Final Report

Organised environmental crime in a few Candidate Countries

coordinated by

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MANAGEMENT SUMMARY

The study at issue investigates organized environmental crime in the five Accession Countries: Czech Republic, Estonia, Hungary, Lithuania, and Poland. The study encompasses:

- a numerical evaluation of cases of organized environmental crime in the Czech Republic, Estonia, Hungary, Lithuania, and Poland;

- an analysis of the legal environment concerning organized environmental crime in the Czech Republic, Estonia, Hungary, Lithuania, and Poland;

- a review of the enforcement structures concerning organized environmental crime in the Czech Republic, Estonia, Hungary, Lithuania, and Poland.

The following sectors are covered:

- illegal commercial trade in endangered species and their products;

- illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste;

- illegal commercial trade in ozone depleting substances;

- illegal dumping and shipment of radioactive waste and potentially radioactive material;

- illegal logging and illegal trade in wood and

- illegal fishing.

In the Accession Countries, environmental crime is a comparatively young field of study, as compared to most of the EU Member States. In part, statistics on this area of crime do not begin before the mid-90ies (and often, there is no awareness of these crimes before). Data on organized crime in the environmental sphere do in no way exist in the police statistics of the countries in question. Other contacts, such as customs services, ministries of the environment, courts and state attorneys, do not have further information available (or otherwise, they do not want to provide it). Literature on organized crime in the sphere of environment is only sparsely available. Even NGOs, in many cases valuable sources of first information, have only little material. Insofar, this study is the very first to collect information on these cases systematically.

The assessment of the extent of environmental crime and organized environmental crime depends on the availability of information. Only on the basis of meaningful information on
number and background of crimes as well as comprehensive data on markets for environmental products (e.g. wood or endangered species) and services (e.g. waste disposal) can a reliable statement on the existence of environmental and organised environmental crime be made. In the countries studied there is only little or partly no information available. The availability of information differs from country to country and from issue to issue. An only small number of sources makes it more difficult to compare information, even with respect to reliability.

In Estonia and Lithuania, information gathering was most difficult due to a lack of information sources. The same can be said for Hungary, where information gathering was additionally hampered by non-co-operation by the public authorities.

Some of the environmental crimes seem to be a relatively new problem in the accession countries, which is above all linked to the introduction of fees for waste disposal. When the city of Budapest, e.g., introduced such a fee in 1997, illegal waste dumping was largely unknown. Today a fee of 260 Forint (about 1 Euro) per tonne entices to dispose waste illegally.

A total number of 63 cases of organized environmental crime in the sense of European Commission and Europol definition\(^1\) could be established. Looking at the overall results of the research on organised environmental crime cases the relatively low number of cases compared to other classical segments of organised crime – e.g. drug trafficking and prostitution- is obvious.

There are 32 cases of illegal logging (to be traced back to traditional roots in this well wooded countries as well as poverty crime), 16 cases of illegal waste disposal or transboundary shipment, 10 cases of illegal trade in endangered species, 4 cases of illegal fishing and 1 case of illegal commercial trade in ozone depleting substances. The distribution among countries presents an extremely heterogenous picture. Most cases have been established in the Czech Republic (44 cases). In all other countries under study only a few cases have been identified. Except from Estonia (7 cases) and Lithuania (5 cases), where the small size of the country could be an explanation, the number of identified cases in Hungary (1 case) and Poland (6 cases) is at first glance surprisingly small.

An explanation of these findings might be that – and this also refers back to a study conducted for the European Commission in 2002, on organized environmental crime in the fifteen Member States, - that environmental crime is so-called „control crime“. That is to say that the more advanced the legal framework and societal awareness are, and the more effective and specialized prosecution procedures become, the more cases are uncovered. In the Czech Republic, for example, a large number of cases was discovered (44), whereas in Hungary there was only one. These country analyses express the fact

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\(^1\) The definition of organized crime is used in the context of the Annual European Union Organised Crime Situation Report (6204/1/97 ENFOPOL 35 REV 2) DG H II)
that prosecution structures are much more evolved in the Czech Republic, they are much better staffed and technically equipped as well as co-operating comparatively efficiently, whereas in Hungary, these structures are still undeveloped.

Although for Poland, official statistics may indicate that the problem of environmental organized crime does not exist, reality seems to be fairly different. Poland is recognized as a transit country for international organized criminal groups, and became an operational and destination country for Polish and international organized groups. The number of cases in respect to illegal commercial trade in endangered species and their products, dumping and storage of waste and all other sectors covered by the study indicates that organized crime groups may be involved in these activities. Officials from institutions dedicated to fighting environmental crime confirmed this fact informally. However, since 1993 no one was charged with and sentenced for committing environmental crimes in relation with participation in an organized group.

