposed on legal persons if the following conditions exist:

- A natural person who commits the criminal act is a manager or other employee in the entity;
- or
- A natural person commits the criminal act on the decision or approval of the manager of the entity or the collective management body of the entity.

State or municipal institutions and international organisations are excluded from criminal responsibility.

Article 43 of the Criminal Code specifies the following criminal penalties for legal persons:

- A fine up to 1,250,000 LTL (362,025 EUR);
- Restriction on the activities of the enterprise;
- Liquidation of a legal person.

Only one penalty may be imposed on a legal person for each crime. Articles of the special part of the Criminal Code do not specify the penalties to which the enterprise is subject. Courts may chose to impose any of the above criminal penalties.

Pursuant to Article 52 of the Criminal Code, the court shall prohibit the legal person from engaging in certain types of activities by provided for this in its founding documents or by passing an order compelling the enterprise to close a certain branch of activities. Restrictions on legal persons shall be imposed for periods ranging from 1 to 5 years.

Pursuant to Article 53 of the Criminal Code, when requiring that a legal person is liquidated, the court shall prohibit the legal person from carrying out all the activities provided for in its founding documents and require that the legal person closes down.

Confiscation of profits may be imposed together with the criminal penalties for legal persons (Art. 57 (4) of the Criminal Code).

Articles 270, 271, and 273 of the Criminal Code provide that legal persons are also responsible for the violation of environmental legislation provided in these articles.

There is no sentencing practice on application of the new Criminal Code yet. It can be said that currently criminal environmental law is “law in books” whereas the Administrative Offences Code is a “law in action”.

Study on criminal penalties in a few candidate countries’ environmental law

Milieu Ltd.
6 October 2003
2.4 Poland

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2.4.1 Introduction

- Evolution of environmental law

Polish penal law regulations on environmental protection have developed over a long period\textsuperscript{24}. Setting aside criminal regulations concerning nature protection, it can be said that the early 1960s marked the starting point of penal law regulation of environmental protection. Water contamination was one of the first areas to be regulated.

The first penal law was the Act on Protection of Water against Contamination of 31 January 1961 (\textit{Official Journal of Laws} no. 5, item 33). This was quickly replaced by the Act of 30 May 1962 on Water Law (\textit{Official Journal of Laws} no. 34, item 158) and after several years by the Act of 24 October 1974 on Water Law (\textit{Official Journal of Laws} no. 38, item 230). These three water acts produced a new penal concept, which had a three layer format, namely:

1) serious offences, including harmful water contamination, under Article 154 sec. 1 of the Water Law of 1962 with a sanction of detention up to two years and a fine, and under Article 122 of the Water Law of 1974 with a sanction of imprisonment up to five years and a fine (that is 2.5 times higher), and other serious water offences;
2) petty offences under Article 155, 156 and 157 of the Water Law of 1962 and Article 126 to 129 of the Water Law of 1974; the latter list of petty crimes was longer;
3) administrative tort under Article 160 of the Water Law of 1962 and Article 130 of the Water Law of 1974 for which administrative bodies imposed financial penalties on facilities, that is generally on legal persons.

\textit{Codification from 1969 to 1971}

Codification of Poland’s criminal law in 1969 brought about three significant developments:

1) Article 140 §1 point 2 of the Penal Code in chapter XX on Serious Offences against Public Safety created liability for persons who exposed human life, health or property to public danger resulting in water contamination or air or soil pollution (sanction of imprisonment: from 2 to 10 years if intentional, from six months to five years, if accidental);
2) Article 213 of the Penal Code made the felling of trees in forests equal to the crime of theft;
3) As result of an execution of international obligations, Article 10 § 2 of introductory regulations of the Penal Code made sea water contamination from sea-going vessels a serious offence.

\textsuperscript{24} For more details on the development see Radecki, W., \textit{Petty and serious offences against environment. A guide.}, Warszawa - Wrocław, 1995, p. 67 to 127
Act on Protecting and Shaping the Environment of 1980

Instead of amending the Penal Code, changes to the concept of punishment for damaging the environment were created by introducing criminal provisions into the Act on Protecting and Shaping the Environment of 31 January 1980 (original text *Official Journal of Laws* of 1980 no. 3, item 6, later uniform text *Official Journal of Laws* of 1994 no. 49, item 196 as amended), replaced by the Environmental Protection Law Act of 2001. These new provisions created three serious offences:

- under Article 107 water contamination, air or soil pollution in a way that might expose human life or health to danger, causing damage to flora or fauna to a great extent or causing serious economic damage;
- under Article 108 lack of care for protective facilities;
- under Article 109 violation of the most important provisions on protection of agricultural and forest lands.

Also, the Act contained an extensive list of petty offences under Article 106 and regulations regarding financial penalties under Article 110.

In 1989, remarkably important mechanisms were introduced with respect to administrative torts under Article 110 of the Act on Protecting and Shaping the Environment and under Article 130 of the Water Law of 1974. They took the form of providing an opportunity to defer payment of an inflicted penalty provided that actions were taken to remove the cause of the penalty (appropriating investment outlays to the penalty, if the causes were removed) and to divide the penalty into instalments.

Another change concerning financial penalties was the adoption of the Act of 21 March 1991 on Marine Areas of the Polish Republic and Marine Administration ("Official Journal of Laws" no. 33, item 131). The Act abolished all ‘criminal marine regulations’ both for serious offences and petty offences found earlier in the Act on Sea Fisheries, on Polish Zone of Sea Fisheries, in the Shelf Act and other normative laws regarding the sea. These criminal marine regulations were replaced with financial penalties. However, this was not a critical evolution with respect to development of provisions of a penal nature.

Another important change in the development of penalties for environmental damage took place with the adoption of the Act on Nature Protection of 16 October 1991 (original text *Official Journal of Laws* of 1991 no. 114, item 492, later uniform text *Official Journal of Laws* of 2001 no. 99, item 1079 as amended). In this Act, unlike the previous acts on nature preservation of 1934 and 1949, penalisation was not restricted to petty offences. The Act introduced the following four types of serious offences (currently the Act on Nature Preservation does not include provisions on serious offences since they are included in the Criminal Code):

- destroying, serious damaging or significant reducing of the natural value of a protected area or object (Article 54);
- causing significant natural damage as a consequence of obtaining, destroying, damaging plants or killing animals on a protected area or belonging to protected species (Article 55);
- illegal construction or illegal performing of an economic operation on a protected area or in its protection zone (Article 56);
- killing or fishing protected fauna species without a required permit (Article 57);
These articles were then followed by a traditionally set out Article 58 on petty offences of violation of protective bans and restrictions.

- **Existing environmental criminal legislation**

*Constitution*

The Polish Constitution, in addition to the guarantees of democratic freedoms and assurances regarding private property and a market economy, contains several provisions related directly to the environment. The general framework of environmental protection and sustainable development in Poland is found in the Constitution, in the midst of fundamental national values.

Article 5 contains a direct reference to the concept of “sustainable development”, a fundamental principle in the Constitution. Article 5 reads “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of person and citizens,... and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.” (Emphasis added).

Article 31(3) highlights the prominence of environmental protection, whilst recognising that it is not absolute. It states that any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the national environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Article 86 of the Constitution places a general duty on “everyone” to protect the environment. The article is commonly understood as a reference to support the idea of “polluter pays” principle. However, we should not ignore the express duty to take “care” of the environment, which infuses a significantly broader meaning to this Article.

In addition to imposing a wide duty of care on “everyone”, the Constitution imposes extensive responsibilities on public authorities regarding environmental protection (art. 74 and art. 68.4).

Article 74.3 does provide one very significant regulation regarding the subjective rights of the people. It gives everyone the right to information on the state and protection of the environment. Such a right provides Polish people with a guarantee of transparency of public life, which is crucial in a democratic state.

*Primary and secondary legislation*

In Poland criminal sanctions can only be based on provisions of primary legislation (acts), not on other legal instruments (secondary legislation, *i.e.* executive regulations). Thus, only primary legislation is discussed in this study.

The main sources of environmental criminal legislation are:

1) Penal Code of 1997

The Penal Code of 1997 is an important source of criminal sanctions for serious offences. It includes also - in chapter XXII - regulations on offences against the environment (see: chapter
I.2.1 on classification of criminal offences). The Penal Code provides also for regulations on types of penalties (see: I.2.2 on types of penalties).

2) Code of Petty Offences of 1971

The Code includes a long list of petty offences which can be said to concern the environment. The offences include: causing noise with attributes of a prank (Article 51), cruelty to animals (Article 62), destroying or damaging waterside plants (Article 81), breaches of fire protection regulations in forests (Article 82 § 1 point 7), contamination of water used for drinking or watering animals (Article 109 § 1) and water in swimming pools and baths (Article 109 § 2), a failure to maintain order and tidiness within and near real estates (Article 117), felling trees in a forest, if due to the wood’s value, the act is not considered a serious offence (Article 120) and handling such stolen wood (Article 122), garden theft (Article 123), destroying or damaging plants on public utility areas (Article 144 § 1), removing, destroying or damaging roadside or protected trees or bushes (Article 144 § 2), littering public places (Article 145), harmful activities in forests, gardens and on fields (Article 148 to 157).

The Code of Petty Offences was significantly extended by the Act of 2 December 1994 amending the Act – Code of Petty Offences (Official Journal of Laws of 1995 no. 6, item 29), which introduced nine new types of forest-related petty offences under Article 158 to 166 of the Code of Petty Offences.

3) Environmental primary legislation which includes several legal acts such as:

- The Environmental Protection Law Act of 27 April 2001 (Official Journal of Laws no. 62, item 67) which covers extensive and case-based provisions on petty offences (Article 329 to 360). It also provides regulations on financial penalties that are common to problems related to the environmental protection, waste and water law. The act does not include provisions on serious offences.
- The Act on Waste of 27 April 2001 (Official Journal of Laws no. 62, item 628) includes provisions mainly on petty offences (Article 70 to 79) and one provision on the serious offence of transporting dangerous wastes outside the country’s borders (Article 69). The act does not contain provisions on administrative torts since such provisions can be found in the Environmental Protection Law Act.
- Articles 21 to 29 of the Act on Packaging and Packaging Waste (Official Journal of Laws no. 63, item 638) and Articles 37 to 40 of the Act on Entrepreneurs’ Obligations Concerning Management of Some Waste and on Product and Deposit Charges (Official Journal of Laws no. 63, item 639) contain further provisions on petty offences. These Acts do not provide provisions on serious offences.
- The Act on Forest Reproductive Material of 7 June 2001 (Official Journal of Laws no. 73, item 761) includes two provisions on serious offences (Article 52 and 53). However, this Act will only come into effect when Poland joins the European Union.
- The Act on Genetically Modified Organisms of 22 June 2001 (Official Journal of Laws no. 76, item 811) contains eight provisions on serious offences (Article 58 to 65).
- The Act on Water Law of 18 July 2001 (Official Journal of Laws no. 115, item 1229) contains in part IX “Criminal Provisions’ three provisions on serious offences (Article 189, 190 and 191). It does not include provisions on administrative torts, since such common provisions on environment protection, waste and water law were included in the Environmental Protection Law Act.
• The Act on Handling Substances Depleting the Ozone Layer of 2 March 2001 (*Official Journal of Laws* no. 52, item 537) includes provisions both on serious offences (Article 36 and 37) and on petty offences (Article 38).
• The Act of 29 November 2000 – the Nuclear Law (*Official Journal of Laws* of 2001 no. 3, item 18) includes provisions on petty offences.

• **Jurisprudence as a source of law**

In Poland as in other countries following the continental law system, jurisprudence cannot be considered as a source of law.

However, rulings of the Supreme Court, due to its reputation, are taken into account by other courts. The role of the Supreme Court is significant because of its ability to issue resolutions that remove legal doubts, hence creating certainty. Supreme Court rulings are binding in the particular case that they concern.

Although criminal environmental cases are rare in Poland, there are a few rulings of the Supreme Court concerning or at least connected with environmental criminal law (useful in its interpretation). For example:

1) Ruling of 2 February 2002 (II KKN 291/98) where the Supreme Court stated that the phrase “facility protecting water, air or ground from pollution” as referred to in art. 186 of the Penal Code shall be interpreted in a functional way in order to cover all types of equipment used for protection of the environment, and not only a technical (i.e. more complicated) unit.
2) Ruling of 27 April 1970 (IV KR 32/70) was passed on the basis of the previous Penal Code of 1969 and does not directly concern environmental offence, but is useful in interpretation of Art. 182 of the present Penal Code. The ruling gives an interpretation of the term “many persons” used in the previous Penal Code (chapter on offences against public safety) as well as in Art. 182 (“He who pollutes water, air, land with a substance or ionising radiation in a quantity or a form, which may threat a life and/or health of many persons or may cause a significant damage in fauna and/or flora, shall be liable to the penalty of imprisonment from 3 months to 5 years”). The Supreme Court stated namely that a number of 6 persons is already sufficient in that case.

• **Concept of criminal environmental law and relationship to administrative law system**

Following the publication of the 1997 Penal Code, and its chapter XXII, which is considered to constitute a real breakthrough in handling serious offences against the environment, a proposition was submitted to include a notion of criminal environmental law in the Polish legal language. This notion of criminal environmental law was to be patterned on the German *Umweltstrafrecht* or French *droit penal de l’environnement*, and understood in a triple-faceted manner:

1) in a narrower meaning (*sensu stricto*) as a collection of provisions on serious offences against the environment;
2) in a broader meaning (*sensu largo*) as a collection of provisions on serious and petty offences against the environment;

3) in the broadest meaning (*sensu largissimo*) as a collection of provisions on serious environmental offences, petty environmental offences and environmental administrative torts punished by financial penalties.\(^25\)

This has been a controversial issue because financial penalties were commonly used for administrative and not criminal liability. Nevertheless, the similarity between administrative penalties and penal sanctions imposed on legal persons goes in favour of the idea.

The issue of how to clearly define the parameters of Poland’s criminal environmental law has been debated. Polish criminal environmental law must include the provisions of chapter XXII of the Penal Code ‘Serious Offences against the Environment’ as well as the provisions on serious offences, petty offences and administrative torts included in the most important acts. For example, such acts would include the Environment Protection Law, the Act on Nature Protection, the Hunting Law and fisheries acts, the Acts concerning waste, the Water Law, the Geological and Mining Law, and provisions in the Act on Protection of Agricultural and Forest Lands, in the Act on Forests, and lastly, but importantly, the Act on Animal Protection. The Environmental Protection Law Act also embraces provisions on protection of the ozone layer, on chemical substances or genetically modified organisms, and these too should be covered. Lastly, the criminal provisions found in the Nuclear Law should not be omitted.

### 2.4.2 Criminal responsibility of natural persons

#### 2.4.2.1 Classification of criminal offences

Offences subject to criminal sanctions are divided into two groups – serious and petty offences:

1. **Serious offences** are further divided into:
   a) crimes which are subject to the penalty of imprisonment for not less than 3 years or to a more severe penalty;
   b) misdemeanours which are subject to penalty of a fine higher than 30 times the daily fine, penalty of restriction of freedom or penalty of imprisonment exceeding 1 month.

A crime may be committed only intentionally, whereas a misdemeanour may also be committed unintentionally, but only where the particular provision so stipulates.

All serious offences against environment (included in chapter XXII of the Penal Code and in various environmental acts) are misdemeanours.

2. **Petty offences** are subject to the penalty of imprisonment ranging from 5 up to 30 days, 1 month restriction of freedom (connected with public works) or a fine from 20 PLN (5 Euro) up to 5000 PLN (1250 Euro).

A petty offence may be committed intentionally or unintentionally unless a particular provision specifies only intentional commitment.

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As mentioned above, regulations on serious offences are included in the Penal Code of 1997 and the regulations on petty offences - in the Code of Petty Offences of 1971. Regulations on both serious and petty offences may also be contained in other legal acts (e.g. environmental offences in environmental acts).

An essential part of Polish criminal environmental law sensu stricto are undoubtedly the provisions of chapter XXII of the Penal Code ‘Serious Offences against the Environment’. Chapter XXII, however, does not exhaust this category because there are serious offences in other chapters of the Code that can be treated as serious offences against the environment (for example offences against Public Safety like: causing an event which imperils human life or the health of many persons, like fire, blast of explosives or flammable materials or any other form of a violent release of energy, or poisonous, suffocating or burning substances, violent release of nuclear energy or of ionising radiation (Art. 163); causing a danger to the life or health of many persons by causing an epidemiological hazard or spread of a contagious disease or an animal or plant disease (pest), producing or marketing substances, foodstuffs or other commonly used goods harmful to health or pharmaceutical preparations which do not conform to binding quality standards (Art. 165); manufacturing, processing, accumulating, possessing, using or trading, without a required permit, or in breach of the conditions thereof, an explosive substance or device, radioactive material, device emitting ionising radiation or any other item or substance which may cause widespread danger to human life or health (Art. 171).

Furthermore, such serious offences can also be found in other acts. Nevertheless, we shall restrict ourselves in this analysis only to those mentioned in chapter XXII. The Chapter contains eight provisions from Articles 181 to 188 that can be clearly divided into two different groups. The first group (Articles 182 to 186) refers to key issues in environmental protection: pollution, waste, radiation; the second group (Articles, 181, 187 and 188) refers to nature preservation.

Pollution, wastes, radiation

Basic types of serious offences included in the first group cover the following activities of perpetrators:

1)  water contamination, air or soil pollution with a substance or ionizing radiation (Article 182 of the Penal Code: § 1. He who pollutes water, air, land with a substance or ionising radiation in a quantity or a form, which may threaten a life and/or health of many persons or may cause a significant damage in fauna and/or flora, shall be liable to the penalty of imprisonment from 3 months to 5 years. § 2. In cases where the perpetrator acts unintentionally, he shall be liable to the penalty of a fine, restriction of freedom or imprisonment up to 2 years.;

2)  illegal (i.e. contrary to provisions) storage, disposal, rework, neutralisation or transport of waste or waste substances (Article 183 of the Penal Code: § 1. He who, in violation of regulations, stores, disposes, reworks, neutralises or transports waste or substances in conditions or in a way which may threaten a life and/or health of many persons or may cause significant damage to fauna and/or flora, shall be liable to the penalty of imprisonment from 3 months up to 5 years.);

3)  transporting, gathering, storing, abandoning or leaving without proper protection nuclear material or other sources of ionizing radiation (Article 184 of the Penal Code: § 1. He who, transports, gathers, stores, abandons or leaves without proper protection nuclear material or other sources of ionizing radiation if this may endanger the life and/or health of a man or may cause a significant damage in fauna and/or flora, shall be liable to the penalty of imprisonment from 3 months up to 5 years.);

All of the above activities are treated as serious offences only if they endanger the life or health of many people (see Article 182 and 183). In contrast under Article 184, even endangering the...
life or health of one man or causing extensive damage in flora or fauna means it will be a serious offence. We found a modern construction of liability for potential endangerment in these provisions, namely that the mere possibility of danger resulting from an amount or form of a pollutant (Article 182) or from conditions or a manner of handling wastes or substances (Article 183) can also constitute a prohibited act.

Liability for serious offences depends upon the consequence of the activity. If a consequence of such behaviour is extensive damage in flora or fauna, the perpetrator is liable for a serious offence under Article 185 § 1 of the Penal Code. Or if the consequence of such behaviour is the death of a person or a serious damage to the health of many people, the perpetrator will be liable for a serious offence under Article 185 §2 of the Penal Code.

This basic list of serious offences is completed with the criminalisation of:
- illegal importing of waste or substances endangering the environment from abroad – Article 183 § 2 of the Penal Code;
- the failure to maintain facilities in proper conditions or failure to use facilities protecting against pollution or radiation - Article 186 §1 of the Penal Code;
- delivering or accepting for use objects without protection required by law - Article 186 §2 of the Penal Code.

The undoubted advantage of having a Code is the fact that the provisions on serious offences against the environment can easily be identified, in a maximum synthetic way and by avoiding references to any provisions outside the Penal Code. Of course, the provisions on serious offences against the environment in chapter XXII of the Penal Code still must be interpreted in the light of essential regulations included in the Environmental Protection Law Act, the Nuclear Law and acts concerning waste. Nonetheless, this synthetic formulation of Articles 182 to 186 of the Penal Code allows practitioners to use the regulations stated in material acts without greater difficulties adjusting them to the notion system adopted in the Code.

**Nature Conservation**

The second group of serious offences includes:
1) causing extensive damage to flora or fauna - Article 181 § 1 of the Penal Code;
2) causing significant damage as a consequence of:
   a) destroying or damaging plants or animals on a protected area - Article 181 § 2 of the Penal Code;
   b) destroying or damaging plants or animals covered by species protection irrespective of the place the act was committed - Article 181 § 3 of the Penal Code;
3) causing significant damage as a consequence of destroying, serious damaging or significant decreasing the natural value of a legally protected area or object - Article 187 of the Penal Code;
4) illegal construction or running of economic operations endangering the environment on an area under protection due to nature or landscape respects or in a protected zone of such an area - Article 188 of the Penal Code.

The fundamental notion categories found in provisions of Article 181 as well as 187 and 188 of the Penal Code derive from provisions of the Act on Nature Protection.

The Code’s provisions include many instances where judgements have to be made: first of all, the requirement of “significant” damage under Article 181 § 2 and 3 and Article 187 of the
Penal Code. According to a uniform standpoint of commentators, significant damage is the damage that is significant in terms of nature, not necessarily in financial terms. It may be even impossible to express such damage in pecuniary units but if it is assessed by a natural scientist as significant, this will suffice. The judgement on significance makes it possible to differentiate between serious and petty offences. If acts described under Article 181 § 2 and 3 and Article 187 of the Penal Code do not cause significant damage, the act is not a serious offence but still it exhausts attributes of a petty offence under Article 58 of the Act on Nature Protection.

Another term that needs to be interpreted by a court is “extensive” damage referred to in Art. 181 § 1. According to commentaries on the Penal Code the term means territorially extensive damage (for example a few hectares of forest).26

A serious offence under Article 188 of the Penal Code is construed differently. It is not necessary to show any damage. It is sufficient that construction operations are carried out or economic operations (not any but only such operations that endanger the environment) are conducted. A statutory attribute of such a serious offence is acting contrary to regulations, which means contrary to prohibitions expressed explicitly in the act, i.e., contrary to prohibitions formulated under a normative act that puts a given area under protection or without a required permit or contrary to its terms and conditions.

2.4.2.2 Criminal penalties in environmental law

A detailed analysis of the sanction system found in chapter XXII of the Penal Code indicates that there are five types of penalties for serious offences against the environment:

**Penalties**

1. Fines or restrictions on freedom are stipulated for:
   a) accidentally causing significant damage as a consequence of destroying or damaging plants or animals (Article 181 § 5 of the Penal Code);
   b) accidentally failing to meet obligations with respect to protection facilities (Article 186 § 3 of the Penal Code);
   c) accidentally causing significant damage as a consequence of destroying or damaging protected areas or objects (Article 187 § 2 of the Penal Code).

2. Fines, restrictions of freedom or imprisonment for up to 2 years are stipulated for:
   a) intentionally causing significant damage as a consequence of destroying or damaging plants or animals on a protected area (Article 181 § 2 of the Penal Code);
   b) intentionally causing of significant damage as a consequence of destroying or damaging plants or animals under species protection (Article 181 § 3 of the Penal Code);
   c) accidentally causing extensive damage to flora or fauna (Article 181 § 4 of the Penal Code);
   d) accidental dangerous pollution (Article 182 § 2 of the Penal Code);
   e) accidentally and dangerously breaching provisions on handling waste (Article 183 § 4 of the Penal Code);
   f) accidentally dangerous breach of provisions on handling nuclear materials (Article 184 § 3 of the Penal Code);
   g) intentionally failing to maintain protection facilities in proper conditions (Article 186 § 1 of the Penal Code);

26 See: Radecki, W., Offences against the Environment, Chapter XXII of the Penal Code. Commentary, CH Beck, Warszawa 2001, p. 68
h) intentionally accepting for use objects without protection facilities (Article 186 § 2 of the Penal Code);

i) intentionally causing significant damage as a consequence of destroying or damaging protected areas and objects (Article 187 § 1 of the Penal Code);

j) illegal construction and conducting economic operations on a protected area (Article 188 of the Penal Code);

3. A penalty of imprisonment from three months to five years is stipulated for:
   a) intentionally causing extensive damage to flora or fauna (Article 181 § 1 of the Penal Code);
   b) intentional dangerous pollution (Article 182 § 1 of the Penal Code);
   c) intentional dangerous breach of provisions on handling waste (Article 183 § 1 and 3 of the Penal Code);
   d) intentionally bringing waste from abroad (Article 183 § 2 and 3 of the Penal Code);
   e) intentionally dangerous breach of provisions on handling nuclear materials (Article 184 § 1 and 2 of the Penal Code);

4. A penalty of imprisonment from six months to 8 years is stipulated for intentional serious offences under Article 182, 183 and 184 of the Penal Code qualified by an accidental consequence in a form of extensive damage in flora and fauna (Article 185 § 1 of the Penal Code).

5. A penalty of imprisonment from 2 to 12 years is stipulated for serious offences under Article 182, 183 and 184 of the Penal Code qualified by an accidental consequence in a form of a death of a man or a serious detriment to health of many people (Article 185 § 2 of the Penal Code);

An overall view on the system of penalties leads to the following comments. Three accidental serious offences are punished with non-imprisonment penalties (group 1). The most frequently available sanction is an alternative sanction: i.e. a fine, restriction of freedom, imprisonment up to two years (group 2). In the two groups, the provisions allow for legal proceedings to be stopped in cases where the prerequisites of Article 66 of the Penal Code occur. The prerequisites are where the blame and social harm is not significant and the circumstances of committing such an act do not raise any doubts, and the perpetrator has no record of intentional serious offences, and where his qualities and personal situation justify a presumption that despite discontinuance of the proceedings he will obey the law.

As far as serious offences punished alternatively by a fine, restriction of freedom or imprisonment up to two years (group 2) are concerned, the rule found under Article 58 § 1 of the Penal Code is relevant. It provides that the court shall pronounce a penalty of imprisonment without a conditional stay of execution only when another penalty or punitive measure cannot fulfil the purposes of a penalty. With regard to group 3, Article 58 § 3 of the Penal Code is significant. According to that article, where a serious offence is punishable with imprisonment of up to five years, the court may inflict a fine or a penalty of restriction of freedom instead of imprisonment, and this applies particularly where punitive measures are also awarded. Penalties more severe than five years of imprisonment (group 4 and 5) are stipulated only for the most serious offences qualified by consequences.

According to Article 69 of the Penal Code, a conditional stay of execution of a penalty is possible if a penalty of maximum two years’ imprisonment, restriction of freedom or a fine is announced. This means therefore that an execution of every punishment for a serious offence against the environment under Chapter XXII of the Penal Code may be conditionally stayed if the prerequisites of Article 69 of the Penal Code occur: that is, if it is considered sufficient to
achieve the penalty’s purposes with respect to a perpetrator, and in particular, to prevent a perpetrator from committing further serious offences. Whilst assessing this sufficiency, the court is obliged to take into account first of all a perpetrator’s attitude, his qualities and personal situation, his way of life and behaviour after committing the serious offence. A conditional stay of a penalty’s execution may be announced even in a case of sentencing a perpetrator for the most serious offence under Article 185 § 2 of the Penal Code, but only if the court inflicts the lowest admissible penalty according to the provision, i.e. two years of imprisonment.

To sum up, it can be said that sanctions for serious offences against the environment specified in the Penal Code are not too severe. Nevertheless, the court can inflict in a majority of cases (excluding group 1 of the above-mentioned) a punishment of imprisonment also without a conditional stay of its execution, if necessary. This high flexibility of the Code allows the court to conduct a rational punitive policy.

Punitive measures

We shall now discuss the other punitive measures that can be awarded to perpetrators of serious offences against the environment. Punitive measures can be called “additional penalties” which may be imposed on the perpetrator as well as the main penalty. To simplify, there are punitive measures awarded on general rules and special punitive measures stipulated also for serious offences against the environment.

1) Punitive measures awarded on general rules

As far as the first group is concerned, the following measures shall be mentioned:

a) A ban on occupying a specific post or performing a specific profession, which according to Article 41 § 1 of the Penal Code can be announced if a perpetrator abused opportunities of his post or profession to commit a serious offence or showed that continued occupation of the post or performance of the profession endangers significant assets protected by law;

b) A ban on running specific economic operations, which according to Article 41 § 2 of the Penal Code can be announced in case of sentencing a perpetrator for committing a serious offence in connection with running such operations, if further running of such operations endangers significant assets protected by law;

c) Forfeiture of objects obtained directly in a result of committing a serious offence or objects used or designed for a purpose of committing such a serious offence (Article 44 of the Penal Code).

An application of these measures with respect to perpetrators of serious offences against the environment may be justified in certain circumstances. It is justified if it appears that a perpetrator abused opportunities of his post or profession or used a fact of running economic operations and he shall be devoid of such opportunities due to a probability of further violation of protective provisions (Article 41 § 1 and 2 of the Penal Code) or a rifle is seized that a perpetrator used to kill a protected animal (Article 44 of the Penal Code).

2) special punitive measures stipulated also for serious offences against the environment.

The second group of the above-mentioned punitive measures may have an even greater significance. The group includes redress of damage, punitive damages and taking away benefits.
a) redress of damage

As far as a redress of damage is concerned, Article 46 § 1 of the Penal Code provides that in the case of sentencing a perpetrator for a serious offence against the environment, the court, at the request of an affected party, can order the offender to redress the damage caused in whole or part. Provisions of the civil law on time limitation and on the possibility of awarding a pension do not apply here. It is not by chance that this provision whereby the court orders a duty of redressing the damage in whole or part was included in the Penal Code. It shall be noted that damages caused to the environment in result of, e.g. pollution may be enormous. Moreover, if a perpetrator convicted of a serious offence against the environment committed the act operating within an organisational unit, it would be frequently clearly unjust to impose a duty of redressing the damage on him. It is obvious that this organisational unit should be first held liable. Article 46 § 1 may be applied for example in the situation where a pollution of the environment subject to Art. 183 of the Penal Code causes at the same time a damage to somebody’s (affected party’s) property. In that case a court may impose on the perpetrator an obligation of redress of damage apart from a penalty provided for in Art. 183.

b) punitive damages

Punitive damages are laid out in several provisions of the Penal Code, and provide a very interesting instrument. Pursuant to Article 47 § 2 of the Penal Code, in case of sentencing a perpetrator for a serious offence against the environment, the court may order punitive damages for a specific social purpose related to the environment protection (hereinafter referred to as ‘ecological’ punitive damages). According to Article 48 § 2 of the Penal Code, punitive damages determined under Article 47 § 2 of the Penal Code may be ordered in an amount from three to twenty times over the lowest salary at a time of making a decision by the first instance court (‘ecological’ punitive damages are thus higher than other damages because in general the upper limit of punitive damages is ten times over the lowest monthly salary).

Punitive damages are called in Polish nawiązka. The word originally referred to strips of cloth to wrap around a wounded part of a body (bandage) and a financial penalty for battery or inflicting wounds. Next, the word meant a financial penalty imposed on a thief for a petty larceny or a larceny committed for the first time. The Penal Code of 1932 did not include the term punitive damages. The Petty Offence Law of the same year did provide for stipulated punitive damages under two provisions. It appeared for some time that punitive damages would disappear from legal practice. However, from the start of codification from 1969 to 1971 (the Penal Code of 1969 and the Petty Offence Code of 1971) we can observe a true revival of punitive damages not only in the petty offence law, but also in the criminal law sensu stricto. In the 1990s, the significance of punitive damages for perpetrators of serious and petty offences was even higher. Over the years, courts ordered extremely high punitive damages provided under the criminal provisions of the Act on Nature Preservation. An important feature of the new provisions on punitive damages was abandoning the rule of ordering punitive damages only for the benefit of an affected party.

The legal nature of punitive damages is contentious. Discussions in texts on the instrument have emphasised its repressive and compensatory nature. The usual trend is to treat punitive damages as a specific mixed measure with prevailing repressive elements and also with a compensation element\(^\text{27}\). A significant feature of all present provisions on punitive damages included in the Penal Code, the Petty Offence Code and also in other acts, is the fact that punitive damages are to play the role of standard compensation for immeasurable damages or damages that are hard

\(^{27}\) Grzegorczyk, T., Gubiński, A., Petty offences law, Warszawa, 1995, p. 168
to quantify. The fundamental punitive damages stipulated in the general part of the Penal Code are also within the frames of the legislation trend.

The provisions of Article 47 § 2 and Article 48 § 2 of the Penal Code indicate that punitive damages can be ordered irrespective of an obligation to redress the damage. Moreover they can be ordered also in situations when a serious offence did not cause any damage at all (for example in case of Art. 184 of the Penal Code (caring, accumulating, storing, abandoning or neglecting a nuclear material that could endanger the life or health of human beings or cause the destruction of plant or animal life)). It can be argued that punitive damages are more repressive than compensation in nature because a duty to redress the damage is imposed (only if an affected party files such a request) obligatorily; it can be imposed with respect to only a part of the damage but always obligatorily.

Further, a different subject than the affected party is entitled to receive punitive damages because punitive damages are ordered for a social purpose connected with the environment protection. One may have a deceptive impression that it is an objective designation. A social purpose must be attained by someone in some form and thus there must be some subject for whose benefit punitive damages are ordered. An ecological organisation as understood under Article 3 point 16 of the Environmental Protection Law Act is such a subject. The ecological organisation is a social organisation whose statutory objective is the environment protection. Punitive damages may be ordered for the benefit of any operating organisation meeting the criteria stated under Article 3 point 16 of the Environmental Protection Law Act. Furthermore, punitive damages may be ordered for the benefit of a foundation involved in environmental protection, and although a foundation is not a social organisation it can execute objectives related to the environment protection.

c) taking away benefits

A significant role in environmental protection may be played by a decision to take away benefits; it is a specific legal instrument introduced under Article 52 of the Penal Code which reads: ‘Article 52. In a case of sentencing somebody for a serious offence bringing financial benefits to a natural or legal person or an organisational unit with no status of a legal person, and committed by a perpetrator acting on its behalf or in its interest, the court may oblige a subject that obtained financial benefits to return them in whole or part for the benefit of the State Treasury; it does not refer to financial benefits to be returned to other subject.’

This is not a punitive measure as understood under Article 39 of the Penal Code because it was not mentioned in the latter and furthermore it is not addressed against a serious offence perpetrator but against a subject that benefits from the serious offence. A provision of Article 52 of the Penal Code is to some degree patterned on provisions of § 30 and § 130 of a German act on order-related petty offences (“Ordungswidrigkeitengesetz” – OWiG). Although Article 52 of the Penal Code is not precisely patterned on German provisions, the idea is similar. ‘Savings’ on environment protection facilities may be treated as ‘financial benefits’ as understood under Article 52 of the Penal Code. In this way, Article 52 of the Penal Code becomes in some situations a surrogate criminal liability for legal persons and organisational units that cannot be found in the Polish law. The provisions can be treated in such a way because generally a legal person or an organisational unit is a subject obtaining benefits from a criminal act committed by a perpetrator who abandoned actions to be taken or acted within such a legal person or an organisational unit.

A possible application of Article 52 of the Penal Code may be illustrated by the following situation. A company operating in Poland contrary to legal provisions brings waste from abroad to the country. It receives considerable money and a customer from Western Europe finds the
company operating in Poland good value because it would have to pay even more to legally dispose of waste in its country. A member of the Polish company’s management, who executed the transaction, is convicted of a serious offence under Article 183 § 2 of the Penal Code. Article 52 of the Penal Code gives the court grounds to oblige the company that obtained financial benefits from the transaction in the form of money received from a foreign customer to return the money (in whole or part) to the State Treasury. It is obvious that the money cannot be returned to the foreign customer. It can be assumed that Article 52 of the Penal Code will become an important measure to combat some serious environmental offences.

2.4.2.3 Alternative ways of settlement

In cases where an offence is subject to a penalty not exceeding 5 years of imprisonment, the public prosecutor is empowered, with defendant’s consent, to file at court a motion to waive the trial and for a conditional discontinuance of proceedings or for applying a punitive measure such as redress of damage or punitive damages.

Before filing the motion, the public prosecutor shall refer the case to a so-called mediation proceedings between the defendant and the affected person carried on by a person or institution registered in the “register of mediators” kept by the appeal court.

The court, before making a decision on a conditional discontinuance of proceedings, may also refer the case to mediation proceedings, when considered useful for reaching an agreement on redress of damage.

2.4.3 Criminal responsibility of legal persons

On 28 October 2002, an act was adopted on liability of collective entities for acts prohibited under a threat of a punishment (Official Journal of Laws no. 197, item 1661). This law shall come into effect on 27 October 2003. Pursuant to the act, a collective entity is a legal person and an organisational unit with no status of a legal person, excluding the State Treasury, territorial self-government units and their associations as well as state and territorial self-government bodies. A collective entity is also a trading company with a share held by the State Treasury, units of territorial self-government or an association of such units, a share-holding company in a process of formation, an entity in liquidation and an entrepreneur that is not a natural person.

Liability of a collective entity falls as a consequence of criminal liability of a natural person. The assumption is expressed in Article 3 of the act, according to which a collective entity is subject to liability for a prohibited act, which is behaviour of a natural person:

1. acting on behalf or in the interest of a collective entity under a power or an obligation to represent it, make decisions or perform an internal inspection or when abusing such a power or failing to fulfil such an obligation;
2. admitted to act as a result of abusing powers or fulfilling obligations by a person as stated in point 1;
3. acting on behalf or in the interest of a collective entity with a consent or knowledge of a person as stated in point 1;
4. who is an entrepreneur
   - if the behaviour brought or could have brought any benefit, even a non-financial one, to the collective entity.
A condition for liability of a collective entity is a valid court judgement that a natural person is guilty of committing a serious offence, e.g. an injunction judgement or a decision on a conditional discontinuance of proceedings or in a valid decision on discontinuance of proceedings due to circumstances excluding prosecution of a perpetrator (Article 4 of the act).

Pursuant to Article 5 of the act, a collective entity is subject to liability in a case of finding:
- at least a lack of a due diligence in choosing a natural person as stated under Article 3 point 2 or 3;
- at least a lack of a proper supervision over the person;
- or if an organisation of work of such an entity does not assure prevention of committing a prohibited act and if it could have been prevented if due care had been exercised in given circumstances by a person as stated under Article 3 point 1 or 4.

The regulations have significance for environmental protection because pursuant to Article 16 sec. 1 point 8 of the act, a collective entity is subject to liability based on the act, if a person as stated under Article 3 committed a serious offence against the environment provided for under:

a) Article 181 to 184 and Article 186, 187 and 188 of the Penal Code (destruction of plant or animal life of considerable dimensions; polluting the water, air or ground with a substance or contaminates with ionising radiation; treating of waste or substances and treating of nuclear material or other source of ionising radiation that could endanger the life or health of human beings);

b) Article 34 of the Act on Chemical Substances and Preparations of 11 January 2001 (unlawful placing on the market a preparation dangerous for human health or for the environment);

c) Article 69 of the Act on Waste of 27 April 2001 (unlawful export of hazardous waste);

d) Article 58 to 64 of the Act on Genetically Modified Organisms of 22 June 2001 (operations on GMO without permit; non-compliance with a permit concerning GMO; causing a danger for the human life or health, for the environment or for the property by operations on GMO).

Sanctions imposed on a collective entity include:
- financial penalty to a maximum amount of 10% of incomes, and furthermore:
  - obligatorily
    1) forfeiture of objects obtained even indirectly as a result of committing a prohibited act or objects used or meant for committing a prohibited act;
    2) forfeiture of financial benefits obtained even indirectly as a result of committing a prohibited act;
    3) forfeiture of equivalent objects or financial benefits obtained even indirectly as a result of committing a prohibited act;
  - facultatively:
    1) ban on promotion or advertisement;
    2) ban on using grants, subsidies or other forms of support from public means;
    3) ban on making use of an aid of international organisations;
    4) ban on applying for public procurements;
    5) ban on conducting a specific activities;
    6) public announcement of a judgement.

It must be stressed that pursuant to Article 6 of the Act, liability or a lack of liability of a collective entity on principles specified under the act does not exclude civil liability for caused damage, administrative liability or individual legal liability of a perpetrator of a prohibited act. Even more importantly, liability under the act does not exclude instruments of administrative financial penalties.
The subject-related texts indicate that the legislator assumes liability of a collective entity to be separate from the liability concept based on culpability within a classic, penal law understanding of the term. The Act’s construction is based on a model of identification of liability and on a concept of a so-called culpability in choosing or supervising or an organisational culpability. Direct criminal liability of collective entities was rejected because the legislator made it possible to hold a legal person liable in criminal terms dependent on finding a natural person guilty. This is the first time the issue of criminal liability of legal persons has been considered, and we will be able to assess its merits and faults only upon gathering further experiences.

2.5 Slovakia

By Zuzana Zajickova, Life and Waste, Bratislava

2.5.1 Introduction

- Evolution of environmental criminal law in Slovakia

Slovakia in its current form has been an independent state since January 1993. For the greatest part of its history Slovakia belonged to Hungary. Hungary was an integral part of the Austrian monarchy, which became in 1868 the Austrian-Hungarian monarchy. Following World War I the Austrian-Hungarian monarchy disintegrated in 1918 and Slovakia was part of the Czechoslovak republic until 1992 (other than for a short period during World War II, when in the territory of Slovakia there was an independent Slovak state). This history explains why the Slovak Criminal Code has its roots in the Austrian criminal law system (Criminal Code from 1852) and follows a typical continental model.

In particular, the following historical periods and milestones have influenced Slovak criminal legislation:

I. Austro-Hungarian Empire:

- 1803-1852: During this period, the 1803 Criminal Code applied. It was composed of two parts: the first part contained crimes (felonies) and the second part listed contraventions (petty offences); both parts contained procedural provisions. Initially, the 1803 Code applied throughout all the empire, including in Hungary (and Slovakia), where it was valid until 1878.

- 1852-1878: The Criminal Code from 1803 was amended by the Code of 27 May 1852 N. 117. The 1852 Code differed from the 1803 Code in several ways: the 1852 Code contained only substantive law and procedural law was left to a separate legal act. In addition, the 1852 Code introduced a new classification of offences, including the two historical types of felonies and petty offences, and a third new type of misdemeanours. The 1852 Code expressly embedded in Slovakian law the principle *nullum crimen sine lege*, and the principles of *nulla poena sine lege* and of legality in § 32 and 33.

However, during this period, the sources of criminal law in Hungary were rather uncertain. In addition to the Austrian Criminal Code from 1803 (as amended in 1852), the 1864 textbook by T.Pauler (“büntetőjogtan”) was used, in universities and also in courts, where it was referred to as a source of law. The textbook contained the Hungarian feudal penal norms and principles of sentencing which were based on a combination of the 1843 scheme, the Austrian 1852 Criminal Code and German science of penal law.

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29 In 1840 the Hungarian Parliament established a commission which had to prepare the new penal scheme. The work finished in 1843 and the proposal contained the liberal principles of the French Code and of the English procedural law, such as the principle of equity before the law (notwithstanding whether the person was a nobleman or not, everybody had the equal right to defence). This proposal never became a law because of its progressiveness.
• 1878: Legal uncertainty concerning the ambit of Hungary’s criminal law reached such a
degree that in 1878 the first Hungarian Criminal Code was adopted. This Code
distinguished between crimes (felonies), misdemeanours and contraventions (petty
offences). In 1879, a special criminal law on contraventions N. 40/1879 was adopted;
subsequently, a criminal procedure law was adopted in 1896 (Law N. 88/1896).

II. Post- world wars period:

• 1918-1950: The Criminal Code from 1878 was valid in Slovakia, whilst the Criminal Code
from 1852 applied in Czech lands. This legal dualism remained in force also after the
formation of the Czechoslovak Republic in 1918. During World War II, criminal law in
Slovakia was applied pursuant to extraordinary acts. Post World War II, criminal law
returned to its pre-war status, i.e., the old criminal codes applied, interpreted in compliance
with the presidential decrees, laws and the Constitution from 1948.

• 1950-1960: In 1950 the legal dualism in Czechoslovakia ended following the adoption of
the Criminal Code No. 86/1950 and Criminal Procedure Code N. 87/1950, Administrative
Criminal Code No. 88/1950 and Administrative Criminal Procedure Code N. 89/1950 valid
for the whole territory of the Czechoslovak state.

III. Soviet period:

In 1960, the new constitution was enacted, which provided a basic framework for further
development of the legal order in Czechoslovakia.

was adopted. These legal acts together with their amendments and modifications are still valid
today. Up until 1990, pure criminal offences were categorised as crimes (felonies) and
misdemeanours, and post 1990 there has only been one category, namely, criminal offences.

During the Soviet era (and after 1961), the main purpose of the Criminal Code was to protect
the socialist structure of society, the structure of the state, socialist property, the rights and the
interests of the citizens and to educate citizens on their obligations and to maintain the
principles of the so called “rules of the socialistic co-existence”.

From the remains of this system, we can still trace the structure of today’s Criminal Code,
mainly in the sequence of the interests protected by the criminal law. These are expressed in the
chapters of the special part of the Criminal Code:

1. Crimes against the Republic
2. Economic Crimes
3. Crimes against Public Order
4. Generally Dangerous Crimes
5. Serious Crimes against Civic Co-existence
6. Crimes against the Family and Youth
7. Crimes against Life and Health
8. Crimes against Freedom and Human Dignity
9. Crimes against Property
10. Crimes against Humanity

31 The criminal code has 34 amendments and the criminal procedure code has 22 amendments.
11. Crimes against Conscription and Civilian Service
12. Military Crimes

IV. Slovakia at present:

With the end of the Soviet era also the first environmental criminal offences (§181a, §181b-Endangering of the environment) were introduced to the Criminal Code - on 1st February 1990 by Act No. 159/1989. These provisions were not sufficient, and so Act No. 177/1993 introduced further new provisions such as §181c (Infringement of flora and fauna conservation) and §181d (Poaching) which were valid from 12 August 1993. The criminal offence of illicit import, export and transport of waste found in §181e was amended from 1 October 1994 by the Act No. 248/1994. The 1st of August 2001 saw the final amendments to date in the field of the environmental criminal law introduced by Act No. 253/2001, which concerned Art. 181f (unauthorised disposition of waste) and Art. 181g (infringements of water conservation).

The fact that environmental criminal offences were only introduced to the Criminal Code after 1989 does not mean that environmental criminal acts were not punished prior to 1989. In practice, other provisions were used (such as damaging property of socialistic property, damaging belongings of another person, abusing a public authority, and general endangerment).

- Sources of legislation for Slovak environmental crimes

**Constitution**


Pursuant to Article 4 of the Constitution, raw materials (minerals), caves, underground waters, natural healing sources and watercourses are the property of the Slovak Republic. This provision is important for legal regulation of the privatisation process and for the legal regulation of economic instruments of environmental policy supporting environmental sound manner of entrepreneurs. The Constitutional Act No. 90/2001 has amended this article adding the caves to the property of the Slovak Republic. This situation opens the possibility for legal disputes to take place as caves were not initially owned by the State. Some legal experts have expressed their opinion that this amendment shows some characteristics of expropriation or limitation to the former private ownership rights and the only possibility for such situations would be if Article 1 of the Additional Protocol No. 1 to the Convention on protection of human rights and fundamental freedoms applied.

Article 20 subpar. 2 of the Constitution provides the possibility to enact a law to determine which areas (other than the ones stated in the Art. 4) constitute the exclusive ownership of the state, municipality or determined legal persons.

Article 44 subpar. 1 and Article 45 of the Constitution provide the right to a hospitable environment and a right to early and complete information on the state of the environment.

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32 Art. 4: Raw materials (minerals), caves, underground waters, natural healing sources and watercourses are the property of the Slovak Republic.
33 Jan Drgonec: *Constitution of the Slovak Republic, commentary to the amendment by the Constitutional Act No., 90/2001*, Heureka, 2001
34 Art. 44
These rights are guaranteed to everybody without regard to sex, race, language, religion, nationality, position, etc. Until today no decision of the Constitutional Court of the Slovak Republic regarding these rights exists to allow specifying the definitions and institutions contained in Articles 44 and 45 of the Constitution. According to commentaries on the Constitution, these rights are not fundamental rights, nor are they economical, social and cultural rights. It is a subjective right of a public character. This means such a right is applicable towards the State and in this way it differs from the subjective rights of private character. The subject of this right (a natural person) has the right to have a healthy, hospitable, proper, not disturbed and dignified environment, providing him/her the opportunity of quality living, good feeling, healthy working conditions etc. The decision of the Constitutional Court of the Czech Republic may be inspiring: the Czech Constitutional Court has qualified the healthy environment as a public good, benefits of which are indivisible and persons cannot be excluded to enjoy it. Art. 44 in its subparagraphs 2, 3 and 4 contains the obligations towards the environment. The obligations to protect and improve the environment and cultural heritage and the prohibition to endanger or impair the environment, natural sources and the cultural monuments over the limits stated by the law concern every person, while the obligation contained in Article 44 subpar. 4 on control over the prudent exploitation of natural sources, of ecological balance and of effective conservation of the environment and guaranteed protection for determined species of wild plants and wild animals concerns the State.

Primary and secondary legislation

According to Article 13 subparagraph 1 of the Constitution of the Slovak Republic, duties may be laid down by the law, on the basis of the law within its limits and maintaining the basic rights and fundamental freedoms or by international treaties imposing direct rights and duties to the citizens or by the regulation of the government which under the provisions of a law executes the European Agreement on Access to the European Communities. The secondary legislation regulates only the details of the duties stated in the primary legislation.

There are three main types of liability for breaching the obligations in the environmental sphere:

- Criminal
- Administrative
- Civil.
Criminal liability is not and will probably not become a decisive type of liability but its existence is very important as criminal law is the instrument that protects against the most serious offences.

The provisions of criminal law in the environmental sphere are set in Act No. 140/1961, i.e., the Slovak Criminal Code, as amended, which describes the following offences:

- Art. 181a – 181b Endangering of the environment:
- Art. 181c – Infringement of the conservation of flora and fauna
- Art. 181d - Poaching
- Art. 181e – Illicit import, export and transport of waste
- Art. 181f – Unauthorised disposition with waste
- Art. 181g – Infringement of the conservation of water

- criminal offences against the public, endangering and harming human health:
- Art. 179 – 180 General endangering
- Art. 223 – 224 Negligent harm of health

- and several criminal offences which may result in danger or damage to the environment, such as:
  
  Art. 182 – Detriment and endangering of the operation of a generally profitable installation
  Art. 187a – Illegal manufacturing and holding of nuclear materials and chemical substances with high level of risk
  Art. 202 – Disorderly conduct
  Art. 203 – Cruelty to animals.
  Art. 257 – Damaging an object belonging to another person
  Art. 258 – Abuse of ownership
  Art. 258a – Damaging and deterioration of cultural heritage

The illicit act of the offender may consist of an action or an omission. The criminal penalty depends on the consequences caused by the offence.

Unlike other legal systems (e.g. German or Austrian), which consider the environment as a medium, the detriment of which may cause negative consequences on human health or life of people (and for this reason they condemn the offender who caused with his/her impacts to the environment a risk for the health of a bigger number of persons), the Slovak criminal regulations do not consider these circumstances. The provisions of Article 223 subpar. 3, which provide for criminal liability of a person who negligently caused serious harm to health or the

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deaths of several persons because he/she violated administrative regulations on the safety of the work, transport or the hygienic regulations, is not sufficient from the point of view of environmental care.

As mentioned before, there are three main types of liability in the environmental sphere: Criminal, Administrative and Civil. Apart from civil, which deals with the right to compensation for the environmental damage, we shall discuss further in the text the main differences between the criminal and the administrative liability and we shall explain the special kind of liability – so called “quasi criminal” or “administrative criminal” which contains several elements of criminal liability regulation and several of administrative liability.

So, if environmental duties are breached, not only do criminal penalties apply, but petty offences penalties can also apply (thanks to their similarities with criminal liability they may be also called “quasi criminal penalties”) as well as administrative penalties. The constitutive acts of petty offences are found in the special Petty Offences Law - Act No. 372/1990 ("zákon o priestupkoch"), and also in separate administrative laws. The procedure regulating petty offences is found in Act No. 372/1990.

Only natural persons can be liable for criminal offences and for petty offences. Natural persons, entrepreneurs and legal persons can be held liable for administrative infringements. For breach of a duty imposed on legal persons, the person who acted or had to act is liable. However, where the breach was due to an act followed by a command, the person who commanded such an act is liable - *culpa in eligendo or custodiendo*.

Administrative sanctions are stated in a vast number of administrative laws. Sanctions for breaching administrative law are mostly the imposition of fines.

- **Jurisprudence as a source of law**

Jurisprudence is not an official source of law in Slovakia notwithstanding the fact that courts often decide on the basis of existing case law and precedent. However, inferior courts are bound by the legal opinion of superior courts in the concrete case.

To date the Supreme Court has made only two decisions that directly relate to the field of environmental criminal law (they are discussed in the part concerning Jurisprudence). The

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rulings of the Supreme Court certainly play an important role and affect interpretation and thus application of the Criminal Code and its environmental criminal provisions.

- Relationship of criminal environmental law to administrative law

The rules of criminal liability are contained in the Criminal Code. The main features of a crime are:

- Formal features (characteristics) – as stipulated in the special part of the Criminal Code, taking into account the facts pertaining to the act in question, such as its object, subject, objective side and subjective side, unlawfulness, the offender’s age (at least 15 years of age) and mental sanity.
- Material features – danger represented by the act to society, which must be more than negligible.

Culpability is an obligatory feature of a crime. Intention is necessary for criminal liability in cases where the Criminal Code does not state expressly that negligence is sufficient (Art. 3 subpar. 3 of the Criminal Code). When the act was committed an aggravated situation (so-called qualified merits of the criminal offence), the opposite principle applies – negligence is sufficient, save when the Criminal Code does not expressly require intention.

From the point of view of the subjective side of the criminal offence, it does not matter whether the crime was committed with prior intention or with sudden intention. These circumstances are important for the level of seriousness of the act for society (material feature).

In criminal law the principle of individual liability of a natural person applies. Criminal law does not recognise collective liability or the liability for the fault of the other person (for example if a legal person fails to fulfil its duty and such an act constitutes a criminal offence, the natural person cannot bear responsibility for this act, even if this natural person is a person in a managerial capacity; in this way such a legal person will not be criminally liable.).

The general rules of administrative penal law and the rules of administrative penal procedure are laid down in “Zákon o priestupkoch”42 (Act on Petty Offences No. 372/1990 from 28 August 1990). This law provides both the substantive and procedural law on petty offences.

The main differences between administrative penal law and criminal law are discussed below:

A petty offence is a culpable act, which infringes or endangers society and it should be expressly indicated as a petty offence if the act is not considered as another administrative infringement or criminal offence. Negligence is sufficient in administrative penal law, if intent is not specifically required (under criminal law the opposite principle applies – if nothing is expressly indicated, it means that intention is necessary, and negligence is sufficient only in cases where negligence is expressly indicated as a condition of a criminal offence or the criminal offence is committed in an aggravating situation – these aggravating situations are usually stated in second and further subparagraphs of the article).

In administrative penal law, as with criminal law, natural persons are liable. For breach of a duty imposed on a legal person the person who acted or had to act is liable, and when the act followed a command, the person who commanded the act is liable - culpa in eligendo or custodiendo. Administrative penal sanctions are not registered in the criminal record.

Like the Criminal Code, the Act on Criminal Offences states four basic characteristics for an constitutive act of a petty offence: object, objective side, subject and subjective side. Culpability
is an obligatory feature of the subjective side of the petty offence. Therefore the methods and institutes of criminal law are usually applied in the petty offence procedure, in particularly for indication of authenticity of evidence.

Unlike criminal offences, petty offences and punishable infringements of administrative law are not prosecuted by public prosecutors, but by district administrative authorities, the same authorities that execute administrative law. Unlike courts these authorities are not independent. They have to obey orders from governmental ministers and their superior authorities. It is possible to appeal against the decision of a district administrative authority to a superior administrative body. This superior body may not change the awarded sanction to the disadvantage of the person charged with the petty offence. It is possible to ask the competent court to review the administrative body’s decision (for petty offences the district court is competent) provided that ordinary recourse to administrative procedure has been exhausted.

The penalties in administrative penal law are mainly fines. Imprisonment may not be a sanction for contraventions (petty offences). The actual provisions setting out the penalties for petty offences are, apart from the Act on Petty Offences, contained also in separate administrative laws: Act on Waste, Act on Water, Act on Air, etc. For further details see Annex I.

Minor petty offences are settled before a municipality body and the fines go towards the income of the municipality. Major petty offences are settled before an administrative body (district offices or regional offices) and again the fines imposed provide extra funds for the state budget. The convicted offender has to support the costs of the procedure. In cases of acquittal, the authority has to bear the costs.

The rules of administrative liability are contained in numerous administrative laws. As for petty offences, administrative laws contain sanctions for breaching administrative obligations that can be applied to natural persons and to legal persons, too. There are separate administrative sanctions, which apply to entrepreneurs (natural persons) and to the legal persons.

Administrative procedure is generally regulated by the Act No. 71/1967 on administrative procedure. However there are some areas that are specially regulated, e.g. Act No. 543/2002 (Act on Nature and Landscape Protection), Act No. 223/2001 (Waste Management Act). Since there is no separate regulation for the procedure on administrative infringements, in theory, the death of the offender does not extinguish liability for the administrative infringement. It is up to the administrative court to decide whether natural death is a cause for extinction of administrative liability.

The constitutive acts of administrative infringements are contained, according to the Supreme Court of the Slovak Republic, in approximately two hundred laws and so the system is very fragmented.

Culpability is not an obligatory feature of an administrative infringement. Administrative liability is an objective kind of liability: the consequence is important (and intention or negligence does not need to be found). It is also called also liability for the result.

- **Peculiarities of Slovakia’s environmental criminal legislation**

Presently, the trend is for administrative authorities to give out more severe penalties than the courts, notwithstanding the fact that this situation should be the reverse. The Criminal Code in its Art. 53 subpar. 1 provides that a court may require that the natural person who committed a crime pay from 5 000 Sk (circa 125 EUR) to 5 000 000 Sk (circa 125 000 EUR). In
comparison, an administrative authority in waste management may require that the natural
person pay up to 5 000 000 Sk (circa 125 000 EUR), and this figure can be doubled in case of
administrative infringement. The sanction may be doubled for example in case of repeated
infringement of the administrative provision (Art. 79 subpar. 3 Waste Management Act)39.

Some authors40 consider that in Slovakia the difference between criminal offences and
administrative infringements is decreasing. In this context, objective liability (liability for the
result) for administrative infringements and elimination of exculpation motives seriously
interfere with the principle nulla poena sine culpa. In practice, this means that if the principle of
nulla poena sine culpa was applied, the offender would be liable only if there was fault (culpa)
and not for the result, regardless whether he caused the infringement or not. The principle of
nulla poena sine culpa applies in criminal law, but the penalties of criminal law are lower than
those in administrative law so this may cause competent bodies to apply administrative penalties
rather than criminal ones. The Act on administrative procedure (Act No. 71/1967) does not
contain the basic principles found in the Criminal Code or in the Petty Offences Code, such as
prohibition of reformatio in peius. The administrative authority is not obliged to advise the
offender on the possibility of claiming judicial review of the administrative decision.

- Future trends

For several reasons including systematisation of the Criminal Code, lack of transparency and
also Slovakia’s negotiation position on Chapter 24 of the EU acquis (co-operation in the field of
justice and inner affairs), a new re-codification of the Criminal Code and the Criminal
Procedure Code has been prepared. In the framework of the new Code, the two categories of
criminal offences (felonies and misdemeanours) will be reintroduced, taking the country back to
the pre World War II tradition. Criminal liability of legal persons is also planned. The new
Criminal Procedure Code will strengthen the adversarial and accusatorial elements of the
procedure, which means that the procedure will be led by the president of the Senate or the
judge, but the evidence will be put forward by the procedural parties themselves. The new
Criminal Code will introduce several new penalties (e.g. penalty of obligatory work, house
arrest and probation) and the new penalties for legal persons, e.g. fine up to 50 millions of Sk
(circa 1 250 000 EUR).

A new environmental criminal provision is provided for in the new Code, that of spreading a
contagious disease of animals or plants. If committed, the judge can condemn the offender for
imprisonment up to two years, in case of aggravating situations up to five years. The other
criminal provisions in ambit of the environment will remain the same with one exception – the
unauthorised treatment of waste will be punished less severely (from 1 to 5 years of
imprisonment, compared to the present imprisonment from 2 to 8 years).

The new Criminal Code and the new Criminal Procedure Code will be in force on January 1,
2005.

39 Art. 79 subpar. 3 Waste Management Act: The administrative body may in its decision on infliction of
a fine also impose to the offender an obligation in a certain time to take measures of reparation of the
consequences of his/her illicit acting, for which the fine was imposed. If the offender does not take the
measures, the administrative body is entitled to inflict another fine up to the double of the upper limit of
the fine as provided for in this act.
40 Eva Babiakova, the judge of the Supreme Court of the Slovak Republic and others.
2.5.2 Criminal responsibility of natural persons

2.5.2.1 Classification of criminal offences

- General classification of criminal offences

Following the amendment of the Criminal Code No. 175/1990 from 1 July 1990, there is only one pure criminal category in Slovakia, which is criminal offence (“trestny cin”). According to the legal provisions of the Criminal Code, a criminal offence may be committed intentionally or negligently.

The criminal act itself is judicially condemnable, as is preparation of a criminal offence, attempting to commit a criminal offence, organising, instructing and assisting a criminal offence. An act may be committed by a failure to act.

According to Art. 3 of the Criminal Code, a criminal offence is considered to be an act that is dangerous to society, if its characteristics are found within the Criminal Code (formal condition) provided that the act reaches the necessary degree of seriousness (material condition).

An act whose degree of seriousness (danger) to society is tiny shall not be considered a crime (criminal offence) even though it may otherwise have the features of a crime (as described in the special part of the Criminal Code).

The degree of seriousness (danger) represented by an act to society shall be determined in particular by:

- the significance of the protected interest affected by such act,
- the manner in which the act is committed,
- its consequences,
- the circumstances under which the act is committed,
- the personality of the offender,
- the degree of his culpability,
- motives.

The significance of the protected interest affected by the act is determined by the object of the crime – the interest protected by the Criminal Code such as: life, health, dignity, property etc.

The manner in which the act is committed includes the type and nature of the act, as well as the instruments used and, partially, also the behaviour of the offender after the act.

The consequence is the endangerment or violation of the object of the criminal offence, which is a part of the constitutive act’s characteristics, e.g. the death of the injured person.

The circumstances under which the act is committed include the place and the time of the crime, and circumstances which influenced the offender (aggravating or mitigating).

The personality of the offender is characterised by his/her features, his/her previous private and public life, age, attitude towards the committed act, repeated offence, etc.

The degree of culpability is projected in the form of the culpability and the characteristics of the offender’s intention in committing the crime. Direct intention is more serious than indirect intention, and indirect intention is more serious than negligence. Planned intention is more serious than spur-of-the-moment intention.
The offender’s motive is also relevant for determining the degree of seriousness. It is necessary to find out whether there are some pathologic motivations or not.

Usually the amount of the damage distinguishes whether the act constitutes a crime or a petty offence. Below a certain level of damage the act should not be deemed as criminal. The necessary thresholds in concrete cases are stated in the special part of the Criminal Code.

A very small damage is understood to be the damage amounting to at least a minimum monthly salary (circa 134 EURO). A not insignificant damage amounts to at least to six times such a salary (circa 804 EURO). An even bigger damage is understood to be a damage amounting to at least twenty times such a salary (circa 2,682 EURO). A significant damage is considered to be a damage amounting to at least one hundred times such a salary (circa 13,412 EURO), and a very large-scale damage is understood to amount to at least five hundred times such a salary (circa 67,062 EURO). These levels are to be applied accordingly to determine the level of profit, value of a thing or range of an act.

The Criminal Code in its special part contains the definitions of specific criminal offences with their characteristics, which should be fulfilled in order that an act may be considered a criminal offence. In several criminal offences the level of profit, value of thing or range of the act is expressly indicated as a condition (material condition) of the criminal offence, but there are also some criminal offences which only state that whoever breaches an administrative law may be punished. In this case it is necessary to detect whether the offender has caused a damage or fulfilled some other material condition, i.e., whether the act of the offender reached the necessary degree of seriousness that it should be considered a criminal offence. For example the act of the thief who steals a thing of a value less than the minimum salary, is not considered a criminal offence but only an administrative petty offence and is dealt with before the administrative bodies or police, not before the court.

When determining the amount of damage, the usual price of the object which has been subject to the attack shall be used. If it is not possible to determine the value of the damage in this way, the reasonable cost for acquiring the same or a similar item or the cost of restitution to the previous state shall apply.

With regard to the criminal offences stated in § 181a, 181b and 181c of the Criminal Code, the losses which can be caused will be either ecological damage or weakening the ecosystems’ natural functions by damaging their components or breaching the internal ties and processes as a consequence of human activity. There exist special legal provisions, which should be used to calculate the amount of damage caused to protected plants, protected animals, and woods. The provisions take into account the biological, ecological and cultural value of the land etc, and have regard to its preciousness (rarity) and the degree to which it is endangered. These provisions are found in Ministerial Ordinance No. 24/2003 implementing the Act No. 543/2002 on Conservation of Nature.

Unlike some other countries such as Italy\textsuperscript{41}, in Slovakia environmental harm, like other kinds of damage, may be claimed only by the person who suffered the damage and as such must be a subject of the law. In this regard, the institute of social evaluation exists to quantify the seriousness of the criminal offence (whether there was an aggravating situation and therefore a more severe punishment applies), but the State can claim the damage only when property of the

\textsuperscript{41} Article 18 of Italian Law 249/86, introduced provisions concerning the reparation of environmental harm, although principally it only awards a right to claim compensation for damage to the environment as such to the state.
State has been damaged. This in practice means that in cases where wild animals, which do not belong to anybody, are killed or injured, there is nobody to claim the damage.

- Specific criminal offences for environmental law

The provisions of Art. 181a and 181b - **Endangering of the environment** (intentional – 181a, negligent – 181b) are general provisions, allowing punishment of offences whenever a provision of environmental legislation is violated (formal condition) provided that the necessary degree of seriousness of the act for society is reached (material condition).

The constitutive act of the criminal offence pursuant to Art. 181c – **Infringement of the conservation of flora and fauna** includes the following activities violating the provisions on protection of nature and landscape: damaging, destroying, extracting, eradicating or collecting protected flora or deteriorating or destroying its biotope, killing, injuring, taking or removing protected fauna or deteriorating or destroying its biotope and habituation, or deteriorating or destroying wood species or taking it out causing thus significant deterioration or endangering protected fauna or flora species, possession in significant volume the protected fauna or flora species or parts thereof, in significant volume keeping, cultivating, breeding, treating, importing or exporting or trading of or in protected fauna or flora species or parts thereof, intentional deprivation, falsification, modification or otherwise unauthorised of irredeemable mark of protected plants or its exemplars.

When the above mentioned offences cause substantial damage or deterioration to the environment or are committed with the intention to gain profit for the offender or are committed notwithstanding previous condemnation, or committed when the offender is a member of organised group or if the offences are committed in a particularly brutal or agonising manner (aggravating situations), even an negligent act will constitute a criminal offence (see subparagraphs 3-5 of Art. 181c; the criminal offences pursuant to Art. 181c/3/b, 181c/4/b and 181c/5/b are intentional offences, committed with the intention to gain profit).

The constitutive act of the criminal offence according to **Article 181d – Poaching** is the intentional violation of the prohibition against unlawful interference with hunting laws, with fishing laws or hunting animals and fish at the time of their protection or in a prohibited manner or hiding, keeping or transferring the animal or fish illegally hunted or found.

The constitutive act of the criminal offence according to **Article 181e - Illegal import, export and transport of waste** is the intentional violation of the prohibition against importing, exporting or transporting waste in a manner inconsistent with provisions on waste.

The constitutive act of the criminal offence according to **Art. 181f – unauthorized disposition with waste** is the intentional violation of general prohibition to manage waste contrary to laws on waste causing detriment to water, soil or air.

The constitutive act of the criminal offence according to **Article 181g - violation of water protection** is the intentional violation of the prohibition against acting in a manner inconsistent with provisions for the protection of water, causing emergency deterioration of quality of surface water or ground water and thus causing damage.

The constitutive act of the criminal offence according to **Article 179 and 180 - general endangering** is intentional (179) or negligent (180) violation of the prohibition against exposing humans to a danger of death or serious harm to health or property to a danger of large scale damage and so causing fire or flood or defect or accident of a means of public transport or
damaging effect of explosives, gas, electricity or other similar dangerous substances or powers or commits other similar dangerous act (general danger), or increases general danger or obstructs its repudiation or mitigation.

The constitutive act of the criminal offence according to Article 223 and 224 - Negligent harm to health is a negligent act consisting of hurting someone’s health infringing an important duty implicit from his profession, position or function or imposed on the person according to a law.

The full text of the relevant legal provisions containing criminal offences can be found at Annex II. The criminal penalty will depend on the consequences caused by the offence. Art. 181a, 181b, 181e, 181f and 181g of the Criminal Code are general in scope, allowing for the punishment of offences whenever a provision of environmental legislation is violated (formal condition) provided that the necessary degree of seriousness of the act for society is reached (material condition). These criminal offences of the Criminal Code depend absolutely on administrative law.

The material condition element tends to be very strong in cases of environmental criminal offences. This is due to the wording of environmental criminal offences, especially Art. 181a, 181b, 181c, 181e, 181f and 181g, which are constructed so that if someone violates an environmental law duty, the seriousness of the act will then decide whether a criminal penalty or an administrative penalty should be applied.

An error (false knowledge of the reality) concerning administrative law does not prevent punishment for intentional acts or omissions, if the offender failed in his professional duty or in his employment to inform himself about a legal provision or an administrative decision and if he acted intentionally regarding the other facts of the offence. Such an error is considered as a legal error and as such does not excuse the offender. Legal error is false knowledge caused by either ignorance or false interpretation of a law. The Slovak Criminal law applies the principle that ignorance of the law is no excuse - *ignorantia juris non excusat*.

The provisions of Art. 179, 180, 181a, 181b and 181e are referred to generally as *abstract endangerment*. They provide sanctions for the non-respect of administrative provisions, which violate the general prohibition against endangering the environment. Endangering the environment can occur either by exposing the environment to a danger of a serious detriment acting contrary to environmental protection laws (181a, 181b); or acting contrary to the waste management laws (181e).

The provisions of Articles 179, 180, 181c, 181d, 181f and 181g are referred to as *concrete endangerment*, as the detriment to the environment must be caused by directly endangering human health. This can occur by exposing humans to danger of death or harm to health or by endangering someone’s property to a great extent. It can also occur by creating general danger which is considered to be situations such as fire, flood, explosion, when persons are in danger of death or harm to their health or there is a danger of large scale damage to property and such a danger is proximate (Art. 179, 180).

2.5.2.2 Criminal penalties in environmental law

The types of criminal penalties which can be imposed for breaches of environmental law are the same as those that can be imposed for other criminal offences:

a) deprivation of liberty (imprisonment)
b) loss of titles and / or badges of honour

c) loss of military grade

d) prohibition of activity (disqualification)

e) forfeiture of property

f) money penalty (fine)

g) forfeiture of an object

h) expulsion (only applicable for foreigners)

i) prohibition of stay in certain area

Pursuant to § 28 of the Criminal Code, the general rule is that if the special part of the Criminal Code provides for two or more punishments for a certain crime, each such punishment may be imposed separately, while two or more may be imposed in parallel (“concurrently”). Besides the penalty quoted in the special part of the Criminal Code, penalties found in the General Part of the Criminal Code can be imposed in addition. Certain combinations of penalties are prohibited (for example, it is not possible to impose a fine as well as property forfeiture). Expulsion and prohibition of residence in certain areas may be imposed separately, even if the special part of the Criminal Code does not stipulate such punishment.

The penalty of disqualification means that the condemned person is prohibited from performing an activity, job, profession or function or an operation for which a special licence is necessary. This penalty can only be imposed where the crime was committed in connection to this activity. A court may impose the penalty of disqualification for a period from one to ten years. When the court orders the disqualification in addition to an unconditional (unsuspended) term of imprisonment, the duration of the imprisonment shall not be counted as a period when such an activity was not performed.

The prohibition of stay in a certain area is applied when the offender commits a criminal offence in connection with a specific area (e.g. pub, stadium, etc.) The court may order a prohibition of residence ranging from one year to five years, if this is required in the interests of protection of public order, family, health, morality, property. The prohibition of residence may not involve the place or district where the offender has his/her permanent residence. The court may also impose on the offender appropriate restrictions aimed at introducing order into his/her way of life (lifestyle).

A court may impose a money penalty (fine) in an amount ranging from 5 000 Sk (circa 125 EUR) to 5 000 000 Sk (circa 125 000 EUR) if the offender acquired or attempted to acquire a property benefit by his intentional criminal activity. Without the conditions from the previous sentence the court may only impose a fine where the special part of the Criminal Code so permits, or it may impose such fine for the commitment of a crime punishable by a maximum term of imprisonment not exceeding five years and because of the nature of the committed crime and the possibility of the offender’s rehabilitation, a concurrent sentence of imprisonment is not imposed. A fine may be imposed as a sole punishment when the court is of the opinion that no other punishment is required. The court may determine that the fine shall be paid in appropriate monthly instalments. The collected amount of fine shall be given to the state. If the court imposes a fine, it shall also determine an alternative punishment of imprisonment of up to five years, should the fine not be paid within the fixed time limit.

The principle of humanism applies when the court imposes penalties. The principle of humanism means that young people and women are separated from men in prisons, imprisoned persons are separated according to the seriousness of the committed criminal offence, and their rights are guaranteed (for example right not to work, right to express the religion, etc.)
Penalties associated to environmental criminal offences are as follows:

Art. 179 – Intentional General Endangerment
• deprivation of liberty (imprisonment) for three to eight years (aggravating situations imprisonment for eight to 15 years or by the extraordinary penalty

Art. 180 – Negligent General Endangerment
• imprisonment up to one year years (aggravating situations imprisonment up to five years) or
• disqualification or
• fine.

Article 181a – Intentional Endangering the Environment
• imprisonment of up to three years (aggravating situations imprisonment up to eight years) or
• disqualification.

Article 181b – Negligent Endangering the Environment
• imprisonment of up to one year (aggravating situations imprisonment up to five years) or
• disqualification
• fine.

Article 181c: Violation of the Protection of Plants and Animals
• imprisonment of up to three years (aggravating situations imprisonment up to eight years) or
• fine
• disqualification or
• forfeiture of an object.

Article 181d: Poaching
• imprisonment of up to two years (aggravating situations imprisonment up to five years) or
• disqualification or
• fine or
• forfeiture of an object.

Article 181e: The Illegal Import, Export and Transport of Waste
• imprisonment of up to two years or
• disqualification.

Article 181f: Unauthorised Treatment of Waste
• imprisonment of two years to eight years or
• disqualification.

Article 181g: Violation of Water Protection
• imprisonment of two years to eight years or
• disqualification

Art. 223: Negligent Harming Human Health
• imprisonment up to one year or
• disqualification.
Art. 224: Intentional Harming Human Health
- imprisonment for 6 months to five years or
- fine

Penalties for petty offences regulated in several administrative laws:

**Act No. 543/2002 on Nature and Landscape Protection:**
- reprimand,
- fines up to 300 thousand Sk – circa 7 500 EUR (according to the constitutive act),
- forfeiture of an object

**Act No. 223/2001 Z. z. on Waste:**
- fines up to 20 thousand Sk – circa 500 EUR (according to the constitutive act),

**Act No. 184/2002 Z. z. on Water** (petty offences for infringements of this act are also provided for in the Act No. 372/1990 – Petty Offences Act)
- reprimand,
- fines up to 5000,- Sk (circa 125 EUR)
- disqualification,
- forfeiture of an object

**Act No. 478/2002 on Air Protection** does not contain the constitutive acts of petty offences; the petty offences regulated in Petty Offences Act apply (art. 29 and art. 45 Petty Offences Act)
- reprimand,
- fines up to 5000,- Sk (circa 125 EUR),
- disqualification,
- forfeiture of thing

**Act No. 76/1998 on Earth Ozone Layer Protection** (although it contains the constitutive acts of petty offences, does not contain the penalties, so for the penalties the Petty Offences Act applies)
- reprimand,
- fines up to 1000,- Sk (circa 25 EUR),
- disqualification,
- forfeiture of thing

**Act No. 261/2002 on Prevention of Major Industrial Accidents** does not contain the constitutive acts of petty offences; the petty offence regulated in Petty Offences Act applies (art. 45 Petty Offences Act)
- reprimand,
- fines up to 3000,- Sk (circa 75 EUR),
- disqualification,
- forfeiture of an object

**Act No. 23/1962 on Hunting** does not contain the constitutive acts of petty offences; the petty offence regulated in Petty Offences Act applies (art. 45 Petty Offences Act)
- reprimand,
- fines up to 3000,- Sk (circa 75 EUR),
- disqualification,
- forfeiture of an object
• **Administrative penalties:**

As this analysis does not deal with administrative penalties, we shall make a comparison of the criminal and administrative penalties in a short example:

An administrative authority in waste management may require that the natural person pay up to 5 000 000 Sk (circa 125 000 EUR), and this figure can be doubled in case of administrative infringement. The sanction may be doubled for example in case of the repeated infringement of the administrative provision (Art. 79 subpar. 3 Waste Management Act: The administrative body may in its decision on infliction of a fine also impose on the offender an obligation to take measures to repair the consequences of his/her illicit acting, for which the fine was imposed. If the offender does not take the measures, the administrative body is entitled to inflict another fine up to the double of the upper limit of the fine as provided for in this act).

As we have already mentioned, the administrative authorities frequently give more severe penalties than the courts, notwithstanding that the reverse situation should apply. With administrative punishments it often happens that a so-called cumulative penalty is imposed for several illicit acts of a legal person or natural person-entrepreneur. The administrative authorities deal with the majority of infringements in ambit of environmental law, because the process is fast and there is no need to find the culpability of the offender. The negatives are that the administrative bodies are not independent and they do no monitoring and data collection concerning environmental infringements, cases tried, sanctions imposed and other relevant matters.

• **Aggravating and mitigating factors**

Situations which aggravate criminal offences in the environmental sphere are offences that are:

- causing substantial damage or deterioration to the environment
- committed with intention to gain profit for the offender or other person
- committed notwithstanding previous condemnation
- committed as a member of organised group
- committed in a particularly brutal or agonising manner
- committed in a massively effective or despicable manner
- committed so that the offender has violated an important duty implied from his job, profession, position or function or imposed to him by a law

These aggravating situations are specified directly in the provision on the environmental offence. There are also some aggravating circumstances found in the General Part of the Criminal Code which can be applied to all criminal offences (e.g. the offence is repeated or committed in a particularly rude manner).

A judge may reduce the penalty when certain mitigating circumstances exist. These are found in Art. 33 of the Criminal Code, e.g. state of subordination, under coercion, helping the authorities to resolve the offender’s offence etc. Art. 40 of the Criminal Code also provides for extraordinary cases where the punishment can be reduced under the minimum penal rate provided for in the Criminal Code. The judge is allowed to do so when he/she supposes that having regard to all aspects and the situation of the offender, use of the penalty stated in the Criminal Code would be excessively severe, and the purpose of the punishment could be reached also by a lesser punishment. This provision is also used where offenders have
contributed significantly to detecting the crime committed by an organised criminal group or helped to prevent a crime which would have been committed by an organised criminal group.

Environmental criminal offences cease to be punishable as soon as the offender voluntarily restores the harmful consequence of his act or informs a public prosecutor, policeman or investigator in sufficient time to avoid the damaging consequence of the act. This is called active repentance.

The extraordinary punishment of up to 25 years or life imprisonment (i.e. exceeding the maximum ordinary penalty of 15 years) may be conferred when the offence has an extremely high degree of danger to society, and where the possibility of correcting the offender is extremely difficult. A judge may also punish the person also by fine, but only for less serious classes of offences.

- **Alternative means of settlement**

At the moment there exist three alternative means of settlement under criminal law:
- conditional suspension of the criminal proceedings,
- criminal order and
- conciliation,

It is important to stress that these alternative means are increasingly used in Slovakia.

For example, as part of its preparation for accession to the European Union, the Government of Slovakia, with the cooperation of the UK Government, has instituted a programme to improve access to justice for all sectors of the population. The goal of the project is to establish modern, accessible, affordable and effective alternative dispute mechanisms in the Slovak Republic.

A team of technical experts from CEDR Solve, the UK’s leading commercial mediation provider, are assisting the Ministry of Justice and all other decision-making partners in Slovakia with this project. During the Inception Phase, which ended in April 2002, extensive consultations were held with a broad range of stakeholders interested in delivering effective justice in Slovakia.

The Implementation Phase aims to put in place the foundations for the development of mediation in Slovakia through:
- new legislation, in compliance with EU and other international standards;
- training programmes to familiarise users with the processes involved, and create a body of skilled mediators;
- awareness building, and;
- establishing an institution that will foster the development and use of ADR.

Pilot projects for a probation and a mediation service have been installed in 3 provinces of Slovakia (Bratislava IV, Nove Zamky and Spisska Nova Ves). However, a special law which would put in place the legal framework for the operation of the probation and mediation service and the framework for the probation officers has not yet been enacted.
2.5.3 Criminal responsibility of legal persons

Slovakia still governs itself pursuant to the principle *societas delinquere non potest* (a company may not commit a delict. Despite this, there are several criminal offences that have the special requirement that the offender is a statutory representative of a company. The Act on Petty Offences also recognises the liability of a representative of a legal person. The Act enshrines the principle of *culpa in eligendo or custodiendo*, which means that the person who acted or had to act is liable and when the act followed a command, the person who commanded such an act is liable.

Liability of legal persons is foreseen in the new re-codification of the Criminal Code and the Criminal Procedure Code which is currently under preparation and should enter into force as of 1 January 2005. The proposed new Criminal Code shall regulate the liability of legal persons as follows:

The crime is committed by a legal person, if it is committed by the body or the representative of the legal person on behalf of the legal person or in benefit to the legal person and the responsible person acted in contrary to the regulations or he/she did not maintain the necessary level of caution, or he allowed the commitment of the crime by insufficient control or management.

The criminal liability of legal persons will not apply to the state, its bodies, to the National Bank of Slovakia, upper territorial units (regions) and municipalities.

Criminal liability of a legal person does not exclude the criminal liability of a natural person.

Legal persons may be criminally liable for the crimes expressly stated in the special part of the Criminal Code. The liability of legal persons will apply to crimes, apart from the seventh chapter – Generally dangerous crimes and crimes against the environment, also to all the crimes stated in the first chapter – Crimes against the peace and humanity, in the fifth chapter – Crimes against property, in the sixth chapter – Economical crimes, and in the eighth chapter – Crimes against the republic.

Legal persons will not be liable for the crimes stated in the fourth chapter – Crimes against family and youth or for the crimes stated in the eleventh chapter – Crimes against conscription, civic service and defence of the state.

The penalties for crimes of legal persons shall be as follows:
- fine,
- permanent or temporary dissolution of the legal person or the part thereof
- forfeiture of the property,
- forfeiture of an object.

A court shall be entitled to on a legal person the following protective measures:
- permanent or temporary prohibition of certain activity
- judicial surveillance over the activities of the legal person or the part thereof
- confiscation of an object,
- suspension of the right to a public allowance or aid.

A court shall be entitled to impose on a legal person a fine for an amount from 500.000 Sk (circa 12 500 EUR) to 50 million Sk (circa 1 250 000 EUR) when the upper limit of the imprisonment of a natural person for the crime is stated as follows:
a) to 3 years, from 500,000 Sk (circa 12,500 EUR) to 5 million Sk (circa 125,000 EUR),
b) to 5 years, from 1 million Sk (circa 25,000 EUR) to 10 million Sk (circa 250,000 EUR),
c) to 10 years, from 5 million Sk (circa 125,000 EUR) to 20 million Sk (circa 500,000 EUR),
d) to 15 years, from 10 million Sk (circa 250,000 EUR) to 30 million Sk (circa 750,000 EUR),
e) to 25 years, from 20 million Sk (circa 500,000 EUR) to 50 million Sk (circa 1,250,000 EUR).

Should the legal person repeat the crime, notwithstanding that it was convicted in the last three years for such a crime or for a more serious crime, the criminal penalty rates shall be increased by one third.

A court shall be entitled to permanently dissolve the legal person or the part thereof with liquidation, if the legal person or the part thereof was established for committing the criminal activities, or was convicted for the crime to which the Criminal Code provides for the imprisonment with an upper limit of more than 10 years. Otherwise the only possibility shall be to dissolve the legal person or a part thereof for a maximum duration of five years.

The proposal of the new Criminal Code and the new Criminal Procedure shall be dealt before the Legislative Council of the Government of the Slovak Republic in September 2003.
3. **Criminal provisions and penalties for selected EU Directives**

One of the goals of the present study is to assess national criminal provisions in relation to a number of selected Directives including:


Volume II of this study includes a complete set of Tables of Concordance per country, which enable a detailed analysis provision by provision for each targeted Directive and Regulation of the correspondent national law transposing the EC obligation and its associated criminal penalty.