The discrepancy between reality and sentencing practice in courts shows that institutions responsible for preparatory procedure (Police, Prosecutor’s Office) are not fully aware of and prepared for fighting organized environmental crime. In appeal and district prosecutor’s offices, there are no special units or persons exclusively appointed to fighting organized environmental crime.

The analysis of the legal framework and conditions in reference to organized environmental crime in the five countries, the research on the prosecution structures, as well as the case research and the concommitant co-operation of the field researchers with the study-relevant officials, i.e. police, customs and ministries of the environment, shows that it is rather astonishing that there is actually any information on environmental crime as defined by the Europol-criteria in Estonia, Lithuania and Hungary, as this field of criminal activity receives only scant notice by the legal and investigative agencies in these countries.

Even though all five countries had taken some measures for environmental protection before 1989, it was only institutionalized with an appropriate body of law and accompanying public raising of awareness after 1989. Insofar, environmental protection and policy may be seen as a young discipline. In fact, these five countries prove the adage that paper is very patient, whereas the accompanying administrative structures for implementing environmental policy are very weak. It also seems difficult to translate environmental law into everyday practice.

Legal possibilities for fighting environmental crime as organized crime differ from country to country. In the Czech Republic, Hungary and Poland the national organized crime legislation can be applied to all environmental criminal offences, whereas in Estonia possibilities for prosecuting environmental crime as organized crime are rather limited. In Lithuania, environmental crime cannot be prosecuted under the national organized crime legislation. Therefore, the sanctioning practice can also vary within a great range of possibilities.
Besides insufficient market information and the non-awareness of the organized form of environmental crime in the overall legal context of each country, a lack of effective control mechanisms may also be responsible for the small number of cases of organized environmental crime. In none of the countries under study was a specialized enforcement unit for organized environmental crime identified. With the exception of the Czech Republic, where resources seem to be sufficient and co-operation between the authorities is considered to be good, enforcement structures seem to be weak in all countries. The problem of inadequate control mechanisms is not only caused by the non-existence of specialized enforcement structures, but also by a general lack of technical and personnel resources. E.g. if there is no sufficient control equipment at the border guard’s or customs’ disposal, the chance of identifying the smuggling of hazardous waste or endangered species is small. The same can be assumed if there are only a few inspectors responsible for a large geographical area, e.g. in Olsztyn province in Poland, where only one fishery inspector has to control 6,000 hectares of lakes. Corruption among the enforcement bodies, which is often reported, seems also to be a problem regarding inefficiency of enforcement mechanisms.

For all of the five countries, the following statements are true:

**Environmental crime as “poverty crime”**

Worthy of highlighting is the existence of “poverty crime”. Illegal logging and illegal fishing is often caused by poor living conditions. These crimes can be committed just for the purpose of satisfying personal needs (construction material or food) but also on behalf of criminals who employ poor people for committing crimes. E.g. in Poland there are some villages “specialised” in illegal fishing, whereas in other regions of the country, illegal logging has been there for generations and has historical traditions. In Estonia and Lithuania, illegal fishing is attractive in coastal regions where employment opportunities are few.

**Willingness of authorities to disclose information is low**

From the research it can be concluded that the willingness of public authorities to disclose information is low. Initially, in none of the countries of the study were police, customs, public prosecutors or other governmental bodies willing to co-operate and to support the study with information. This hampered the research of cases, however, most difficulties appeared during the analysis of organisation design and working methods of enforcement bodies. The reasons for this are on the one hand a generally low awareness of environmental crime, but on the other hand a continuity of behaviour patterns inherited from the socialist era. Although transparency has been improving since the political changes in 1989/90, enforcement bodies are still not used to providing information to the public. This is especially the case for police, customs and public prosecutors.
In due cause of the case research and the finalisation of this study research staff, contrary to the impression of the limited case number of cases, gathered information during fieldwork, analyses of the legal environment and enforcement bodies and indirect remarks by representatives of national authorities indicate the existence of a by far higher number of cases in reality.

Tanja Fröhlich
September 2003
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ANNEX I

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ANNEX II

QUESTIONNAIRE ENFORCEMENT BODIES .............................................................
1. INTRODUCTION AND DEFINITIONS

Goal of the present study is to provide an overview on factual and legal information on organised environmental crime in the Czech Republic, Estonia, Hungary, Lithuania and Poland.

The study is based on information obtained from Police, Public Prosecutors, Customs, Ministries and other administrative bodies, NGOs and further organisations active in the field of environmental crime issues. Furthermore material/information from literature, press, grey literature, presentations and from internet resources was included.

Due to the fact that the study focussing on organised environmental crime covers a largely unexplored segment, only few existing research material could be included. Worth mentioning in this field is the TRAFFIC\(^1\) 2002 review of CITES implementation in Candidate Countries “Focus on EU enlargement and wildlife trade”.