This section provides comparative tables which summarise the detailed information provided in Volume II. In particular, *Table 1 on transposition of EU Directives into national law* highlights those areas where full alignment with EU obligations in the targeted Directives has not yet occurred (as of May 2003). *Table 2 on comparative analysis of criminal penalties per country and sector* summarises the information on environmental criminal offences and associated penalties as provided in the national Criminal Codes and other relevant primary legal sources for each selected Directive/Regulation.

In order to enable comparisons of environmental criminal offences, we have classified criminal environmental offences into:

- Crimes (Czech Republic, Hungary, Lithuania, Slovakia). Note that the term crime equals the term felony used by the Hungarian expert in its national study.
- Misdemeanours (Hungary, Lithuania, Poland)
- Criminal petty offences (Poland)

At the end of each sector covered under *Table 2 on comparative analysis of criminal penalties per country and sector*, we have provided a summary analysis that allows brief country comparisons concerning the range of criminal acts and their corresponding penalties.
### Table 1: Transposition of EU Directives into national law

<table>
<thead>
<tr>
<th>EU Directive</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposal of Waste Oils (75/439/EEC, as amended)</td>
<td>Transposed</td>
<td>Not transposed</td>
<td>Transposed, except Art. 8.3 on the observance of ELV through appropriate system of control.</td>
<td>Transposed</td>
<td>Not transposed Art. 10.2: ensure that any waste oils containing PCB/PCTs are disposed of without any avoidable damage to man &amp; environment.</td>
</tr>
<tr>
<td>Framework Directive on Waste (75/442/EEC, as amended)</td>
<td>Transposed, except the obligation to register establishments which transport waste (art.12).</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Dangerous substances into water (79/464/EEC)</td>
<td>Not transposed</td>
<td>Art. 8: general obligation to take all appropriate steps in order not to increase the pollution of water.</td>
<td>Transposed, except Art. 8.3 on the observance of ELV through appropriate system of control.</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Wild Birds (79/409/EEC, as amended)</td>
<td>Not transposed</td>
<td>Art. 3.1: obligation to preserve and maintain a sufficient diversity and area of habitats for wild birds. Art. 5: establishment of a general system of protection for wild birds. Art. 6.1: prohibition of sale, and offering for sale of live or dead wild birds. Art.4.1 &amp; 2. Annex I and migratory species shall be subject to special conservation measures. Art. 6: avoid deterioration of natural habitats; environmental assessment of plans likely to have an effect on a site, and compensatory measures if plan is carried out. Art. 7: provisions on hunting practices. Art.11: on the introduction of any bird species, which does not occur naturally in the wild state.</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Cadmium Discharges (93/513/EC)</td>
<td>Not transposed</td>
<td>Art. 3.1: comply with the limit values.</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Large Combustion Plants (88/609/EEC)</td>
<td>Transposed</td>
<td>Not transposed</td>
<td>Not transposed Art. 3.2: programmes must be drawn up and implemented with aim of complying with the emission ceilings.</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Hazardous Waste (91/689/EEC, as amended)</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
<tr>
<td>Natural Habitats (92/43/EC, as amended)</td>
<td>Not transposed</td>
<td>Art. 3.3: obligation to maintain landscape features of major importance for wild fauna and flora. Art. 10: obligation to encourage the management of landscape features of major importance. Art. 6: (P.T): establishment of conservation</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Transposed</td>
</tr>
</tbody>
</table>

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**Study on criminal penalties in a few candidate countries’ environmental law**

Milieu Ltd.
6 October 2003
<table>
<thead>
<tr>
<th>EU Directive</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>measures and statutory/administrative/contractual measures; avoid deterioration of natural habitats; provide compensatory measures when a plan with negative assessment is carried out for reasons of public interest. Art. 12.1: ensure a system of strict protection, and prohibit the sale of specimens for Annex IV (a) species. Art.13.1: establishment of a system of strict protection for Annex IV (b) species. Art. 14: if necessary, measures must be taken to ensure that exploitation of Annex V species is compatible with maintaining their conservation status. Art.15: prohibit indiscriminate means of the capture of Annex IV (a) and V (a) species. Art.22: regulate/prohibit deliberate reintroduction of non-native species.</td>
<td>Transposed</td>
<td>Not transposed</td>
<td>Transposed</td>
<td>Transposed</td>
<td>Not transposed</td>
</tr>
<tr>
<td>COMAH (96/82/EC)</td>
<td>Transposed</td>
<td>For some provisions no matching criminal legislation was found (Art. 6.1, 6.2; 6.4, 7.2, 9.1, 9.2, 9.3, 11.1-2, 14.1 , 14.2)</td>
<td>Not transposed</td>
<td>Art. 13.1 and 13.4: information on safety measures (Annex V) is supplied to persons liable to be affected; and the safety report must be made publicly available.</td>
<td>Transposed</td>
</tr>
<tr>
<td>VOCs (99/13/EC)</td>
<td>Not transposed</td>
<td>Art. 4.3: notification to CAs for those installations to be authorised using the reduction scheme of Annex IIB 31/10/2005 at the latest.</td>
<td>Not transposed</td>
<td>Art. 10: ensure that if Dir. has been breached, the operator informs the CA and takes measures to restore compliance. For some provisions no matching criminal legislation was found (4.2,6.2, 9.1, 14) Art.6.2 (discretionary provision) has not been transposed.</td>
<td>Transposed</td>
</tr>
</tbody>
</table>
### Table 2: Comparative analysis on criminal penalties per country and sector

<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
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<th>Slovakia</th>
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<tbody>
<tr>
<td>Waste</td>
<td></td>
<td></td>
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<tr>
<td>Waste Oils (75/439/EEC, as amended)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>*Note: CR treats waste oils as hazardous waste. All other countries refer to waste oils as a regular category of waste.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Article:</td>
<td>181e – Criminal Code (CC)</td>
<td>281/A – Criminal Code (CC)</td>
<td>No specific provision applies for waste-related environmental offences. The only possibility to punish is through Art 270 §1 (intentional &amp; negligent crime) &amp; Art 270 §2 (intentional &amp; negligent misdemeanour) of Criminal Code. Blanket provisions. The above-mentioned articles include a general offence against the environment &amp; refer to other environmental legislation to typify the crime. In addition, the lack of a licence for economic operations is punished under Art 202 (1).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type:</td>
<td>Crime</td>
<td>Crime (281/A §1)</td>
<td>Misdemeanour (281/A §3)</td>
<td>Misdemeanour</td>
<td>Crime</td>
<td>181f – Criminal Code (CC)</td>
</tr>
<tr>
<td>• intentional &amp; negligent</td>
<td>• intentional</td>
<td>• abstract endangerment</td>
<td>• negligent</td>
<td>• intentional</td>
<td>• concrete endangerment</td>
<td></td>
</tr>
<tr>
<td>• abstract endangerment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constitutive Act:</td>
<td>181e § 1: Dangerous waste disposal &amp; transport against environmental legislation &amp; harming environment</td>
<td>Collect, store, handle, deposit or transport waste without a licence or contrary to environmental legislation &amp; harming human health and environment</td>
<td>Storage, treatment, disposal, transport waste against administrative provisions &amp; threat human health or significantly damage environment</td>
<td>Unauthorised treatment of waste against administrative provisions &amp; harming water, soil or air</td>
<td></td>
<td></td>
</tr>
<tr>
<td>181e § 2: International transport of dangerous waste against environmental legislation, without administrative licence or with false data to be granted a licence</td>
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<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Offender:</td>
<td>Natural persons</td>
<td>Natural and legal persons</td>
<td>Natural and legal persons</td>
<td>Natural persons</td>
<td>Natural persons</td>
<td></td>
</tr>
<tr>
<td>Penalty:</td>
<td>P: up to 2 years</td>
<td>P: up to 5 years</td>
<td>P: up to 5 years</td>
<td>P: 2 to 8 years And/Or O: Ban of activity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Aggr: up to 3 years</td>
<td>6 months to 5 years</td>
<td>Misdemeanour-negligent: P: up to 2 years</td>
<td>Misdemeanour - intentional: P: 3 months to 5 years</td>
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<td></td>
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<tr>
<td>And/Or</td>
<td>F: 65-161,000 EUR And/Or</td>
<td>O: Ban of activity</td>
<td>F: max. 160,000 EUR</td>
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</tr>
<tr>
<td>Aggr/mit:</td>
<td>Article 181e § 3 &amp; 4</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td></td>
<td>Article 185</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Degree of benefit</td>
<td>• petty offences: P: 5 days –30 days</td>
<td></td>
<td>• extent of harm to fauna/flora</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• repetition</td>
<td>O: max. 1,250 EUR</td>
<td></td>
<td>• extent of harm to human health</td>
<td></td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td></td>
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<tr>
<td>Sector / EU Directive</td>
<td>National legislation</td>
<td>Czech Republic</td>
<td>Hungary</td>
<td>Lithuania</td>
<td>Poland</td>
<td>Slovakia</td>
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</tr>
<tr>
<td>Waste Framework (75/442/EEC, as amended)</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art 181a (intentional) &amp; Art 181b (negligent) of the Criminal Code- blanket provisions. The above-mentioned articles include a general offence against the environment &amp; refer to other environmental legislation to typify the crime.</td>
<td>Collect, store, handle, deposit or transport waste without a licence or contrary to environmental legislation &amp; harming human health and environment</td>
<td>Crime (281/A §1)</td>
<td>Misdemeanour (281/A §3)</td>
<td>183 – CC + criminal petty offences provisions in CoP</td>
<td>181 f – CC</td>
</tr>
<tr>
<td>Type:</td>
<td></td>
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<td>• intentional</td>
<td>• negligent</td>
<td>Misdemeanour</td>
<td>Crime</td>
</tr>
<tr>
<td>Constitutive Act:</td>
<td></td>
<td></td>
<td>• abstract endangerment</td>
<td></td>
<td></td>
<td>• intentional (183 §1 &amp; 2 &amp;3)</td>
</tr>
<tr>
<td>Offender:</td>
<td>Natural and legal persons</td>
<td>Natural and legal persons</td>
<td></td>
<td>Natural persons</td>
<td>Natural persons</td>
<td></td>
</tr>
<tr>
<td>Penalty:</td>
<td></td>
<td></td>
<td>P: up to 5 years</td>
<td>P: up to 2 years</td>
<td></td>
<td>P: 2 to 8 years And/or O: Ban of activity</td>
</tr>
<tr>
<td>Agg/mit:</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td></td>
<td>Article 165</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• extent of harm to fauna/flora</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• extent of harm to human health</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Study on criminal penalties in a few candidate countries’ environmental law

Milieu Ltd.
6 October 2003
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazardous Waste (91/689/EEC, as amended)</td>
<td>Article:</td>
<td>181e – CC</td>
<td>281/A – CC</td>
<td>No specific provision applies for waste-related environmental offences. The only possibility to punish is through Art 270 §1 (intentional &amp; negligent crime) &amp; Art 270 §2 (intentional &amp; negligent misdemeanour) of the Criminal Code-blanket provisions. The above-mentioned articles include a general offence against the environment &amp; refer to other environmental legislation to typify the crime.</td>
<td>183 – CC + criminal petty offences provisions in CoP</td>
<td></td>
</tr>
<tr>
<td>Type:</td>
<td>Crime</td>
<td>• intentional &amp; negligent</td>
<td>• abstract endangerment</td>
<td>Crime (281/A §2)</td>
<td>• intentional</td>
<td>Crime (181f)</td>
</tr>
<tr>
<td>Constitutive Act:</td>
<td>Misdeemeanour (281/A §3)</td>
<td>• negligent</td>
<td>• concrete endanger</td>
<td>Misdemeanour</td>
<td>• intentional (183 §1 &amp; 2 &amp;3)</td>
<td>Crime (181e)</td>
</tr>
<tr>
<td></td>
<td>Deposit of hazardous waste (wider concept than EU definition) without a licence</td>
<td>In addition, the lack of a licence for economic operations is punished under Art 202 §1 of the Criminal Code.</td>
<td>Storage, treatment, disposal, transport (183 §1) import (183 §2) waste against administrative provisions &amp; threaten human health or significantly damage environment</td>
<td>181 f: Unauthorised treatment of waste against administrative provisions &amp; harm water, soil or air</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offender:</td>
<td>Natural persons</td>
<td>Natural and legal persons</td>
<td>Natural and legal persons</td>
<td>Natural persons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty:</td>
<td>Natural persons</td>
<td>Natural persons</td>
<td>Natural persons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggrimit:</td>
<td>181e § 3 &amp; 4</td>
<td>• Degree of benefit</td>
<td>• repetition</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td>Article 185</td>
<td>• extent of harm to fauna/flora</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• extent of harm to human health</td>
</tr>
</tbody>
</table>
## General notes on waste sector:

- **Coverage of Directives by specific articles in Criminal Code**: Hungary, Poland and Slovakia apply the same article of their respective Criminal Code to waste and hazardous waste-related serious offences. The concept of hazardous waste in the Hungarian Criminal Code is wider than the one defined in the national environmental framework legislation and than the EU definition.

The Criminal Code of the Czech Republic only refers to hazardous waste-related offences and waste oils fall under this category of wastes. For regular waste-related offences, the more general articles (181a and 181b) on threats to the environment apply. Similarly, the Lithuanian Criminal Code does not contain any specific article on waste, and therefore, the article on general threats to the environment (270 §1 & §2) applies. For specific information on this article, see tables under umbrella provisions.

In Poland, there is a parallel criminal system for those petty offences described in depth via environmental legislation. For specific information on this, please look at the detailed Tables of Concordance per country/ EU Directive in Volume II.

- **Types**: The Czech Republic punishes both intentional and negligent hazardous-waste related offences with the same penalties. In Hungary, intentional offences of waste-related obligations are classified as crimes and a more severe penalty is linked to such cases, while negligence offences constitute misdemeanours with lower penalties. In Poland, both intentional and negligent offences are classified as misdemeanours, but different penalties apply. In Slovakia, negligent waste-related offences are not specifically covered by the relevant articles of the Criminal Code.

- **Constitutive Act**: The description of the constitutive act in all countries (except Lithuania) includes treatment, disposal and transport of wastes. In many cases, i.e., Czech Republic, Poland and Slovakia international transports of waste (Poland and Slovakia) or hazardous waste (Czech Republic, Poland, Slovakia) is referred to as a separate category of offence. In the case of the Czech Republic and Poland the associated penalty is the same as the one applied to waste treatment and disposal; however, in Slovakia, the associated penalty for illegal import, export and transport of waste is lower.

Poland and Hungary use an eco-anthropocentric view of environment, as the offence has to endanger both human health and the environment. The Czech Republic and Slovakia follow a more ecocentric model as the subject of the harm is solely the environment.

- **Offender**: The wording of the relevant articles in the Criminal Codes for all countries (except Lithuania) refer to natural persons. However, Poland and Hungary extend criminal liability for legal persons (culpa in diligendo or custodiendo cases) via different legal instruments. Slovakia and the Czech Republic intend to amend their legal provisions in order to extend criminal liability to corporations (See section 4.1 for extensive analysis).

- **Penalties & aggravating factors**: The maximum penalty is in general fixed at a maximum of 5 years, the most remarkable exception to this general statement is Slovakia where the penalty of unauthorised treatment of waste could reach a maximum of 8 years. It is to be noted that the future re-codification of the Slovak Criminal Code (expected in 2005) should significantly reduce this penalty from 1 to 5 years of imprisonment. In the Czech Republic, both intentional and negligent crimes could be subject to the same penalty (which could reach a maximum of 5 years if specific aggravating factors apply), while in Poland and Hungary negligent offences are considered misdemeanours and thus, subject to a lower imprisonment penalty up to 2 years.

The countries that specify aggravating factors for these environmental offences are the Czech Republic and Poland. In the Czech Republic, penalties might increase depending on 1) the extent of benefit ("significant" benefit) that the offence brings to the offender and 2) the repetition of the offence. In Poland, penalties could increase if 1) the consequence of the act is the destruction of plant or animal life of considerable dimensions – penalties of imprisonment from 6 months to 8 years- and 2) the death of a human being or the serious physical harm for many persons – penalties of imprisonment from 2 to 12 years -. For all other countries, no aggravating and mitigating facts apply specifically for these kinds of environmental crime, other than the general aggravating and mitigating circumstances specified in the Criminal Code.

Penalties for legal persons vary from fines (higher amounts than those imposed to natural persons), deprivation of certain rights and suspension of activity, confiscation of things or dissolution of the legal entity (See section 4.1 for extensive analysis).
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
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</thead>
<tbody>
<tr>
<td>Water</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Dangerous substances into water (76/464/EC, as amended)</td>
<td>Article:</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art 181a (intentional) &amp; Art 181b (negligent) of the Criminal Code - blanket provisions.</td>
<td>281/ A §1 – CC</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art 270 §1 (intentional &amp; negligent crime) &amp; Art 270 §2 (intentional &amp; negligent misdemeanour) of the Criminal Code- blanket provisions. The above-mentioned articles include a general offence against the environment &amp; refer to other environmental legislation to typify the crime.</td>
<td>182 – CC + criminal petty offences provisions in CoP</td>
<td>181g – CC</td>
</tr>
<tr>
<td>Type:</td>
<td>Intentional</td>
<td>Crime</td>
<td>Intentional</td>
<td>Misdemeanour</td>
<td>Crime</td>
<td></td>
</tr>
<tr>
<td>Constitutive Act:</td>
<td>Abstract endangerment</td>
<td></td>
<td></td>
<td>Intentional (182 §1)</td>
<td>Intentional</td>
<td></td>
</tr>
<tr>
<td>Offender:</td>
<td>Natural and legal persons</td>
<td>Discharge of dangerous substances into water without licence or contrary to environmental legislation and harming human health and the environment.</td>
<td>Natural and legal persons</td>
<td>Pollution of the water with substances which may threat human health or significant damage in fauna &amp; flora.</td>
<td>Natural and legal persons</td>
<td>Natural persons</td>
</tr>
<tr>
<td>Penalty:</td>
<td>P: up to 5 years</td>
<td></td>
<td></td>
<td>P: from 2 to 8 years And/Or O: Ban of activity</td>
<td>P: from 2 to 8 years And/Or O: Ban of activity</td>
<td>P: up to 5 years</td>
</tr>
<tr>
<td>Agg/mit:</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Cadmium Discharges (83/513/EEC) | Article: | The Directive is not yet transposed in the Czech Republic. | For particular details on criminal penalties linked to this Directive see above under Dangerous Substances to Water. | For particular details on criminal penalties linked to this Directive see above under Dangerous Substances to Water. | For particular details on criminal penalties linked to this Directive see above under Dangerous Substances to Water. | For particular details on criminal penalties linked to this Directive see above under Dangerous Substances to Water. |
<p>| Type:                 |                       |                |         |           |        |          |
| Constitutive Act:     |                       |                |         |           |        |          |
| Offender:             |                       |                |         |           |        |          |
| Penalty:              |                       |                |         |           |        |          |
| Agg/mit:              |                       |                |         |           |        |          |</p>
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
</table>

**General notes on water sector:**

- **Coverage of Directives by specific articles in Criminal Code:** Both Directives are covered under the same articles of the Criminal Code. The Czech Republic and Lithuania connect water pollution to the more general articles of their Criminal Codes on environmental damage. Poland and Hungary use those articles where pollution of waters through dangerous/hazardous substances occurs. Slovakia is the country that specifically tackles deterioration of the quality of surface and ground waters.

  In Poland, there is a parallel criminal system for those petty offences described in depth via environmental legislation. For specific information on this, please look at the detailed Tables of Concordance per country/EU Directive in Volume II.

- **Types:** Hungary uses only intentional offences and abstract endangerment definitions (violation of environmental provisions); Poland addresses both intentional and negligent offences and refers to a criminal figure based on concrete endangerment (water pollution). Slovakia uses only intentional offences and concrete endangerment (deterioration of surface and ground waters occurring into environmental damage of considerable extent) with the so-called blanket provisions (violation of environmental specific legislation).

- **Constitutive Act:** Hungary connects water pollution caused by dangerous substances' discharges with the unlawful deposition of liquid hazardous wastes into waters. Poland and the Czech Republic use a general article on pollution of environment and its components (and thus, water). Lithuania connects water-related offences under the general threat to the environment. Slovakia details in a specific article the violation of water protection.

  Poland and Hungary use an eco-anthropocentric view of environment, as the offence has to endanger both human health and the environment. The Czech Republic and Slovakia follow a more ecocentric model as the subject of the harm is solely the environment.

- **Offender:** The wording of the relevant articles in the Criminal Codes for all countries (except Lithuania) refer to natural persons. However, Poland and Hungary extend criminal liability for legal persons (culpa in diligendo or custodiendo cases) via different legal instruments. Slovakia and the Czech Republic intend to amend their legal provisions in order to extend criminal liability to corporations (See section 4.1 for extensive analysis).

- **Penalties & aggravating factors:** Slovakia's Criminal Code includes the most stringent penalties for water-related offences, i.e., a maximum penalty of 8 years. In Hungary and Poland imprisonment penalties reach a maximum period of 5 years.

  In Poland, penalties could increase if 1) the consequence of the act is the destruction of plant or animal life of considerable dimensions – penalties of imprisonment from 6 months to 8 years- and 2) the death of a human being or the serious physical harm for many persons –penalties of imprisonment from 2 to 12 years -. For all other countries, no aggravating or mitigating facts apply specifically for environmental crime, other than the general aggravating and mitigating circumstances specified in the Criminal Code.

  Penalties for legal persons vary from fines (higher amounts than those imposed to natural persons), deprivation of certain rights and suspension of activity, confiscation of things or dissolution of the legal entity (See section 4.1 for extensive analysis).

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Study on criminal penalties in a few candidate countries’ environmental law

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<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
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<tbody>
<tr>
<td>Nature</td>
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</tr>
<tr>
<td>Wild Birds</td>
<td>(79/409/EEC, as amended)</td>
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<tr>
<td>Article:</td>
<td>181 f CC</td>
<td>281 – CC</td>
<td>270 §1 - CC</td>
<td>181 – CC + criminal petty offences provisions in CoP</td>
<td>181 c - CC</td>
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<td>Article:</td>
<td>181 g CC</td>
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<td>Crime</td>
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<td></td>
<td>181 f: Crime</td>
<td>prohibition</td>
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<td>181 g: Crime</td>
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<td>181 h: Crime</td>
<td>Intentional</td>
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<td>Constitutive Act:</td>
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<td>Intentional</td>
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<td></td>
<td>illegal killing,</td>
<td>&amp; negligent</td>
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<td>holding or transferring of</td>
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<td></td>
<td>protected fauna, flora &amp; endangered species against env. provisions &amp; in large scale (&gt;50) or repetitive act</td>
<td>endangerment</td>
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<td>181 g: Negligent</td>
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<td></td>
<td>Extent of benefit</td>
<td>&amp; Organised</td>
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<td></td>
<td>181 f: No specific aggravating circumstance.</td>
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<td>Natural persons</td>
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<tr>
<td>Penalty:</td>
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<td>P: up to 6 years Or</td>
<td>F: 36 – 7,240 EUR</td>
<td>No specific aggravating or mitigating fact</td>
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<td>*Aggr: 6 months to 5 years</td>
<td>Or: 3 months to 5 years</td>
<td>Or: Public work, restriction of liberty</td>
<td>No specific aggravating or mitigating fact</td>
<td>Extent of profit</td>
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<td></td>
<td>* 2 – 8 years</td>
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<td>for this environmental criminal offence</td>
<td>Repetition of act</td>
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<td>And/Or</td>
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<td>Organised gang</td>
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<td></td>
<td>F: 65-161,000 EUR And/Or</td>
<td></td>
<td></td>
<td></td>
<td>Particular cruel manner</td>
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<td></td>
<td>O: Ban of activity</td>
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<td>Art. 181 g &amp; h: P: up to 1 year And/Or</td>
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<td>F: 65-161,000 EUR And/Or</td>
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<td>O: Ban of activity</td>
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<tr>
<td>Agg/mit:</td>
<td>181 f: Extent of benefit</td>
<td>Extent of benefit</td>
<td></td>
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<td>&amp; Organised group</td>
<td>&amp; Organised group</td>
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<tr>
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<td>181 g &amp; h: No specific aggravating circumstance.</td>
<td>No specific aggravating or mitigating fact</td>
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</tbody>
</table>

Very detailed description including: destroying, injuring, trading, falsifying label of protected animals and fauna & their habitats against administrative provisions & to a large extent

Study on criminal penalties in a few candidate countries’ environmental law

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<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wild Birds (cont.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>181 c</td>
</tr>
<tr>
<td>(79/409/EEC, as amended)</td>
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<tr>
<td>Article:</td>
<td>181a</td>
<td>281 – CC</td>
<td>271 - CC</td>
<td>181 §2 –CC + criminal petty offences in CoP</td>
<td>181 §2 –CC + criminal petty offences in CoP</td>
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<tr>
<td></td>
<td>181b</td>
<td></td>
<td>273 - CC</td>
<td>187 CC + criminal petty offences in CoP</td>
<td>188 CC + criminal petty offences in CoP</td>
<td></td>
</tr>
<tr>
<td>Type:</td>
<td>181a: Crime</td>
<td>Crime (281 §1b)</td>
<td>271: Crime</td>
<td>181: Misdemeanour</td>
<td></td>
<td>Crime</td>
</tr>
<tr>
<td></td>
<td>• Intent.</td>
<td>• intentional</td>
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<td>• Intentional</td>
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<td></td>
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<td>• Abstract endangerment</td>
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<tr>
<td></td>
<td>181b: Crime</td>
<td>Misdemeanour (281 §3)</td>
<td>273: Crime</td>
<td>187: Misdemeanour</td>
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<td></td>
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<tr>
<td></td>
<td>• Negligent</td>
<td>• negligent (only if aggravated figure of Art. 281 §2 applies)</td>
<td>• intentional</td>
<td>• Intentional &amp; negligent</td>
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<td></td>
<td>• Abstract endanger</td>
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<td>• concrete endangerment</td>
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</tr>
<tr>
<td>Constitutive Act:</td>
<td>181b: Crime</td>
<td>271: Destruction or ravaging of protected areas</td>
<td>181: Destroy or damage plants or animals against admin. provision</td>
<td>187: Destroy, damage or decrease value of protected area causing serious damage</td>
<td>Very detailed description including: endangering fauna and flora's habitats against administrative provisions &amp; to a large extent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Negligent</td>
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<td>187: Destroy, damage or decrease value of protected area causing serious damage</td>
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<td>• Abstract endanger</td>
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<td></td>
<td>188: Misdemeanour</td>
<td>273: Destruction of wetlands &amp; illegal felling of forests</td>
<td>188: Carry out economic activity in protected area</td>
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<tr>
<td>Offender:</td>
<td>Natural persons</td>
<td>Natural and legal persons</td>
<td>Natural persons</td>
<td>Natural and legal persons</td>
<td>Natural persons</td>
<td></td>
</tr>
<tr>
<td>Penalty:</td>
<td>Art 181a: P: up to 3 years</td>
<td>• Crime-intentional: P: up to 3 years</td>
<td>Art 271: P: up to 5 years</td>
<td>• Misdemeanour intention (181 §2, 187 §2 &amp; 188)</td>
<td>P: up to 3 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Aggr: 1 to 5 years</td>
<td>* Aggr: up to 3 years</td>
<td>Or: restriction of liberty, detention</td>
<td>P: up to 2 years</td>
<td>Or: max. 180,000 EUR Or</td>
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<td></td>
<td>2 to 8 years</td>
<td>2 to 8 years</td>
<td>Or: Restriction of liberty (=prohibition of movement + public works from 3 months to 1 year) And:</td>
<td>Or: 187 CC + criminal petty offences in CoP</td>
<td>And/Or</td>
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<td>And/or</td>
<td>And/or</td>
<td>And: O: confiscation/ restoration</td>
<td>And/or</td>
<td>F: 180 – 180,400 And/or</td>
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<td></td>
<td>F: 65 – 161,000 EUR And/or</td>
<td>O: Ban of activity</td>
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<td>O: ban of activity</td>
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<td></td>
<td>Art 181b: P: up to 3 years</td>
<td>• Misdemeanour negligent: P: up to 2 years</td>
<td>Art 273: P: up to 2 years</td>
<td>• Petty offences</td>
<td>P: up to 3 years</td>
<td></td>
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<tr>
<td></td>
<td>• Aggr: up to 2 years</td>
<td>F: max. 180,000 EUR Or</td>
<td>O: Restriction of liberty And</td>
<td>O: max. 1,250 EUR</td>
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<td>6 months to 5 years</td>
<td>Or: 187 CC + criminal petty offences in CoP</td>
<td>O: confiscation/ restoration</td>
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<td></td>
<td>F: 65 – 161,000 EUR And/or</td>
<td>O: Ban of activity</td>
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<td>O: Ban of activity</td>
<td>O: Ban of activity</td>
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<td>Agg/mit:</td>
<td>See specific aggravating facts for Articles 181a and 181b under rows for umbrella provisions in page 92.</td>
<td>• Irreversible damage or destruction of the area</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
<td>No specific aggravating or mitigating fact for this environmental criminal offence.</td>
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<td>• Extent of damage</td>
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<td>• Extent of profit</td>
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<td>• Repetition of act</td>
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<td>• Organised gang</td>
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<td></td>
<td>• Particular cruel manner</td>
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<table>
<thead>
<tr>
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<th>National legislation:</th>
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<th>Slovakia</th>
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<tr>
<td>Wild Birds (cont.)</td>
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<tr>
<td>(79/409/EEC, as amended)</td>
<td>No matching criminal provisions.</td>
<td>272 §1 - CC</td>
<td>Misdemeanour + criminal petty offences in CoP</td>
<td>181d</td>
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<td>Article: 178a</td>
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<td>Type: Crime</td>
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<td>Crime</td>
<td>Crime</td>
<td>Misdemeanour</td>
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<tr>
<td>Intentional</td>
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<td>Intentional and negligent</td>
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<tr>
<td>Concrete endangerment</td>
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<td>Concrete endangerment</td>
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<td>Constitutive Act:</td>
<td>Illegal hunting</td>
<td>Illegal hunting or fishing outside allowed season or in prohibited sites or by prohibited means with a result of harming fauna</td>
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<tr>
<td>Offender: Natural persons</td>
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<td>Natural persons</td>
<td>Natural persons</td>
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<tr>
<td>Penalty:</td>
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<tr>
<td>P: up to 2 years</td>
<td>Art. 272 §1 P: up to 2 years Or F: 36 – 3,620 EUR Or O: restriction of liberty, detention</td>
<td>• Misdemeanour intentional (Art. 53 Hunting Law) P: from 3 months to 5 years And O: Confiscation</td>
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<tr>
<td>*Agg: 6 months to 6 years and confiscation of a thing And/Or P: 65-161,000 EUR And/Or Ban of activity or confiscation of thing</td>
<td>Art. 272 §2 P: up to 3 years Or F: 36 – 3,620 EUR Or O: restriction of liberty, detention</td>
<td>• Petty offences P: 5 days –30 days Or F: max. 1,250 EUR</td>
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<td>• Repetition of act (for a person already indicted)</td>
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<td></td>
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<td>• Massively effective or contemptible manner</td>
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<td>• Organised group</td>
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<td>Self or another person’s benefit</td>
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<td>In extremely infamous way</td>
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<td>Large scale</td>
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<td></td>
<td>Organised group</td>
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<td></td>
<td>Repetition of criminal offence (convicted during last 3 years)</td>
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</table>

No specific aggravating or mitigating fact for this environmental criminal offence.

No specific aggravating or mitigating fact for this environmental criminal offence.

Repetition of act (for a person already indicted)

Massively effective or contemptible manner

Organised group
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
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</thead>
<tbody>
<tr>
<td>Habitats (92/43/EEC, as amended)</td>
<td>Article: For particular details on criminal penalties linked to this Directive see above under Wild Birds Directive.</td>
<td>For particular details on criminal penalties linked to this Directive see above under Wild Birds Directive.</td>
<td>274 – CC + see above for additional criminal provisions referring to this Directive.</td>
<td>For particular details on criminal penalties linked to this Directive see above under Wild Birds Directive.</td>
<td>For particular details on criminal penalties linked to this Directive see above under Wild Birds Directive.</td>
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<tr>
<td>Type:</td>
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<td>Constitutive Act:</td>
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<tr>
<td>Agg/mit:</td>
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</table>

**General notes on nature protection sector:**

- **Coverage of Directives by specific articles in Criminal Code:** Both Directives are covered under the same articles of the Criminal Code. This group of Directives is by far the one with the largest coverage in all national Criminal Codes. It is specially remarkable in the case of Lithuania, which uses the same framework article for most of the Directives covered in this study, but applies five different articles to this single sector. In Poland, serious environmental offences referring to illegal hunting and trading of endangered species are to be found outside the Criminal Code, in other legal Acts (e.g., Hunting Law, Act on Animal Protection).

In Poland, there is a parallel criminal system for those petty offences described in depth via environmental legislation. For specific information on this, please look at the detailed Tables of Concordance per country/EU Directive in Volume II.

- **Types:** Use of a larger extent of concrete endangerment types as compared to other sectors, use of mainly intentional types.

- **Constitutive Act:** All countries are very descriptive in the content of the constitutive act which could address three main areas: protection of fauna and flora, protection of special protected areas and hunting/fishing provisions.

- **Offender:** The wording of the relevant articles in the Criminal Codes for all countries refer to natural persons. However, Poland and Hungary extend criminal liability for legal persons (culpa in diligendo or custodiendo cases) via different legal instruments. Slovakia and the Czech Republic intend to amend their legal provisions in order to extend criminal liability to corporations (See section 4.1 for extensive analysis).

- **Penalties & aggravating factors:** The extent of the penalties largely vary depending on the country, but longer imprisonment penalties for aggravated cases appear in the Czech Republic and Slovakia (up to 8 years). In many cases, an additional penalty including confiscation of the object used for the environmental offence applies. Aggravated circumstances are particularly detailed in the Czech Republic and Slovakia and include extent of damage caused and benefit for offender, organised crime, and repetition of the criminal act.

Penalties for legal persons vary from fines (higher amounts than those imposed to natural persons), deprivation of certain rights and suspension of activity, confiscation of things or dissolution of the legal entity (See section 4.1 for extensive analysis).
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
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<tbody>
<tr>
<td>Ozone Depleting Substances (2037/2000)</td>
<td>Article:</td>
<td>No matching environmental criminal legislation was found</td>
<td>No matching environmental criminal legislation was found</td>
<td>No matching environmental criminal legislation was found</td>
<td>36.1 of Act on Management of Ozone Depleting Substances + criminal petty offences in CoP</td>
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<td>Type:</td>
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<td>Petty offences</td>
<td>Petty offences</td>
<td>Misdemeanour</td>
<td>The Slovak expert refers to the possibility of applying articles 181a + 181b on threats to environment of the Criminal Code (see below umbrella provisions)</td>
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<td></td>
<td>Constitutive Act:</td>
<td>Only the system of petty offences apply.</td>
<td>Only the system of administrative offences apply.</td>
<td>Only the system of administrative offences apply.</td>
<td>Violation of prohibition of ODS production or international transfer or placing in the market.</td>
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<td>Natural persons</td>
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<tr>
<td></td>
<td>Penalty:</td>
<td>Misdemeanour (Article 36.1 Act on Management ODS) P: up to 2 years Or F: (max not fixed) Or O: restriction of liberty</td>
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<td></td>
<td>Agg/mit:</td>
<td>Petty offences P: 5 days –30 days Or F: max. 1,250 EUR</td>
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</tbody>
</table>

General notes on chemical sector:

No matching criminal provision has been found in the Czech Republic, Hungary, Lithuania and Slovakia for this particular EU Regulation. Only in Poland the Act on Management of Ozone Depleting Substances (OJ 2001 No 62, item 537, as amended) contains criminal provisions, which punish the production, international transfer and placing in the market of ODS. Criminal penalties include imprisonment or restriction of liberty (in minor offences cases) or fines (but no specific maximum is fixed in the national legal act). Criminal liability only refers to natural persons.

In addition, there is a parallel criminal system for those petty offences described in depth via environmental legislation. For specific information on this, please look at the detailed Tables of Concordance per country/ EU Directive in Volume II.
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Industrial Pollution Control</strong></td>
<td>Large combustion plants (88/609/EEC)</td>
<td>No matching environmental criminal legislation was found.</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art. 280 § 2 of the Criminal Code. The above-mentioned article include a general offence against the environment &amp; its components &amp; refer to other environmental legislation to typify the crime</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 270 when violation of environmental rules affects society to such an extent that would legitimate appliance of criminal law.</td>
<td>90 Building Law + 182 (umbrella provision) CC + criminal petty offences in CoP</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 181a (intentional offence) and 181 b (negligent offence) of the Criminal Code on threats to environment</td>
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<td><strong>Article:</strong></td>
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<td><strong>Constitutive Act:</strong></td>
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<td><strong>Offender:</strong></td>
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<td><strong>Penalty:</strong></td>
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<tr>
<td><strong>Agg/mit:</strong></td>
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</tbody>
</table>

**Industrial Pollution Control**

**Article:**

- No specific provision applies for environmental criminal legislation was found.
- No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art. 280 § 2 of the Criminal Code. The above-mentioned article include a general offence against the environment & its components & refer to other environmental legislation to typify the crime.
- No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 270 when violation of environmental rules affects society to such an extent that would legitimate appliance of criminal law.
- 90 Building Law + 182 (umbrella provision) CC + criminal petty offences in CoP.
- No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 181a (intentional offence) and 181 b (negligent offence) of the Criminal Code on threats to environment.

**Type:**

- Misdemeanour
- Intentional/negligent
- Concrete endangerment

**Constitutive Act:**

- Construction without a required permit.

**Offender:**

- Natural persons (and for umbrella provisions of Article 182: natural and legal persons).
- Misdemeanour (Art. 90 Building Law):
  - P: 3 m – 2 years Or
  - F: max. 180, 000 Euro Or
  - O: restriction of freedom (prohibition of moving + public works – 30 days).
- Petty offences:
  - P: 5 days –30 days Or
  - F: max. 1,250 EUR

**Penalty:**

- No specific aggravating circumstance for this criminal offence.

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Milieu Ltd.
6 October 2003
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation:</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMAH (96/82/EC)</td>
<td>Article: No specific provision applies for environmental offences linked to this Directive.</td>
<td>No specific provision applies for environmental offences linked to this Directive.</td>
<td>No specific provision applies for environmental offences linked to this Directive.</td>
<td>Misdemeanour • Negligent • Concrete endangerment</td>
<td>+ Criminal petty offences in CoP</td>
<td>179 CC</td>
</tr>
<tr>
<td></td>
<td>Type: The only possibility to punish is through Art.181a (intentional offence) and 181 b (negligent offence) – blanket provisions.</td>
<td>The only possibility to punish is through Art. 280 § 1 &amp; 5 of the Criminal Code- blanket provisions.</td>
<td>The only possibility to punish is through Art. 280 § 1 &amp; 5 of the Criminal Code- blanket provisions.</td>
<td>Art. 176 + blanket provisions of Art. 270, §1 and 2</td>
<td>172 CC</td>
<td>180 CC</td>
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<tr>
<td></td>
<td>Constitutive Act:</td>
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<td></td>
<td>163/164 CC</td>
<td>220 CC</td>
<td>225 CC</td>
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<td>Offender: Natural persons</td>
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<td>Penalty:</td>
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<td></td>
<td>Agg/mit: No specific aggravating or mitigating fact.</td>
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</table>

<table>
<thead>
<tr>
<th>Constitutive Act: 163/164 CC: Cause an event, which imperils human life or the health of many persons or property of a considerable extent.</th>
<th>179 CC: Crime</th>
<th>Intentional</th>
<th>Abstract endangerment</th>
</tr>
</thead>
<tbody>
<tr>
<td>172 CC: Obstruct an action aimed at averting widespread danger to life or health of persons or property.</td>
<td>180 CC: Crime</td>
<td>Intentional</td>
<td>Abstract endangerment</td>
</tr>
<tr>
<td>220 CC: Not fulfil duties on occupational safety and/or hygiene and thus, expose an employee to an immediate danger of loss of life or a serious detriment to health.</td>
<td>223 CC: Crime</td>
<td>Negligent</td>
<td>Concrete endangerment</td>
</tr>
<tr>
<td>225 CC: Prevent a person authorised to carry out environmental inspections or make it difficult to do so.</td>
<td>223: Crime</td>
<td>Negligent</td>
<td>Concrete endangerment</td>
</tr>
<tr>
<td>23 IP: Not making public information available.</td>
<td>23 IP: Misdemeanour</td>
<td>Intentional</td>
<td>Concrete endangerment</td>
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<tr>
<td>Natural persons Natural persons</td>
<td>Natural persons</td>
<td>Natural persons</td>
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<tr>
<td>F: 36 – 1810 Euro Or O: deprivation of the right to do a certain job or position, restriction of freedom.</td>
<td>163/164 CC: P: 3 months – 12 years And F: max. 180000 Euro</td>
<td>179: P: 3-8 years</td>
<td>179: P: 3-8 years</td>
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<tr>
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<td>172 CC: P: 3 months – 5 years And F: max. 180000 Euro.</td>
<td>* Aggr: 8 to 15 years</td>
<td>* Aggr: 8 to 15 years</td>
</tr>
<tr>
<td></td>
<td>220 CC: P: 3 months –3 years Or F: max.180000 Euro Or O: restriction of freedom = prohibition of moving + public works (3m – 1y)</td>
<td>180: P: up to 1 year And/Or</td>
<td>180: P: up to 1 year And/Or</td>
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<tr>
<td></td>
<td>225 CC: P: 3 months - 3 years And F: max. 180000 Euro</td>
<td>* Aggr: up to 3 years</td>
<td>* Aggr: up to 3 years</td>
</tr>
<tr>
<td></td>
<td>23 IP: P: 3 months – 1 year Or F: max.180000 Euro Or O: restriction of freedom = prohibition of moving + public works (3m – 1y)</td>
<td>12 to 5 years</td>
<td>12 to 5 years</td>
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<tr>
<td>No specific aggravating or mitigating fact.</td>
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| Study on criminal penalties in a few candidate countries’ environmental law

Milieu Ltd.
6 October 2003
<table>
<thead>
<tr>
<th>Sector / EU Directive</th>
<th>National legislation</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
<th>Slovakia</th>
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<tbody>
<tr>
<td>VOCs (99/13/EC)</td>
<td>Article: No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art.181a (intentional offence) and 181 b (negligent offence) – blanket provisions.</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through Art. 280 § 2 &amp; 5 of the Criminal Code – blanket provisions.</td>
<td>202, §1 CC + blanket provisions of Art. 270 §1 and §2 CC (see below under umbrella provisions)</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 182 on environmental pollution and the criminal system of petty offences.</td>
<td>No specific provision applies for environmental offences linked to this Directive. The only possibility to punish is through the general provisions of Art. 181a (intentional offence) and 181 b (negligent offence) of the Criminal Code on threats to environment – blanket provisions. In addition, Articles 179 (intentional offence) and 180 (negligent offence) on general threat to human health or threat to property causing, fire, flood, breakdown or accident (abstract endangerment) may also apply. Similarly, Articles 223 and 224 on negligent harm to human health connected to specific professional positions.</td>
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<td>Constitutive Act: The above-mentioned articles include a general offence against the environment &amp; refer to other environmental legislation to typify the crime</td>
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<td>Agg/mit:</td>
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</table>

**General notes on IPC sector:**

- **Coverage of Directives by specific articles in Criminal Code:** No specific criminal provision applies to this group of Directives, and most countries refer to the so-called blanket and general endangerment provisions on protection of the environment & punishment of pollution. In Poland and Lithuania, where some specific provisions have been listed by the national experts environmental and human health components are very much linked. Similarly, Slovakia lists several articles referring to endangerment of human health or threat to property causing, fire, flood, breakdown or accident (abstract endangerment). In such cases, penalties are certainly higher than the ones that have been analysed for environmental harm.