The chapter following this introduction contains the empirical part of the study, starting with an introduction to the methodology and the discovered general situation. The study adheres to the same methods applied within the 2002 study „Organized Environmental Crime in the Fifteen Accession States, also conducted by the BfU for the European Commission, and explained below.

Displayed are cases of organised environmental crime - respectively such cases showing elements of organised crime – from the Czech Republic, Estonia, Hungary, Lithuania and Poland. Time frame for the research were the past 10 years. Sectors requested by the European Commission were:

- illegal commercial trade in endangered species and their products;
- illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste;
- illegal commercial trade in ozone depleting substances;
- illegal dumping and shipment of radioactive waste and potentially radioactive material;
- illegal logging and illegal trade in wood and
- illegal fishing.

Experts of Police, Ministries and other administrative bodies, Public Prosecution Services, Non Governmental Organisations and Customs within the field have been identified, visited and interviewed and/or approached by phone and mail. The experts have been asked to compile case studies on an electronic submission form or to supply relevant trial sentences. Additional to the case information provided within this study and up to two

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\(^{1}\) TRAFFIC is the wildlife trade monitoring network. TRAFFIC works in co-operation with the Secretariat of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). TRAFFIC is a joint programme of WWF and IUCN-The World Conservation Union.
depth examples of organised environmental crime per country, the European Commission received details on all researched cases in a database.

A statistical overview on all cases is provided under 2.12.

Chapter 3-7 contain an analysis of the current legal environment in the Czech Republic, Estonia, Hungary, Lithuania and Poland. For each of these countries environmental legislation, legislation on organised crime, overlapping and differences of these legal sectors as well as existing sanctions for organised environmental crime were analysed.

Chapter 8 provides information on the national structures to control organised environmental crime in the Czech Republic, Estonia, Hungary, Lithuania and Poland.

Following definitions provided by the European Commission in its terms of reference formed the basis of this study:

Organised Crime

The notion of organised crime was defined in the Council’s Joint Action of 21 December 1998, pursuant to Article 31 of the Treaty on European Union (ex article K.3) making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29/12/1998 p. 1), in Article 1. For the purposes of the study, the criterion on the minimum length of the sentence incurred (4 years) does not apply.

The definition of organised crime is used in the context of the Annual European Union Organised Crime Situation Report (6204/1/97 (ENFOPOL 35 REV 2) DG H II): In order to speak about organised crime at least six of the following characteristics need to be present, four of which must be those numbered 1, 3, 5 and 11:

1. Collaboration of more than 2 people;
2. Each with own appointed tasks;
3. For a prolonged or indefinite period of time (refers to the stability and (potential) durability);
4. Using some form of discipline and control;
5. Suspected of the commission of serious criminal offences;
6. Operating at an international level;
7. Using violence or other means suitable for intimidation;
8. Using commercial or businesslike structures;
9. Engaged in money laundering;
10. Exerting influence on politics, the media, public administration, judicial authorities or the economy;
11. Determined by the pursuit of profit and/or power.

An indication of organised crime areas is also given in Article 2 (2) and the Annex to the Europol Convention in which serious forms of international crime are listed, and in which environmental crime is listed as a serious criminal offence.
The definitions used for each of the above stated crime sectors are:

**Endangered Species**

The Convention of Washington 1973 on international trade in endangered species of wild fauna and flora (CITES), transposed into Community law by Council Regulation 3626/82, of 3 December 1982 defines the term "endangered species".

**Waste**


**Ozone depleting substances**

The Vienna Convention on the protection of the ozone layer and the Montreal Protocol on ozone depleting substances, as well as the Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer define the term "substances which deplete the ozone layer".

**Radioactive Waste**


**Illegal logging and illegal trade of wood**

In the absence of a legal definition at the national or international level, the following elements can be taken into account as working definition.

Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national or directly nationally binding international law. It includes for example activities such as logging without a permit, non-respect of nature protection and forest

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3 OJ L 65, 07/03/1984 p. 14
4 OJ L 78, 26/03/1991 p. 32
6 OJ L 377, 31/12/1991 p. 20
7 OJ L 297, 31/10/1988 p. 10
8 OJ L 297, 31/10/1988 p. 21
9 OJ L 244, 29/09/2000 p. 1
laws or of forest management plans and regulations, tax evasion, corruption, misdeclaration to customs, etc.

**Illegal fishing**

The elements of definition quoted by the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing in articles 3.1 and possibly 3.2 and 3.3. 11

The study was drawn up by Betreuungsgesellschaft für Umweltfragen Dr. Poppe mbH Umwelgtutachterorganisation (BfU) (Germany) in co-operation with Aquatest a.s. (Czech Republic), Elle - Estonian, Latvian and Lithuanian Environment (Estonia), Jurevičius, Balčiūnas ir Partneriai (Lithuania), Kancelaria Radcy Prawnego Ryszard Armatowski, (Poland), Teder & Partnerid (Estonia)and 3S Tanácsadó Bt. (Hungary) for the European Commission, Directorate General Environment.

The reporters for the various chapters and Member States are:

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Paulius Docka (Jurevičius, Balčiūnas ir Partneriai), market analysis, empirical research, legal framework, enforcement bodies (Lithuania)

Ryszard Armatowski (Kancelaria Radcy Prawnego Ryszard Armatowski), market analysis, empirical research, legal framework, enforcement bodies (Poland)

Kristi Martin (Teder & Partnerid), legal framework (Estonia)

Pál Sonnevend (3S Tanácsadó Bt.), market analysis, empirical research, legal framework, enforcement bodies (Hungary)

Special thanks goes to the representatives of national authorities for their plentiful and profound input supporting of this study.

Kassel, 10 September 2003

Tanja Fröhlich

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2. EVALUATION OF CASES OF ORGANISED ENVIRONMENTAL CRIME

2.1. METHODS AND FRAMEWORK

In order to receive information on cases of environmental organised crime and on the type and the scope of organised crime, the following information sources are used:

- Contacting national administrations;
- Data base research;
- Library research;
- Internet research;
- Contacting specialised non-official institutes (i.e. universities, law offices);
- Interviews with representatives of enforcement and prosecution authorities in the five Candidate Countries;
- Contacting non-governmental organisations (NGO).

Initially, an encompassing base of information is created: on the authorities in charge, other parties involved (such as NGOs) and potential organised environmental crime, via Internet, literature and other publications. These sources contain a host of hints on/references to environmental crime. The question whether these crimes were to be considered „organised crime in the sphere of environment“ in the sense of this study, and under consideration of the organised crime-criteria given, needed to be researched for all cases.

This research generally involved contacting the Public Prosecutor in charge, police and customs agencies as well as other governmental authorities. The authorities in charge were researched for each country. Here it was particularly helpful to use personal contacts built up by single officials; not only in reference to quickly locating information needed, but also in terms of the willingness to communicate. Independently of the follow-up research, the researcher in charge of a particular country conducted on-site meetings. Additionally, there was close contact via telephone, mail and e-mail.

A case questionnaire (Annex I), which could also be completed electronically, was used to elicit the relevant information on a case, in particular: type of environmental crime, OC-criteria, product, amount of product, geographic origin, point of destination, type of criminal organisation, specialists, technology applied, profit, market demands, detailed case descriptions.
None of those questioned was able to deliver information on the total scope of the market for a specific product or type of waste. This is why the market for the single areas of crime needs to be looked at separately. A country specific market analysis for each area of crime precedes the case statistics, in order to achieve comparability between market and the cases actually researched. These market analyses are basically condensed versions of already existing analyses, or, in the author’s opinion, credible estimates. A more detailed understanding of the market situation within the countries researched was not possible due to lack of sufficient data.

For each Country under study, one to two in-depth examples were prepared. The in-depth examples were chosen as to significant scope and/or market characteristics or by the fact that most detailed information could be obtained for that specific case. As far as available, statistical information, case descriptions, OC-structure, investigative methods and sentence were included. The number of in-depth examples per country is dependent on the amount of information given by the respective enforcement authorities.

For the collection and further processing of the cases researched, a MS Access-based database in analogy with the questionnaire was created. All of the cases researched were entered into this database. This database allows statistical evaluation of:

- which country experiences the highest occurrence of OC environmental crime;
- the extent of total profit in this area;
- in which crime area the highest number of cases could be researched.

In order to realize the objective of this study, which is to make visible the scope of environmental OC and to uncover problematic areas attention needs to be given to the following difficulties in the research of organised environmental crime cases.

- **Number of cases in the countries under study is small due to a lack of information**

The research has presented a very heterogenous image of the countries. Most cases of organised environmental crime in the sense of the study have been established in the Czech Republic (44 cases). Based on the number of population and compared to the findings made in other countries this is a quite high figure. In Poland, which is about four times bigger in terms of population, only six cases could have been established. In Hungary, which has as much inhabitants as the Czech Republic, only one case has been established. Estonia and Lithuania, which are the smallest number among the country sample, accounted for seven respectively five cases.
The heterogenous image should not direct to the conclusion that the countries are differently affected by organised environmental crime. The explanation is rather to be found in a lack of data and awareness in the countries under study. A very basic problem is the availability of statistics. Only few statistics on environmental crime which are often poorly developed can be found. In Lithuania environmental crimes are not seperately indicated in the crime statistics and in Estonia statistics on environmental offences are available only for the years after 2000 (except illegal logging).

The country specific analysis of markets for each area gives rise to the assumption that there is a high number of number of unknown cases. Due to a lack of information it is not possible to verify the exact number of such cases and whether they meet the criteria of organised crime in the sense of this study.