In Poland, there is a parallel criminal system for those petty offences described in depth via environmental legislation. For specific information on this, please look at the detailed Tables of Concordance per country/ EU Directive in Volume II.
### Umbrella provisions – general threat to environment (No EU Directive specifically connected to these articles)

<table>
<thead>
<tr>
<th>Article</th>
<th>Czech Republic</th>
<th>Hungary</th>
<th>Lithuania</th>
<th>Poland</th>
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#### More serious offences (higher penalties associated)

<table>
<thead>
<tr>
<th>Article</th>
<th>Type</th>
<th>Constitutive Act</th>
<th>Offender</th>
<th>Penalty</th>
</tr>
</thead>
</table>
| 181a - CC | Crime | Intentional pollution or damage of environment against administrative law | Natural person | P: up to 3 years  
F: 65 – 161,000 Euro And/Or  
O: ban of activity |
| 280 §1 & 2 - CC | Crime | Intentional pollution or damage of environment against administrative law | Natural persons | P: up to 8 years  
F: 36 – 7,240 EUR |
| 270 §1 - CC | Crime | Intentional pollution or damage of environment against administrative law | Natural & legal persons | P: up to 8 years  
F: 125-125,000 EUR And/Or  
O: Ban of activity |
| 182 - CC | Crime | Intentional & negligent major damage of environment against administrative law | Natural persons | P: up to 6 years  
F: 180,000 EUR  
O: Restriction of freedom (prohibition of moving + public works from 3 months to 1 year) |
| 181a - CC | Crime | Intentional severe endangerment of environment against administrative law | Natural persons | P: up to 8 years  
F: 125-125,000 EUR And/Or  
O: Ban of activity |

#### Serious offences (lower penalties associated)

<table>
<thead>
<tr>
<th>Article</th>
<th>Type</th>
<th>Constitutive Act</th>
<th>Offender</th>
<th>Penalty</th>
</tr>
</thead>
</table>
| 181b - CC | Crime | Negligent damage of environment | Natural person | P: up to 5 years And/Or  
F: 65-161,000 EUR And/Or  
O: Ban of activity |
| 280 §5 - CC | Misdemeanour | Negligent damage of environment | Natural and legal persons | P: up to 3 years  
F: 36-1,810 EUR Or  
O: Public work, restriction of liberty |
| 270 §2 - CC | Misdemeanour | Intentional & negligent major damage of environment against administrative provisions | Natural and legal persons | P: up to 2 years  
F: max. 180,000 EUR Or  
O: Restriction of freedom (prohibition of moving + public works from 3 months to 1 year) |
| 182 - CC | Crime | Pollution of water, air and land with substances which may threaten human health or significant damage fauna & flora. | Natural person | P: up to 5 years And/Or  
F: 125-125,000 EUR And/Or  
O: Ban of activity |
4. National criminal jurisprudence in the environmental sphere

4.1 Czech Republic

By Eva Kruzikova and Eva Adamova, Institute for Environmental Policy, Prague, Czech Republic

4.1.1 Competent court for hearing criminal procedures

- **Introduction**

  The current system of courts has been established by the Constitutional Act No. 1/1993 Coll., and the following categories of general (not constitutional) courts exist:\(^\text{42}\):

  - Supreme Court
  - Supreme Administrative Court
  - High Courts
  - Regional Courts
  - District Courts.

  Apart from the constitutional provisions, judicial power is regulated by the following acts:

  - Act No. 6/2002 Coll., on courts, judges, judges on the bench, on courts administration and on amendments of other certain acts (Act on courts and judges), as amended
  - Act No. 7/2002 Coll., on procedure concerning the judges and general prosecutor

  - Act No. 141/1961 Coll., on criminal judicial procedure, as later amended,
  - Act No. 150/2002 Coll., on administrative judicial procedure\(^\text{44}\)

- **Powers of the courts**

  All tiers of the system of courts, with the exception of the Supreme Administrative Court, deal with criminal offences. Each tier is involved in the criminal procedure to the extent that is specified by the law.

\(^{42}\) Apart from the regular courts the Constitution established and defined the powers of Constitutional Court (Art. 86-Art. 89). The study does not deal with this category of court since the centre of the jurisprudence in issues concerning environmental crimes lies with general courts. The Constitutional court decides especially on the abolishment of acts or other legal regulations which violates the constitutional legal order or constitutional claim against final decision or other act of public authority (Art. 87 par. 1 item a, b) d), Act 1/1993 Coll.).

\(^{43}\) The Act regulates disciplinary procedure concerning judges.

\(^{44}\) The Act stipulates the functions (powers) of courts dealing with administrative issues. Their organisation and procedure of courts, participants and other persons involved in the administrative judiciary. The study focuses on the functions of courts related to the criminal liability only.
The Supreme Court is the highest judicial authority in all issues conferred to courts for both civil and criminal procedures. Its powers do not apply to issues decided by the Constitutional court or the Supreme Administrative Court.

The Supreme Administrative Court is the supreme judicial body acting in administrative issues. Notably it is the second instance court for decisions made by the regional courts. It has no powers in criminal procedure issues.

High Courts are second instance courts for both civil and criminal judicial procedures in cases where regional courts acted as the court of first instance. They have no powers in administrative procedure issues.

Regional Courts are second instance courts for both civil and criminal judicial procedures in cases where district courts acted as the court of first instance. They also act as the first instance courts in issues set up by the Act on Judicial Procedure. Apart from civil and criminal legal issues, the regional courts are the first instance courts acting in administrative issues in cases stipulated by acts.

District Courts are first instance courts for both civil and criminal procedures. They exercise no powers in administrative judicial issues.

There are no specific environmental courts in the Czech Republic. Nevertheless within the court there exists a division of work from the point of view of the specific field of law. Thus the Supreme Court consists of divisions for:

- criminal issues,
- civil law issues
- commercial issues.

The Supreme Court pronounces its decisions in accordance with the Act No. 6/2002 Coll., either by “senates” (head of senate and two judges) or by “great senates” of the divisions (nine judges of the particular division).

The regional and district courts give their decisions either by senates or by a single judge. The division of functions between senate and single judge is specified in the acts either on criminal or civil procedure.

There are also no specialist judges to decide upon environmental crimes. The Criminal Act stipulates only general requirements for a judge\(^{45}\) and does not lay down requirements with respect to specific legal fields.

- Jurisprudence and sources of criminal law

The Czech criminal procedure legislation does not recognise court rulings as a source of law.

The Supreme Court has the power to assess the lower courts’ rulings and on the ground of this assessment it makes opinions on rulings in certain legal issues. The aim of the Supreme Court’s opinion is to ensure a unified approach of the courts’ rulings. Its rulings and opinions are published in the Supreme Court’s Collection of Rulings and Opinions. However, this

\(^{45}\) Czech citizenship, legal capacity, without a criminal record, moral quality, experience and 25 years of age (section 60, Act No. 6/2002 Col.).
Jurisprudence is not generally binding on the lower courts, which can express a different legal view in their ruling. Supreme Court rulings do not have a regulatory power, but are regarded as extra authority for a court’s decision.  

4.1.2 Procedure for bringing a criminal case

- Fundamental criminal procedure principles

The criminal judicial procedure is governed by the following principles (Criminal Act No. 140/1961 Coll., section 2):

- due legal process (p. *nullum crime sine lege, nulla poena sine lege*).
- adequacy (so as to spare the rights and freedom defined by the Charter of Human Rights and Freedom).
- quick process.
- securing the right for defence (counsel).
- officiality (all the bodies acting in criminal procedures proceed *ex officio*).
- legality (public prosecutor has duty to prosecute all criminal offences he learns about if not otherwise stipulated in the act or international agreement).
- accusatorial (criminal prosecution in the courts is possible only on the basis of a criminal charge / *actio criminalis* / or on the basis of the general prosecutor’s proposal).
- presumption of innocence.
- investigation (all bodies acting in criminal procedures proceed in accordance with the Criminal Procedure Act and in co-operation with parties so as to ensure fact-finding).
- directness (the court’s ruling is based only on evidence put forward during the process).
- orality.
- discretion for assessment of evidence.
- fact finding without reasonable doubts.
- process open to public.
- collaboration with association of citizens.

The principle of opportunity has not been introduced into the Czech criminal legal procedure. However, some aspects of this principle may be found in conditions under which prosecution of a crime is not mandatory. This is the case when:

- criminal prosecution is lacking purpose for reasons specified in section 175 (2) of the Criminal Judicial Act and for this reason the case may be suspended before launching the prosecution or stopped.
- conditions for conditional stopping of criminal prosecution are fulfilled.
- conditions for settlement are fulfilled.

The principle of plea bargaining as applied within the Anglo-Saxon legal system has not been implemented in the Czech criminal judicial procedure. The Criminal Act does not contain provisions on plea bargaining (a reduction of the penalty before bringing the case to the court).

Yet, the criminal judicial procedure act introduced certain instruments, which make the procedure accelerated and more efficient such as:

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Kuhn,Z, p.228-269, Musil,J., Kratochvíl,V. Šámal, P. a kolektiv, p.67  
47 The principles as well as other general provisions of the Criminal Procedure Act apply fully to the criminal procedure in case of environmental crimes.
- criminal order
- conditional suspension of criminal prosecution
- settlement.

All three instruments are applied to minor offences when it is not necessary to open a trial.

- **Stages of criminal judicial procedure**

There are two stages in criminal procedure:

a) pre-judicial:
   - preparatory procedure,
   - procedure following abolishment of a ruling of the Constitutional Court;

b) judicial:
   - preliminary negotiation of the charge,
   - trial,
   - regular remedy procedure,
   - irregular remedy procedure,
   - execution of the judgement,
   - procedure following abolishment of a ruling of the Constitutional Court.\(^{48}\)

The pre-judicial stage is obligatory and is carried out by the police. Its main purpose is to find whether a crime was committed or not. It is initiated by the police, on the basis of a third person’s report or on the basis of another person’s or body inducement. Using the evidence they uncover, the police decide whether or not to launch a criminal prosecution.

The police may decide to submit the case to the general prosecutor with a suggestion to submit the charge to the court. The general prosecutor can either stop the prosecution or break the prosecution or submit the charge to the court. Reasons for stopping or breaking the prosecution are specified in the Judicial Procedure Act (section 172, 173). In cases where a prosecution is stopped, the prosecution does not continue further, since the reasons for having a prosecution have gone, e.g., if the act is not a criminal act or there are doubts that the act for which the specific prosecution was launched had been committed. In cases where the prosecution is broken, it is stopped temporarily, until the reasons for breaking the prosecution are removed. The reasons may be, e.g., the absence of the accused which makes it impossible to clear the case up properly, or if the accused cannot be put to trial because of his serious illness.

The first phase of the judicial stage - preliminary negotiation of the charge – is not obligatory. Reasons for holding this phase are for example:

- there are conditions that justify stopping the prosecution,
- the preparatory stage was not carried out in accordance with law,
- the issue is the responsibility of another court, etc.

After the preliminary negotiation of the charge the trial is opened. The trial is the crucial phase of the procedure where the substantive issues are decided, i.e., guilt and penalty. The key part of the trial is the evidence. The general prosecutor is obliged to prove the guilt of the charged

\(^{48}\) Execution of the judgement and the procedure following abolishment of a ruling of the Constitutional Court will not be described in the study, taking into account its main topic.
person while the latter has the right to propose and carry out evidence in defense. The act indicated in the charge as the object of evidence and evidence put forward during the trial are the basis for the court’s final decision (ruling).

The trial is open to the public (section 199(1) of the Act on Criminal Judicial Procedure) since it is considered that trials have positive educational impact on the public. The public can be excluded from the trial in cases defined by the Criminal Code, e.g. when the confidentiality of the case in question or the security or other important interest of witnesses may be endangered.

The court in its final ruling can decide that:

- the charged person is guilty of a specific crime,
- the issue is to be returned to the general prosecutor for additional investigation,
- the court is not competent for the specific case and that a higher court is to decide on the competent court,
- the criminal prosecution is to be stopped,
- the criminal prosecution is conditionally stopped or
- the criminal prosecution is broken.

The general prosecutor, charged person, participant or injured person has the right to appeal against the ruling of the court of first instance. The deadline for submitting an appeal is 8 days from the day the ruling was delivered to the parties concerned. If no party concerned uses the right of appeal, the ruling comes into effect after expiry of the 8 day term.

The appeal opens the regular remedy procedure. The court competent to decide on the appeal is the court of a higher instance. This court has the following options:

- to reject the appeal for procedural reasons (e.g. the appeal was submitted late or by a person who did not have the right to appeal or the appeal does not comply with legal conditions),
- to reject the appeal if it is not justified
- to abolish the ruling or a part of it in which case the court:
  - stops or breaks the prosecution or
  - returns the case to the court of the first instance or
  - issues a ruling itself.

The appeal court cannot find the charged person guilty of the crime of which he was acquitted by the ruling of the court of the first instance and of a more serious crime than that of which the court of the first instance was entitled to convict him/her.

If the appeal court returns the case to the court of the first instance this court is bound by its legal opinion.

Irregular remedy includes a review of an appeal and complaint against a violation of law. Both these means of remedy may be applied only if the rulings are already in effect.

4.1.3 Duration and costs of the procedures

The Act on Criminal Judicial Procedure does not stipulate any deadlines concerning the duration of the procedures. The only time limits concern the police investigation, which limits range from 2 to 6 months according to the conditions specified in the Act.
The costs of a criminal procedure may include costs of:

- trial, including the service of a term of imprisonment
- custody
- witnesses
- expertise
- interpretation
- counsels.

The costs of criminal procedure are born by the State including the cost of making a compulsory defence in cases specified by the law.\(^49\) In the latter case, the accused person may ask the court to bear specific costs such as expertise, if the accused or injured person asks for the expertise to be carried out. The State also bears costs of items which have to be paid immediately such as postage, payment for evidence or interpretation. These costs are paid off by those persons who are found guilty.

The State does not bear, even preliminarily, the prosecuted person’s own costs, nor other persons involved including a injured party (for example costs of travel to the court, costs of obtaining proof, phone, mail, etc.).

The State also does not bear the costs connected with a chosen counsel and a representative of a defendant. If the accused person was found guilty upon a final judgement he/she us obliged to reimburse the State for the following costs:

- costs of custody,
- costs and award for a counsel established by the State,
- costs of serving the imprisonment,
- other costs born by the State.\(^50\)

Based on the decision of the Head of the criminal senate of the court of the first instance a convicted person is obliged to reimburse costs of the damaged person connected with his/her claim for damages. The Head of the criminal senate decides on the ground of the damaged person’s application. The right for this claim expires one year after the judgement has been pronounced.

### 4.1.4 Some statistics on proceedings

Our statistics were obtained from the Ministry of Justice. We also consulted the Directory of the Czech Police and Ministry of Environment, Czech Environmental Inspectorate and the General Prosecutor of the Czech Republic. The most comprehensive data was obtained from the Ministry of Justice. These data were also used as the main source for the tables below.

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\(^{49}\) The compulsory defence is required by the Criminal Code for example in such cases when the judicial procedure is carried out against a juvenile person or if an accused person was deprived of legal capacity or if a court or public prosecutor regard it as necessary or if the crime concerned could be penalised by imprisonment higher than five years, etc.

\(^{50}\) These costs are paid within a lump sum defined by a Ministerial Decree No. 312/1995 Coll.
The Ministry of Environment does not have a comprehensive database on environmental crimes. Similar information was provided by the Czech Environmental Inspectorate, which often informs the police about breaches of environmental legislation.

The statistics available for environmental crimes could not be set forth according to the table provided in the methodology for this study because during the period 1999 - 2002 the Czech Criminal Code regulated only general bodies of crime in the field of the environment. As mentioned in the overview section, sections 181a and 181b introduced two special bodies of crime – intentional or negligent threats to the environment. The new bodies of environmental crime (sections 181e-181h) were introduced by the amendment 134/2002 Coll. that entered into effect on 1 July 2002. For this reason, there is not yet any statistical data available on the prosecution of these new bodies of environmental crime.

Before 1 July 2002, the criminal courts could use only legal basis for cases involving environmental crime, i.e. sections 181a and 181b. This situation is reflected in the table where statistical data concerning these to sections prevail. These two sections were applied in cases of illegal tree cutting in forests which is now a special body of crime stipulated by the amendment from 2002. Another problem connected with imposition of penalties for environmental crimes is that sections 181a and 181b are too general. These sections do not quantify or further specify the act and its consequences so as to enable the court to determine the level of social dangerousness. Therefore, the courts did not like using sections 181a and 181b. The main reason was that it was very difficult to distinguish if the concerned behaviour bears the features of a crime or “only” an administrative offence.

### Number of prosecuted persons

<table>
<thead>
<tr>
<th>Criminal Act</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>181a – threat to the environment</td>
<td>28</td>
<td>55</td>
<td>57</td>
<td>57</td>
</tr>
<tr>
<td>181b - threat to the environment</td>
<td>12</td>
<td>36</td>
<td>22</td>
<td>38</td>
</tr>
<tr>
<td>181e – dangerous waste</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181f – fauna and flora protection</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>181g – fauna and flora protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181h - fauna and flora protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note:* the data concerning persons persecuted under sections 181e – 181h covers only the period of the second half of the year 2002 as the bodies of crime concerned were introduced into the Criminal Act from 1st July 2002.

### Number of persons charged with a fine

<table>
<thead>
<tr>
<th>Criminal Act</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>181a - threat to the environment</td>
<td>20</td>
<td>48</td>
<td>51</td>
<td>50</td>
</tr>
<tr>
<td>181b - threat to the environment</td>
<td>4</td>
<td>23</td>
<td>19</td>
<td>32</td>
</tr>
<tr>
<td>181e – dangerous waste</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181f - fauna and flora protection</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>181g - fauna and flora protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181h - fauna and flora protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note:* the data concerning persons convicted under sections 181e – 181h covers only the period of the second half of the year 2002 as the bodies of crime concerned were introduced into the Criminal Act from 1st July 2002.
Sanctions: Number of convicted persons

<table>
<thead>
<tr>
<th>Criminal Act</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>181a - threat to the environment (intention)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No of convictions</td>
<td>12</td>
<td>8</td>
<td>14</td>
<td>37</td>
</tr>
<tr>
<td>• imprisonment</td>
<td>11</td>
<td>3</td>
<td>12</td>
<td>27</td>
</tr>
<tr>
<td>• fine</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>• imprisonment + fine*</td>
<td>4</td>
<td>12</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Average fine</td>
<td>€ 2,580</td>
<td>€ 403</td>
<td>€ 1,677</td>
<td></td>
</tr>
<tr>
<td>Acquittals</td>
<td>8</td>
<td>40</td>
<td>37</td>
<td>13</td>
</tr>
</tbody>
</table>

| **181b - threat to the environment (negligence)** |      |      |      |      |
| No of convictions                                 | 3    | 3    | 8    | 15   |
| • imprisonment                                    | 1    | 1    | 2    | 5    |
| • fine                                            | 1    | 1    | 1 - € 645 | 14 |
| • imprisonment + fine*                           | 1    | 1    | 1 - € 806 | 1    |
| Average fine                                      | € 726 | € 1,828 |      |      |
| Acquittals                                        | 1    | 20   | 11   | 27   |

| **181c – dangerous waste**                        |      |      |      |      |
| **181f - fauna and flora protection**             |      |      |      |      |
| **181g - fauna and flora protection**             |      |      |      |      |
| **181h - fauna and flora protection**             |      |      |      |      |

*Note: Data concerning persons convicted under sections 181e – 181h cover only the period of the second half of 2002 as the bodies of crime concerned were introduced into the Criminal Act from 1st July 2002.*

As to the prosecuted persons, there is an apparent difference between the year 1999 and the period 2000 – 2002. In the latter period there was an increase in number of prosecuted person. The reason might be a general increase of environmental awareness, including on the part of the police. No doubt an important reason for this rise is the increasing activity of non-governmental organisations. This conclusion relates only to crimes pursuant to sections 181a and 181b of the Criminal Act.

A similar conclusion may be drawn regarding the number of persons charged. There is an increase of charged persons during the period 2000-2002 and the crime they were charged for is again the general endangerment provisions under sections 181a and 181b of the Criminal Act. Comparing the number of prosecuted persons and the number of persons charged with the crime, we also arrived at the conclusion that the number of persons taken to court is lower than that for those persons against whom prosecutions were launched.

Both of the first two tables show that most persons were both charged and prosecuted for intentional acts according to section 181a of the Criminal Act. The number of persons charged
and prosecuted for negligent acts according to section 181b is significantly lower. The reason is that negligent acts are more difficult to prove.

The table “Number of convicted persons” provides useful information on the crimes of sections 181a and 181b of the Criminal Act. There is still no data available on section 181c – 181h of the Criminal Act. The number of acquittals in both cases is rather high in comparison with the number of convictions. The reason for this might be the complexity of proving the causal link between the damage and the illegal act. The complexity is especially apparent when there are several sources of pollution in question.

As to the categories of punishment, the most common is imprisonment combined with fines (cumulative sentence). This means that the resulting sentence includes punishment for two or more crimes. According to the Criminal Act the crucial criterion for the final decision on the punishment is the rate envisaged for the more dangerous of the acts.

The statistics as formulated by the Ministry of Justice do not allow the specification of other categories of crimes for which the accused was sentenced (apart from the environmental crimes). Therefore it is not possible to deduct which of the crimes resulted in a particular sanction.

Criminal law cases when only a fine was imposed are rather rare.

According to the data available, the possibility of imposing a ban on an activity has not been used.

4.1.5 Most relevant cases and punishments imposed

- **Judgement of District court in Vsetin, from 15 September 1999, No. 3T 146/99, threatening the environment under section 181a par. 1 and par. 3 of the Criminal Act**

In the period from November 1989 to January 1999 two perpetrators carried out illegal cutting of raw wood by the way of clear felling in the volume of 1415 m³. Due to their activity, clear-felled areas of 3,601 m², 5882 m² and 16533 m² were created. The perpetrators infringed the Act No. 289/1995 Coll., on forests and on amendments of certain acts in a serious way. As a consequence of their infringement of the act, the soil surface layer was disturbed, the soil was endangered more intensively by water erosion, the stability of the surrounding trees was disturbed as well and thus a serious threat of and damage to the environment in the forests was caused.

The damage of the environment amounted to 12 206 283 Czech crowns (393,751 EUR). As concerns the specification of the environmental damage, three expert specifications were submitted to the court. The court found the assessment of damage made by one expert to be inadequately low and based its ruling on another expert’s assessment. That expert indicated the environmental damage as being damage of a large extent and considered as an aggravating situation.

The perpetrators were found guilty of crime under section 181a par. 1 and par. 3 of the Criminal Act and each of them convicted to 3 years imprisonment with a conditional suspension of the sentence execution for 4 years. In addition, during this period supervision was imposed on them.
Both perpetrators and the general prosecutor did not agree with the conclusions of the district court, notably as regards the assessment of the environmental damage and appealed to the Regional Court in Ostrava.

The Regional Court in Ostrava, in its decision of 12.12.2000 No. 7To 682/2000 dismissed the appeal of both of them. According to his ruling their appeal was unjustified under section 256 of the Act on Criminal Judicial Procedure.

On the basis of the Regional Court’s decision the Czech Minister of Justice submitted a complaint against a breach of law to the Supreme Court of the Czech Republic. According to the Minister the district court assessed incorrectly the extent of environmental damage as an element of the body of crime under section 181a and applied the aggravating circumstances (par. 2 and par. 3) as the starting point for the rate of the penalty. This way the court acted in contradiction to its obligation to evaluate all circumstances of a case as stipulated in the Act on Criminal Judicial Procedure (section 2 par. 5 and par. 6). As concerns the court of appeal in Ostrava, the Minister argued that this court did not review the legality and justification of the district court’s ruling sufficiently and decided in contradiction to the Act on Criminal Judicial Procedure (sections 254 and 256) as well. Again, the Minister’s main argument concerned the method for specification of the environmental damage.

The Supreme Court arrived at the conclusion that neither the District Court nor the Regional Court broke the law to the detriment of the accused persons when both of them regarded the extent of the environmental damage as an aggravating situation and dismissed the complaint (decision from 28 November 2001, No. 5 TZ 274/2001).

- Judgement of District Court in Blansko, from 9 August 2001, No. 2T 104/2001, - threatening the environment under section 181b par. 1, par. 2 and par.3 of the Criminal Act

In the period from February 2000 to March 2000 the accused person had raw wood on his own plot cut by way of clear felling and without prior permission of a relevant public authority. In acting so, he infringed particular provisions of Act No. 289/1995 Coll. on forests, Act No. 114/1992 Coll., on nature and landscape protection and Act No. 17/1992 Coll., on environment. As a consequence of this activity a damage to the environment amounting to 7 029 887 Czech crowns (226 705 EUR) was caused. The environmental damage was evaluated on the basis of an expertise.

The perpetrator was found guilty having committed an environmental crime under section 181b par. 3 of the Criminal Act and condemned to unconditional imprisonment of 15 months.

The accused person appealed against the ruling of the District Court in Blansko to the Regional Court in Brno. He asserted that the Court decided on his guilt on the basis of an expert who had not assessed the damage properly. He further asserted that the real value of the environment cannot be specified under the current Environmental Act because there is no specific law for counting environmental damage. The court of second instance found the arguments against the evaluation of evidence of the accused as unjustified and dismissed his appeal (ruling from 28 March 2001, No. 6 To 521/2001).

The accused then submitted a review of an appeal to the Supreme Court of the Czech Republic. The Supreme Court dismissed the review as unjustified (decision from 24 October 2002, No. 3Tdo 847/2002). The main reason for deciding so was the fact that the accused argued against procedural defects of the ruling which does not fall to the category of reasons for submitting this
kind of irregular remedy under section 265b of the Act 141/1961 Coll., on criminal judicial procedure.

- Judgement of District court in Zlín from 14 January 2001, No. 4T 12/2001 - threatening of the environment under section 181a par. 1 of the Criminal Act

The perpetrator stole raw wood from several plots (in private property) and from the beginning of the year 1999 to February 2000 cut raw wood in a protected area and in a way which absolutely contradicted principles of proper cutting and the environmental legislation. As a consequence of this activity he caused significant damage. In addition to that he had not forested the cut area and also had cut trees that were not of prescribed age and so had seriously endangered the environment.

The District Court in Zlín found the accused guilty of crime under section 181a of the Criminal Act and convicted him to imprisonment of 3 years and to pay damages of 258 193 crowns (8 328 EUR) to injured persons. The court based its ruling (among others) on the damage assessment carried out by the Czech Environmental Inspectorate.

The accused disagreed with the court’s ruling and appealed to the Regional Court in Brno. Apart from the District Court’s conclusions concerning the crime of theft, the accused did not agree with the finding of facts and the evidence presented by the District Court in Zlín in relation to the accusation of crime under section 181a of the Criminal Act. He argued that the description of the criminal act in its ruling is not specified sufficiently from the legal point of view. The provision of section 181a is a “blanket norm” which refers to other acts.

The Regional Court dismissed the appeal and confirmed the ruling of the District Court (decision from 14 August 2002, No. 3T 236/2002).

On the basis of this ruling the accused submitted a review of an appeal to the Supreme Court of the Czech Republic. This court has concluded that the review was justified because the decision of both courts was not based on a legally correct assessment of the act. For this reason the Supreme Court repealed the ruling both of the District and Regional Courts and stated that the District Court had to deal with the case and issue a new ruling.

4.1.6 Conclusions and recommendations

1. There exists a legal continuity in the Czech Criminal legislation – between the Austro-Hungarian Monarchy law and that of the first Czechoslovak Republic (1918-1939) and also between the legislation of the Soviet era and the current one. However, certain important changes were made due to the new political and social conditions.

2. The only source of law in the field of environmental criminality is the Criminal Act.

3. Due to the last amendments in 2002, the current Czech environmental criminal legislation is more adequate for the needs of environmental protection than the previous one, although certain changes are still necessary.
4. The general sections 181a and 181b do not allow stipulation of the body of crime precisely and so do not reflect sufficiently the special character of particular media or behaviour. It also does not allow enforcing all intentions expressed by special environmental legislation, notably differentiating the level of dangerousness of particular infringements.

5. As explained in the Overview there is no criminal liability for legal persons in the Czech criminal law. So far, they bear only administrative responsibility.

6. The principles of environmental criminal procedure are governed by the principles of the Criminal Judicial Procedure Act as are other crimes.

7. There are no special environmental courts or tribunals for environmental crimes. Also, judges are not specialised on environmental issues.

8. So far, most of the court rulings concerned the environmental body of crime under sections 181a and 181b. The reason was that new bodies of environmental crimes have been introduced only from 1 July 2002.

9. Rulings of the courts are not sources of law as in the common law system. Nevertheless, the rulings of the Supreme Court serve as a very important tool for interpretation and unification of the court decision-making.
4.2 Hungary

By Sandor Fülöp, Environmental Management Law Association (EMLA), Budapest, Hungary

4.2.1 Competent court for hearing criminal procedures

The Hungarian court system has four levels: local (city) courts (111), county courts (19), district courts (3) and the Supreme Court. The first three levels carry out the regular first and second instance judicial work and the third level (district courts) attends to the extraordinary remedies (and second instance for the most important cases). The Supreme Court provides theoretical rulings and maintenance of the uniformity of the legal practice in the country.

Apart from vertical separation of work, the courts are divided horizontally, too. At the first instance, there is only a basic separation of the criminal and civil law judges, while on the other levels there are chambers of judges specialised on administrative law and labour law, too.

All Hungarian criminal judges receive the same training, and generally in their practical work judges do not specialise. There are, in fact, only two types of cases that require judges to be specialised, namely military and juvenile delinquency cases. Military judges have special chambers in courts of first and second instance and in the Supreme Court. Juvenile delinquency judges do not require any special training or qualification, and are deemed acceptable to perform this specific role by a simple decision taken by the head of the local courts. In practice, this decision is frequently influenced by the willingness of certain judges to undertake the role, and the needs ensuing from the workload of the given court.

There are two further groups of crimes, economic crimes and traffic crimes, which are usually examined by judges having special background gained from either postgraduate training or work in practice. Judges do not require a formal authorisation allowing them to examine economic or traffic crimes. Rather in practice, the matter will be determined with regard to distribution of workload at the courts. Having said this, the legislator is aware of the need to have special knowledge in order to examine traffic crime cases. Such cases are in the first instance dealt within local city courts, which are linked to county courts. For example, in Győr-Sopron-Moson County, traffic cases could be examined only in the Győr city court, because Győr is the seat of the county court. The reasons for having specialised handling of traffic cases could also be used to argue in favour of specialised handling of environmental cases. As well as having the necessary legal background, the effective handling of environmental cases requires in-depth technical and scientific knowledge plus the ability to work closely with different (medical, chemical etc.) experts on a daily basis.

Environmental crimes are heard at first instance in the city courts and at the second instance in county courts. Extraordinary remedies in environmental cases could be raised at the district courts if certain conditions are met. Only substantial legal faults can serve as a basis for extraordinary remedy and, as usually, the circle of persons who can initiate is also restricted. There are no specific judges with responsibility to hear environmental cases in Hungary (see earlier discussion of the lack of specialised courts or chambers). However, there is a special post-graduate environmental legal course at Budapest ELTE University. According to Professor Bandi, who heads this course, each year there is a growing number of judges on the course but, unfortunately no criminal judges during the eight year long history of the course.

Hungarian court practice adheres rigidly to the constitutional guarantees of criminal substantive and procedural laws. This is an understandable rebound effect following the “pragmatic” years.
of criminal law in the socialist era of the sixties and early seventies. The *legality principle* is fixed in the Constitution (Article 57) and in general terms (not restricted to criminal law) in the Act of Legislation (Act XI of 1987, Article 12, Paragraph (2)).

The Hungarian Constitutional Court in its decision No. 11/1992 (III. 15.) AB annulled an act of the Parliament because of the anti-constitutional use of retrospective measures in criminal law. The act in question aimed to renew the limitation period for crimes committed between 1944 and 1990 that had not been prosecuted for political reasons. The Constitutional Court held that the act infringed the requirement of constitutional criminal law that a person can only be accused under the regulations which were in force the time of perpetration. The Constitutional Court went on to state that the only possible exemption to this rule would be if the new laws were clearly more favourable to the perpetrator than the old ones were. (Changes in criminal law that create a better position to the perpetrator shall be used retroactively if the judge in the given individual case is convinced beyond reasonable doubt that the new law is favourable to the perpetrator in all respects.) As well as infringing the rule of exclusion of retroactive power of regulations, the act was annulled by the Constitutional Court also on grounds of unavoidableness, foreseeableableness and fairness.

### 4.2.2 Procedure for bringing a criminal case

For personal crimes such as crimes against personal dignity or sexual freedom, only the victim of the crime is entitled to initiate criminal procedure. In all other crimes, anyone may make a criminal complaint. According to Article 122, Paragraph (1): “Anyone is entitled to make a criminal complaint.” However, this provision contains a right and not an obligation, except in cases of the most serious crimes against the humankind, national defence and in the case of terrorist type of crimes.

An interesting topic for environmental cases is the role of non-governmental organisations (NGOs) in criminal procedure. Hungarian criminal procedural law mentions NGOs as a possible source of information and also as possible targets of “signalisation”. Signalisation is a special motion the judge can make when closing the case whereby several organisations are informed of the crime since they are considered able to take steps to prevent further similar crimes.

In addition in 2000, the Ministry of Justice developed a proposal, under which NGOs could act as “the helper of the prosecutor” and could support (and partly control) the work of the prosecutors. However, this proposal was not accepted in the Parliament in the final round of voting.

Although there is the possibility of *plea bargaining* under the most recent criminal legislation (referred to earlier in the section on Hungarian environmental criminal legislation), we found no signs that it is used with regard to environmental cases. Nor do we consider that plea-bargaining will be used in such cases in the near future.

The Hungarian, post-socialist legislature is definitely more conservative than the Western European legislatures. That explains why there are few possibilities offered by law to the prosecutors or judges to create exemptions from the *principle of officiality*.51 Exemptions

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51 The principle of officiality covers the unconditional responsibility of the state criminal organs (police, prosecutor and judge) to reveal crimes and use sanctions against them in a due process. The principle of officiality also covers the idea that these organs shall not wait until the victim of a crime makes a complaint – except the cases when the right of initiative lay with special circles of victims (e.g. victims of crimes against personal dignity).

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*Study on criminal penalties in a few candidate countries’ environmental law*

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require that there is only a small social danger caused by the perpetration of a crime. Both the prosecutor and the judge are entitled to end criminal proceedings if the actual social danger is considered to be extraordinarily low or becomes extraordinarily low after perpetration (because of changes of objective or subjective circumstances). Finally, the judge can end criminal proceedings in relation to certain crimes if the social danger caused is low in comparison with other committals of that crime.

There is one situation in law where the perpetrator’s activities following the crime can or shall lead to the cessation of criminal proceedings. This situation is where the perpetrator’s family may be harmed because of the perpetrator’s failure to pay alimentation. After the perpetrator pays the necessary sum to his family, the court may decide to stop the proceedings against him. There are some cases in court practice in connection with other crimes, which are similar to this method.

4.2.3 Duration and costs of the procedures

As concerns the duration of procedures, only the timing of the police procedure is regulated in a certain way. According to Article 131, Paragraph (3) of the Criminal Procedural Code, the criminal investigation shall be finished within 2 months. However, with the permit of several levels of the prosecutors’ offices, this term can be prolonged several (theoretically not restricted) times. The process of prosecutors and judges is not determined in time dimensions.

There is no exact data on the cost of court actions. The convicted person has to pay the expenses of the expert that gave opinion in the case either to the police or to the court, but not the general court expenses or the expenses of the other criminal law implementation organs. Should the perpetrator engage an attorney, he will also have to pay his fee. In the case of more serious crimes the presence of a defence lawyer is mandatory. However, if the perpetrator does not want to engage one, the State will appoint a public defender, which is free for the perpetrator.

From practice, it can be said that in a criminal case, where one expert participates, the cost could range between 50,000 and 250,000 HUF (200-1000 Euro). The attorney fee will be agreed between the attorney and the perpetrator, and may range between 250,000 and 500,000 HUF (1000-2000 Euro) in more straightforward cases, but in larger, more sophisticated cases could be as high as 1,000,000 HUF (4000 Euro).

4.2.4 Some statistics on proceedings

Unfortunately, the available data is not separated according to the 6 categories of the Guidance material for this report. The only comprehensive criminal statistics in Hungary can be found at the Statistical Department of the General Attorney’s Office. These statistics provide data in relation to the three types of crimes found in the Hungarian Criminal Code. One covers nature protection, the other covers infringements of the rules on hazardous waste and chemicals, whilst the third category covers infringements of the remainder of the environmental protection rules. Although the coverage is not perfect in these cases, the following data gives us a sense of the general situation on prosecution of environmental crimes.

Another difficulty in the interpretation of the data is that only aggregated data is provided on the sanctions for environmental crimes. However, the following rough estimates can be made.
Years/Sectors | 1998 | 1999 | 2000 | 2001 | 2002
--- | --- | --- | --- | --- | ---
Air, water and radiation
No of prosecutions | 90 | 52 | 71 | 67 | 115
No. of convictions | 35 | 23 | 29 | 29 | 24
Imprisonment
Fines
Others
No of acquittals
Total amount of fines
Average fine
Waste and chemicals
No of prosecutions | 36 | 47 | 51 | 120 | 60
No. of convictions | 22 | 26 | 29 | 88 | 24
Imprisonment
Fines
Others
No of acquittals
Total amount of fines
Average fine
Nature
No of prosecutions | 52 | 55 | 71 | 129 | 227
No. of convictions | 33 | 22 | 48 | 83 | 166
Imprisonment
Fines
Others
No of acquittals
Total amount of fines
Average fine
Total
Imprisonment | 6 (22,2 %) | 10 (20 %-) | 29 (20,0 %) | 23 (27,7 %) | 34 (24,8 %)
Fines | 7 (25,9 %) | 16 (32 %) | 40 (42,1 %) | 34 (41,0 %) | 75 (54,7 %)
Others | 10 (37 %) | 6 (12 %) | 10 (10,5 %) | 20 (24,1 %) | 14 (10,2 %)
No of acquittals | 4 (14,8 %) | 18 (36 %) | 16 (16,8 %) | 6 (7,2 %) | 14 (10,2 %)
Total amount of fines | no data | no data | no data | no data | no data
Average fine | no data | no data | no data | no data | no data

While in the previous lines we counted in numbers of crimes, here, naturally, we count in numbers of perpetrators.

Public interest work, secondary punishment (e.g. banning from profession), reprimand, probation.

Here we count the substantive acquittals because of findings of lack of crime or lack of perpetration and discontinuance of the proceeding by the court because of formal reasons (failure to meet the burden of proof, raising of reasons to exclude adjudication, etc.)
4.2.5 Most relevant cases and punishments imposed

Hungarian criminal legal practice is highly influenced by the decisions of the Supreme Court. These are published in the journal “Criminal Decisions”. Unfortunately, amongst the five to six hundred decisions that are published annually there are very few environmental cases. Five environmental decisions have been found from 2001, 1999, 1986 and 1984.

In Decision No. BH 2001.512 it was held that irreversible damage to nature had been committed as well as the tort of nuisance. In this case, an agricultural entrepreneur was held guilty of failing to supervise his horses. His horses had trespassed on part of a forest, which had been designated as specially protected by the National Nature Protection Agency. The horses then damaged the bark of “illir” beech trees and blue beech trees and trampled over underwood trees. The damage caused by the horses had irreversible effects.

The judgement reveals that important elements of the case were that the perpetrator’s farm was very close to the protected wood, and yet he did not erect any fences and his twelve horses had strayed into the wood without any supervision for a period of almost six months. Also relevant was that during this time, the regional Nature Protection Agency warned the perpetrator several times to restrain his horses and that he was also fined for infringement of nature protection rules. The horses even created regular trails in the wood. Their manure also caused serious damage as it modified the unique chemical features of the forest’s soil. The changes to the soil resulted in some plants disappearing and new ones starting to grow. Altogether the horses ruined 821 illir beech trees and 392 blue beech trees and damaged several times more of both kinds of trees. The wood and soil of a 17-hectare (400 m x 400 m) territory was totally and irreversibly changed.

The punishment given was 300 days-equivalent fine with a 500 HUF daily amount (a very low amount considering the low income of the perpetrator). Together with this 150.000 HUF punishment, the criminal court obliged the perpetrator to pay 658.914 HUF in damages, 20% in interest for 4 years and 39.550 HUF as a procedural fee (the total amount was more than 3390 Euro).

This case could be a good example of the narrow path the Hungarian environmental criminal prosecution is taking: there were many more persons whose criminal responsibility should have been examined. The fact that a local horse farmer could seriously damage a very large protected area for a seemingly long time without being stopped raises the question of the responsibility of the officials of environmental and nature protection bodies.

In Decision No. BH 2001.264 it was found that there had been unlawful deposition of hazardous waste. Here the perpetrator was aware that there were environmentally dangerous materials on the land he had purchased, but he failed to take steps to handle them, breaching conditions that he had undertaken in the purchase contract. Instead of properly handling the dangerous waste, he put it in an unknown place. (There was no possibility to discover where the perpetrator put the dangerous waste, but since the legal ways of handling of it could be reasonably excluded, the court was convinced that he illegally dumped it somewhere else).

The land involved had originally belonged to a firm that went bankrupt. The liquidator commissioned a firm to gauge the extent of the environmental damage, and found out that there were 125 litres of identifiable material and 1 ton of mixed, unidentifiable material in barrels and that the soil had been contaminated. The cost of cleaning up was estimated at 1,3–1,4 million HUF (5200–5600 Euro). The liquidator then sold the real estate to the perpetrator with a contract under which they agreed that the new owner would clean up the land. On account of this, the
perpetrator did not have to pay for the land, and even received 500,000 HUF compensation for
the proper handling of the substantial amount of hazardous waste.