- **OC-Statistics**

  In none of the five countries a statistic on organised environmental crime exists.

- **OC-Classification**

  Within the five Candidate Countries, there are country-specific differences in the criteria for defining organised crime. None of the definitions is congruent with the given Europol definition. The resulting difficulties in researching archives made the collection of cases difficult.

- **Data Protection**

  Some of the administrations were very reticent in passing on information, as this conflicted with data protection.

- **Technical Resources**

  In some cases it was not possible to do the research necessary due to lack of EDP archives.
• **Scope of data available from press and NGO sources**

There is not only a lack of data from the side of the public authorities as described above. There is also only few information available from the press or NGO sources. When information is available it is often vague and general. The information is often difficult to verify as sources are unknown.

• **Borderline Cases**

Three cases could be considered as organised crime cases although not all criteria of organised crime given by the definition could be ascertained.

Within the case descriptions of the in-depth examples and the database those cases are clearly introduced as such.

• **Willingness to co-operate**

From the research it can be concluded that the willingness of public authorities to disclose information is low. In none of the countries of the study police, customs, public prosecutors or other governmental bodies were from the beginning willed to support the study with information. The research of cases was hampered by this, however, most difficulties appeared meanwhile analysing the design of organisations and working methods of enforcement bodies. The reasons for this are on the one hand a general low awareness for environmental crime but on the other hand a continuity of behaviour patterns inherited from the socialist era. Although transparency has been improving since the political changes in 1989/90 enforcement bodies are not used to provide information to the public. This is especially the case for police, customs and public prosecutors.

• **Profit Estimation**

Only in a minority of cases is the amount of profit achieved by the illegal activity known to the administration or other institution questioned. A small part of the interviewees was able to provide such information for a case in question; an even smaller number was able to provide an estimated number of profit gained through all activities of the organised crime group in question. All numbers provided were given as estimates. Therefore all amounts given as total profits for the separate areas of crime represent estimated values.
2.2. MARKETS IN THE CZECH REPUBLIC

Illegal trade in endangered species

A large number of wild species are or may become threatened by over-exploitation of their populations by the international demand for their specimens. It holds worldwide that trade in animals and protected plants represents together with trade in drugs, weapons and wastes the four most lucrative fields of trading. The turnover of the worldwide trade in products from wild fauna and flora is estimated to 20 mlds. USD and according to the estimations of Interpol illegal trade can make up to 5 mlds. USD per year. In the Czech republic the turnover of the legal international trade in fauna and flora protected by CITES Convention was about 53 mill. CZK.\textsuperscript{12}

Wildlife markets involve many thousands of species and change constantly, depending upon many factors such as fashion, value, availability and regulation or restrictive measures taken regarding trade in certain species. Illegal trade in connection with uncontrolled taking fauna and flora species from their natural habitats and destroying original ecosystems with natural occurrence of these species is the second most significant cause of the decrease of fauna and flora species in our planet. With the aim to set the international trade in endangered species of fauna and flora under a common control of all nations of the world in order to prevent their total extinction the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted in 1973. The CITES Agreement regulates international trade in about 30,000 species that are included in its three annexes based on a system of permits and certificates that can be issued if certain conditions are met and must be presented before consignments of specimens are allowed to leave or enter a country.

The trade in endangered species is controlled and monitored in the Czech Republic since 1992 when the former CSFR (the Czech and Slovak Federal Republic) signed the Convention. In the first years, the Convention was only insufficiently implemented by the Act No. 114/1992 Coll., on nature and landscape protection. Special regulation was implemented in 1997 by the Act No. 16/1997 Coll., on conditions of exports and imports of endangered species of wild fauna and flora and other measures of protection of such species. The Management authority is the Ministry of Environment, Department of Nature Protection, the Scientific authority is the Agency for Nature Conservation and Landscape Protection and the Enforcement authority is the Czech Environmental Inspection (CIZP). The implementation of the CITES Act is also provided by the Regional Offices, where a compulsory registration is carried out, and by the customs offices by checking the consignments at borders.

Czechoslovakia and later the Czech Republic became a very important and key transit and destination country for the international trade in species of wild fauna and flora.

\textsuperscript{12} Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002
However in recent years the role of a final destination country prevails.\textsuperscript{13} The situation changed markedly after the \textit{Act 16/1997 Coll.} came into force. A significant decline in the number of illegally held animals was achieved thanks to stricter controls at the borders, obligatory registration of specimens and regular checks at local markets and selling exhibitions. International co-operation has also improved significantly, but the situation is still far from satisfactory. At the end of 2001, Czech citizens were engaged in the highest number of cases of smuggling animals in some way, registered by Interpol.\textsuperscript{14}

Trading in dead bodies of animals and animal parts and products has recently been very significant. Unlike the market with live animals this one has not still been mapped enough and there are no data on the volume of the market.\textsuperscript{15}

\textbf{Suppliers}\textsuperscript{16,17,18}

There is a wide spectrum of subjects operating here as suppliers of CITES listed species. Beginning in individuals (middlemen, couriers, breeders and growers, businessmen) and small organized groups of people living from trading in animals and plants. Individuals and groups specializing in illegal trade in CITES, to highly organized groups, some of which could be classified as criminal conspiracy and some of them committing these criminal activities on an international level.

These people have the right contacts, and they are able and willing to negotiate concrete shipments and trading. They are also linked to contacts abroad and when necessary they are able to make a deal to suit their particular requirements. Pure jailbirds, people who had been prosecuted here in the Czech Republic as well as abroad, can be found amongst them. These people are able to legalize illegally imported animals, to gain required documents for them.

The Czech Police and CIZP have information that Russian mafia with connections to Moscow or Dagestan imports Russian caviar and specimens according to individual requirements of their clients to the Czech Republic.\textsuperscript{19}

\textsuperscript{13} An interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)
\textsuperscript{14} Dr. Ladislav Mik, the then head of Nature Protection Department at CIZP, now the Deputy Minister and the Head of the Nature and Landscape Protection Division, Ministry of the Environment, during an interview at the Exhibition “Smuggled Pleasure”, which took place 22\textsuperscript{nd} March – 9\textsuperscript{th} June 2002 in the National Museum, Prague
\textsuperscript{15} in: Newspaper for the Exhibition “Smuggled Pleasure”, which took place 22\textsuperscript{nd} March – 9\textsuperscript{th} June 2002 in the National Museum, Prague
\textsuperscript{16} An interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)
\textsuperscript{17} An Interview with Mgr. Pavla Říhová, inspector of Regional Inspectorate Prague, Division of Nature Protection, CIZP (24.3. 2002)
\textsuperscript{18} An Interview with Jaroslav Hruška, Department of Organized Crime Detection, Criminal Police and Investigation Service, Police Czech Republic (14.04. 2003)
\textsuperscript{19} also in: Newspaper for the Exhibition “Smuggled Pleasure”, which took place 22\textsuperscript{nd} March – 9\textsuperscript{th} June 2002 in the National Museum, Prague; and “Češi si koledují o punc pašeráků zvířat”, in Právo 2001


Table 1: Nationality of persons violating CITES Agreement, detained by customs officers in 1995-2002

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CZ</td>
<td>1</td>
<td>28</td>
<td>3</td>
<td>9</td>
<td>34</td>
<td>12</td>
<td>31</td>
<td>42</td>
</tr>
<tr>
<td>PL</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>12</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>SK</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>16</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>VIE</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>8</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>6</td>
<td>2</td>
</tr>
</tbody>
</table>

Customers

Breeding and growing is a widespread hobby in the Czech Republic. The country is supposed to be a superpower in growing cacti, orchids and succulents, next to Japan and Austria. Breeding of animals is also on a high level. Many species that are bred in captivity are exported in large numbers. It can be concluded that breeders and growers, pet shops and individuals as well as subdealers represent the group of customers.

Legal market

The Czech Republic has quite a large market concerning trade in CITES-listed species. As mentioned above, the majority of the specimens are traded for commercial purposes as a consequence of the fact that breeding of exotic animals and growing of exotic plants is a very common and widespread hobby with a very long tradition in the Czech Republic.

Legal trade has relatively stabilised since 1998, the total volume of the trade does not change markedly; it varies with the demand on the markets.

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20 Table provided by Mr Jiri Trousil, Deputy Director of Investigation Division, Headquarters of Customs
22 An interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)
23 Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
24 Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
Table 2: CITES permits and certificates issued by the Czech Republic from 1995 to 2000

<table>
<thead>
<tr>
<th>Year</th>
<th>Import permit</th>
<th>Export permit</th>
<th>Re-export certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>267</td>
<td>385</td>
<td>48</td>
</tr>
<tr>
<td>1996</td>
<td>381</td>
<td>390</td>
<td>69</td>
</tr>
<tr>
<td>1997</td>
<td>448</td>
<td>430</td>
<td>93</td>
</tr>
<tr>
<td>1998</td>
<td>569</td>
<td>569</td>
<td>155</td>
</tr>
<tr>
<td>1999</td>
<td>648</td>
<td>659</td>
<td>172</td>
</tr>
<tr>
<td>2000</td>
<td>506</td>
<td>601</td>
<td>147</td>
</tr>
<tr>
<td>Total</td>
<td>2,819</td>
<td>3,034</td>
<td>684</td>
</tr>
<tr>
<td>Mean per year</td>
<td>470</td>
<td>506</td>
<td>114</td>
</tr>
</tbody>
</table>