The defence lawyer of the perpetrator argued that there was error of facts. He argued that the
perpetrator had not known that the waste on his land was dangerous according to the law, nor
had he known that proper handling required that he had to have the waste handled by a facility
that held all the permits necessary to handle hazardous wastes. The Supreme Court dismissed
this defence saying that the contract was clear enough in respect of the obligations and the
responsibilities of the new owner and he should have scrutinised the hazardous waste
regulations in order to be aware of all the details of his responsibilities.

The punishment was 10 months imprisonment, whose execution was suspended for 1 year (i.e.
not served unless the perpetrator commits further criminal acts or seriously infringes the rules of
probation) and 200,000 HUF (800 Euro) fine as side-punishment.

In our opinion, both the suspended imprisonment and the low sum of the side-punishment fine
are very ineffective as a response to a serious, wilful environmental crime. Such a lenient
criminal sentence has no deterrent strength, but rather can act as an encouragement for similar
entrepreneurs to base their economic activities on similar environmental crimes.

In Decision No. BH 1999.2888 it was held that criminal legal responsibility was not engaged for
negligent homicide, negligent grievous bodily harm and negligent harming the environment
where the perpetrator’s has insufficient mental and intellectual capacity. In this case, the
perpetrator incapacity meant that he could not be held to know that dismantling car batteries
might endanger his and his family’s health and might endanger the environment.

According to psychological experts, the perpetrator’s mental level was in the zone of slight
defectiveness, and he could not assess anything more complicated than normal everyday
routines. Since 1994 he worked for a small waste collecting enterprise and was involved in
melting together the lead component of the batteries. No one in the company warned him that
the hot lead vapour could cause serious harm to health and to the environment. Later, as the
amount of the collected batteries grew, he continued the melting activity outside his own house.
The result was that a significant amount of lead emissions was released into the air and soil.
These emissions caused his one-year-old baby to die, and his four-year-old child to suffer
serious lead poisoning. He took his children to doctors at the time of the first symptoms but the
doctors did not suspect the rare syndrome of lead poisoning.

The county court in its second level decision acquitted the defendant on the basis of lack of
capacity. Not even negligence was established, since it was not acceptable in the objective and
subjective situation of the perpetrator to foresee the consequences of his activity.

In evaluating this case, again we would like to refer back to the “narrow path” of prosecuting
the environmental crimes. A simple minded person seriously endangered the environment of a
whole rural community for a long time, every one knew what was going on, but no one, neither
the neighbours nor the authorities, did anything to stop his activity – and still the only criminal
procedure is one that ends with acquittal of a mentally disabled perpetrator.

The title of Decision No. BH 1986.87 is: “Erroneous establishment of the crime of damaging
the environment because of pouring a pesticide with poisonous elements into a well.”

The perpetrator was an alcoholic and his ties with his wife and children had broken down. One
night, whilst inebriated, he climbed into the garden of his wife’s family and poured a tin can of
pesticide into the house well. The next day the family discovered that the water from their
The garden well was of a changed colour and odorous, so they used the neighbour’s well to drink and wash.

The expert opinion stated that the poisoning did not threaten the neighbouring dwellings nor did it cause significant poisoning of the underground water or soil.

The Supreme Court found the perpetrator to have committed attempted homicide with an improper tool and punished the perpetrator with a short-term imprisonment.

Decision No. BH 1984.481 concerned the “Establishment of aggregated crimes of harming the environment and negligent (damaging) nuisance.”

A company collected and dismantled car batteries in very primitive conditions, directly onto the soil of the company drive-way. They then put the crushed batteries on trucks and transported them to the railway station where they again stored the pile of battery pieces and dust on soil. At that railway station on several occasions there was parallel loading to cars of battery pieces and animal feed stock (battery pieces were mixed with animal feed stock by chance). Due to this negligent practice several dozens of cows died at three agricultural firms. In addition, underground water and 8 dwellings near the station were seriously polluted and it was necessary to excavate 2000 m³ soil (resulting in circa 200,000 Euro cost).

The company directors and the director of the railway station were sentenced to 6 months’ imprisonment suspended for 2 years (i.e. not served unless the perpetrator commits further criminal acts or seriously infringes the rules of probation) and as side-punishment fined 7000 and 6000 HUF (700 and 600 USD55) respectively.

This old decision is important in the history of environmental criminal legal practice, since it emphasises that environmental crimes are not only those crimes which cause material harm.

4.2.6 Conclusions and recommendations

Hungarian criminal law does not to any extent help with the more effective implementation of the Hungarian environmental administrative regulations. This is for partly legal and partly practical reasons.

On the legal side, we have to emphasise first that the most general problem is that environmental criminal provisions are not harmonised with environmental administrative regulations in terms of content or definitions. There needs to be a systematic analysis of Hungarian environmental administrative law to reveal those rules that require direct criminal legal support. For instance, the omission of certain monitoring and reporting activities which can prevent the authorities from controlling the environmental performance of certain facilities might be considered grave enough to merit a criminal penalty. With regard to methodology, our environmental criminal law uses different terminology from administrative environmental law and this often causes difficult practical problems. For instance, an even serious infringement of certain environmental protection administrative legal rules might not qualify as an environmental crime because of the different use of words in the criminal legal texts.

As well as amending these shortcomings via joint committees of environmental administrative lawyers and leading criminal lawyers, we suggest that some further amendments and additions

55 Euro did not exist that time.
to environmental criminal law are considered, for inclusion in the future development of this part of our criminal law.

The possibility of significantly diminishing or even ending the criminal responsibility of perpetrators of environmental crimes in cases where they undertake to remedy the harm caused would make Hungarian environmental criminal law much more effective. In the majority of the cases, the perpetrator is the person who is in the best position to carry out remedial work because he has knowledge of the location and/or possesses the proper tools and expertise.

The legislator should also consider introducing the criminal legal obligation to report the most serious environmental crimes by anyone (except the direct perpetrator) who acquires firsthand information about them. Since the response factor is crucial in remedying serious environmental disasters, criminal law should use its special tools to create a sense of urgency to all who are involved in such events.

Finally, we suggest enhancing the roles of environmental NGOs in the criminal environmental enforcement. NGOs, as sources of information and evidence, could even now play a role in the environmental criminal process, but their environmental awareness and vigilance should be better used, in line with the former official draft regulation of Ministry of Justice, i.e., as having a secondary indictment function. This would enable the NGOs to become involved into the criminal procedure as private indictment parties whenever the official indictment body (the prosecutor’s office) fails to issue an indictment based upon the evaluation of the facts of the criminal investigation carried out by the police.
4.3 Lithuania

By Domas Balandis, Lithuania

4.3.1 Competent court for hearing criminal procedures

The Lithuanian court system consists of courts of general jurisdiction and courts of special jurisdiction. General jurisdiction courts are district courts, regional courts, the Court of Appeal and the Supreme Court.

The Supreme Administrative Court of Lithuania and regional administrative courts are courts of special jurisdiction and hear disputes arising from administrative legal relations. Other courts of special jurisdiction may be established for hearing labour, family, juvenile and bankruptcy cases as well as other categories. No specific environmental courts exist.

The district court is the court of first instance for 1) civil cases assigned to its jurisdiction by law; 2) criminal cases assigned to its jurisdiction by law; 3) cases assigned to the jurisdiction of mortgage judges; 4) cases of administrative offences assigned to its jurisdiction; 5) cases relating to the enforcement of judgements and sentences. In cases provided by law, judges of the district court shall perform the functions of an investigating judge and an enforcement judge as well as other functions assigned to a district court by law (Law on Courts, Art. 15).

The regional courts: 1) are first instance for civil cases assigned to its jurisdiction by law; 2) are first instance for criminal cases assigned to its jurisdiction by law; 3) are appeals instance for cases involving decisions, judgements, rulings, resolutions and orders of district courts; 4) perform other functions assigned to its jurisdiction (Law on Courts, Art.19).

The Court of Appeal: 1) takes appeals from regional court decisions, judgements, rulings, resolutions and orders; 2) hears requests for the recognition of the decisions of foreign courts, international courts and arbitration awards and their enforcement in the Republic of Lithuania; 3) performs other functions assigned to its jurisdiction (Law on Courts, Art. 21).

The Supreme Court is the only court of the “ cassation” instance (i.e. final appeal on points of law only) for reviewing effective decisions, judgements, rulings, resolutions and orders of the courts of general jurisdiction. It develops uniform court practice in the interpretation and application of statutes and other legal acts. The Supreme Court may also perform other functions assigned under law to its jurisdiction (Law on Courts, Art.23).

The Supreme Court’s bulletin "Court Practice" publishes periodically the following:
1) decisions, orders and rulings rendered by the plenary session of the Supreme Court, decisions handed down by a chamber of three judges or an extended chamber of judges the publication whereof has been approved by the majority of the Court's judges;
2) summary reviews of court practice in the application of statutes and other legal acts in cases of separate categories approved by the Senate and interpretations in the form of recommendations;
3) other materials the necessity of publication whereof has been approved by the Senate (Law on Courts, Art. 27).
The publishing of the Supreme Court bulletin is financed from the State budget and from the proceeds from sale of the bulletin. Courts and judges of the Republic of Lithuania receive the bulletin of Supreme Court free of charge.

The interpretation of statutes and other legal acts described in the rulings published in the Supreme Court bulletin must be taken into consideration by courts, state and other institutions as well as by other persons when applying these statutes and other legislation (Law on Courts, Art. 23).

The regional administrative courts: 1) provide the first instance for administrative cases assigned to its jurisdiction by law; 2) perform other functions assigned to its jurisdiction (Law on Courts, Art. 29).

The Supreme Administrative Court: 1) is the first and final instance for administrative cases assigned to its jurisdiction by law; 2) is appeal instance for cases from decisions, rulings and orders of regional administrative courts; 3) is appeal instance for cases involving administrative offences from decisions of district courts; 4) an instance for hearing, in cases established by law, petitions on the reopening of decided administrative cases, cases involving administrative offences among them. The Supreme Administrative Court develops the uniform practice of administrative courts by interpreting and applying statutes and other legal acts (Law on Courts, Art. 31).

The Supreme Administrative Court issues a bulletin under the title "Practice of Administrative Courts" publishing in it periodically the following:

1) decisions, rulings and orders rendered by the plenary session of the Supreme Administrative Court, decisions handed down by a chamber of three judges or an extended chamber of five judges the publication whereof has been approved by the majority of the Court's judges, as well as all decisions on lawfulness of regulatory administrative acts;

2) summary reviews of court practice in the application of statutes and other legal acts in cases of separate categories approved by the Senate and interpretations in the form of recommendations;

3) other materials the publication of which has been approved by the majority of judges (Law on Courts, Art. 32).

The interpretations found in the Supreme Administrative Court bulletin on the application of statutes and other legal acts must be taken into consideration by courts, state and other institutions as well as by other persons when applying these statutes and other legislation (Law on Courts, Art. 31).

The Constitutional Court of the Republic of Lithuania is not a part of the court system, but is an independent judicial body with the authority to determine whether the laws and other legal acts adopted by the Seimas (the Parliament) are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government conform to the Constitution or laws.

The President appoints judges to the district courts, regional courts, regional administrative courts and the Supreme Administrative Court. Judges of the Supreme Court are appointed by the Seimas, while the President upon approval by the Seimas appoints judges of the Court of Appeals. The Council of Courts selects candidates and advises the President on the appointment of judges.

In March 2002, the Parliament adopted a Law on the National Courts Administration. The National Courts Administration is in charge of providing the necessary technical assistance to
the courts, analysing court proceedings and compiling statistics. Automatic Statistical Information System via Internet offers ongoing crime prevention information. Information intended for official use is provided for registered users.

The new Law on Courts introduces compulsory in-service training for judges. Under the Law, the Minister of Justice and the Council of Courts are jointly responsible for the organisation and methodological preparation of the training programmes including acquis-related matters. The Training Methodology Division of the Prosecutor-General’s Office, which is responsible for organising training for public prosecutors, organises joint training programmes for judges and prosecutors.

The Law of the Republic of Lithuania on Providing Legal Aid aims to ensure the provision of state-guaranteed legal aid in civil, administrative and criminal cases.

District courts are the first instance for environmental criminal hearings. Judges are not specialised according to type of cases and any criminal judge can conduct the hearing of environmental offences. The regional courts are appeals instance for environmental cases, involving decisions, judgements, rulings, resolutions and orders of district courts.

District courts conduct also hearings of environmental administrative offences referred to in Article 224 of the Code on Administrative Offences. These offences are: construction and operation of economic activity without a permit; pollution of the sea environment; pollution of environment by radioactive substances, provision of wrongful information on environment, others. State environmental inspectors apply administrative sanctions for infringement of environmental laws in cases not attributed to the district courts by the Code on Administrative Offences.

- **Principles of criminal jurisdiction**

The Law on Environmental Protection provides that any legal or natural person who by way of unlawful activities causes damage to the environment, to human health and life, to property or interests of other persons shall be held liable in accordance with the administrative, criminal or civil law. Offenders also must cover all losses and, if possible, restore the conditions of the environment (Law on Environmental Protection, Art. 32).

An administrative offence is illegal behaviour (either action or omission) for which the law provides administrative sanctions (Code of Administrative Offences, Art. 9). Articles 51-90 of the Code of Administrative Offences establish sanctions for violation of environmental legislation.

A crime is an illegal act or omission, forbidden under the Criminal Code, and which is punished by imprisonment (Criminal Code, Art. 11.1).

In accordance with the provisions of the Criminal Code, the courts impose penalties within the scope of the sanction of the relevant Article, which provides for criminal liability for the committed crime. When imposing a penalty the court has to take into account: the dangerousness of the offence committed; the form and type of culpability; the motives and objectives of the crime committed; the personality of the offender; the stage of the commission of the crime; the manner in which the person participated in the crime and the mitigating or aggravating circumstances.
The principle of legality applies in Lithuania. A person shall be held criminally liable only when a Criminal Code in force at the time of commission of the crime forbids the act which he has committed (Criminal Code, Art. 2).

The Criminal Code provides the following exceptions from criminal liability: self-defence (Criminal Code, Art. 28); performance of professional duties or scientific experiments (Criminal Code, Art. 30, Art. 35); immediate necessity, when acts are carried out in an attempt to avert danger which threatens him or other persons or their rights, or community or state interests, if this danger could not be averted by any other means and if the damage caused would be less than the damage avoided (Criminal Code, Art. 31); execution of lawful order (Criminal Code, Art. 33); acts which, although they result in consequences provided for by criminal statutes, nevertheless constitute a justifiable production or economic risk necessary to attain objectives beneficial to society (Art. 34).

The Criminal Code provides also releases from criminal liability. In the following cases a public prosecutor, after approval by the pre-trial judge, must not bring a case into court even when elements essential to the offence are detected: the act lost its dangerous character due to a change in the circumstances (Criminal Code, Art. 36); the act or omission is recognised as insignificant due to minor consequences or other elements of the offence (Criminal Code, Art. 37); victim and the culprit reach reconciliation and voluntarily agree on the making of restitution for damage caused by the commission of the crime (Criminal Code, Art. 38); culprit co-operates with the pre-trial investigation institution and supports detection of the organized crime (Criminal Code, Art. 39)\(^1\).

The plea bargaining principle is not applicable in Lithuania. However, in cases of criminal acts, which are punishable only by a fine or where the penalty of the type is treated as alternative penalty, the trial proceedings may be dispensed with and the penalty may be imposed by a penal order. In such a case the judge shall be entitled to draw up the penal order upon receipt of the prosecutor's application. If during the pre-trial investigation the prosecutor decides to request that the judge disposes of the case by issuing a penal order, the bill of indictment shall not be drawn up. The prosecutor shall draw up an application and send it together with the material collected in the course of pre-trial investigation to the court in accordance with the rules of jurisdiction (Criminal Procedure Code, Art. 418).

4.3.2 Procedure for bringing a criminal case

Each time when elements of a criminal offence are discovered, the prosecutor and the institutions of pre-trial investigation must, within the limits of their competence and within the shortest time, conduct an investigation, and try to discover the criminal act (Criminal Procedure Code, Art. 2). Officers of pre-trial investigation institutions conduct the pre-trial investigation. Pre-trial investigations are organised and led by a prosecutor. The prosecutor may decide to conduct the pre-trial investigation himself. In cases provided for by the Criminal Procedure Code, a pre-trial judge may conduct actions for certain investigation.

Infringements of environmental legislation are usually investigated in the following way:

1) Regional environmental protection inspectors draw up official reports and register infringements of environmental law;
2) Environmental inspectors, acting within the limits of their competence, investigate cases and apply penalties if it is obvious that the offence falls within the Code of Administrative
Offences. Offenders or victims may appeal decisions of environmental inspectors to the district courts;

3) Environmental inspectors investigate the cases and submit official reports to the district courts in cases where the law authorises environmental inspectors simply to draw up official reports but not apply the sanctions. In such cases, the district courts apply the administrative penalties;

4) Environmental inspectors submit official reports and other material collected to pre-trial investigation institutions for pre-trial investigations if elements of a criminal offence are discovered.

Upon receipt of an official report from the environmental protection inspector the pre-trial investigation institution (usually, the police) comments on the pre-trial investigation. A prosecutor or an officer of a pre-trial investigation institution may refuse to start a pre-trial investigation only where the facts stated in the official report about the criminal act are totally unconvincing. The decision of a prosecutor or a pre-trial investigation officer not to commence pre-trial investigation must be recorded in an official report. The environmental protection inspector who filed an official report has to be notified about the refusal to commence pre-trial investigation. The decision of a pre-trial investigation officer not to commence pre-trial investigation may be appealed against with a prosecutor, and a prosecutor’s decision may be appealed against with a pre-trial judge. The Criminal Procedure Code requires the prosecutor who received an application or communication about a criminal act, or where the prosecutor himself establishes elements of a criminal act, to commence the pre-trial investigation at the earliest opportunity. The prosecutor either performs the actions of the pre-trial investigation himself or directs a pre-trial investigation institution to perform them.

NGOs or other organisations or civil parties can also submit to the prosecutor or to a pre-trial investigation institution an application about a criminal act. But in practice NGOs or other organisations share competence with environmental protection inspectors.

4.3.3 Duration and costs of the procedures

Legal expenses can comprise the following:

- sums paid to witnesses, victims, experts, specialists and interpreters in reimbursement for the expenses incurred by them while travelling to the location where they are summoned and their accommodation expenses;
- sums paid to witnesses and victims for making them leave their usual work;
- sums paid to experts, specialists and interpreters for their work, save where they perform their duties in the line of their service;
- sums paid to lawyers for the defences where they participated in the proceedings by appointment;
- sums spent for custody or shipment of objects;
- other expenses incurred by parties to the proceedings or by the court which are recognised as legal expenses by a pre-trial investigation officer, a prosecutor and the court (Criminal Procedure Code, Art.103).

Legal expenses incurred by a witness, a victim, an expert, a specialist, an interpreter and the appointed counsel are reimbursed from the funds of pre-trial institutions, the prosecutor’s office or the court. The Government of the Republic of Lithuania determines the manner of reimbursement and the exact sums payable. A party to the proceedings who, at his own discretion, hired an expert, a specialist, a counsel or an agent or who incurred other expenses...
shall reimburse their expenses from his own resources. A party to the proceedings may request that the court recognises his expenses as legal expenses and that they are recovered from the convicted person.

When handing down a judgement, the court decides whether to recover all the legal expenses (save the expenses incurred by interpreters) from the convicted person. The court has the right to decide to recover legal expenses from an accused who has been found guilty but has been released from penalty or for whom penalty has not been imposed. Expenses incurred as a result of the adjournment of the investigation or hearing owing to default by any one of the parties to the proceedings without a good cause shall be recovered from the defaulting party.

If a lawyer participated in the proceedings as an appointed counsel for the defence, when handing down a judgement or an order, the court also determines the amount of the fee payable to the lawyer for his services by an accused or his legal representatives. Taking into account of the means of a convicted person, the court may decide not to require an accused to cover the expenses referred to in paragraphs 1 and 2 of this section. If such is the case, the counsel’s fees shall be reimbursed under the Law of the Republic of Lithuania on Providing Legal Aid.

There is no data on costs for the proceedings. In practice, where one witness or expert participates in a criminal case, the cost is about 100 EUR. The lawyer’s fee is subject to agreement with the accused. Payment of an appointed counsel for the defence is very low – approximately 50 EUR per day. There are currently proposals in the Parliament to increase this fee.

4.3.4 Some statistics on proceedings

As already mentioned, the Code of Administrative Offences is the main instrument for enforcement of environmental laws and regulations. The Criminal Code is applied rarely. The tables below show the total number of registered administrative environmental offences and registered criminal environmental offences.

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Criminal environmental cases

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There are few statistics available on environmental criminal procedures in the courts. The Automated Statistical Information System (ASIS) notes environmental crimes under the heading “other crimes” which makes it impossible to provide the exact number of criminal environmental cases. The data in table 2 has been collected manually from the police and from the courts.

The number of criminal investigations of environmental offences has increased as from May 1, 2003, since the new Criminal Code has come into force. The data in table 3 has also been collected from the police and the General Public Prosecutor’s office.

\(^{56}\) While in the previous lines we counted numbers of crimes, here, naturally, we count numbers of perpetrators.
\(^{57}\) Public interest work, secondary punishment (e.g. banning from profession), reprimand, probation.
\(^{58}\) Here we count the substantive acquittals because of findings of lack of crime or lack of perpetration and discontinuance of the proceedings by the court because of formal reasons (failure to meet the burden of proof, raising of reasons to exclude adjudication, etc.)

Milieu Ltd.
6 October 2003

Study on criminal penalties in a few candidate countries’ environmental law
**Criminal investigations of environmental offences (May 1, 2003 – July 31, 2003)**

<table>
<thead>
<tr>
<th>Chapter XXXVII of the Criminal Code ‘Offences against Environment and Human Health’</th>
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<th>Crimes</th>
<th>Misdemeanours</th>
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### 4.3.5 Most relevant cases and punishments imposed

The vast majority of criminal offences reported concern illegal hunting, illegal fishing and forest felling. Pollution of water, air and soil forms a minority of the criminal offences. The criminal cases relevant to offences against wildlife and offences related to pollution of environment are described below.

**Criminal case No. 1-72-02/2002 (offence against wildlife)**

On May 18, 2000 environmental protection inspectors detained three persons on suspicion of fishing illegally in the river Neris. The suspects used specially prepared tools for killing fish by electricity. The environmental protection inspectors submitted an official report on infringement of environmental law together with collected evidence to the pre-trial investigation institution (the police). The police conducted pre-trial proceedings provided for by the Criminal Procedure Code. Witnesses confirmed the alleged infringement. The pre-trial investigation uncovered that the suspects had previously been punished for infringement of environmental law. Since the pre-trial investigation uncovered the elements of a criminal act, the prosecutor brought an indictment against the suspects. Sirvintas district court found them guilty of a criminal act stipulated in Art. 245 of the old Criminal Code (infringement of environmental laws) and imposed on the accused a penalty of imprisonment for 6 months. The convicted persons were also required to compensate against their damage to the environment by paying a sum of 2485 Lt (720 EUR).

Punishment by imprisonment for infringement of environmental law is a rare occurrence. The case above is the only court case when the court applied this kind of penalty for infringement of environmental law. Fines are the main punishment for environmental offences.

**Criminal case No. 30-9024-01 (offence related to pollution of the Baltic Sea)**

Due to an accident, Transportation Company Butinge oil products polluted the Baltic Sea. The oil transportation pipe was damaged due to irregular inspection and lack of sufficient technical maintenance. The Ministry of Environment calculated 2 600 000 LTL (753 000 EUR) damage to the environment and sent an official report to the State Prosecutor. The State Prosecutor office carried out the investigation and accused the manager of criminal neglect of official duty.
The accusation was based on Article 245\(^3\) of the old Criminal Code - pollution of the sea by dangerous substances. The accused denied the accusation and argued that technical maintenance had been carried out regularly. The technical examinations and other available evidence was insufficient to enable a decision to be reached. The case is still in the district court of Klaipeda. This case is relevant to the statistics above as it elucidates differences between the number of registered criminal offences and the number of convictions.

4.3.6 Conclusions and recommendations

Significant changes have been made in reforming the judicial system in Lithuania. In 2002 the Seimas adopted the new Criminal Code and the new Criminal Procedure Code. The new Code of Administrative Offences is under preparation. These changes impact on the enforcement of environmental legislation.

The number of criminal cases for infringement of environmental legislation is very low. In contrast, the number of administrative cases for infringement of environmental legislation is increasing. The situation can be explained by the fact that the Code of Administrative Offences provides detailed regulations on the application of penalties for infringement of environmental legislation. The provisions of the Code of Administrative Offences are concrete and easier to apply. Moreover, penalties (especially fines) are approximately at the same level as in the Criminal Code. However, the number of criminal investigations of environmental offences has increased since May 1, 2003, when the new Criminal Code came into force.

The vast majority of criminal environmental offences concern illegal hunting, illegal fishing and forest felling. Pollution of water, air and soil forms a minority of the criminal offences.

Punishment by imprisonment for infringement of environmental law is a rare occurrence. There is only one court case when the court has applied such a penalty for commitment of an environmental offence.

There is no legal practice concerning the application of penalties pursuant to the new Criminal Code yet. Lawyers and public institutions are analysing the application of the new Criminal Code and are already discussing the first amendments to the new Criminal Code.

There are few statistics available on environmental criminal procedures in the courts. The Automated Statistical Information System (ASIS) notes environmental crimes under the heading of “other crimes”, but does not specify data article by article. It is recommended that the ASIS, which is managed by the National Courts Administration, should provide details on criminal cases concerning infringement of environmental legislation. This will support closer analysis of court proceedings and the application of the Criminal Code for infringement of environmental legislation.
4.4 Poland

By Magdalena Bar, Jerzy Jendroska, Jan Jerzmanski, Wojciech Radecki. Jendroska, Jerzmanski & Bar. Corporate and Environmental Law, Wroclaw, Poland

4.4.1 Competent court for hearing criminal procedures

The most important feature of the current criminal law including also the petty offence law is the rule that the court may exclusively make decisions in proceedings both in serious and petty offence cases. This does not prevent fines from being imposed for petty offences by way of penal orders because this is not a decision by sentence, and the fine procedure is considered to be a substitutionary procedure.

Pursuant to regulations under the Act of 27 July 2001 - Law on Structure of Common Courts (Journal of Laws no. 98, item 1070 as amended), the common courts consist of district courts, province courts and courts of appeal.

The district court is established for each commune; in justified cases more than one district court may be established on the area of the same commune. District courts have criminal divisions.

Magistrate’s courts, as divisions or non-local divisions of district courts, may be established in district courts, in or outside their seats. If the magistrate’s court is established in the district court, petty offence cases are tried by the magistrate’s court (magistrate’s division). If, however, there is no magistrate’s court, petty offence cases are tried by the district court in the criminal division.

The province court is established with jurisdiction over at least two district courts. The province court will have a criminal division for criminal cases of the first and second instance. The court of appeal is established with jurisdiction over at least two province courts. In the court of appeal, there is a criminal division for cases within the scope of criminal law tried in the second instance.

According to statistical data, in Poland there are: 294 district courts (magistrate’s divisions have been established in the majority of them), 43 province courts and 10 courts of appeal.

In principle, environmental serious offence cases are tried in the first instance in the district court. It is a duty of the province court, as the court of first instance, to examine the following serious offences qualified by consequences such as a death of a person or serious damage to the health of many people:

- causing a fire (e.g. forest fire) or other act threatening the public safety (Article 163 § 3 and 4 of the Penal Code),
- pollution or other threat to the environment caused by radiation or waste (Article 185 § 2 of the Penal Code),

The district court must also examine intentional serious offences such as causing a danger to the public safety (e.g. spreading plant or animal pest) under Article 165 § 1, 3 and 4 of the Penal Code.
If the district court makes a decision in the first instance, an appeal can be filed at the province court. If the province court made a decision in the first instance, an appeal can be submitted to the court of appeal.

In environmental petty offence cases, the district court (magistrate’s division, if established) is always competent as the court of first instance. In principle, the court of appeal is:

1) the province court to try appeals against and complaints to decisions and rulings closing a way to passing a judgement,
2) the district court in other composition equal in rank to try other complaints.

4.4.2 Procedure for bringing a criminal case, duration & costs of the procedure

Criminal proceedings in cases concerning serious and petty offences are conducted according to precisely specified procedural rules, which due to theoretical and practical reasons may be presented jointly with respect to both types of punishable acts, with a special attention given to their distinctive nature.

- Sources of the Criminal Proceedings Law

With respect to liability for serious offences, the Code of Criminal Procedure (Polish abbrev. k.p.k.) adopted on 6th June 1997 as amended by the Act of 10th January 2003 is the basic source. With respect to liability for petty offences, the Code of Petty Offence Case Procedure (Polish abbrev. k.p.w.) adopted on 24th August 2001, as amended by the Act of 22nd May 2003, is the basic source.

There are significant differences between the two procedural codes. The Code of Criminal Procedure in its original version included 682 articles, and constitutes a fully independent codification. The Code of Petty Offence Case Procedure, includes only 119 articles in its original version, and does not constitute an independent codification because the legislator, for the needs of the procedure in petty offence cases, refers to around 250 articles from the Code of Criminal Procedure, which can also be applied respectively to petty offence cases. So, the procedures for serious offences are different from petty offences but are based on similar principles.

- Types of proceedings

Serious offence cases

In serious offence cases, the Code of Criminal Procedure provides for a difference between ordinary and special procedure. In principle ordinary procedure is applied; special procedure applies where the prerequisites provided in relevant provisions occur (see below).

The ordinary procedure in serious offences cases consists of the following stages (described in the next parts of the study):

1) A notification to a prosecutor of commitment of a serious offence (may be made by every person including an environmental NGO);
2) Prosecutor’s decision on starting preparatory proceedings;
3) An inquiry or an investigation (as a rule carried out by the police and in some cases by a prosecutor or by other bodies);
4) Filing of an indictment by a prosecutor (or in some cases another public accuser such as a director of a national park), or under certain circumstances by an affected party;
5) Proceedings before the court of first instance;
6) A decision of the court (a sentence, an acquittal, a conditional discontinuance of proceedings, a discontinuance of proceedings).

There are three types of special procedures: simplified procedure, procedure in cases brought on a private charge and injunction procedure. However, when referring to environmental crimes, only two types of special procedures have any significance - simplified and injunction procedures.

The assumption is that the simplified procedure is applied to cases in which an investigation is carried out. Investigations are conducted in principle in cases of a serious offence within the competence of the district court and punishable with a penalty up to 5 years imprisonment. However, in a case of a serious offence against property an investigation is carried out only when the value of the subject of the offence or damage made does not exceed PLN 50 000 (about Euro 12 500). The majority of environmental crimes meet the conditions for an investigation to be carried out. However, an investigation is not made, by the operation of an explicit provision of Article 325b § 2 of the Code of Criminal Procedure, in cases including serious offences provided for under Article 181 to 184, 186 and 187 of the Penal Code. Thus, an investigation is conducted in almost all environmental crime cases provided for under the Penal Code and an ordinary, not simplified, procedure is applied.

The most important issue about the injunction procedure is that the court in cases of serious offences subject to examination in a simplified procedure may decide that a hearing is not necessary. The court may then, during a session without participation of involved parties, issue an injunction resulting in the restriction of freedom or a fine up to 100 daily rates or PLN 200 000 (about Euro 50 000), and also a punitive measure in cases provided for in the Act. Appeal can be made against an injunction. If the appeal is admitted, the case is returned for simplified proceedings.

Petty offences cases

In petty offence cases, the Code of Petty Offence Case Procedure provides that a judgment is made according to:
1) ordinary procedure,
2) injunction procedure,
3) accelerated procedure;

The judgement will be made according to the ordinary procedure when there are no grounds to examine a case according to the accelerated or injunction procedures. Further, an authorised body may impose a fine by way of a penal order in cases indicated in the act and on principles specified therein (see below chapter on proceedings in cases of petty offences subject to a fine).

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59 An investigation is one form of preparatory proceedings (see: section on preparatory proceedings and preliminary actions). It is conducted in cases of “lighter” serious offences (but still rated among serious, not petty offences). Another form of preparatory proceedings - an inquiry - is conducted in cases of the most serious offences (including felony).
The ordinary procedure in petty offences cases consists of the following stages:

1) A notification to the police of commitment of a petty offence (may be made by every person including an environmental NGO);
2) Preliminary action;
3) An inquiry or an investigation (as a rule carried out by the police and in some cases by a prosecutor or by other bodies);
4) Filing of a motion to punish by the police or - under certain circumstances - by an affected party;
5) Proceedings before the court of first instance;
6) A decision of the court (a sentence, an acquittal, a conditional discontinuance of proceedings, a discontinuance of proceedings).

The court in the injunction procedure issues an injunction during a session without the participation of involved parties and determines a sentence by which it imposes a rebuke, fine or a penalty of restriction of freedom (not detention) and a punitive measure if the act’s circumstances and the guilt of an offender raise no doubts. As mentioned above, an appeal can be made against an injunction. If the appeal is admitted, the case is returned for simplified proceedings.

The accelerated procedure may have significance in cases of environmental crimes when an offender is a person:

1) without a place of permanent or temporary residence or
2) staying temporarily on the territory of the Republic of Poland;

The procedure can be used if there are grounds to fear that examination of the case according to the ordinary procedure may not be feasible or may be hindered to a great extent.

The accelerated procedure can be applied on condition that an offender was caught in the act of committing a petty offence or directly afterwards and brought to court immediately. The police or other security or safety maintenance forces may conduct detention. Such enforcement agencies may oblige witnesses to appear before the court. A motion to punish may be made orally and entered into the court minutes and the court starts to try the case without delay. Another feature of the accelerated procedure is the shorter time period for filing appeals.

• Procedural rules

Proceedings both in serious offence and petty offence cases are conducted according to rules known as procedural rules.

Part of the rules are common to both types of proceedings. The most important procedural rules common for proceedings in both serious offence and petty offence cases include:

1. Principle of material (objective) truth requiring that true actual settlements constitute a basis for all resolutions.
2. Principle requiring that procedural bodies are objective when considering circumstances working both for and against a defendant (accused).
3. Principle of free appraisal of evidence, stating that the law does not decide on the weight of evidence; it gives freedom in this respect to procedural bodies but requires that the appraisal is based on correct understanding, knowledge and life experience.
4. Principle of presumption of innocence meaning on the one hand that the defendant (accused) does not have to prove his/her innocence because it is his/her blame that needs to be proved, and as long as the blame is not proved and confirmed by a final
judgement, he/she is considered innocent; and on the other hand the principle states that doubts that cannot be removed are settled for the benefit of the defendant (accused).

5. Principle of accusatorial procedure, according to which proceedings can be instituted before court only if they are based on a complaint named as follows:
   a. in serious offence cases – an indictment
   b. in petty offence cases – a motion to punish.

The most important difference in terms of procedural rules between serious offence prosecution and petty offence prosecution is shown upon an appraisal of an obligation to conduct proceedings. The principle of legalism (duty to prosecute) and the principle of opportunity (power to prosecute) compete with each other.

The principle of legalism stated under Article 10 of the Code of Criminal Procedure applies to proceedings in serious offence cases. The principle states the following:

Article 10 § 1. A body appointed to prosecute serious offences is obliged to institute and conduct preparatory proceedings, and a public accuser is obliged also to file and support an indictment of an act prosecuted ex officio.
§ 2. Excluding cases provided for by law or international law, nobody can be exempted from liability for a committed serious offence.

All environmental crimes are prosecuted upon an ex officio indictment.

In petty offence cases, the principle of restricted opportunity applies which means that prosecution bodies are not forced to prosecute, but they are obliged to react to a petty offence in a manner specified by provisions of the Code of Petty Offences and the Code of Petty Offence Case Procedure. Particularly from this point of view, an option to limit a sentence to educational measures is a significant institution of the substantive petty offence law. The foregoing is provided for under Article 41 of the Code of Petty Offences:

Article 41. A sentence may be limited to an instruction, rebuke, warning or other educational measures.

The regulation means that a sentence in every petty offence case may be limited to an application of educational measures.

Plea bargaining does not apply in cases on a public charge.

Parties in proceedings

Procedures in serious and petty offence cases are based on the principle of contradiction. According to this principle, any legal action is a dispute between two parties, usually known as the active party (who presents an indictment) and the passive party (who defends himself against the indictment).

Parties in criminal procedure in serious offence cases:

1) The public accuser – in principle, this is a public prosecutor. So-called non-prosecutor’s public accusers may appear only if some special act provides a body with a power to appear in such a role; such accusers include:
a) forest rangers (as well as persons with the same rights) in cases concerning serious offences consisting of cutting trees in forests;
b) rangers of the National Hunting Service in cases concerning serious hunting offences;
c) director of a national park or an officer of the National Park Service acting with the director’s power of attorney in cases concerning serious offences consisting of cutting trees in forests on the area of the national park,

2) The affected party (a natural or legal person, whose legal property was directly violated or endangered by a serious offence) in preparatory proceedings at any time and in proceedings before court only if such a person is granted the status of an auxiliary prosecutor acting with or in substitution for a public accuser or a status of a claimant prosecuting pecuniary claims arising directly out of a committed crime,

3) The defendant, understood as:
   a) The suspect, i.e. a person with respect to whom a decision was made to present charges or charges were presented without such a decision in connection with starting a hearing concerning such a person as a suspect,
   b) The defendant in a narrower meaning, i.e. a person against whom an indictment was brought to the court as well as a person with respect to whom a public prosecutor put forward a motion for conditional discontinuance of proceedings.

A defence counsel may assist the defendant, but only a barrister or a barrister’s trainee may act as such defence counsel. A party other than the defendant may instruct an attorney: again, a barrister or a barrister’s trainee. A counsellor may act as an attorney for a state, self-government or social institution.

**Parties in petty offence cases:**

1) The public accuser – generally, this will be the police, also
   - by operation of provisions of the Code of Petty Offence Case Procedure:
     a) the prosecutor may be a public accuser in every petty offence case due to its system role,
     b) governmental and self-governmental administration agencies, bodies of state control and territorial self-government control as well as commune (town) services, but only if they revealed a petty offence within their scope of operations and applied for a motion to punish,
   - by operation of special provisions:
     a) forest ranger (or a person with the same rights) in forest-related petty offence cases,
     b) ranger of the National Hunting Service and a hunting ranger in hunting-related petty offence cases,
     c) ranger of the National Fisheries Service in fishery-related petty offence cases,
     d) officer of the National Park Service (and a person with the same rights) in cases concerning petty offences violating provisions on nature conservation on the area of the national park,
   - by operation of Article 14 of the Act on the Environment Protection Inspectorate of 20th July 1991 (Journal of Laws 2002, no. 112, item 982), an inspector of the Inspectorate who is granted powers of a public accuser in every environmental petty offence case even if a motion to punish was submitted by other authorised accuser,
2) An auxiliary accuser – only an affected party (i.e. a person whose legal property was directly violated or endangered by a petty offence) if he or she was granted such a status by:
   
a) submitting an independent motion to punish in petty offence cases prosecuted at a request of the affected party,
   
b) joining a public accuser,
   
c) submitting his/her own motion to punish, if a public accuser, despite notification of a petty offence, did not decide to submit a motion to punish,
   
3) An accused person; in a litigation sense it is the person against whom a motion to punish was submitted in a petty offence case.

An accused person may be assisted by a defence counsel; an affected party and an auxiliary accuser may be assisted by an attorney.

- Preparatory proceedings and preliminary actions

Prior to bringing an indictment before the court in a serious offence case or a motion to punish in a petty offence case, the grounds for the action have to be verified. The grounds are verified during proceedings which are called preparatory proceedings in serious offence cases and preliminary actions in petty offence cases.

Preparatory proceedings occur in two forms:
   
1) an inquiry and
   
2) an investigation.

An inquiry is conducted in cases of the most serious offences (including felony) as well as crimes that are subject to an investigation, if a prosecutor decides so due to the importance and complexity of the case. In principle, an inquiry is made in environmental serious offence cases. Generally, an inquiry is conducted by the police, but in some rather rare cases it will be conducted by a prosecutor’s office.

An investigation is carried out by the police and other statutorily authorised bodies in cases of the “lighter” serious offences (but still rated among serious, not petty offences). As far as the other statutorily authorised bodies are concerned, in current regulations, an investigation for environmental serious offence cases may be made only in simplified proceedings by:

1. forest rangers and persons with the same rights, only in cases where wood from forests owned by the State Treasury is a subject of a crime: cutting trees in a forest (Article 290 of the Penal Code), theft of wood (Article 278 of the Penal Code), dealing in stolen wood (Article 291 and 292 of the Penal Code);
   
2. director of a national park or an officer of the National Park Service acting with the director’s power of attorney in cases concerning forestry-related serious offences committed on the area of the national park;
   
3. rangers of the National Hunting Service in cases where game is a subject of a serious offence.

A decision on starting preparatory proceedings is made *ex officio* or as a result of a notification if there is grounds for suspicion that a crime was committed.

Provisions of the Code of Criminal Procedure contain a duty of notification of commitment of serious offences prosecuted *ex officio* formulated as:
• public duty imposed on every person, which means that everyone who learns about a commitment of serious offence which - according to the Penal Code provisions - shall be prosecuted *ex officio*, is obliged to notify the prosecutor or police of the fact (there are no sanctions for non-compliance with that duty);

• legal duty imposed on state and self-government institutions that discover a crime in connection with their operations - the same duty as above, imposed on a person managing the institution (there could be a criminal sanction for non-compliance with this provision).

The Environment Protection Inspection is subject to special provisions on notification. It has a duty to notify a prosecution body of a serious offence against environment and to attach any evidence supporting its suspicion.

Upon receiving a notification, a body appointed to conduct preparatory proceedings is obliged to make a decision on instituting or refusing to institute proceedings. Instituted preparatory proceedings may end up being discontinued. The prosecutor or other body conducting proceedings will take the decision whether to refuse to institute proceedings or to discontinue proceedings. If another body is conducting proceedings, such a decision must be approved by a prosecutor. Decisions to refuse to institute proceedings and decisions on discontinuance of proceedings are often made on account of insufficient evidence and difficulties in stating a credible case (perpetrator’s act is often considered as not unlawful).

Proceedings may be discontinued also when an offence is considered as only providing a low degree of damage to society (this means for example that a prosecutor is empowered to end proceedings at that early stage without filing an indictment). This situation frequently occurs in cases of environmental offences where economical interest is very often considered as more important than environmental interest and as justifying the perpetrator’s behaviour.

A decision on a refusal to institute proceedings may be appealed against by an affected party and an institution (including an environmental NGO) that filed a notification of a crime. A decision to discontinue proceedings may be appealed against by parties (in practice, by the affected party). Provisions of the Code of Criminal Procedure specify the following procedure. A complaint is submitted to a prosecutor superior to the prosecutor who made or approved a decision on refusal to institute or on discontinuance of proceedings. If a superior prosecutor does not agree with the prosecutor’s decision, the case will be brought to court. The court, when cancelling the first prosecutor’s decision, is obliged to provide reasons for cancellation and circumstances that need to be explained or actions that need to be taken. The indications are binding upon the prosecutor. If the prosecutor still does not find grounds to file an indictment, again a decision on a refusal to institute or on a discontinuance of proceedings is made. The decision may be appealed against only to a superior prosecutor. If the decision is sustained, an affected party may file an indictment as an auxiliary accuser. In that case an affected party may replace a public prosecutor.

The problem with environmental offences is that in those cases there is often no affected party in the procedural sense (the environment itself is “affected” but not a particular person) so there is no person who could appeal against a decision on discontinuance of proceedings or file an indictment as an auxiliary accuser in cases of a decision on a refusal or on discontinuance of proceedings. However, there is the possibility for NGOs to appeal against a decision on refusal to institute proceedings in cases where the NGO was “the institution filing a notification of an offence”.

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*Study on criminal penalties in a few candidate countries’ environmental law*

Milieu Ltd.
6 October 2003
To introduce the discussion of petty offence proceedings, the 2003 amendment of the Code of Petty Offence Case Procedure (in force since 1 July of 2003) has to be mentioned as it has resulted in significant changes to provisions concerning preliminary actions. The present model is based on the following assumptions:

1. In principle, preliminary actions are conducted by the police as well as bodies indicated in Article 17 § 3 of the Code of Petty Offence Case Procedure (administration, control bodies, commune services and other bodies if the law states so).

2. Preliminary actions are obligatory in order to determine whether there are grounds to submit a motion to punish; the action should, as far as is reasonable, be taken on the crime scene directly after discovering such an offence and should be closed within a month (these timings are of an instructional nature, and failure to keep these deadlines does not generate any litigation effects).

3. If preliminary actions do not bring any grounds to submit a motion to punish, a respective notification is delivered to known affected parties by a person that submitted the notification of the petty offence. An affected party may submit then his/her own motion to punish, and other persons may file a complaint to a superior body.

4. The course of preliminary actions depends on whether the act’s circumstances raise any doubts or not:
   a) if the act’s circumstances does not raise any doubts, recording of preliminary actions can be limited to an official note containing findings necessary to prepare a motion to punish; the official note shall include an indication of a type of actions, time and place, involved persons as well as a short description of a course of actions and signature of the person writing the note.
   b) if the act’s circumstances raise doubts, evidence may be examined; such actions are recorded in the form of a report limited to a record of the most important statements of persons involved in the actions.

5. The person with respect to whom there are justified grounds for preparing a motion to punish shall be immediately examined. Such a person has a right to refuse to make a statement and to submit motions as to any evidence about which such a person shall be instructed. The examination of such a person begins with communicating a charge entered in a record of hearing; the record shall include only the most important statements of such a person.

6. The examination of a person with respect to whom there are justified grounds for preparing a motion to punish can be resisted if it involves significant problems. The person may provide explanations to a competent body within 7 days of resisting the examination. An official note must document any resistance to examination.

7. Preliminary actions are conducted also in order to supplement or check facts included in a motion to punish, if the motion is placed by an auxiliary accuser plus if the court decides that these facts need to be verified.

8. Supervision of preliminary actions is maintained by a superior body with respect to the body conducting the action.

Court procedure is started by placing a motion to punish. According to the effective legal status, such a motion can be placed only by a public accuser, an auxiliary accuser and in some cases by an affected party.

- **Closure of court action**

Court actions in serious offence cases can be closed with the following decisions:

1. A sentence,
2. A conditional discontinuance of proceedings when finding a defendant guilty and finding special circumstances allowing conditional discontinuance,
3. An acquittal,
4. A discontinuance of proceedings when lawsuit impediments are found.

Involved parties have a right to appeal against a decision to a court of higher instance. A judgement with force of law can be subject to cancellation by the Supreme Court but only in a case of the most serious violations of law (never with respect to a penalty).

Court actions in petty offence cases can be closed with the following decisions:
1. A sentence,
2. Acquittal,
3. Discontinuance of proceedings when lawsuit impediments are found.

Involved parties have a right to appeal to the province court. A motion of cancellation can be placed only by the General Public Prosecutor or the Ombudsman.

- **Procedures in cases of petty offences subject to a fine**

Proceedings in cases of petty offences subject to a fine are governed by Chapter 17 Section IX ‘Specific Proceedings’ of the Code of Petty Offence Case Procedure. In principle, the proceedings in cases of petty offences subject to a fine are conducted by the police, and by other bodies, if stated by a specific regulation. The bodies include without limitation:

- forest rangers and persons with the same rights, authorised to impose fines by way of penal orders for forestry-related petty offences in a scope provided under separate provisions;
- rangers of the National Hunting Service and hunting rangers for petty offences committed on an area of hunting grounds in a scope of hunting-related damages;
- rangers of the National Fisheries Service for petty offences provided under the Fisheries Act;
- officers of the National Park Service and persons with the same rights in cases of petty offences violating the nature conservation regulations committed on an area of national parks;
- inspectors of the Environment Protection Inspectorate in cases of petty offences against the environment provided under separate regulations.

Proceedings in cases of petty offences subject to a fine are of a substitutional nature. The proceedings are conducted by a non-judicial body and closing a case with a fine always depends on the consent of the perpetrator. Although a fine is not a decision, it is however a resolution and constitutes a legal impediment for instituting actions before court with respect to the same act of the same person.

In this type of proceeding, a perpetrator may be punished with a fine from PLN 20 to PLN 500 (from around Euro 5 to Euro 125). However, in a case of a one-act concurrence of regulations (Article 9 § 1 of the Code of Petty Offences), i.e. when one act has attributes of petty offences stipulated in at least two provisions of the law, the upper limit of a fine is PLN 1000 (around Euro 250).

The law of procedure indicates positive and negative prerequisites (conditions) of the proceedings in cases of petty offences subject to a fine. The positive prerequisites (i.e. such
conditions that must occur to admit proceedings in cases of petty offences subject to a fine) include:

1. The power of a given officer to impose fines by way of penal orders for a given petty offence;
2. Prerequisites concerning a manner of revealing a petty offence; proceedings in cases of petty offences subject to a fine are admissible only if:
3. the perpetrator was caught in the act of or immediately after committing a petty offence, or
4. an officer confirms the commitment of a petty offence by way of an eye-witness in the absence of the perpetrator or by a measuring or checking instrument and the identity of the perpetrator is no doubted.
5. Time-related prerequisites; in principle a fine is imposed immediately but it is possible to conduct preliminary actions started as soon as a petty offence is discovered. In such a case a fine may be imposed by a penal order:
6. within 14 days in a case stated under point 2 (a),
7. within 30 days in a case stated under point 2 (b),
8. Prerequisites concerning the consent of a perpetrator. A perpetrator of a petty offence may refuse to accept a fine and an officer is obliged to instruct a perpetrator of such a right to refuse and about the legal consequences of the refusal (in consequence of the refusal, a motion to punish is submitted to court).

The most significant negative prerequisite is the requirement of awarding a punitive measure\(^{60}\) (e.g. forfeiture of objects, punitive damages). Article 96 § 2 of the Code of Petty Offence Case Procedure states that a fine shall not be imposed for a petty offence for which a punitive measure should be awarded. So, fines are prohibited in cases where punitive measures are obligatory. Also, where punitive measures are optional but where the fining body considers that a punitive measure is required for a given petty offence, the court can decide to impose such a punitive measure.

Another negative prerequisite is that the serious offence and the petty offence must exist together at the same time, i.e. there is a concurrence of offences (Article 10 § 1 of the Code of Petty Offences). In such cases, fines are not sufficient punishment for a petty offence, and a motion to punish shall be submitted to the court.

The Code specifies three types of fines:
1. A cash fine imposed on the guilty person who pays the fine directly to the officer who imposed it (Article 98 § 1 point 1 of the Code of Petty Offence Case Procedure). The cash fine can be imposed only on a person staying temporarily on the territory of the Republic of Poland or without a permanent or temporary residence.
2. A credit fine imposed on a guilty person who then acknowledges receipt of the notice of fine (Article 98 § 1 point 2 of the Code of Petty Offence Case Procedure). This is the basic form of a fine applied with respect to persons other than stated under point 1 above. The fine shall include an instruction concerning the duty to pay the fine within 7 days of accepting the fine and consequences of a failure to pay within a specified time. In the case of failure to pay the fine, it shall be enforced according to a procedure specified in provisions of the Act on Enforcement Procedures in the Administration.
3. A default fine (Article 98 § 1 point 3 of the Code of Petty Offence Case Procedure). A default fine may be imposed if a petty offence is known and, though its perpetrator was

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\(^{60}\) Referred in the Code of Petty Offence Case Procedure, applied in case of petty offences; on punitive measures applied in case of serious offences - see chapter 2.4.2.2. on criminal penalties.
not caught at the scene, his identity is known and not in doubt. The notice of fine shall be left in such a place where the perpetrator will receive it. The notice shall indicate that the perpetrator must pay the fine within 7 days as well as information on the consequences of a failure to pay within the time period. If a default fine is not accepted, it becomes valid when it is paid within a specified time. If a perpetrator fails to pay the fine, there are no grounds to start an enforcement procedure because the fine was not accepted. In such a situation, a motion to punish shall be submitted to court.

There is no appeal against a fine. However, the legislator has introduced provisions which result in fine cancellation found in Article 103 of the Code of Petty Offence Case Procedure. A fine can be cancelled only if it was imposed for an act that was not an act forbidden as a petty offence, i.e. in a situation when an act was legally neutral or was forbidden but not as a petty offence but for example, as a serious offence. A fine can be cancelled at the request of a punished person or ex officio. The competent court to examine a case under whose jurisdiction a fine was imposed has a power to cancel the fine. By cancelling the fine, the court orders the fined amount of money to be repaid.

- **Procedural costs.**

The costs of the proceedings include:
- court costs (court fees and “expenses” borne by the State Treasury in the course of the proceedings)
- expenses of the parties, including lawyer’s fees

Court costs incurred in the course of the proceedings are provisionally paid by the State Treasury. Those include, apart from court fees, also for example translating costs, reimbursements of witnesses expenses, mailing costs, lawyer’s fees in case a defendant has to have a lawyer ex officio (when a defendant proves he is not able to pay lawyer’s fees; when he is juvenile, deaf or blind).

Expenses of the parties are provisionally paid by them (excluding fees of an ex officio lawyer).

In the decision concluding the proceedings the court shall always indicate to whom, in which proportions and to what extent the court costs shall be charged:
- In a case a defendant is convicted, he shall pay back the court costs to the State Treasury and to the auxiliary prosecutor – his expenses.
- In case a defendant has been acquitted or the proceedings have been discontinued, all costs of proceedings are borne by the State Treasury, except the defending lawyer's fees.

### 4.4.3 Some statistics on proceedings

In order to gather statistical data on environmental jurisprudence and examples of environmental offences cases we took the following steps. First we contacted:

1. **The National Prosecutor in the Ministry of Justice.**

Using the official letter issued by the Commission for the purpose of this study, we asked the National Prosecutor’s Office to provide us with statistical data on environmental offences and to point out courts or prosecutor’s offices where the particular cases were conducted along with the
court’s reference number of those cases. This information was required because the only way to find records of a particular case is to go to a court with the exact reference number and ask for the relevant files. The records are not confidential. First of all they are accessible to the parties to the case, and they are also available to other persons if the president of the court gives his consent. There are no comprehensive databases containing the statistical data.

After a few weeks we received a letter from the National Prosecutor’s Office saying that our request had been passed on to its statistical unit. However, we were informed that the National Prosecutor does not hold data on petty offences and that such data might be available in the General Headquarters of Police. We also were informed that the National Prosecutor’s Office was not able to provide us with case reference numbers, nor any further information on where we can find relevant files because it does not possess this information.

Then we waited for an answer from the statistical unit. Finally, after further interventions we received a fax containing some data. The data contained information on serious offences regulated in the Penal Code only and not in other legal acts.

The tables that we received are provided on the next pages. It was not possible to include a table in the format requested in the Research Guidelines for National Experts because almost all of the articles referred in the table can apply to air as well as to water, nature etc. Moreover, we could not gather information on, for example, the total amount of fines.

<table>
<thead>
<tr>
<th>Art. of Criminal Code</th>
<th>1998 (1 September – 31 December)</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Proceedings</td>
<td>No. of prosecutions</td>
</tr>
<tr>
<td>Art. 181</td>
<td>initiated</td>
<td>finished</td>
</tr>
<tr>
<td>Art. 182</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 183</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 184</td>
<td></td>
<td></td>
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<tr>
<td>Art. 185</td>
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<tr>
<td>Art. 186</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 187</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art. 188</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Study on criminal penalties in a few candidate countries’ environmental law
2. The General Headquarters of Police.

Following the National Prosecutor’s advice, we asked the General Headquarters of Police for data concerning environmental petty offences. We received from them a table with data on three types of petty offences against the nature protection. Just as the situation with the National Prosecutor, the Police could not provide the reference number of particular cases.
Below is the table provided by the General Headquarters of Police:

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of petty offences against the nature</td>
<td>71111</td>
<td>70622</td>
<td>72499</td>
<td>68326</td>
</tr>
<tr>
<td>No. of prosecutions</td>
<td>3794</td>
<td>4122</td>
<td>5530</td>
<td>3067</td>
</tr>
<tr>
<td>Fines imposed by the Police</td>
<td>14578</td>
<td>12605</td>
<td>10371</td>
<td>10242</td>
</tr>
<tr>
<td>Non-criminal measures applied (such as warning, admonition)</td>
<td>52739</td>
<td>53895</td>
<td>56598</td>
<td>55017</td>
</tr>
</tbody>
</table>

3) The Board of National Parks (subordinated by the Ministry of the Environment).

As mentioned earlier, a director of a national park and an officer of the National Park Service can be a public prosecutor in some cases of serious and petty offences committed on the area of the national park. So we asked the Board of National Parks for some information on cases where national parks were involved.

The persons with whom we talked were very interested in the study and willing to help, but all they could do was to provide us with the following table:

**Table of Number of cases in which directors of national parks were public prosecutors in Magistrates’ courts**

<table>
<thead>
<tr>
<th>Year</th>
<th>Illegal use of forest</th>
<th>Poaching</th>
<th>Thefts and destruction of property</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>34</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>1999</td>
<td>59</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>2000</td>
<td>23</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>2001</td>
<td>23</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>2002</td>
<td>30</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>
4.4.4  Most relevant cases and punishments imposed

The next stage of our research was to try to find any examples of environmental offences cases. We were aware that finding of any cases would not be easy because we had no information on court reference numbers of cases and on courts where the cases were conducted, and also because environmental offence cases are rather rare.

At that stage we contacted or visited:

1. District court in Wroclaw (3 criminal divisions)
2. Province court in Wroclaw
3. Magistrate’s court in Wroclaw (3 criminal divisions)

We carried out our research in the courts in both formal and informal ways. The formal way consisted of going through the court registers of cases from the last few years. The cases in a register are arranged in a chronological order and not according to types of offences so - bearing in mind rarity of environmental cases – trying to find cases in this way was very difficult.

Informally, we contacted judges to ask them whether they had conducted or heard about any environmental offences cases. Although most of them were experienced in their work (working as a judge for 10 or more years) they could not recall any cases, suggesting how rare these cases are.

4. Ministry of the Environment

We also contacted officers in the Ministry of Environment (i.e. Nature Protection Department Director). None of them were aware of any of the cases that we were interested in.

The Director of Nature Protection Department suggested that we contact customs offices/units in order to get some information on smuggling of species protected under the CITES Convention (some wild bird species are covered by both CITES Convention and Wild Bird Directive).

5. Ministry of Finances - Customs Department
6. Customs Office at the Warsaw airport
7. Customs Chamber in Wroclaw.

An official from the Customs Office at the Warsaw airport was especially interested in such smuggling cases and gave us some information on this.

The cases are usually investigated in the following way: After detecting a smuggled plant or animal and seizing it by a customs officer (which fulfils the requirements of “preliminary actions” carried out in petty offences cases), a customs office files a motion to punish at a court. Smuggling a protected species is a petty offence so a customs office - as one of the bodies of state control - has a right to do so.

According to Art. 58.2 of the Nature Protection Act, in such cases a court is obliged to impose the forfeit of a plant or animal. The plant or animal is then donated to an institution indicated by a voievode or the Minister of the Environment (by the latter - in cases of species strange for Polish fauna or flora) entitled to possess the species. In practice the institution is a zoological or botanical garden.
Persons in other above-mentioned offices were also aware that such smuggling cases exist, but were not able to indicate even a court where we could find them nor reference numbers.

We also tried to find any examples of environmental offence cases in legal databases. They did not include many judgements on environmental cases that were relevant for this study. The one case which we considered relevant is described below.

The owner of a brewery was accused of and convicted in the first instance (district court in Skierniewice) of non-compliance with the obligation to properly operate a facility used for the protection of environment (which was a petty offence under the Act on Protection and Shaping the Environment). In that case the “facility” was a sewage container (cesspool).

The perpetrator argued that a cesspool cannot be considered as a “facility” because the term covers only a technical (i.e. more complicated) unit.

The province court in Skierniewice upheld the court of first instance’s judgement. The accused then complained to the Supreme Court which also upheld the previous judgement (ruling of 2 February 2002, ref no. II KKN 291/98). The reasoning was that the term “facility” in the provision in question shall be interpreted in a functional way in order to cover all types of equipment used for the protection of the environment.

Although it was difficult to find any other particularly relevant cases, we were able, in working on the study, to draw on the experienced expert, Prof. Wojciech Radecki, who used to work as a public prosecutor and is still in contact with other prosecutors. Some of the conclusions and recommendation given below are based on those experiences.

4.4.5 Conclusions and recommendations

1. Polish environmental criminal legislation seems to be quite well developed. However, the use of criminal sanctions in cases of non-compliance with environmental law tends to be used very much as a last resort (after provisions on administrative liability).

2. As shown by the Tables of Concordance, Polish environmental criminal legislation implements the relevant EU provisions.

3. The rules of criminal procedure in Poland provide for enforcement of the above mentioned EU provisions.

4. In practice, environmental offence case indictments are very rarely filed at court. They frequently end up with the prosecutor deciding to discontinue proceedings. The reasons for this are:

   a) insufficient evidence and difficulties in stating the attributes of an offence (the perpetrator’s act is often considered as not unlawful)

   b) considering an environmental offence as an act of low degree of damage to society (the economic interest is very often considered as more important as the environmental interest and - at the same time - as justifying the perpetrator’s behaviour).
Sometimes prosecutors also decide to refuse to institute proceedings, also because of low degree of damage to society.

5. The peculiarity of environmental offence cases where there is often no affected party in procedural sense (the environment is itself “affected”, but not a particular person). This means that there is no person who could:

   a) appeal against a decision on discontinuance of proceedings (however, there is a possibility for NGOs to appeal against a decision on refusal to institute proceedings in cases where the NGO was “the institution filing a notification of an offence”),

   b) file an indictment as an auxiliary accuser in case of a decision on a refusal or on discontinuance of proceedings.

6. The main problem seems to be insufficient awareness of the importance of environmental law among public prosecutors and perhaps also among judges. Thus, the way to improve the situation would be via awareness building in these professional groups.
4.5  Slovakia

By Zuzana Zajickova, Life and Waste, Bratislava

4.5.1  Competent court for hearing criminal procedures

No specific environmental courts exist in Slovakia. The only option to demand judicial protection in the ambit of environmental law is through the general courts:

- District Courts – first instance courts for major number of civil and criminal procedures (including the environmental criminal offences), first instance courts also for reviewing the legality of the procedure of the petty offences.
- Regional Courts - second instance courts for both civil and criminal judicial procedures in cases where district courts acted as the court of first instance; first instance courts acting in issues set up by the Civil Procedure Code or Criminal Procedure Code; first instance courts acting in administrative issues in cases stipulated by acts;
- Supreme Court – the highest court for civil, administrative and criminal judicial procedures, second instance court for cases dealt in the first instance before the regional courts.

In the Supreme Court there are specific boards specialised in criminal, civil, commercial and administrative fields of law; one judge can take part only in one such board.

The judicial protection executed by the general courts in the field of environmental law is realised mainly through reviewing the legality of public administration decisions at the base of the action in court, but also via criminal procedure (environmental criminal offences) and civil procedure (issues regarding the reimbursement of environmental damage).

Apart from the general courts there are also the military courts that deal with matters of military criminal offences and criminal offences committed by the military and police officers.

The competence of the general court is determined according to the following:

- Subject matter jurisdiction (which type and instance of court is competent, as described before)
- Territorial jurisdiction (which court in which district or region shall be competent)

There are several factors which may influence the territorial jurisdiction of the court:

- place where the crime was committed (*forum delicti comissi*)
- place where the accused person lives, works or stays (*forum loci*)
- place where the crime was detected (*forum scientiae*)

The territorial jurisdiction is in the first place determined according to the place where the crime was committed. Should this not be possible, or should the crime be committed abroad, the territorial jurisdiction is determined according to the place where the accused person lives, works or stays. The advantage of this aspect is that the court can easily detect the circumstances...
characterising the personality of the offender and his surroundings. Territorial jurisdiction according to the place where the crime was detected applies when it is impossible to allocate jurisdiction pursuant to the previous two aspects (e.g. because the place of the commitment of the crime or the place where the offender lives is not known, or the offender lives abroad). The place where the crime was detected is considered to be the place in Slovakia where some of the criminal authorities were first aware of the crime.

The case is decided by the judge or by the senate. The senate may consist of the professional judge and laymen. In this case all the members of the senate have the same rights.

The district court decides in principle in senate formation which consists of the judge and two laymen.

The regional court decides always in senate formation. When it decides as a court of the first instance, the senate consists of two judges (one of which is the chairman) and three laymen. If the regional court decides as a court of the second instance, the senate consists of three professional judges.

The Supreme Court decides always in senate formation, which consists of three professional judges (one of which is the chairman). The senate consisting of the chairman and other four professional judges decides when the court deals with extraordinary remedies against the decisions of the other senate of the Supreme Court when these decided on ordinary remedies.

4.5.2 Procedure for bringing a criminal case

The criminal procedure consists of the following parts:

- **Preparatory procedure:**

  According to the Criminal Procedure Code (Art. 158 to 160 of the Criminal Procedure Code) anybody is entitled to notify the prosecutor, investigator or police about the fact that a criminal offence was committed. The competent body must start the prosecution in 30 days from receipt of such a notice if there is no reason for refusing the prosecution (e.g. on grounds of incompetence). The notifying person is entitled to information on how the competent body proceeded and may ask the prosecutor to overlook the process of investigation by the investigator or police.

- **Inquiry:** Standard inquiry is executed by the investigating officer of the Police Forces. The short inquiry is done by the policemen (for crimes with upper limit of imprisonment lower than three years, this kind of inquiry must be finished not later than 1 month from the inculpation; the public prosecutor is entitled to prolong this term for other 30 days maximum).

  The investigating officer holds the exclusive competence to initiate a criminal procedure. Environmental agencies, NGOs, and other civil parties may inform the criminal authorities of suspected offenders, but private penal action is not allowed in Slovakia.

- **Trial before the court:** As soon as the necessary evidence is collected that a person has committed a criminal offence, the public prosecutor issues the accusation and brings the penal action before the court. From the start of the trial the public prosecutor becomes a defendant of the state. The hearing is open to the public, with some exemptions...
stipulated in the law. After that the court executes the evidence and all the parties of the trial present their final speeches. The offender has the last word before the jury decides. The court may decide only about the act that is stated in the accusation, but the legal classification contained in the accusation is not binding for the court.

The following principles apply to the criminal procedure in Slovakia:

- presumption of innocence; *praesumptio boni viri*, art. 2 subpar. 2 of the Criminal Procedure Code,
- *in dubio pro reo*
- *beneficio cohesioniis*
- public prosecutor’s duty to prosecute all criminal offences he learns about if otherwise not stipulated in the act or international agreement and all the authorities involved in criminal procedures proceed *ex officio*; art. 2 subpar. 1 of the Criminal Procedure Code, art. 3 subpar. 1 of the Criminal Code, art. 17 subpar. 2 of the Constitution
- all the bodies acting in criminal procedures proceed in accordance with the Criminal Procedure Act and in co-operation with parties as to fact-finding; art. 3, art. 6 of the Criminal Procedure Code
- criminal prosecution in the courts is possible only on the basis of a criminal charge (*actio criminalis*) or on the basis of the prosecutor’s accusation - *nemo iudex sine actore*, art. 2 subpar. 8, art. 180 subpar. 1 of the Criminal Procedure Code
- criminal judicial procedures are public with some exceptions stipulated in law; art. 2 subpar. 10 of the Criminal Procedure Code, art. 48 subpar. 2, art. 142 subpar. 3 of the Constitution,
- an offender has the right to be instructed on his rights at all the stages of the procedures;
- the accused person has the right to select his/her counsel (advocate), art. 2 subpar. 13 of the Criminal Procedure Code
- the accused person has the right to use his/her mother tongue before the criminal authorities, art. 2 subpar. 14 of the Criminal Procedure Code, etc…

In particular, the principles for bringing a criminal case are as follows:

- **Principle of Legality (**nulla poena sine praevia lege**)

In Slovakia the principle of legality applies according to:

- Article 17 subparagraph 2 of the Constitution (nobody may be pursued or deprived from liberty otherwise than for the reasons and in a way that shall be stipulated by law),
- Article 2 subparagraph 1 of the Criminal Procedure Code (nobody can be pursued as accused otherwise than from legal grounds and in the way stipulated in the Criminal Procedure Code),
- Article 3 subparagraph of the Criminal Code (a crime is an act which is dangerous to society and the features of which are stipulated in the Criminal Code)
- Article 16 subparagraph 1 of the Criminal Code (the liability to punishment for an act shall be considered according to the law in force at the time when the act was committed; it shall be considered under a subsequent law only if consideration under such law is more favourable to the offender).
• **Plea Bargaining**

Plea bargaining is not applied in Slovakia, not even in the case of a co-operating witness.

• **Principle of opportunity**

The principle of opportunity is not applied in Slovakia.

Instead of that, the proceeding *ex officio* principle applies for all the authorities having a role in criminal procedure. This means importantly, that the public prosecutor is obliged to prosecute all the criminal offences of which he gets knowledge and the authority is obliged to prosecute the criminal offences *ex officio*. The authority may not end a prosecution or may not refuse to execute a plea for intervention.

There are some alternative means of settling criminal cases: conditional suspension of the criminal proceedings, criminal order and conciliation.

Conditional suspension of the criminal proceedings (Art. 307 of the Criminal Procedure Code) can apply where the criminal offence should not be condemned with a penalty higher than five years, the damaged person agrees and the offender declares that he committed the criminal offence and he reimburses the damage to the damaged person. When the court or the prosecutor conditionally suspends the proceedings, a probation period from six months to two years is determined, during which the accused person is monitored to ensure that he/she behave himself well and reimburses for the damage caused. If he/she fails to do so, the proceedings continue.

The criminal order is a short kind of procedure before the individual judge without an ordinary trial, when the facts of the constitutive act have been ascertained in a reliable manner and proved by the obtained evidence.

The last amendment of the Criminal Procedure Code (so called integration amendment) has brought a new mechanism of conciliation (§ 309). Conciliation allows for an agreement to be reached between the State and the person harmed (the victim) on one hand and the offender on the other hand. The agreement has to be approved by the court and will result in the formal criminal proceedings not taking place. Conciliation agreements must provide however for the criminal offence in question to be punished with a maximum imprisonment of three years (intentional criminal offences) or five years (negligent criminal offences). Also, the offender must admit that he committed the act and he must reimburse or promise to reimburse the damage caused by his act.

The conciliation procedure can be used for 190 criminal offences. If death was caused by a criminal offence, the conciliation procedure is not available. Problems can arise in cases where the offender declares that he will reimburse the damage and the other conditions are fulfilled, where the court approves the conciliation and then the offender does not keep the promise. Here the only option for the victim is to bring the case before a civil court because the penal case has been lawfully ended with the decision to end criminal proceedings, and *res iudicata* occurs.
4.5.3 Duration and costs of the procedures

The state temporarily bears the costs of procedure, with exemption of the own costs of the accused person, injured person, and of the selected defending lawyer (advocate). The court’s final decision on the case will also decide who bears the costs of procedure. This decision constitutes part of the sentence. Usually the condemned person has to bear the costs, and the judge at the end of proceedings declares the amount. The costs consist of carrying out the arrest, the allowances of the appointed defending lawyer (provided that the offender has no right to be defended free of cost), costs connected with imprisonment and other costs of the procedure (lump sum).

The lump sum of the costs of the criminal procedure, which temporarily bears the State is (according to Ministerial Ordinance No. 482/2002 from 15 August 2002, in force as of 1 October 2002):

   a) in a criminal procedure, which is finished with a criminal order and this came into force - 1000 Sk (circa 25 EUR),
   b) other cases of criminal procedure, if the criminal authority
      1. used an expert from the field of psychiatry - 3 600 Sk (circa 90 EUR),
      2. used an expert from another field - 2 400 Sk (circa 60 EUR),
      3. did not use an expert - 1 600 Sk (circa 40 EUR).

4.5.4 Some statistics on proceedings

Following receipt of the official letter from the European Commission requesting information for this study, the Supreme Court of the Slovak Republic replied to us that they have no available statistical data, nor the manpower necessary to research and analyse the decisions. The Supreme Court forwarded this letter to the Ministry of Justice of the Slovak Republic on 30 April 2003. On 20 June 2003, the Ministry of Justice sent us a preliminary report regarding sentences given for criminal offences under Art. 181a, 181b, 181c, 181d, 181e, 181f and 181g for the period between 1998-2002. This report was preliminary as it included only the firm sentences of 23 district courts out of the 34 district courts that were asked. On 25 June 2003 we also received a report prepared by the Public Prosecutor’s Office of the Slovak Republic. We received the second part of the report from the Ministry on 4 August 2003, so the present report is complete.

The statistics provided to us by the Public Prosecutor’s Office (PPO) are different than the numbers provided by the Ministry of Justice. This may be due to the different methods used to determine when a prosecution formally commences. In this report, we shall rely on the data provided by the Ministry of Justice as it is based on the information received from the courts. We have included the statistic from the Public Prosecutor’s Office (PPO) in brackets.

The statistics presented in the following pages correspond to the period 1998 - 2002.\footnote{The data was provided by the Ministry of Justice of the Slovak Republic and the Public Prosecutor’s Office of the Slovak Republic}
Criminal offence according to **Art. 181a - Endangering the Environment - intentional**

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>The total number of convictions:</td>
<td>22</td>
<td>(3 according to the PPO, in 1998-0, in 1999-0, in 2000-0, in 2001-0, in 2002-3)</td>
</tr>
<tr>
<td>The total number of criminal acts:</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – unconditional penalty:</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – conditional penalty:</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – withheld sentence:</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>The number of acquittals:</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Another single punishment:</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Forfeiture of thing:</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

The **real average amount of time** for criminal environmental proceedings, i.e., the average time from the beginning of the criminal prosecution until the final judgement, is not possible to submit, because the decision on commencement of the criminal prosecution is archived in the file. For this reason, the start of the criminal prosecution is considered to be the date of commitment of the criminal act.

The **average amount of time** for criminal proceedings for the criminal offence noted under Art. 181a is 10 months.

**Conditional penalties** were imposed from case to case in the range from 4 to 10 months with condition (period of probe) from case to case between 15 – 24 months.

**Other punishments:**
- one case: disqualification to execute speleologic activity\(^{62}\) for 5 years.
- two cases: the punishment was withheld.

Criminal offence according to **Art. 181b - Endangering the Environment - negligent**

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>The total number of convictions:</td>
<td>11</td>
<td>(9 according to the PPO, in 1998-2, in 1999-5, in 2000-0, in 2001-1, in 2002-1)</td>
</tr>
<tr>
<td>The total number of criminal acts:</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – unconditional penalty:</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – conditional penalty:</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>The number of convicted persons – withheld sentence:</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>The number of acquittals:</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Another single punishment:</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Forfeiture:</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

The **average amount of time** for criminal proceedings for the criminal offence as specified in Art. 181b is 15 months. One case lasted for 4 years and 10 months. In comparison to the other proceedings this one was very long and for this reason it was not considered for the calculation of the average amount of time.

**Penalties** were imposed from case to case from 6 to 12 months with conditions attaching to those penalties lasting from case to case from 12 to 18 months.

---

62 Speleologic activity is the activity of studying and exploring the caves.
Criminal offence according to Art. 181c - Violation of the Protection of Plants and Animals

The total number of convictions: 65 (84 according to the PPO, in 1998-12, in 1999-11, in 2000-17, in 2001-8, in 2002-36)

The total number of criminal acts: 91
The number of convicted persons – unconditional penalty: 4
The number of convicted persons – conditional penalty: 53
The number of convicted persons – withheld sentence: 0
The number of acquittals: 3
Another single punishment: 5
Fine: 8
Disqualification: 1

The average amount of time for criminal proceedings for the criminal offence found under Art. 181c is 10 months. In one case, the criminal procedure lasted for 5 years. However, as this was a special case, it was not included in the average.

Unconditional penalties were imposed for an average period of 12 months.

Conditional penalties were imposed ranging between 4 - 12 months with conditions on average ranging from 12 to 30 months.

The punishment of expulsion was applied in one case.

Forfeiture was applied in one case (binoculars and a metallic forest foot rest).

The fine was applied in four cases, from 5 000 Sk (125 EUR) to 18 000 SK (450 EUR).

Criminal offence according to Art. 181d - Poaching

The total number of convictions: 775 (821 according to the PPO: in 1998-38, in 1999-18, in 2000-19, in 2001-301, in 2002-445)

The total number of criminal acts: 830
The number of convicted persons – unconditional penalty: 45
The number of convicted persons – conditional penalty: 527
The number of convicted persons – withheld sentence: 44
The number of acquittals: 13
Another single punishment: 159
Forfeiture of thing: 159
Fine: 85

The Act No. 399/2000 which entered into force from 1 December 2000 amended the text of Art. 181d. According to the text valid before 1 December 2000, a person committed the criminal offence of poaching if he/she without authorisation interfered with hunting rights, fishing rights or hunted animals and/or fish at time when they were protected. The other requirement was that the damage caused was not insubstantial. The penalty which could be given for poaching was imprisonment for up to two years or fine or forfeiture.

After the amendment which entered into force from 1 December 2000, the amount of criminal convictions for poaching increased dramatically, hence the Ministry of Justice asked the competent courts to provide information only for the finalised judgements with the unconditional penalty.
The average amount of time for criminal proceedings for the criminal offence of poaching was 6 months.

Unconditional penalties were imposed for periods between 3 - 14 months.

Other penalties imposed: 12 times forfeiture – fish hooks, capstans, corks, load and similar fishing utensils: 4 times fine – three of them each in amount of 5 000 Sk (circa 125 EUR), one case in amount 7 000 Sk (circa 175 EUR); 2 times disqualification - prohibition of fishing right – one case for 3 years, one case for 2 years.

Criminal offence according to Art. 181e –Illegal Import, Export and Transport of Waste

| The total number of convictions: | 2 (0 according to the PPO) |
| The total number of criminal acts: | 2 |
| The number of convicted persons – unconditional penalty: | 0 |
| The number of convicted persons – conditional penalty: | 2 |
| The number of convicted persons – withheld sentence: | 0 |
| The number of acquittals: | 0 |
| Another single punishment: | 0 |
| Forfeiture of thing: | 0 |

No concrete final sentences have been delivered to the Ministry of Justice.

Criminal offence according to Art. 181f - Unauthorized Treatment of Waste

Criminal offence according to Art. 181g - Violation of Water Protection

The above-mentioned criminal offences were introduced to the Criminal Code by the amendment Act No. 253/2001, which entered into force as of 1 August 2001. Between 2001-2002, no final sentences have occurred, and therefore no statistics have been provided to us. It is necessary to state that the acts which may result in endangering or harming the environment under Art. 181f and 181g are often judged according to the other provisions of the Criminal Code.

To-date, there is no available information on acquittals. The Public Prosecutor’s Office has available information only on total number of acquitted persons, but not on the individual acquittal cases (which means that in one case several persons could have been accused).

The information on the amounts of the fines does not reflect the real volume of the fines imposed for breaching environmental duties, since administrative authorities impose the majority of fines.

4.5.5 Most relevant cases and punishments imposed

Under Slovakia’s judicial system (more details are described above), the district (provincial) court is the competent court for the first instance, and the regional court is competent for the second instance. The law specifies that several specific criminal offences must be dealt with first of all at the first instance before passing to the regional court. The highest court of appeal is the Supreme Court. The Supreme Court deals with cases complaining against the decisions of inferior courts, public prosecutors, investigators or police.
It is necessary to stress that case law is not an official source of law in Slovakia. There are only a few decisions of the Supreme Court available for environmental criminal cases. We did not find other important firm decisions – a lot of cases are not finished as they are in the stage of appeal.

Case 8 Tz 29/95

A very important principle in Slovakia’s criminal law is that of ecological detriment.

- Ecological detriment is defined in the Act on the Environment (art. 10 of the Law n. 17/1992) as a loss or weakening of the natural functions of the ecosystems emerging by the lesion of their elements or by the disorganisation of the internal links and processes as a consequence of a human activity. This can happen also as a consequence of the destruction of one animal or plant and the ecosystem is weaker. The rule of proportion applies: the more precious individual, the more important he is for the ecosystem and the ecological detriment is more notable.

- Contrary to the ecological detriment, damage to the environment is, as well as any other kind of damage, reduced property value. The amount of damage is determined based on the price for which the object of the attack is usually sold at the place and time of such attack. If the amount of a damage cannot be established in this manner, it shall be based on the cost of obtaining an identical or similar thing or restoring it to its previous condition. The damage has to be suffered by a subject (either a natural or legal person). Wild fauna cannot claim damages as it is not a legal subject — res nullius. The Supreme Court of the Slovak Republic (in the judgement from 22nd June 1995, file N. 8 Tz 29/95), declared that in such cases the aim of the constitutive act of the criminal offence is conserving the environment as the basic surrounding of human beings, animals and other organisms (the conserving of the environment has suffered and this is the interest that is protected by the Criminal Code).

- The social value is the biological, ecological and cultural value of the protected plant or protected animal, which is determined with regard to their rareness, endangerment and performing of non-production functions. Social value of woods is used for calculation of the social value of forest vegetation growing in areas with fourth or fifth levels of protection and social value of protected trees.

Unlike the ecological detriment, the social value is related only to the protected plants and animals (or minerals, etc. — see the art. 95 of the Act on Protection of Nature and Landscape n. 543/2002) and it does not take into account their importance for the ecosystem — for example importance of the activity of an animal in relation to separate elements of the environment, such as wood, soil, flora, function of predator etc.

- The confusion turned on the definition contained in the art. 88 subpar. 14. The detriment in connection with the crimes defined in article 181a, 181b and 181c shall be understood as the social value according to the Ministerial ordinance N. 24/2003.

63 We checked the complete volumes of the judicial revue: ZO SUDNEJ PRAXE, published by IURA EDITION, whose editorial board consists from the judges of the Supreme Court of the Slovak Republic, from the beginning of the existence of the revue (1996) till now and we found only two cases that regard criminal offences in environmental field. We also saw other literature (as stated in the bibliography part) but the only cases quoted were always the two cases that we found. There are several other cases of judicial review of decisions on administrative infringements or petty offences, but they are not criminal penalties, so we did not include them herein.
Case 7 Tz 4/99

This Supreme Court decision - No. 7 Tz 4/99. This decision gave the definition of “endangerment of protected flora species” as creating a danger for conservation or maintenance of protected flora in a certain locality, and provoking danger of massive reduction in protected flora species destined to cause extinction in that locality. This case treated also the difficult question of the damage of the environment. The public prosecutor office stated that the Slovak republic (the state) was harmed because the charged person cut trees, which were situated in a protected area. However, the fact that the trees which were cut were situated in a protected area does in itself mean that a criminal offence was committed. Also, the conditions of § 181c need to be fulfilled, namely that either damage was caused by the criminal offence or protected flora species were endangered. The damage is the real property loss that the damaged person lost. The social value described in Ministerial ordinance N. 24/2003, which expresses the phytological, ecological and cultural value of the flora species with regard to their preciousness and the degree of their endangerment, may not be considered as damage.

With regard to the criminal offence of Art. 181c, the constitutive act consisting of cutting the wood is contrary to the Act on Nature and Landscape Protection and so the act may be qualified also as a criminal offence. A problem occurs as wood is defined as a tree growing out of the forest soil fund in the Act No.543/2002. From this reason, it would be necessary to extend the legal definition of the constitutive act to cover also trees growing on the forest soil. If such trees were cut out (for example this may happen in the protected area which make part of the forest soil fund). In these cases the present art. 181c subpar.1 letter c) of the Criminal Code may not be applied.

The court also concluded that the fact that the protected animals and plants are in free nature does not automatically mean that they are owned by the State. The Constitution states in its Art. 4, that minerals, caves, underground waters, natural healing resources and watercourses belong to the property of the Slovak Republic. Therefore the ownership of the trees has to be determined.

District Court of Ružomberok, IT 86/01-209:

In this way, the court has expressed its opinion that cutting down trees in a protected area does not always constitute a criminal offence. Notwithstanding the fact that the decisions of the courts are not deemed the source of law, there is a decision of the District Court of Ružomberok, from 19 September 2001 that came into force on 7 November 2001 and is considered a “precedent”.

The accused person J.K. from the Czech Republic came to the district of Liptovské Revúce, Slovakia, on 4 May 2001, he parked the car in Nižná Revúca and he went on foot to the wood, he brought with him a knapsack with binoculars, special linen belt, linen rope, special foot rests to climb on the tree and the box adjusted for transport of the eggs of the birds.

He came to the tree where he found two young eagles and notwithstanding that the bird is protected the whole year in Slovakia, he took the older and stronger young eagle with him.

The social value of the bird is 100 000 Sk (circa 2 500 EUR) and he endangered the population of the eagle which belongs to the protected species according to the articles 5, 24 and 26 of the Act on Protection of Nature and Landscape n. 278/1994; in this way he also intervened to the hunting right in an unauthorised manner, because he, contrary to the provisions of laws on protection of nature and landscape he gained for himself a protected kind of animal and he
caused endangerment of the protected animal and he illicitly without permit hunted the animals. So he committed crime according to the article 181c subpar. 1 letter c) of the Criminal Code – protection of animals and plants and according to the article 181d subpar. 1 of the Criminal Code – poaching.