Table 3: Survey of number of exported specimens from 1996 to 2000

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MAMMALIA</td>
<td>91</td>
<td>156</td>
<td>149</td>
<td>189</td>
<td>175</td>
</tr>
<tr>
<td>AVES</td>
<td>1354</td>
<td>5215</td>
<td>6555</td>
<td>9644</td>
<td>15770</td>
</tr>
<tr>
<td>RPTILIA</td>
<td>2539</td>
<td>3032</td>
<td>4299</td>
<td>5985</td>
<td>7174</td>
</tr>
<tr>
<td>AMPHIBIA</td>
<td>354</td>
<td>4</td>
<td>941</td>
<td>1097</td>
<td>947</td>
</tr>
<tr>
<td>PISCES</td>
<td>0</td>
<td>0</td>
<td>4100</td>
<td>80</td>
<td>8000</td>
</tr>
<tr>
<td>EVERTEBRATA</td>
<td>0</td>
<td>1</td>
<td>145</td>
<td>68</td>
<td>400</td>
</tr>
<tr>
<td>FAUNA</td>
<td>4338</td>
<td>8408</td>
<td>16189</td>
<td>17060</td>
<td>32466</td>
</tr>
<tr>
<td>FLORA</td>
<td>445</td>
<td>1321</td>
<td>8448</td>
<td>16746</td>
<td>8003</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4783</td>
<td>9729</td>
<td>24637</td>
<td>33806</td>
<td>40469</td>
</tr>
</tbody>
</table>

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25 ibid., source: Ministry of the Environment of the Czech Republic, 2001
Table 4: Survey of number of exported and of imported specimens from 1996 to 2000\textsuperscript{27}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MAMMALIA</td>
<td>116</td>
<td>248</td>
<td>204</td>
<td>431</td>
<td>255</td>
</tr>
<tr>
<td>AVES</td>
<td>6517</td>
<td>9540</td>
<td>7176</td>
<td>6291</td>
<td>4340</td>
</tr>
<tr>
<td>REPTILIA</td>
<td>4210</td>
<td>6607</td>
<td>18300</td>
<td>11582</td>
<td>4710</td>
</tr>
<tr>
<td>AMPHIBIA</td>
<td>10</td>
<td>0</td>
<td>30</td>
<td>122</td>
<td>0</td>
</tr>
<tr>
<td>PISCES</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5000</td>
<td>0</td>
</tr>
<tr>
<td>EVERTEBRATA</td>
<td>5388</td>
<td>1082</td>
<td>5681</td>
<td>3818</td>
<td>4282</td>
</tr>
<tr>
<td>FAUNA</td>
<td>16241</td>
<td>17477</td>
<td>31382</td>
<td>27244</td>
<td>13587</td>
</tr>
<tr>
<td>FLORA</td>
<td>1092</td>
<td>8224</td>
<td>41435</td>
<td>12773</td>
<td>25351</td>
</tr>
<tr>
<td>TOTAL</td>
<td>17333</td>
<td>25701</td>
<td>72817</td>
<td>40017</td>
<td>38938</td>
</tr>
</tbody>
</table>

Animals and plants produced by Czech professional and hobby breeders or growers greatly predominate in exports. In contrast, a large portion of the imported specimens is captured in the wild, particularly in developing countries.

The main countries of origin for the specimens imported by the Czech Republic are the USA, Indonesia and Turkey. The specimens imported from the USA are mainly plant seeds and fish eggs. The specimens imported from Indonesia are mainly reptile handbags and plants. The specimens imported from Turkey are live plants, mainly from Cyclamen spp. and Galanthus spp. Among the candidate countries, the Czech Republic is the largest importer of live reptiles and of kilogrammes of sturgeon eggs, the second largest importer of live birds with wild origin, the largest re-exporter of live reptiles and the largest country of origin for live reptiles that were re-exported by other countries. A considerable number of specimens is taken from the wild.\textsuperscript{28}

\textsuperscript{27} CITES 9\textsuperscript{th} Annual Report 2000, Ministry of the Environment, Czech Republic, 2001
\textsuperscript{28} Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
Table 5: Total and “wild” trade by the Czech Republic for selected categories of CITES specimens in 1992-199929