The court has decided to impose him the imprisonment of 12 months without condition, forfeiture of the thing (green knapsack, plastic box of red colour, binoculars mark Carl Zeiss 7x50, production number 4900947, two special foot rests, special linen belt of red colour mark SNAHA Jaromer) the owner of which became the state. The court imposed him also the penalty of expulsion from the Slovak Republic.

The court motivated its decision by the following facts:

Eagle is a protected animal and cannot be hunted for any purpose. It is included in the Convention on international trade with endangered species of wild animals and wild plants (Washington Convention, CITES), in the Convention on protection of the European wild living organisms and natural positions (Bern Convention) as well as in the Convention on protection of the migrating species of wild living animals (Bonn Convention). In last 7 years minimally in 27 cases the losses in the nests of eagle were caused by the human. Another 40 suspicious cases are supposed to be caused by stealing the nests.

Notwithstanding that the offender had no previous condemnation (neither in the Czech Republic, nor in Slovakia), the court proved that he came into Slovakia with intention to steal the egg of the eagle so that he could bring it to the Czech Republic and once born in captivity, he could legalize its origin. This is possible because in Czech Republic, unlike in Slovakia, does not exist the DNA method for establishing paternity of the eagles. The offender breeds wild birds for 27 years so he could not say he did not know, instead, he came to Slovakia with speculative motive, to declare the young birds as born in captivity and after to sell them.

The court has decided that the purpose of the punishment is the protection of the society, to impede the offender from continuing to commit the crimes and to educate him to live a due life. The main reason of the imposed penalty of 12 months of imprisonment was the general prevention, which should be a warning to another potential offenders not to commit such crimes.

After all, also thanks to the offender, the younger bird died and this caused an irreparable damage to the natural property of the Slovak Republic.

This decision of the district court is particularly important because of recognition of the importance of prevention of further harm.

4.5.6 Conclusions and recommendations

The provisions of the Criminal Code regarding environmental criminal offences are very vague, which results in there being too much discretion for the judge and/or the other authorities (public prosecutor) on how to determine the act of the offender. Very often the act that constitutes a criminal offence is considered as an administrative infringement. This concurrence is only prevented in cases of criminal offence and petty offence, and in cases of petty offence and administrative infringement (i.e. that one act can not constitute criminal offence and petty offence at the same time, nor can one act constitute an administrative infringement and the petty offence at the same time). However, problems occur when the administrative infringement
constitutes also the criminal offence. In these cases where natural persons or entrepreneurs commit the act, the same person can be punished for the same act twice (for administrative infringement by the administrative authority and for criminal offence by the court). This double punishment may also start occurring for the legal persons, when the new Criminal Code enters into force.

The lack of criminal liability for legal persons is also problematic, and having more concrete criminal offences would help.

With regard to the criminal offence of Art. 181c, the constitutive act consisting of cutting the wood is contrary to the Act on Nature and Landscape Protection and so the act may be qualified also as a criminal offence. A problem occurs as wood is defined as a tree growing out of the forest soil fund in the Act No.543/2002. From this reason, it is necessary to extend the legal definition of the constitutive act to cover also trees growing on the forest soil. If such trees were cut out (for example this may happen in the protected area which make part of the forest soil fund – in these cases the present art. 181c subpar.1 letter c) of the Criminal Code may not be applied.

The criminal offence of poaching (Art. 181d) is problematic because of lack of quantitative qualification. The material condition (degree of seriousness of the offence for the society) has to be studied on a case by case basis as it is not necessary to cause any damage.

Another significant problem in Slovakia is the lack of the definition of harm to the environment. The definition of ecological detriment is not adequate, as it is connected only to the criminal offences of 181a, 181b and 181c.

The current Constitution does not define protected wild plants and protected wild animals as state property - res nullius, therefore there is nobody to ask for reimbursement, if, especially, these protected plants or protected wild animals are living in a private wood.

Another conclusion is that the definition of ecological detriment should reflect the volume of harm caused to the public interest protected by the State. It should serve not only to judge the seriousness of the criminal offence (whether there is the aggravating situation and therefore more severe punishment applies), but also to give to the State the right to claim the reimbursement of the ecological detriment without respect to the property. Reimbursement of the damage as another legal right may in that way remain untouched (the owner claims the damage which equals to the value of how much his property was reduced by the offence).

To conclude, we would like to emphasise the following:

1. As we have already mentioned, the administrative authorities frequently give more severe penalties than the courts, notwithstanding that the reverse situation should apply. The administrative authorities deal with the majority of infringements within the ambit of environmental law, but they are not independent, nor they do any monitoring and data collection concerning environmental infringements, cases tried, sanctions imposed and other relevant matters.

2. According to the General Prosecutor’s Office of the Slovak Republic, criminal liability is not now and will not be in the future the decisive type of liability. The report from the General Prosecutor’s Office contains the opinion that according to their experience the main type of acts which breach the environmental obligation are and will remain punished by administrative penalties and not by criminal penalties.
3. It seems clear from the above analysis, that information solely on the criminal penalties may be misinterpreted as the majority of the penalties imposed for the violation of the environmental duties are the administrative penalties or quasi-criminal penalties (penalties for the petty offences).

Therefore, in order to have a complete picture of the penalties in environmental law, it is necessary to study the administrative penalties and the penalties for the petty offences, too.

4. Whereas attention to the protection of the environment is ever increasing, it is necessary to start to keep records on criteria that are currently not monitored. As a direct result of the present study and owing to the impossibility to adequately reply to the formal request of DG ENV on precise statistical data, the public prosecutor’s office decided to launch a more complete monitoring. For this reason the prosecutor’s offices will begin to monitor in 2004:

- the information on damage or deterioration of environment caused by a criminal offence, and also which element of the environment has been damaged or deteriorated (water, air, soil, forest, minerals, plants, animals, artificial objects) and
- in which field the damage or deterioration occurred (waste, chemicals, industrial accidents, irradiation, genetically modified organisms, environmental safety and sound buildings and products, protection of human health and care of healthy conditions for life).
5. Conclusions and recommendations

Protection of the environment through criminal law is an increasingly important issue at both national and international levels. Moreover, Europe is having a leading role in the subject, which is very much linked to efforts from both the European Union and from the Council of Europe. In particular, the present study is directly related to the recent European Commission’s proposal for a Directive aiming to lay down minimum Community standards to combat environmental crime.64 The immediate goal of the above-mentioned proposal is to improve enforcement of and compliance with the environmental acquis communautaire.

The five soon-to-be Member States65 targeted by this study, i.e., the Czech Republic, Hungary, Lithuania, Poland and Slovakia have progressively moved towards stricter systems to protect the environment and criminal measures have been adopted as a way to ensure enforcement of environmental legislation. Furthermore, since 1989 these countries have had to build up a range of new administrative bodies and a significant body of legislation to both (1) adapt to the exigencies of their new democratic and economic status and, (2) to fully align with the acquis communautaire by the time of accession. These circumstances present an extraordinary historical opportunity to create better and more advanced legislation in environmental issues without incurring the mistakes made by other EU Member States.

Although criminal legislation to protect the environment in the targeted countries has been in place since the late 1980s, administrative sanctions are mostly applied in practice. On the basis of the limited statistical data available, it appears that about 80-90% of environmental offences are adjudicated under administrative law systems, while only 10-20% are penalised via criminal legislation. Moreover, in most cases the same sort of harmful to the environment action could be considered as either a crime or an administrative infringement depending on the degree of environmental damage caused and the extent of social endangerment. This is also due to the fact that definitions of environmental crimes are based most of the time on the infringement of an administrative provision, and only when the offence is serious is the infraction pursued as a crime.

Another factor that objectively jeopardises application of criminal law to serious environmental offences is the lack of descriptive criminal provisions clearly defining such concepts as environmental damage, significant damage, etc., and detailing the illegal action to be punished. Furthermore, the basic provision in the Criminal Codes of most countries studied describes an offence that is very broad in scope consisting of the general threat to the environment or its components. It will be important to fully harmonise the environment-related terms in criminal law with the more specific environmental definitions included in administrative law.

The public prosecutor’s right to initiate a criminal procedure together with the discretionary powers of the judges seem to be crucial in determining what should be considered an administrative or a criminal offence. Nonetheless, those discretionary powers are very much conditioned by many different factors that are ultimately linked to the societal reluctance to condemn the so-called “white collar” crimes. It is therefore important to recognise the role of

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65 The European Council held in Copenhagen in December 2002 confirmed accession of ten new countries in the European Union: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The future enlargement will effectively take place on 1 May 2004.
all social actors in increasing environmental awareness. In particular, mass media plays a crucial task in getting the public acquainted with the concept of environmental crimes (notitia criminis). Similarly, environmental NGOs may play a very significant role during the criminal procedure and some countries have recognised such a role in their national legislation. This is the case of Lithuania where NGOs are empowered with certain inquiry and control mechanisms. In Hungary, NGOs are entitled to receive privileged direct information on environmental criminal offences, i.e., the so-called “signalisation” mechanism. Some further training for NGOs on procedural rights with respect to environmental criminal legislation appears to be needed to provide for effective action.

As case law in the targeted countries illustrates, judges are rather conservative when dealing with environmental offences and do not go as far as the Criminal Code legal provisions would allow. Thus, judges seldom if ever evaluate the possible damage that the act could have caused, as they do not seem to consider such damage as a harm to society that should be prevented or/and effectively punished. In other occasions, the judges may not be fully aware of the disastrous, long-term and in many cases irreparable effects that an illegal action harming the environment may cause.

It seems therefore essential to train judges, public prosecutors and defendant lawyers specifically in environmental matters. Environmental legislation is indeed highly technical and much of it is new, having been adopted in the last ten years to comply with the EU acquis. Specialised expertise is needed to enable a good understanding of the environmental legislation to which most of the criminal provisions refer. Moreover, it is important to be fully aware of the extent of the ecological and social damage that an environmental offence may cause, and thus to respond with effective and deterrent penalties.

At this time, none of the countries studied have specialised judges for environmental offences, but some national examples of specialised chambers (e.g., in Hungary courts specialised in traffic offences) illustrate that the existence of judges with specific expertise may enable better application of criminal legislation. Indeed, the mere accumulation of the same sort of offences in a particular court may enable that court to develop a better knowledge of environmental legislation and to further judicial practice concerning environmental criminal cases and penalties to be imposed.

In each of the countries under study the jurisprudence of the Supreme Court of Justice is legally binding, although owing to its prestige, lower courts normally follow it. Nonetheless, there has not been any significant legal precedent set out by the national Supreme Courts for environmental offences. Practice in the current EU Member States indicates that the role of the Supreme Court in setting legal precedent and thus in defining criminal provisions and providing for effective application of criminal law, is strengthened when its decisions are mandatory for lower courts.

In addition, criminal legal actions are also limited by the lack of procedural rights to continue process if there is no person legally entitled to claim the damage (since the environment is not the property of anyone). Those cases in which the environment is considered a public good (Slovakia) or the property of the State, could improve protection of environment through criminal law, but as the analyses of jurisprudence and legal precedents have shown in previous sections of this study, this has not yet been the case.

Most legal systems recognise now that legal persons may also have responsibility for committing very serious environmental offences and provide for criminal penalties to
condemn those physical persons acting on behalf of the corporation (culpa in custodiendo or diligendo). Therefore, although strict liability of legal persons is not yet fully admitted in this group of countries, current legislation provides for criminal sanctions of legal persons. However, once more, judges do not fully apply their discretionary powers to provide for more innovative and dissuasive penalties. So far, administrative law is still mostly used, and when criminal law is applied, sanctions are mainly fines and in some cases consist of only the mere reproof of the illegal action. In other cases, i.e., the Czech Republic and Slovakia, corporations are still only liable via administrative law, although pending legislation will provide for criminal liability of legal persons in the future. It would seem important for judges to begin to apply different forms of penalties in these cases in order to provide for a deterrent effect, e.g., dissolution of the corporation, banning of activity, ineligibility of the corporation to be awarded EMAS or ISO certification, etc.

The role that quasi-criminal administrative law plays when punishing serious environmental offences is also important. The so-called petty offences procedures are very similar to the procedural guarantees of criminal trials, but ensure quick and effective action in an area where urgent responses are needed following the offence. The need of immediate response and expedited trials appears to be essential to overcome those problems linked to the impossibility to prove the causal link of the environmental harm when a long period of time has elapsed.

When the system of petty offences applies, fines are the main types of penalty imposed, and not surprisingly, they are normally higher than those imposed at a criminal trial. A possible explanation for this is illustrated by the figure below. The character of the environmental offence in the administrative system is considered as very severe, while the same environmental offence in the criminal system may be perceived as a minor offence as compared to the other criminal figures covered by the Criminal Codes. Such different perceptions in the judicial bodies may explain the relative severity of administrative penalties imposed in practice in comparison to the lighter criminal sanctions.

In the quasi-penal administrative system there is no criminal record of the offence. The possibility to establish criminal records for administrative, quasi-criminal petty offences and criminal offences should be evaluated to see if this could heighten the deterrent effect. However, sometimes non-criminal penalties are also useful when there are possibilities to reach an agreement between local community and industry that would not be possible in a criminal law procedure.

66 Graph presented by the Hungarian legal expert, Dr. Sandor Fülöp, at the final workshop in Brussels, 22 September 2003.
In any case, the difference between criminal and administrative law appears to be diminishing. Even in those cases where criminal law is applied, the flexibility and possibility of discontinuing the proceeding because the offender is going to repair the damage breaks the logic of criminal law. Indeed, the possibility to redress the environmental damage is more in the line of administrative law than in the line of criminal law.

It should be concluded that although criminal legislation seems to be the best channel to provide for exemplary punishment and to increase social condemnation when an environmental offence occurs, most environmental-related offences are punished via administrative procedures. Thus criminal liability remains a last resort solution in these countries. As the Lithuanian reporter stated in his study: it can be said that currently criminal environmental law is “law in books” whereas administrative legislation is “law in action”.

<table>
<thead>
<tr>
<th>Some suggestions for further action</th>
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<tbody>
<tr>
<td>More training of judges and public prosecutors in environmental law</td>
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<tr>
<td>Specialisation of some judges in environmental criminal matters</td>
</tr>
<tr>
<td>Enhance legally binding character of jurisprudence from Supreme Court,</td>
</tr>
<tr>
<td>doctrine harmonisation</td>
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<td>Workshops for NGOs and increase of their rights in criminal procedures</td>
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<tr>
<td>Quicker criminal procedures for environmental crime adjusted to the</td>
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<td>nature of the offence &amp; its urgency</td>
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<td>Alignment of terms and definitions in administrative and criminal law</td>
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<td>in the field of environment</td>
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<td>Develop practice and in some countries also legislation (Czech Republic,</td>
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<td>Slovakia) for criminal liability of legal persons</td>
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<td>Application of different types of penalties, rather than fines, to</td>
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<td>provide for exemplary and deterring punishments</td>
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<td>Establish criminal record for quasi-criminal petty offences</td>
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<td>More detailed criminal provisions needed to cover environmental offences</td>
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<td>Improve national statistics to track criminal case law</td>
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ANNEX I:
COMPLETE TEXTS OF CRIMINAL PROVISIONS
IN THE SPHERE OF ENVIRONMENT
Czech Republic

Criminal Code, Act 140/1961 Coll., as amended

Part II
Special Part

Title III
Crimes against public affairs order
Division
Other disturbances of the state administration activity

Section 178a
Par. 1: Who illegally hunts game or fish or who conceals, transfers on himself or on other person or who holds game or fish illegally hunted shall be punished by the penalty of imprisonment up to two years or by financial penalty or by the prohibition of activity or by confiscation of a thing.

Par. 2: The penalty of imprisonment of six months to five years and confiscation of a thing shall be imposed on perpetrator who commits the crime under par. 1

a) with intention to obtain for himself or for another person property benefit,
b) in extremely infamous way,
c) in a large scale way, or
d) as a member of an organised group.

The perpetrator shall be punished the same way if he was convicted of the act under par. 1 during the last three years.

Title IV
Generally dangerous crimes

Threatening and damaging of environment

Section 181a
Par. 1: Who intentionally pollutes or otherwise damages soil, waters, air, forest or other environmental element by violating environmental legislation or legislation on protection and use of natural resources and in a larger area, on especially protected area or in water resource for which the buffer zone is established, threatens communities or population of wild fauna and flora (environmental damage) or who intentionally increases environmental damage or makes its diversion or mitigation more difficult or

who intentionally increases the environmental damage or makes it more difficult its diversion or mitigation,

shall be punished with imprisonment up to three years, ban of activity or financial penalty/fine.

Par. 2: Imprisonment from one year to to five years shall be imposed on a perpetrator if he
a) commits the act under the par. 1 repeatedly,
b) causes by such an act permanent or long-term environmental damage,
c) causes environmental damage by such an act, for the removal of which costs of significant extent are necessary.

Par. 3: Imprisonment from to two to eight years shall be imposed on a perpetrator who

a) causes by the act under par. 1 damage of especially protected area or of water resource for which a buffer zone is established in a way that it will cause abolishment or significant weakening of the reason for special protection of such an area or
b) causes by such an act environmental damage for the removal of which costs of large extent are necessary.

Section 181b

Par. 1: Who negligently causes or increases environmental damage (§ 181a) or makes its diversion or mitigation more difficult, will be punished with imprisonment up to three years, ban of activity or financial penalty/fine.

Par. 2: Up to two years of imprisonment, ban of activity or financial penalty/fine shall be imposed on a perpetrator who

commits the act under par. 1 because of breaching important duty connected with his job, profession, position or function or imposed by an Act;
causes permanent or long-term environmental damage or
causes environmental damage for the removal of which costs of significant extent are necessary.

Par 3: Imprisonment from six months to five years or financial penalty/fine shall be imposed on a perpetrator who

causes by the act under par. 1 damage of especially protected area or of water resource for which a buffer zone is established in a way that it will cause abolishment or significant weakening of the reason for special protection of such an area or
b) causes by such an act environmental damage for the removal of which costs of large extent are necessary.

Section 181e

Dangerous wastes management

Par. 1: Who, even negligently, deposits or puts aside or transport or otherwise disposes dangerous waste in breach with legislation and this way damages or threatens environment, shall be punished with imprisonment of up to two years, ban of activity or financial penalty/fine.

Par. 2: The same way shall be punished he/she who, even negligently, will breach waste management legislation by transporting dangerous waste across the state border without a notice or approval of responsible administrative authority, or will state in such a notice or in an application for approval false or roughly distracting data or he keeps secret/conceals substantive data, shall be punished the same way.
Par. 3: Imprisonment of up to three years, with ban of activity or financial penalty/fine shall be imposed on a perpetrator who will

a) obtain by an act under par. 1 and 2 significant benefit, or
b) commits such an act repeatedly.

Par.4: Imprisonment from six months to five years or financial penalty/fine shall be imposed on a perpetrator if he obtains by the act under par. 1 and 2 significant benefit.

Section 181f
Illegal treatment of protected and wild fauna and flora

Par 1: Who in breach with law kills, destroys, works up, imports, exports, transfers, preserves, offers, mediates, obtains for himself or for someone else a specimen of especially protected animal or plant species or endangered species specimen and

commit such an act with more than fifty pieces of animals, plants or specimen, or commits such an act although he/she was sentenced for an administrative delict of a similar nature in the last two years or he was sentenced or punished for such a criminal act,

shall be punished with imprisonment of up to three years, ban of activity or financial penalty/fine.

Par 2: The same way shall be punished he/she who in breach with law kills, destroys, works up, imports, exports, transfers, preserves, offers, mediates, obtains for himself or for someone else a specimen of a critically endangered species or of a species directly endangered with extinction.

Par 3: Imprisonment from six months to five years shall be imposed on a perpetrator who

a) commits the act under par. 1 or 2 with intention to obtain significant benefit, or
b) commits such an act together with an organised group acting in several states.

Par 4: Imprisonment from two to eight years shall be imposed on a perpetrator who

a) commits the act under par. 1 or 2 with intention to obtain benefit of large extent, or
b) commits such an act together with an organised group acting in several states.

Section 181g
Who negligently breaches law by killing, destroying, repeatedly imports, exports or transfers or obtains for himself or for someone else an especially protected individual animal or plant species or specimen of endangered species in a larger extent than 50 pieces, or an individual of a specimen directly endangered with extinction, will be punished by up to one year imprisonment or by ban of activity or by financial penalty/fine.

Section 181 h
Who, even negligently, breaches laws or decision of an authority by taking from wild fauna or wild flora to such extent that he endangers local population of these animals or plants, will be punished by up to one year imprisonment or by ban of activity or by financial penalty/fine.
Hungary

The full text of the referred criminal/petty offence\(^{67}\) legislation reads as follows:


- **Concrete articulation of offences to punish environmental offences in the Hungarian Criminal Code**

  **Section 280: Damaging environment**

  (1) The person who damages the environment or any component thereof or displays - infringing his obligation stipulated in a legal rule or official decision - a conduct which is capable of damaging the environment or any element thereof commits a felony and shall be punishable with imprisonment of up to three years.

  (2) The person who considerably pollutes the environment or any component of the environment or displays - infringing his obligation stipulated in a legal rule or official decision - a conduct capable of polluting the environment or any component thereof shall be punishable in accordance with subsection (1).

  (3) The punishment shall be imprisonment of up to five years, if the crime described in subsection (1) causes considerable damage, or is capable of considerably damaging the environment or any component thereof.

  (4) The punishment shall be imprisonment from two years to eight years, if the crime damages the environment or any component thereof to such an extent that the natural or earlier state of the environment or environmental component cannot be restored.

  (5) The person who commits the damaging of the environment through negligence shall be punishable for misdemeanour in case of subsections (1) to (3) with imprisonment of up to two years, in case of subsection (4) with imprisonment of up to three years.

  **Section 281: Damaging nature**

  (1) The person

  a) who unlawfully obtains, dispatches abroad, sells or destroys any plant or animal subject to enhanced protection or to an international convention, its individual organism in whatever phase of development, or the offspring thereof,

  b) unlawfully and considerably changes a natural area under conservation,

  commits a felony and shall be punishable with imprisonment of up to three years.

  (2) The punishment shall be imprisonment of up to five years, if the damaging of nature results in the mass destruction of the plant or animal defined in Section (1), subsection a), or causes the irreversible damaging or destruction of the area in case of Section (1), paragraph b).

  (3) The person who commits the damaging of nature defined in subsection (2) through negligence shall be punishable for a misdemeanour with imprisonment of up to two years.

\(^{67}\) Petty offences in the Hungarian legal system are handled in a special branch of administrative law, with several features very close to criminal law (see in more details in Part II of the study).
Section 281/A: Unlawful Deposition of Waste Hazardous to the Environment

The person who - without a licence defined in a legal rule or infringing the obligation stipulated in a legal rule or executable official decision - collects, stores, handles, deposits or transports any waste containing a substance capable of

a) endangering human life, physical safety, health,

b) polluting water, air, soil or causing permanent changes therein,

c) endangering animals or plants,

commits a felony and shall be punishable with imprisonment of up to five years.

(2) The person who deposits - without a licence defined in the legal rule - any waste containing materials that are explosive, inflammable or radioactive, or dangerous for health and the environment, shall be punishable in accordance with subsection (1).

(3) The person who commits the crime defined in subsections (1) and (2) through negligence, shall be punishable for misdemeanour with imprisonment of up to two years.

Section 286/A: Interpretative Provision

(1) For the purposes of Section 280

a) environmental component: the earth, the air, the water, the biota (flora and fauna) as well as the artificial environment created by mankind, as well as their constituents,

b) pollution: loading of the environment or any component thereof to an extent exceeding an emission standard established in a legal rule or official decision.

c) damaging: an activity under whose effect a change, pollution or utilization of the environment or any component thereof occurs to such an extent, that as a result the natural or previous state of the environment or environmental component can only be restored with intervention or cannot be restored at all, or any activity affecting the biota unfavourably.

2. Act LXIX of 1999 on Petty Offences

Petty Offence against Nature Protection

147. (1)

Those who

(a)

(Turn I) run an activity subject to permit or co-authority permit of the Nature Protection Authority without such permit or co-authority permit or

(Turn II) run or make others to run the activity in a way different from the permit or co-authority permit or

(Turn III) fails to fulfil a responsibility to announce facts about the activity,

(b)

on natural lands – involving lands under nature protection -
(Turn I) run an activity not compatible with the aims of nature protection,

(Turn II) scatter rubbish,

(Turn III) stay at prohibited place,

(Turn IV) transports on a prohibited way,

(Turn V) light fire,

(c)

(Turn I) illegally ruins, takes of specimen or derivative of protected or enhancedly protected living organisms or parts of a cave,

(Turn II) significantly disturb specimen of protected animals,

(Turn III) illegally destroy specimen of protected living organisms or parts of a cave,

(d)

infringes rules of nature protection in any other way,

(Penalty) can be subject of fine up to 100.000 HUF (4.000 Euro).

(2)

An additional measurement against those who commit the petty offence described in Paragraph (1) can be expulsion.

(3)

The perpetrator of petty offence described in Paragraph (1) Point (b) can be subject to an on spot fine executed by the nature protection guard, the municipality nature protection guard or authorised officials of the Nature Protection Authority.

(4)

That specimen of protected or enhancedly protected species, any form of development or derivatives of them, parts of protected mineral entities in connection the petty offence determined in Paragraph (1) was committed with shall be confiscated.

(5)
If the natural values enlisted in Paragraph (4) are in State property, the Directorate of Natural Park seizures and stores them until the entitled body that practices the ownership rights of the State decides about them.

(6)

The process on petty offences of this section shall be carried out by the Directorates of Natural parks.

Petty Offence against Environmental Protection

148. § (1) Those who

(Turn I) run an activity subject to permit or contribution from the environmental protection authorities without such a permit or contribution or differs or makes others to differ from that permit or contribution or

(Turn II) burden or pollute the environment or any of its elements in a way determined in separate laws, or

(Turn III) infringes other environmental protection provisions in other ways,

(Penalty) can be subject of fine up to 150,000 HUF (6,000 Euro).

(2)

An additional measurement against those who commit the petty offence described in Paragraph (1) can be expulsion.

Illegal Hunting

149. § (1)

Those who illegally stays, armoured with weapon suitable to hunt games and the weapon is in status proper to hunt

(a)

at alien hunting district,

(b)

on prohibited place or in prohibited time

(Penalty) can be subject of fine up to 100,000 HUF (4,000 Euro).
Those who

(Turn I) hunt without hunting ticket or

(turn II) in a status or way not corresponding to the conditions prescribed for hunting

(Penalty) can be subject of fine up to 150,000 HUF (6,000 Euro).

Those hunters, who hunt on prohibited place, in prohibited time, on prohibited games or on prohibited ways,

(Penalty) can be subject of fine up to 150,000 HUF (6,000 Euro).

Those who organise hunting with infringement of the rules on hunting

(Penalty) can be subject of fine up to 150,000 HUF (6,000 Euro).

Lithuania

• Constitution of the Republic of Lithuania

Article 54
The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources as well as their restoration and augmentation.

The exhaustion of land and entrails of the earth, the pollution of waters and air, the production of radioactive impact, as well as the impoverishment of fauna and flora, shall be prohibited by law.

• The Criminal Code of the Republic of Lithuania

Article 270.Violation of Rules on Environmental Protection and/or on the Use of Natural Resources
1. Any person who violates rules, established by the legal acts, on environmental protection and/or on the use of natural resources and thus causes major harm to fauna or flora or other grave consequences shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 6 years.
2. Any person who violates rules, established by the legal acts, on environmental protection and/or on the use of natural resources and thus causes minor harm to fauna or flora or other minor consequences, shall be punished by a fine, or restriction of liberty, or detention, commits a misdemeanour, and shall be punished by community service, or a fine, or restriction of liberty, or detention.
3. A legal person shall also be held liable for the acts specified in this Article.
4. Criminal liability for the acts specified in this Article shall be incurred also in the event of negligence.

Article 271. Destruction or ravaging of protected areas or protected objects of nature
1. Any person, who destroys or badly ravages a state national park, reserve, landscape or other protected nature site or monument of nature, shall be punished by restriction of liberty, or detention or imprisonment for a term up to 5 years.

Article 272. Illegal fishing or hunting
1. Any person who hunts or fishes outside the allowed season or in prohibited sites or by prohibited means and thereby causes major harm to fauna, shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 2 years.
2. Any person who hunts or fishes when hunting or fishing is forbidden shall be punished by a fine, or restriction of liberty, or detention, or imprisonment for a term of up to 3 years.
1. Criminal liability for the acts specified in this Article shall be incurred also in the event of negligence [2]

Article 273. Illegal felling of forests or illegal destruction of wetlands
Any person, who, without legal authority, fells or otherwise destroys more than 1 hectare of a forest area or drains a wetland, shall be punished by detention or imprisonment for a term up to 2 years.

Article 274. Illegal Collection or Destruction of Plants
Any person who, without legal authority, collects or otherwise destroys plants, which may be collected or destroyed with authorization only, commits a misdemeanor and shall be punished by public work or a fine.

Article 202. Illegal economic, commercial, financial or professional activity
1. Any person who engages in economic, financial or professional activities on a large scale without establishing a company or without an authorisation for a type of activity which is subject to a licence (authorisation), shall be punished by community service, or a fine, or restriction of liberty, or imprisonment for a term of up to 2 years.

Article 176. Violation of requirements for safety at work
1. An employer or a person authorised by him, who infringes the requirements established by a law or other legal act regarding safety at work or occupational health where this may result in a misadventure for a person, an accident, or other grave consequences, commits a misdemeanor and shall be punished by deprivation of the right to do a certain job or hold a certain position, or a fine, or restriction of liberty, or detention.
2. Criminal liability for the acts mentioned in this Article shall be incurred by negligence.
Poland

The Penal Code:

Chapter XXII
Offences against the Environment

Art. 181:
§ 1. He who causes a significant destruction in flora and/or fauna shall be liable to the penalty of imprisonment from 3 month to 5 years.
§ 2. He who, in violations of regulations applied on the protected area, destroys or damages plants or animals causing serious damage, shall be liable to the penalty of a fine, restriction of freedom or imprisonment to 2 years.
§ 3. To the penalty referred to in § 2 shall be liable he who, even outside of protected areas, destroys or damages protected species of plants or animals causing serious damage.

Art. 182:
§ 1. He who pollutes water, air land with a substance or ionising radiation in a quantity or a form, which may threat a life and/or health of many persons or may cause a significant damage in fauna and/or flora, shall be liable to the penalty of imprisonment from 3 month to 5 years.
§ 2. In case the perpetrator acts unintentionally, he shall be liable to the penalty of a fine, restriction of freedom or imprisonment to 2 years.

Art. 183:
§ 1. He who, in violations of regulations, storages, treats, disposes or transports waste or substances in conditions or in the way which may threat a life and/or health of many persons or may cause a significant damage in fauna and/or flora, shall be liable to the penalty of imprisonment from 3 month to 5 years.
§ 2. To the same penalty shall be liable he who, in violation of regulations, imports from abroad waste or substances which cause threat to the environment.
§ 3. To the same penalty shall be liable he who, in violation of his duty, allows to commitment of the offence referred to in § 1 or 2.
§ 4. In case the perpetrator acts unintentionally, he shall be liable to the penalty of a fine, restriction of freedom or imprisonment to 2 years.

Art.184.
§ 1. He who carries, accumulates, stores, abandons or neglects without properly securing, a nuclear material or other source of ionising radiation, that could endanger the life or health of human beings or cause the destruction of plant or animal life of considerable dimensions shall liable to the penalty of imprisonment from 3 months and 5 years.
§ 2. The same punishment shall be imposed on anyone, who despite his duty allows the commission of the act specified in § 1.
§ 3. If the perpetrator of the act specified in § 1 or 2 acts unintentionally shall be liable to the penalty of fine, the penalty of restriction of freedom or imprisonment up to 2 years.

Art. 185.
§ 1. If the consequence of the act specified in Article 182 § 1, Article 183 § 1 or 3 or Article 184 § 1 or 2 is the destruction of plant or animal life of considerable dimensions, the perpetrator shall be liable to a penalty of imprisonment from 6 months up 8 years.
§ 2. If the consequence of the act specified in Article 182 § 1, Article 183 § 1 or 3 or in Article 184 § 1 or 2 is the death of a human being or the serious bodily harm to many persons, the perpetrator shall be liable to the penalty of imprisonment from 2 and 12 years.

Art. 186.
§ 1. He, who, despite his duty, does not properly maintain or use a facility protecting water, air or ground from pollution, or a facility protecting against radioactive or ionising radiation shall be liable to the penalty of fine, the penalty of restriction of freedom or the penalty of imprisonment up to 2 years.
§ 2. The same punishment shall be imposed on anyone, who commissions or, despite his duties, permits a building stricture or a group of facilities not having facilities as required by law, to be used as specified in § 1.
§ 3. If the perpetrator of the act specified in § 1 or 2 acts unintentionally shall be liable to a penalty of fine or the penalty of restriction of freedom.

Art. 187:
§ 1. He, who destroys or significantly damages or significantly decreases natural value of legal protected area or object causing serious damage, shall be liable to the penalty of a fine, restriction of freedom or imprisonment to 2 years.
§ 2. In case the perpetrator acts unintentionally, he shall be liable to the penalty of a fine or restriction of freedom.

Art. 188:
He who, in protected area or in its buffer zone, in violation of regulations, construct or expand existing buildings or carry on economic activity, shall be liable to penalty of fine, restriction of freedom or imprisonment to 2 years.

Chapter XX
Offences against Public Safety

Article 163. § 1. Whoever causes an event which imperils human life or the health of many persons, or property of a considerable extent, and takes the form of:
1) fire,
2) collapse of a structure, flooding, rock or landslide or snow avalanche,
3) blast of explosives or flammable materials or any other form of a violent release of energy, or poisonous, suffocating or burning substances,
4) violent release of nuclear energy or of ionising radiation
shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. If the perpetrator acts unintentionally he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 3. If the consequence of the act specified in § 1 is the death of a human being or the grievous bodily harm of many persons, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 years and 12 years.

§ 4. If the consequence of the act specified in § 2 is the death of a human
being or the grievous bodily harm of many persons, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 164.

§ 1. Whoever causes the immediate possibility of an event mentioned in Article 163 § 1, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 2. If the perpetrator acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years.

(…)

Article 172.

Whoever obstructs an action aimed at averting widespread danger to the life or health of many persons or to property of a considerable extent shall be subject to the penalty of the deprivation of liberty for a term of between 3 months to 5 years.

Chapter XXVIII

Offences Against the Rights of the Persons Pursuing Paid Work

(…)

Article 220.
§ 1. Whoever, being responsible for occupational safety and hygiene, does not fulfil the duties involved and by this, exposes an employee to an immediate danger of loss of life or a serious detriment to health, shall be subject to the penalty of deprivation of liberty for up to 3 years.
§ 2. If the perpetrator acts unintentionally, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.
§ 3. The perpetrator who has voluntarily averted the impending danger shall not be subject to the penalty.

Chapter XXIX

Offences against the Functioning of the State and Local Government Institutions

(…)

Article 225.
§ 1. Whoever prevents a person authorised to carry out environmental inspections or a person called upon to assist him from performing his official duty, or makes it difficult to do so shall be subject to the penalty of deprivation of liberty for up to 3 years.
§ 2. The same punishment shall be imposed on anyone, who prevents a person authorised to carry out labour inspection or a person called upon to assist
him from performing his official duty, or makes it difficult to do so.

The Environmental Protection Law Act

Art. 329
He who, when obliged to do so under Article 28, fails to collect, process and make available free of charge information to meet the needs of the state environmental monitoring system shall be liable to the penalty of a fine.

Art. 330
He who, when obliged to do so under Article 75 in the course of construction works, fails to ensure protection of the environment on the site where the works are conducted shall be liable to the penalty of a fine.

Art. 331
He who, when obliged to do so under Article 76, paragraph 4, fails to notify the Voivodship Inspector for Environmental Protection of the planned date of the setting into operation of a building structure, or a complex of such structures or installations, or of the end of the start-up of the installation shall be liable to the penalty of a fine.

Art. 332
He who fails to comply with the restrictions, orders or bans set out in the Regulation issued pursuant to Article 92, paragraph 1, shall be liable to the penalty of a fine.

Art. 333
He who, when obliged under the decision made pursuant to Article 95 to measure the levels of substances in the ambient air, fails to meet this obligation or fails to keep the results of the measurements for the required period shall be liable to the penalty of a fine.

Art. 334
He who fails to comply with the restrictions, orders or bans set out in the Regulation issued pursuant to Article 96 shall be liable to the penalty of a fine.

Art. 335
He who does not reclaim the land surface, thus failing to fulfil the obligations set out in Article 102, paragraphs 1 and 2, shall be liable to the penalty of a fine.

Art. 336
1. He who, when obliged under Article 106, paragraph 1, to agree with the environmental authority the conditions for the reclamation of the land surface, fails to fulfil this obligation or conducts the reclamation in a manner other than the one set out in the conditions, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who:
   1) prevents the reclamation of land in compliance with the obligation set out in Article 108, paragraph 2,
   2) uses in earth works soil or earth which exceeds the quality standards laid down pursuant to Article 105.

Art. 337
He who, when obliged under the decision issued pursuant to Article 107 to carry out the measurements of the contents of substances in soil or earth, fails to fulfil this obligation or
fails to keep the results of the measurements for the required period of time shall be liable to the penalty of a fine.

Art. 338
He who fails to comply with the restrictions, orders or bans set out in the resolution of a Powiat Council adopted pursuant to Article 116, paragraph 1, shall be liable to the penalty of a fine.

Art. 339
1. He who, when releasing substances or energies into the environment in the scope not requiring a permit, exceeds the emission limit values laid down pursuant to Article 145, paragraph 1, or Article 169, paragraph 1, shall be liable to the penalty of a fine,
2. The same penalty shall apply to him who:
   1) fails to comply with the requirements relating to the correct operation of an installation or equipment as set out pursuant to Article 146, paragraph 2,
   2) fails to meet in the event of a disturbance in the operation of installation the requirements set out pursuant to Article 146, paragraph 4.

Art. 340
1. He who, when obliged under:
   1) Article 147, paragraph 1, to carry out periodic measurements of emission levels,
   2) Article 147, paragraph 2, to carry out continuous measurements of emission levels,
   3) Article 147, paragraph 4, to carry out preliminary measurements of emission levels from a new or substantially changed installation,
   fails to fulfil these obligations or fails to keep the results of the measurements for the required period,
   shall be liable to the penalty of a fine,
2. The same penalty shall be imposed on him who, when obliged by way of a decision issued pursuant to Article 150, paragraphs 1-3 to carry out measurements at a specific time or to submit their results, fails to fulfil this obligation and who also fails to keep the results of the measurements in the required period.

Art. 341
He who, when obliged to do so under Article 149, paragraph 1, fails to submit the results of measurements to the competent authorities, shall be liable to the penalty of a fine.

Art. 342
1. He who, when obliged under Article 152 to communicate information concerning the operation of an installation, fails to fulfil this obligation or does not operate the installation in agreement with the information communicated, shall be liable to the penalty of a fine
2. The same penalty shall be imposed on him who operates an installation in spite of the expression of the objection referred to in Article 152, paragraph 4, or starts the operation of an installation before the period envisaged for the expression of the objection expires.

Art. 343
1. He who violates the prohibition on the use of sound amplification installations or equipment as laid down in Article 156, paragraph 1, shall be liable to the penalty of a fine
2. The same penalty shall be imposed on him who fails to comply with the restrictions, orders or bans set out in the resolution of a Gmina Council adopted pursuant to Article 157, paragraph 1.
Art. 344
He who violates the prohibition on the placing on the market or reuse of substances which pose particular danger to the environment as set out in Article 160, paragraph 1, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 345
He who, when obliged to do so under Article 161, fails to clean or dispose of the installations or equipment where substances which pose particular danger to the environment were or are used, or those in respect whereof it is warranted to presume that such substances were used therein, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 346
1. He who, when using substances which pose particular danger to the environment, fails to submit periodically information, respectively, to the Voivode, the head of the Gmina, or the town/city mayor, concerning their types, quantities and the place where they are present, thus, failing to fulfil the obligation set out in Article 162, paragraphs 3 and 4, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who fails to provide the required scope of documentation on the types and quantities of substances which pose particular danger to the environment, the places where they are present and the manner of their elimination, thus failing to fulfil the obligation set out in Article 162, paragraph 2.

Art. 347
1. He who, when placing on the market single-use plastic eating vessels and utensils, fails to enclose thereon information on their adverse impact on the environment, thus failing to meet the obligation set out in Article 170, paragraph 1, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who places on the market plastic products referred to in Article 170, paragraph 2, failing to enclose thereon the information on their adverse impacts on the environment.

Art. 348
He who violates the prohibition under Article 171 on the placing on the market of products which fail to meet the requirements referred to in Article 169, paragraph 1, shall be liable to the penalty of a fine.

Art. 349
1. He who, when obliged under:
   1) Article 175, paragraph 1, to carry out periodic measurements of the levels in the environment of substances or energies released,
   2) Article 175, paragraph 2, to carry out continuous measurements of the levels in the environment of substances or energies released,
   3) Article 175, paragraph 3, to keep the results of measurements of the levels in the environment of substances or energies released in relation to the operation of such installations,
fails to fulfil these obligations or fails to keep the results of the measurements for the required period, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who, when obliged by way of a decision issued pursuant to Article 178, paragraphs 1-3, to carry out the measurements at a specific time or to submit them, fails to fulfil this obligation and on him who fails to keep the results of the measurements for the required period.
Art. 350
1. He who, when obliged to do so under Article 177, paragraph 1, fails to submit the results of measurements to the competent authorities, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who, when obliged to do so under Article 179, fails to submit the acoustic map of the areas.

Art. 351
1. He who operates an installation without the required permit or in violation of its conditions, shall be liable to the penalty of arrest, a limitation of freedom or a fine.
2. The same penalty shall be imposed on him who operates an installation without the required security referred to in Article 187.

Art. 352
He who, when noticing the occurrence of an accident, fails to immediately notify thereof the persons present in the danger zone and an organisational unit of the State Fire Service, or the Police, or the head of the Gmina administration, or the mayor of the town/city, thus failing to fulfil the obligation set out in Article 245, paragraph 1, shall be liable to the penalty of a fine.

Art. 353
He who fails to fulfil the obligations imposed by a decision issued pursuant to Article 247, paragraph 1, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 354
1. He who, when operating an increased-hazard or a high-hazard establishment, fails to fulfil the obligations set out in Articles 250 and 251, shall be liable to the penalty of arrest, a limitation of freedom or a fine.
2. The same penalty shall be imposed on him who in the event of an accident fails to fulfil the obligations set out in Article 264.

Art. 355
He who, when operating a high-hazard establishment:
1) fails to draw up or implement the safety management system referred to in Article 252,
2) starts the operation of the establishment without having an approved safety report,
3) fails to review and fails to make warranted amendments to the safety report at the date set out in Article 256, paragraph 1,
4) fails to fulfil the obligations set out in Article 261, paragraph 1, subparagraph 1, or paragraph 3,
5) fails to fulfil the obligations set out in Article 263,
shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 356
He who has introduced a change in the operation of a high-hazard establishment which may contribute to the hazard of an industrial accident without having received the authorisation of the Voivodship Commandant of the State Fire Service for the change in the safety report, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 357
He who has introduced a change in the operation of an increased-hazard establishment which may contribute to the hazard of an industrial accident without having communicated a change in the accident-prevention programme to the Powiat Commandant of the State Fire Service...
and the Voivodship Inspector for Environmental Protection, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 358
He who fails to fulfil the obligations imposed by a decision issued pursuant to Article 259, paragraph 1, shall be liable to the penalty of a fine.

Art. 359
1. He who, when obliged to do so under Article 287, paragraph 1, fails to keep the required records, shall be liable to the penalty of a fine.
2. The same penalty shall be imposed on him who fails to submit the record referred to in Article 286.

Art. 360
He who fails to implement the decision to:
1) stop an activity as issued under Article 364,
2) stop the bringing into use or prohibit the use of a building structure, a complex of structures, an installation or equipment as issued under Articles 365, 367 or 368,
3) prohibit the production, import or placing on the market of products which fail to meet the requirements of environmental protection as issued under Article 370, shall be liable to the penalty of arrest, a limitation of freedom or a fine.

Art. 361
Rulings on the offences set out in Articles 329-360 shall be made pursuant to the provisions of the Code of Petty Offence Case Procedure.

Act on Waste:

Art. 69:
He who, in violation of regulations, exports hazardous waste shall be liable to the penalty of arrest or fine.

Art. 70:
He who:
1) when obliged to recover or dispose of waste- discards it or transfers it to entities which have not obtained the required permits, or
2) in violation of a ban on the landfill of waste or failing to meet the requirements laid down in the approved instruction for waste landfill operation – deposits waste at a landfill, or
3) stores or deposits waste at place which are not intended for these purposes , or
4) in order to meet the criteria for authorization of waste to be deposited at a landfill – dilutes waste or mixes it with other waste , or with other substances or objects, or
5) causing higher risk to human life or health, or to the environment – mixes different types of hazardous waste or hazardous waste with non-hazardous waste, or allows these types of waste to be mixed, or
6) without the required permit – conducts activities in the scope of waste collection, transport, recovery or disposal shall be liable to the penalty of arrest or fine.
Art. 71:
He who:
1) in violation of a ban – thermally transforms waste outside of waste recovery or disposal installations and facilities, or
2) thermally transforms, or allows the transformation of, hazardous waste in incineration plants or other installations which do not meet the requirements set out for hazardous waste incineration plants or at facilities,
shall be liable to the penalty of arrest or fine.

Art. 72
He who:
1) recovers PCBs (polychlorinated biphenyls, polychlorinated terphenyls, monomethyltrichlorodiphenyl methane, monomethyltribromodiphenyl methane and mixtures containing any of the above mentioned substances in the total quantity of more than 0.005% by weight), or
2) burns PCBs on board ships, or
3) mixes PCBs with waste oils in the course of collection or storage
shall be liable to the penalty of arrest or fine.

Art. 73
He who mixes waste oils with other types of hazardous waste in the course of their collection or storage – where the pollution levels in waste oils exceed the limit values- shall be liable to the penalty of arrest or fine.

Art. 76
He who:
1) produces waste without the required decision approving the hazardous waste management programme or in violation of its provisions, or
2) produces waste without submitting information required on the waste produced and an the manner of managing the waste produced, or manages waste in a way inconsistent with the information submitted, or
3) produces waste despite the submission of the objection referred to Article 24(5) or starts a waste producing activity before the deadline for submitting the objection expires, or
4) closes a landfill or a separated part of the landfill without the required authorization from the authority,
5) while obliged to keep a register of waste or to forward the required information or aggregated data sets – does not meet this obligation, does not do so in a timely manner or does not represent the real status
shall be liable to the penalty of fine.

Art. 77
1. He who - when operating a hazardous waste incineration plant or an installation other than a hazardous waste incineration plant – accepts hazardous waste for thermal treatment without checking conformity between the waste accepted and the data contained in the waste transfer form, or without taking, or without keeping, samples of this waste shall be liable to the penalty of arrest or fine.

2. He who - when operating a municipal waste incineration plant, or an incineration plant for waste other than municipal or hazardous, or another installation or facility – accepts non-hazardous waste for thermal transformation without checking conformity between the waste shall be liable to the penalty of arrest or fine.
Building Law:

Art 90:
He who, in cases set forth in Article 48, Article 50 Para 1 Clause 1 or Article 50 Para 1 Clause 2, executes construction work, is liable to a penalty of fine, restriction of freedom or depriving of freedom for up to 2 years.

Act on Management of Ozone Depleting Substances:

Art. 36:
1. He who does not compliance with a prohibition of production or with prohibitions concerning international transfer of substances subject to control or of products contained such substances or who places on internal market substances or products got with a violation those prohibitions shall be liable to penalty of fine, restriction of freedom or imprisonment up to 2 years.

Art. 37:
1. He, who produces, exports or imports substances subject to control without a required permit against its content, as well as he, who uses in his commercial activity substances subject to control got in violation of bans provided for in this act, shall be liable to penalty of fine or restriction of freedom.
2. He who:
   1) violates prohibition of internal transfer of substances subject to control or use them in a prohibited way,
   2) violates prohibition of testing facilities or installations contained substances subject to control, listed in Annex 1 group II or who use those facilities or installations despite of existing prohibition, which causes emission to the environment of substances subject to control listed in Annex 1 group II,
   3) allows for emission to the environment substances subject to control as a result of non-compliance with his duties set in Art. 19, Art. 20.2 and Art. 22.2, shall be liable to penalty of fine or restriction of freedom.

Art. 38:
He, who:
1) violates prohibition of giving trainings during which substances subject to control, listed in Annex 1, group II may be released to air,
2) violates provisions on obligations connected with treatment of substances subject to control listed in Annex 1, group II,
3) violates provisions on treatment of substances subject to control listed in Annex 1, group II,
4) violates provisions on prohibition of introducing new installations using substances subject to control listed in Annex 1, group II shall be liable to penalty of fine.
Act on Animal Protection:

Art. 35
1. He who kills animals in breach of provisions of art. 6 section 1, art. 33 or art. 34 section 1-4 or mutilate them in the manner determined in art 6 section 2, is subject to the penalty of deprivation of liberty for up to one year or the penalty of restricted liberty or a fine.
2. If the perpetrator of the act determined in section 1 acts with a particular cruelty, he is subject to the penalty of deprivation of liberty for up to two years, the penalty of restricted liberty or a fine.
3. If a person is convicted for the crime determined in section 1 the court may decide on the forfeiture of the animal and in the case of a conviction for the crime determined in section 2 the court decided on the forfeiture of the animal - if the perpetrator is the animal's owner.
4. In the event of a conviction for the crime determined in section 1 or 2 the court may forbid the perpetrator to perform a specific trade, carry out a specific activity or perform transactions that require the permission and are connected with using animals or affecting them and it may decide on the forfeiture of tools or objects used to perform the crime and of objects deriving from the crimes.
5. If a person is convicted for the crime determined in section 1 or 2 the court may decide on a supplementary penal measure for the amount of PLN 25 to 2500 for the benefit of the Society for the Prevention of Cruelty to Animals in Poland or towards another goal connected with animal protection, as indicated by the court.

Act on Nature Conservation:

Art. 58:
1. He who violates prohibitions or limitations provided for in Art. 36 and Art. 37 par.1, shall be liable to penalty of imprisonment or fine.
2. In case of commitment of an offences as referred to in par. 1, the following shall be ruled:
   1) the forfeit of instruments and objects which served to committing the offence as well as of the objects acquired by means of the offence,
   2) the duty to restore the previous state and, the latter not being achievable, the punitive damages up the amount of 5 times of monthly average national wage for the benefit of an appropriate voivodeship fund for environmental protection and water management.
   3) the forfeit of a plant or animal or its sending back to the exporting country on the expenses of the perpetrator.

Art. 59.1.5:
He who
(…)
5. Introduces to the natural environment animals or plants strange for domestic fauna or flora without a required permit of the minister responsible for the environment, shall be liable to penalty of imprisonment
Slovakia

Art. 179 – 180 General Endangering

Art. 179
1. Who intentionally exposes humans to a danger of death or heavy harm of health or the property of somebody else’s in danger of a damage of a big volume so that causes fire or flood or defect or accident of a mean of public transport or damaging effect of explosives, gas, electricity or other similar dangerous substances or powers or commits other similar dangerous act (general danger), or who increases general danger or obstructs its repudiation or mitigation, shall be punished by deprivation of liberty (imprisonment) for three to eight years.

2. The offender shall be punished for eight to 15 years
   a) if he commits the act stated in subparagraph 1 as a member of organized group,
   b) if he commits the act stated in subparagraph 1 repeatedly in a short tome or
   c) if he causes by such an act heavy harm on health of more persons or death, damage of big volume or other extremely serious consequence.

3. The offender shall be punished for 12 to 15 years or by the extraordinary penalty
   a) if he causes by the act stated in subparagraph 1 intentionally death, or
   b) if he commits such an act during the defence emergency of the state

Art. 180
1. Who from negligence causes or increases general danger or obstructs its repudiation or mitigation, shall be punished by deprivation of liberty (imprisonment) up to one year or by the disqualification or by a fine.

2. The offender shall be punished by the imprisonment up to three years or by the disqualification,
   a) if he causes by the act stated in subparagraph 1 heavy harm on health or death,
   b) if he commits such an act because he violated an important duty implicit from his job, profession, position or function or imposed to him according to a law, or
   c) if he causes by such an act significant damage.

3. The offender shall be punished by the imprisonment for one year to five years or by the fine
   a) if he causes by the act stated in subparagraph 2 b) damage of big volume, or
   b) heavy harm on health or the death.

4. The offender shall be punished by the imprisonment for three years to ten years if he causes by the act stated in subparagraph 2 b) heavy harm on health or the death to more persons.

Endangering the Environment

Article 181a
(1) A person who intentionally exposes the environment to the danger of severe damage by violating provisions for environmental protection or for the management of natural resources (endangering the environment) shall be punished with an imprisonment of up to three years or the suspension of the activity.

(2) The offence carries a punishment of imprisonment of one year up to six years if the activity stated in par. 1 causes considerable damage to the environment.

(3) The offence carries a punishment of imprisonment of three years up to eight years if his activity stated in par. 1 causes damage of a large extent to the environment.
Article 181b

(1) A person who causes damage to the environment (Article 181a par.1) due to negligence shall be punished with an imprisonment of up to one year or the suspension of his activity or a financial penalty.

(2) The offender is punished with an imprisonment of up to three years or the suspension of his activity.

if he commits an offence stated in par. 1 because he violates an important obligation that follows from his employment, occupation, position or function or is imposed by law, or if such an act causes considerable damage to the environment.

(3) The offender is punished with an imprisonment of one year up to five years if the act stated in par. 2 a) causes damage of a large extent to the environment.

Article 181c: Violation of the Protection of Plants and Animals

A person who in a manner inconsistent with provisions for the protection of nature and landscape damages, destroys, pulls out, digs out or gathers protected plants or damages or destroys its habitat, kills, injures, entraps or dislocates protected animal or damages or destroys its habitat and dwelling, or damages or destroys wood or cuts them down and to the extent that is not small or endangers a protected animal or plant species shall be punished with an imprisonment of up to three years or a financial penalty or suspension of the activity or confiscation of the object.

(2) A person shall be punished equally as in paragraph 1 if in manner inconsistent with provisions for the protection of nature and landscape to the extent that is not small acquires for himself or another person protected animal or protected plant or specimen, to the extent that is not small keeps, grows, breeds, processes, imports or exports protected plants or protected animals or specimen or trades therewith or deliberately removes, falsifies, modifies or in other illegal way uses unique label of protected animals or specimen.

(3) With an imprisonment of six months up to three years or a financial penalty or suspension of the activity or confiscation of the object the offender shall be punished if, he commits the offence stated in par. 1 or par. 2 in larger extent, he commits the offence stated in par. 1 or par. 2 in order to provide himself or another person with greater profit or he commits the offence stated in par. 1 or par. 2 in spite of being penalized for a similar infringement within last two years.

(4) With an imprisonment of one year up to five years or a financial penalty, the offender shall be punished if he commits the offence stated in par. 1 or par. 2 in considerable extent, he commits the offence stated in par. 1 or par. 2 in order to provide himself or another person with considerable profit, he commits such an offence stated in par. 1 or par. 2 as a member of an organized gang or he commits the offence stated in par. 1 or par. 2 in spite of being punished for the same or similar offence within last two years or being released from the execution of a punishment for the same or similar offence within last two years.

(5) The offender shall be punished with an imprisonment of two years up to eight years if he commits the offence stated in par. 1 or par. 2 in a large extent,
he commits the offence stated in par. 1 or par. 2 in order to provide himself or another person with profit of great extent or he commits the offence stated in par. 1 or par. 2 in a particularly cruel or grievous manner

Article 181d: Poaching

(1) A person who unlawfully interferes with the action of the hunting law, with the action of the fishing law or who hunts animals and fish at the time of their protection or in a prohibited manner or who hides, keeps or transfers the game or fish illegally hunted or found shall be punished with an imprisonment of up to two years or a suspension of the activity or a financial penalty or confiscation of the object.

(2) The offender shall be punished with an imprisonment of six months up to five years or confiscation of the object if he commits the offence stated in par. 1.

in spite of being sentenced for such offence or being released from execution of imprisonment for such offence

in a massively effective or contemptible manner or

as a member of a organized gang

Article 181e: The Illegal Import, Export and Transport of Waste

A person who in a manner inconsistent with provisions on waste imports and exports or transports waste shall be punished with an imprisonment of up to two years or the suspension of the activity.

Article 181f: Unauthorized Treatment of Waste

A person who in a manner inconsistent with provisions on waste treats waste and damages water, soil or air and thus causes damage in considerable extent or if elimination of this damage is not possible shall be punished with an imprisonment of two years to eight years or the suspension of the activity.

Article 181g: Violation of Water Protection

A person who acts in a manner inconsistent with provisions for the protection of water and causes emergency deterioration of quality of surface water or ground water and thus causes damage in considerable extent or if elimination of this deterioration of quality is not possible shall be punished with an imprisonment of two years to eight years or the suspension of the activity.

Art. 223-224 Harming human health (negligent)

Art. 223

Who negligently hurts someone else on health so that he infringes an important duty implicit from profession, position or function or imposed to him according to a law shall be punished by the imprisonment up to one year or by disqualification.

Art. 224

Who negligently causes to someone else heavy harm on health or death shall be punished by the imprisonment up to two years or by disqualification.

1. The offender shall be punished by the imprisonment for 6 months to five years or by a fine if the he commits the act stated in subparagraph 1 because he violated an
important duty implicit from profession, position or function or imposed to him according to a law.

2. not applicable for breaching the environmental legal rules.
Czech Republic

General legislation

- Constitutional Act No. 1/1993, the Constitution of the Czech Republic,
- Constitutional Act No. 2/1993 Coll., Charter of fundamental rights and freedoms,
- Criminal Act No. 140/1961 Coll., as amended
- Act No. 141/1961 Coll., on criminal judicial procedure, as later amended,
- Act No. 200/1990 Coll., on Administrative Infractions
- Act No. 6/2002 Coll., on courts, judges, judges on the bench, on courts administration and
  on amendments of other certain acts (Act on courts and judges), as amended
- Act No. 7/2002 Coll., on procedure concerning the judges and general prosecutor 68
- Act. No.150/2002 Coll., on administrative judicial procedure

Environmental legislation

- Act No. 17/1992 Coll., on environment protection
- Act No. 114/1992 Coll., on nature and landscape protection, as amended
- Act No. 16/1997 on conditions of exports and imports of endangered species of wild
  fauna and flora, other measures of protection of such species and modifications of and
  amendments to Act No. 114/1992 on nature and landscape protection as amended by later
  legislation,
- Act No 123/1998 Coll., on the right to information on the environment
- Act No. 157/1998 Coll., on chemicals and chemical preparations as amended
- Act No. 353/1999 Coll., on prevention of major accidents caused by certain dangerous
  chemicals and chemical preparations and on the amendment of Act No. 425/1990 Coll.,
  on district offices, on on other certain measures (Act on prevention major accidents) as
  amended
- Decree of the Ministry of Environment No. 8/2000 Coll. On the principles of accidental
  risk analysis, contents and way of preparation of major accident prevention policy and
  safety report, preparation of internal and external emergency plans, preparation of base
  information for establishing zones of emergency planning, items of information to be
  communicated to the public and how to inform the public in zones of emergency
  planning.
- Government Order No. 6/2000 Coll., which lays down way of review of major accident
  prevention policies and safety reports, contents of annual plan of safety inspections,
  process of inspection, contents of information and contents of the final report on
  inspection
- Decree of the Ministry of the Environment No. 7/2000 Coll., on contents and way of
  preparation of report following a major accident
- Act No. 185/2001 Coll., on waste
- Act No. 254/2001 on waters and amendments of some Acts (Water Act)
- Decree of the Ministry of Environment No.383/2001 Coll., concerning details on waste
  management

68 The Act regulates disciplinary procedure concerning judges.
19 The Act stipulates the functions (powers) of courts dealing with administrative issues. Their
organisation and procedure of courts, participants and other persons involved in the administrative
judiciary. The study focuses on the functions of courts related to the criminal liability only.
• Act No. 449/2001 Coll., on hunting, as amended
• Decree of the Ministry of Environment No. 58/2002, specifying conditions for the protection of the ozone layer
• Act No. 76/2002 on integration of prevention and pollution control (Integrated Prevention Act)
• Act No. 86/2002 on Air Protection and on amendments of certain other acts (Air Protection Act)

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• Béla Blaskó: Collection of Criminal Cases, Rejtjel Publisher, Budapest, 2000
• Békés-Földvári-Gáspár-Tokaji: Hungarian Criminal Law, BM Publisher, Budapest, 1980
• Annual criminal statistics of the criminal law processes of the Hungarian police and prosecutors’ offices (a special collection for the purposes of the present study prepared by the General Attorney’s Office)
• Professor Gyula Bándi, head of environmental legal department of Pázmány Péter Catholic University, Budapest (personal information)
• Katalin Nóra Bonomi, head of environmental department of the Hungarian General Attorney’s Office (personal information)
• Judge Ágnes Fülöp, traffic case judge at Buda District Court, Budapest (personal information)

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Poland

Legal Acts

• The Constitution of the Republic of Poland of 2 April 1997 (Official Journal of Laws no. 78, item 483)
• The Penal Code of 6 June 1997 (Official Journal of Laws no. 88, item 553 as amended)
• Code of Petty Offences of 20 May 1971 (Official Journal of Laws no. 12, item 114 as amended)
• Code of Criminal Procedure of 6 June 1997 (Official Journal of Laws no. 89, item 555 as amended)
• The Environmental Protection Law Act of 27 April 2001 (Official Journal of Laws no. 62, item 67; as amended)
• The Act on Waste of 27 April 2001 (Official Journal of Laws no. 62, item 628; as amended)
• Act on Packaging and Packaging Waste (Official Journal of Laws no. 63, item 638; as amended)
• Act on Entrepreneurs’ Obligations Concerning Management of Some Waste and on Product and Deposit Charges (Official Journal of Laws no. 63, item 639; as amended).
• Act on Forest Reproductive Material of 7 June 2001 (Official Journal of Laws no. 73, item 761)
• Act on Genetically Modified Organisms of 22 June 2001 (Official Journal of Laws no. 76, item 811; as amended)
• Act on Water Law of 18 July 2001 (Official Journal of Laws no. 115, item 1229; as amended)
• The Act on Handling Substances Depleting the Ozone Layer of 2 March 2001 (Official Journal of Laws no. 52, item 537; as amended)
• The Act of 29 November 2000 – the Nuclear Law (Official Journal of Laws of 2001 no. 3, item 18; as amended)

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• Act No. 23/1962 on Hunting
• Ministry of Agriculture Ordinance No. 172/1975 on protection, way and conditions of hunting of certain game species
• Ordinance of the Ministry of Environment No. 55/2001 on Territorial Planning Documentation
• Act No. 127/1994 on environmental impact assessment and generally binding regulations established under this Act
• Act No. 478/2002 on protection of air
• Act No. 261/2002 on prevention of major industrial accidents and on amending and supplementing curtain laws
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ANNEX III: RESEARCH GUIDELINES
Research Guidelines for National Experts

1. Background

The European Commission, in its pursuit of an adequate environmental governance framework, is interested in gathering information concerning the enforcement responses to environmental violations in five candidate countries (Czech Republic, Hungary, Lithuania, Poland and Slovakia), and the extent to which criminal sanctions are used. Thus, it issued a tender to develop a study on “Criminal Penalties in a few Candidate Countries’ environmental law”. The contract was awarded to Milieu Ltd and its team of national experts in December 2002.

It should be noted that a similar study covering criminal enforcement of the above-mentioned Directives/Regulation in the 15 EU Member States was carried out in 2002 by the Maastricht European Institute for Transnational Legal Research, i.e., the so-called METRO Report.

The present study is directly related to recent EU initiatives to apply criminal law principles in order to improve enforcement of and compliance with the environmental acquis communautaire. For example, the 1999 Tampere Council called for the prevention of crime at EU level and specifically emphasised the need to undertake common efforts in certain sectors of particular relevance, including environmental crime. In March 2000, Denmark presented an initiative for a Framework Decision on the Protection of the Environment through Criminal Law\(^69\), which was intended to align national definitions and sanctions for serious environmental crimes and was adopted in January 2003. In parallel, the European Commission presented on 13 March 2001 a proposal for a Directive on the Protection of the Environment through Criminal Law\(^70\), which lays down minimum Community standards to combat environmental crime. The proposal was subject to the co-decision procedure in the European Parliament and amended in late September 2002\(^71\).

Both the Framework Decision (already adopted) and the Commission’s Directive (at proposal stage) aim at the same goal, but whereas the Commission proposal is subject to full co-decision under the EU’s first pillar, the Framework Decision has been adopted by governments alone, and will exclude any jurisdiction from the European Court of Justice in the future. It is likely that the European Commission will ask the European Court of Justice to overrule the Council of Ministers’ formal adoption of the Framework Decision.

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2. Objectives

The aim of the project, according to DG Environment’s ToR, which each of you has already received, is to provide the Commission with legal information on the criminal penalties for breaches in environmental law in the Czech Republic, Slovakia, Hungary, Poland and Lithuania.

The current study will focus on 10 Directives and 1 Regulation dealing with areas of environmental protection where criminal penalties appear to be particularly appropriate, because of inherent economic incentives for violations and/or because of histories of repeated violations. They include as follows:


The study will also provide a study of the criminal legislation in the environmental sphere for each accession country, addressing criminal responsibility of both natural and legal persons. Since the deterrent effect of criminal penalties rests not only on the size of the penalty but on the likelihood that a legal action will be taken against a natural or legal person that has caused severe environmental harm, the study will also include a review of the jurisprudence of each country.

3. Approach & Timing

Following conclusion of all contractual arrangements needed to kick off the project, Milieu met with DG ENV responsible official, i.e., Françoise Comte-Horeanga, to discuss how to approach the criminal penalties study and to agree on deadlines for deliverables. DG Environment indicated that we should follow a similar approach to the one developed in the METRO study, but learning from their experience, Milieu would very much aim to produce a document structured to provide, with a higher degree of comparability and uniformity for each Candidate Country. This is the main reason behind the development of these research guidelines for each relevant section of the criminal penalties study.

In February 2003, our senior advisor, Dr Antonio Vercher Noguera (Public Prosecutor of the Spanish Supreme Court) commented and refined our initial approach.
We foresee that additional improvements of the proposed methodology may occur following our initial workshop in Brussels. In addition, the workshop on Monday, 10 March 2003 will provide us with an opportunity to discuss further issues that may arise in the course of the project (e.g., get acquainted with potential difficulties or challenges for obtaining information relevant to the study, decide date for September workshop, etc.).

The methodology below aims to provide with uniform guidelines for the national reports that will form the material for three main sections of the study:

1) Analysis of criminal law provisions for the 10 Directives and 1 Regulation covered by the study
2) Overview of criminal legislation and penalties
3) National criminal jurisprudence in the environmental sphere

The work of the national experts should start with the completion of the Tables of Concordance (ToCs) for each of the EU legal texts targeted in the study. You should initially work with two pilot ToCs prepared by Milieu for the Habitats and Waste Oils Directives, so that we could discuss the usefulness of these ToCs and/or the need to refine them at the March workshop. Following your comments and experience from working with the pilot ToCs, Milieu will re-format and refine all ToCs as needed and distribute them among you as soon as possible so that you could proceed further with your analysis of the criminal provisions for the targeted EU acquis.

Following the workshop, you are to start completing all remaining ToCs and subsequently compile such information into Consolidated Tables, and draft the analysis of criminal legislation and penalties. Completion of the first five ToCs (Waste Oils, Habitats, Waste Framework, Hazardous Waste and Wild Birds) will take place on 14 April 2003. Following this submission, Milieu will produce Consolidated Tables for comparability of information from each Candidate Country. Completion of all 6 remaining ToCs (Solvents, Large Combustion Plants, Seveso II, Dangerous Substances to Water, Cadmium Discharges, Ozone Depleting Substances) and submission of a first draft of the analysis of criminal legislation and penalties is scheduled for Monday, 5 May 2003. Milieu and Antonio Vercher will then do a quality check and get back to you with queries as appropriate. Then we will finalise all Consolidated Tables and distribute them accordingly for clarifications. This information will be compiled in an Interim Report, which will be submitted to DG ENV on 20 May 2003.

From May to July, national experts will continue their drafting of the analysis of criminal legislation and penalties and will carry out in parallel a study of the criminal jurisprudence in the environmental sphere for the targeted acquis. A final version of those should be delivered on Tuesday, 1 July 2003. Milieu and the senior expert will then draft a comparative analysis of criminal legislation, penalties and jurisprudence for each Candidate Country and draw up initial conclusions from the work completed by the national experts. Our plan is to send a Draft Study on Criminal Penalties to DG ENV on 4 August 2003 (for information on contents of the draft study see the Annex). We will forward this draft to each of you at the same time.

On Monday 1 September 2003, we will hold a workshop in Brussels and present our draft study to DG ENV. This workshop should be held in DG ENV premises and will gather the entire team (all national experts, senior advisor, Milieu’s Project Director and Manager) together with selected Commission’s officials. The final outcome of the workshop will be the submission of the Final Study on Criminal Penalties to DG ENV on 20 September 2003.

Please note that Milieu’s management team will provide continuous support throughout the life of the project, and you should not hesitate to contact the Project Manager as often as needed when completing your work.
The following table illustrates our work plan until completion of the study, (specific deliverables from national experts and corresponding deadlines have been bolded):

<table>
<thead>
<tr>
<th>Date 2003</th>
<th>Activity</th>
<th>National experts</th>
<th>Milieu and Senior Expert</th>
<th>DG Env</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Jan – 7 Feb</td>
<td>Finalise contractual arrangements</td>
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<tr>
<td>21 Feb – 21 March</td>
<td>Distribute guidelines &amp; pilot ToCs</td>
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<tr>
<td>5 March</td>
<td>Submit draft of pilot ToCs</td>
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<td>10 March</td>
<td>Workshop in BXL – Discussion of ToCs &amp; methodology</td>
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<tr>
<td>24 Feb – 28 Apr</td>
<td>Complete ToCs &amp; First type of Consolidated Tables – start drafting sections on criminal legislation</td>
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<tr>
<td>14 April</td>
<td>Submit first 5 ToCs</td>
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<tr>
<td>5 May</td>
<td>Submit 6 remaining TOCs &amp; first draft of criminal legislation</td>
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<tr>
<td>W/c 5 May</td>
<td>Consolidation of Tables &amp; Consultations with national experts and senior advisor</td>
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<tr>
<td>21 May</td>
<td>Submission of Interim Report</td>
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<tr>
<td>5 May – 23 June</td>
<td>Draft section jurisprudence &amp; finalise section criminal legislation</td>
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<tr>
<td>1 July</td>
<td>Submit national reports (criminal legislation &amp; jurisprudence) to Milieu</td>
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<tr>
<td>7 July – 11 Aug</td>
<td>Finalise study and consultations as needed</td>
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<tr>
<td>4 Aug</td>
<td>Draft study delivered to DG ENV</td>
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<tr>
<td>1 September</td>
<td>Workshop in BXL to present Final report – date to be confirmed</td>
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<tr>
<td>8 – 15 Sept.</td>
<td>Integrate comments from DG ENV and consultations with national experts as needed</td>
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<tr>
<td>20 Sept.</td>
<td>Final study delivered to DG ENV</td>
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</table>

3. Methodology for national experts

Milieu’s methodology intends to set forth a straight-forward and uniform process for gathering the national-level information required by the contract, which should subsequently be processed and compiled into a final study to be delivered in September 2003 to the European Commission. As per DG ENV Terms of Reference, national experts will need to focus on the following items:

3.1 Detailed analysis of criminal law provisions in each country, whether national, regional, or local, adopted in order to transpose 10 Directives and give effect to one Regulation

3.1.1 Tables of Concordance to analyse criminal penalties in place for those obligations set by the targeted EU acquis

Milieu has prepared a total of 11 Tables of Concordance (ToC) for the EU legal texts covered by the project. These ToCs are aimed to provide for a comparative analysis and are developed following a similar concept of Progress Monitoring ToCs but accommodated to this particular study and the format requested by DG ENV. They will enable Milieu at a later stage to compile the results found from each particular country into a consolidated table. The following instructions illustrate how to fill out a ToC for this particular study:

The top of each ToC provides a box indicating the country for which this information is provided, the name of the person(s) filling out the ToC, and the date.

The ToC include the following columns:

72 Please note that this updated schedule introduces some changes to the one previously received by you via e-mail on 28 January 2003.
<table>
<thead>
<tr>
<th>Article</th>
<th>EU Obligation (simplified)</th>
<th>Transposing provision in national law (give relevant law or regulation &amp; no. of article)</th>
<th>Provision setting criminal penalties (give relevant law or regulation &amp; no. of article)</th>
<th>Type</th>
<th>Constitutive Act</th>
<th>Description of criminal &amp; other penalties established</th>
<th>Notes</th>
</tr>
</thead>
</table>

**EU Obligation:** The second column lists the legal provisions that lead to obligations on natural and/or legal persons. They are provided to try to link criminal penalties laid down in national law back to a particular EU obligation. In order to facilitate the tasks of the national experts such obligations have been

1. grouped under a generic heading, which relates to the same category of obligations (e.g., registration obligations, compliance with ELVs, collection obligations, etc). Note that owing to such re-organisation of the EU provisions, articles do not necessarily follow their natural numerical order;
2. simplified by summarising the contents of the article concerned;
3. shaded in those cases of discretionary provisions, which would only need to be filled out if the country has decided to cover such obligation under national law;

An additional row has been added to cover any additional relevant measures under national law, e.g., more stringent measures.

As the EU provisions have been simplified and reorganised, please read the text of the Directive through to get an overview of the EU law. National experts should consult pdf / EUR-LEX files when looking for a particular Directive/Regulation. Milieu would be able to provide targeted Directives/Regulation as needed.

**Transposing provision in national law (give relevant law or regulation & no. of article):**
This column provides a place to enter the relevant provision from national law that has transposed the EU requirement. Milieu has already completed this column, when possible, using in-house information. However, keep in mind that this information was gathered in April 2002, and therefore, new developments in national legislation might need to be taken into account.

When a row has not been completed by Milieu, please provide the full title of each relevant legislative act and its full legal citation. If the same transposing text is repeated throughout the ToC, pls use a letter to refer to transposing legislation, including section, article, paragraph, and fully refer to such piece of legislation in an Annex at the end of the table (see example of Poland). E.g. D, section 2, Art.4.2.b

If there are more than one piece of legislation covering the EU obligation, please list them in chronological order.

If there is no transposing provision in national law, to correspond to the EU provision, please indicate: Not Yet Transposed.

Note that this particular column has a different heading in the case of the Regulation (EC) 2037/2000, i.e., Implementing provision in national law (give relevant law or regulation & no. of article), since the countries are not under a legal obligation to transpose.

**Provision setting criminal penalties (give relevant law or regulation & no. of article):**
This column is to be used to indicate which provision in national law specifies a criminal penalty/ies for the corresponding EU obligation. Again, please provide the full title of each relevant legislative act and its full legal citation or abbreviation, as appropriate. If there are
more than one piece of legislation setting a criminal penalty, please list them in chronological order.

Please include the full text of the provision setting criminal penalties. In the case of Lithuania, if the text in the administrative act is very long, summarise it and provide a good description under column of constitutive act.

Please include relevant provisions for that specific obligation of the Directive. Do not use the general article (e.g., damaging the environment). If there is no specific provision in national legislation, leave this column in blank.

If there is a legal act setting criminal penalties that has already been adopted but will be enforced in some months (e.g., the case of Poland) you should include it in the ToC. If the legal act has not yet been adopted, but is in its final stages (going through different readings in the Parliament) you should include it in the study (under point 1, see page 8 of methodology).

Please indicate in parenthesis which provisions refer to natural and which to legal persons. E.g., Environmental Code, Articles 514-516 (natural persons), Article 517 (natural and legal persons); Penal Code, Articles 131-38 (legal persons).

**Type:** This column has been specifically requested by DG ENV and refers to degree of seriousness of the specific criminal offence.

Please clearly state if criminal offence and give a definition according to national law and always qualify under serious/petty offence.

**Constitutive Act:** This column is to be used to describe the act or omission that constitutes the criminal offence. Examples of constitutive acts are as follows:
- Direct violation, e.g., failure to have permit
- Provision of false information in obtaining permit
- Obstruction to control & monitoring
- Violation of general prohibition against causing damage to human health & environment

**Description of criminal and other penalties established:** This column provides a place to enter the criminal penalty set for a particular criminal offence. Please do not include administrative provisions/penalties in the ToCs, but rather refer to quasi-penal administrative law in the study (under point 1, see page 8 of methodology). Penalties should be listed and detailed under the following categories:
- P: Imprisonment
- F: Fine. Please note that when referring to the total amount for a fine, this should be detailed in the country’s national currency and always with its equivalent in EUR.
- O: Others (e.g., confiscation, public works, disqualification, revocation of certain rights, publication of a judgement, restoration, etc.)

Please make a clear difference between penalties imposed to natural and legal persons.

Please use **bold** to indicate the time of imprisonment (**one year up to five years**) and the amount of the penalty (**500 EUR**).

Please include reference to **and/or** if imprisonment, and/or fine, and/or others.
Notes: This is provided to give you the space to add any of your comments, e.g., difficulties in categorising national legal provisions that could illustrate challenges or gaps in the methodology.

* As a general comment, when articles, descriptions, others are repeated throughout the ToC use the word idem.

3.1.2 Supporting texts following the ToCs when further analysis is needed

We are aiming to provide for a clear analysis of criminal law provisions corresponding to the EU *acquis* covered by the project via the ToCs. However, the national experts may experience some difficulties or may need to provide for overall comments via a separate written paragraph. Such supporting text is only required if needed by the national expert and does not in any case replace full completion of the ToCs.

3.1.3 Consolidated Tables

We will then need to consolidate the results from the ToCs filled out by the national experts, to show, for each Directive and article by article, the type and level of the penalties established in each country. Such a table is intended to provide an easy means of comparison of the criminal penalties between the five analysed countries. At this stage we expect that it may be necessary to ask for clarifications from the national experts, for quality control purposes.

*Example of second type of consolidated table for Seveso II Directive*

<table>
<thead>
<tr>
<th>Directive (Ref.)</th>
<th>Czech Republic</th>
<th>Slovakia</th>
<th>Hungary</th>
<th>Poland</th>
<th>Lithuania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 5.1 F:</td>
<td>P:</td>
<td>O:</td>
<td>F:</td>
<td>P:</td>
<td></td>
</tr>
<tr>
<td>Article F:</td>
<td>P:</td>
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<tr>
<td>Article O:</td>
<td></td>
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</tr>
</tbody>
</table>

*F= fine
P= imprisonment
O= other penalties

Milieu will follow a common methodology for comparison including:

➤ **NATURAL PERSONS**

P: one year up to 5 years
Aggravating situations: …… and/or
F: 200 – 2000 EUR and/or
O: Confiscation, public works…..

➤ **LEGAL PERSONS**

P: one year up to 5 years
Aggravating situations: …… and/or
F: 200 – 2000 EUR and/or
O: Confiscation, public works…..
3.2 Overview of criminal legislation in the environmental sphere for each country (6-9 pages)

National experts should draft a comprehensive analysis of the existing criminal legislation in each country to protect the environment. Please try to be as clear as possible and to avoid lengthy discussions of legal problems. Following our reading of the METRO Report, we noticed that one of the main problems experienced was to gather comparable information from each country and therefore, we have prepared more detailed guidance on which issues should be covered by your analysis, which should include the following sections:

1. Introduction (1-2 pages)
   This section should include an overview of criminal legislation for environmental matters and describe the following issues:
   - Evolution of environmental criminal law in your country: Brief historical background & influences (Anglo-Saxon, Germanic, Continental, EU proposals and tendencies, other systems)
   - Summary & clear description of existing environmental criminal legislation, including:
     - Constitution
     - Primary and secondary legislation
     - Jurisprudence as a source of law
   - Relationship to administrative law systems. Pls refer to this point briefly only in those cases where administrative law becomes a quasi-penal law (e.g., when specific administrative penalty procedures apply, administrative agencies have the power to prosecute, administrative systems replace criminal courts for minor offences due to the lower cost of the process, etc)
   - Peculiarities of the country’s environmental criminal legislation. Please flag out those issues that in your opinion deserve special attention particularly if they go further than other countries’ practice; e.g., in Slovenia it may constitute an environmental crime to drive a motorbike or a car in a protected area. Please note that such national peculiarities may be of special interest for the European Commission.
   - Future trends only if there is a Bill already drafted aiming to reform the existing system, e.g., reform of Criminal Code. Please do not provide in this section any speculation on how the current system is to or should be revised in the future and focus only on short-term and nearly definite plans to reform existing legislation.

2. Criminal responsibility of natural persons (3-5 pages)

2.1 Classification of criminal offences
   - General classification of criminal offences. Please describe classification of criminal offences under different categories, e.g., degree of seriousness, mode of trial, liability, etc.
   - Specific criminal offences for environmental law
     - Please include a brief description on the structure of the criminal offences listed above: whether such offences fall under crimes of abstract endangerment (e.g., operation of a plant without a licence) or concrete endangerment (e.g., emission of dangerous substances into water)

2.2 Criminal penalties in environmental law
   - Type of criminal penalties for breaches of environmental law (imprisonment, fine, others….)
• When describing criminal penalties in environmental law, briefly refer to aggravating and mitigating situations.

• Description of alternative means of settlement (for examples, read Recommendation No. (99) 19 of the Council of Europe concerning mediation in penal matters, 15 September 1999: www.restorativejustice.org/rj3/Government%20Reports/mediationEurope.html)

3. Criminal responsibility of legal persons (3 pages)
• Does national law provide for criminal responsibility of legal persons. If yes, follow guidelines under 2.1 and 2.2 (description of offences and corresponding penalties, and powers of judge in application of the penalty).

3.3 Criminal jurisprudence in the environmental sphere (5-6 pages)

The review of actual court cases where criminal law principles have been applied for environmental protection purposes will be important for a deeper understanding of the actual practices in each country in this area. It will also be useful for determining where assistance in furthering the application of criminal law in this sphere may be needed. Please note that this part of the study is of great importance and you will need to include an introduction on your methodology to compile legal practice, steps taken, databases researched, difficulties, etc.

If official letters are required to contact relevant courts, you are responsible for drafting such letters, and sending them to the Laura Sanz Levia, who will then directly co-ordinate with DG ENV for official support to the study.

Your research for this particular section needs to go beyond the usual sources consulted for sections 3.1 and 3.2, e.g., books, legal journals and reviews, and should also include as a minimum:
- Legal databases
- Specific search and request of updated information on case law from the prosecutor and competent court (administrative as well as criminal). Please note that if you experience any problem in addressing such instances, Milieu will request an official letter from the European Commission to back up your request to the Court.

Please come to the March workshop in Brussels with your initial ideas on how to research this section in your country.

Your analysis should include the following sections:

1. Overview of national judicial framework (which judges have competence for which cases?). Please provide examples of both “good” and “bad” cases of courts applying criminal law.
   • Please include a special reference in this section on:
     a) application of the principle of legality (nulla poena sine praevia lege): criminal sanctions for infringements of environmental legislation are only applicable if the defender has acted in conflict with the law and if legislation includes criminal sanctions for this particular offence;
     b) application of plea bargaining when the public prosecutor may settle via a bargaining process with the lawyer of the offender a reduction of the penalty before bringing them to the competent court;
     c) application of the principle of opportunity, which may be lifted for social or political reasons and enables the public prosecutor not to bring a case into court even when a crime has been committed (e.g., used in the German system).
2. Criminal environmental procedure
   • Statistics for environmental crimes in the period 1998-2002. You will need to gather as much data as possible to fill out (whenever possible and if data is easily accessible) the table on the following page.
   • Costs of the procedure (including the obligation or not to be assisted by a lawyer), and who bears them.
   • Persons and bodies empowered to initiate a criminal procedure (exclusive competence of public prosecutor, shared competence with environmental agencies, NGOs, other civil parties…).
   • Competent judges. Please specify whether specific environmental courts exist.

3. Brief description of existing case law or legal precedent:
   • Listed in chronological order
   • Specify type of judiciary body and stages (first instance, appeal, other)
   • Description of existing case law or legal precedent should not be limited to firm final sentences.

4. List of sources consulted to carry out the analysis of case law

3.4 Conclusions and recommendations

Please include a one-page section on conclusions and recommendations from your national study.

4. Formatting rules

Please note that for the analysis of the criminal legislation and jurisprudence on environmental matters, you should follow for uniformity reasons, the FORMAT RULES distributed by Milieu.

5. Supporting documents

For background, you may want to have the following documents at hand. We addresses are provided below.

• 10 Directives and 1 Regulation to be covered by the study
<table>
<thead>
<tr>
<th>Years/Sectors</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
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<tbody>
<tr>
<td><strong>Air</strong></td>
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<tr>
<td>No of prosecutions</td>
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<td>No. of convictions</td>
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<td>Imprisonment</td>
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<td>Fines</td>
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<td>Others</td>
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