<table>
<thead>
<tr>
<th>Species</th>
<th>Specimens</th>
<th>Trade</th>
<th>Total quantity</th>
<th>Wild quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birds</td>
<td>Live</td>
<td>Import</td>
<td>51,915</td>
<td>46,770</td>
</tr>
<tr>
<td></td>
<td>Live</td>
<td>Re-export</td>
<td>5,070</td>
<td>4,344</td>
</tr>
<tr>
<td>Fish</td>
<td>Eggs (in kg)</td>
<td>Import</td>
<td>3,166.311</td>
<td>2,202.259</td>
</tr>
<tr>
<td></td>
<td>Eggs (in kg)</td>
<td>Re-export</td>
<td>2,167.772</td>
<td>2,153.772</td>
</tr>
<tr>
<td>Invertebrates</td>
<td>Corals (in kg)</td>
<td>Import</td>
<td>2,682</td>
<td>2,400</td>
</tr>
<tr>
<td></td>
<td>Live</td>
<td>Import</td>
<td>12,276</td>
<td>12,174</td>
</tr>
<tr>
<td>Plants</td>
<td>Live</td>
<td>Import</td>
<td>94,672</td>
<td>23,137</td>
</tr>
<tr>
<td>Reptiles</td>
<td>Handbags</td>
<td>Import</td>
<td>18,091</td>
<td>18,087</td>
</tr>
<tr>
<td></td>
<td>Live</td>
<td>Import</td>
<td>74,817</td>
<td>35,500</td>
</tr>
<tr>
<td></td>
<td>Live</td>
<td>Re-export</td>
<td>3,855</td>
<td>2,177</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>Import</td>
<td>7,180</td>
<td>6,509</td>
</tr>
</tbody>
</table>

The main countries of destination for the specimens exported by the Czech Republic are the EC countries, mainly Germany, the UK and Spain. The main country of origin for the specimens re-exported by the Czech Republic is Russia, the traded commodity is live fish and recently also caviar. The main countries of import for the specimens re-exported by the Czech Republic are Germany, Spain and Slovakia.

29 Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002), source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, 2001
### Table 6: Top ten countries of origin for CITES specimens reported in numbers and imported by the Czech Republic, directly or indirectly through a re-exporting country, in 1992-1999

<table>
<thead>
<tr>
<th>Country</th>
<th>Specimens</th>
<th>% of total</th>
<th>Taxa</th>
<th>Wild source</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Top ten</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. USA</td>
<td>43,961</td>
<td>13.81%</td>
<td>119</td>
<td>0%</td>
</tr>
<tr>
<td>2. Indonesia</td>
<td>32,079</td>
<td>10.08%</td>
<td>150</td>
<td>90%</td>
</tr>
<tr>
<td>3. Turkey</td>
<td>22,330</td>
<td>7.01%</td>
<td>14</td>
<td>83%</td>
</tr>
<tr>
<td>4. Ghana</td>
<td>21,481</td>
<td>6.75%</td>
<td>22</td>
<td>84%</td>
</tr>
<tr>
<td>5. Netherlands</td>
<td>19,583</td>
<td>6.15%</td>
<td>133</td>
<td>0%</td>
</tr>
<tr>
<td>6. Senegal</td>
<td>19,239</td>
<td>6.04%</td>
<td>30</td>
<td>100%</td>
</tr>
<tr>
<td>7. El Salvador</td>
<td>14,935</td>
<td>4.69%</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>8. Denmark</td>
<td>13,810</td>
<td>4.34%</td>
<td>24</td>
<td>0%</td>
</tr>
<tr>
<td>9. Korea, Republic of</td>
<td>10,800</td>
<td>3.39%</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>10. Uzbekistan</td>
<td>8,601</td>
<td>2.70%</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Remaining countries</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU Member States</td>
<td>11,309</td>
<td>3.55%</td>
<td>400</td>
<td>2%</td>
</tr>
<tr>
<td>Candidate Countries</td>
<td>6,489</td>
<td>2.04%</td>
<td>172</td>
<td>4%</td>
</tr>
<tr>
<td>Other countries</td>
<td>93,742</td>
<td>29.45%</td>
<td>1,029</td>
<td>54%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>318,359</strong></td>
<td><strong>100%</strong></td>
<td><strong>1,645</strong></td>
<td><strong>46%</strong></td>
</tr>
</tbody>
</table>

**Illegal market**

According to international statistics the Czech Republic belongs together with Netherlands and France to the countries most involved in the illegal trade in CITES specimens both as a final destination and a transit country. The fight against illegal trade in endangered species is complicated due to lack of tradition, low priority in the eyes of some enforcement authorities and until recently missing legislation. The crime of unauthorized

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30 ibid., source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, 2001
dealing with species of protected wild fauna and flora was established by amendment to
the criminal act only on 1st July 2002 (see § 181f,g, h of the Criminal Act).

The scope of illegal activities is monitored namely by CIZP, Division of Nature Protection.
A non-stop emergency service, which is intended mainly to provide professional
assistance to the Custom authorities at border crossing points, is operated by CIZP. CIZP
announced following numbers on CITES-related crime in 2000:\(^32\):

- 53 attempts of smuggling out of which 15 on export and 38 on import
- 11,976 items were confiscated, out of which were 6,662 cactuses (imported by Czech
citizens from Bolivia and Mexico), items of snake or crocodile skin (cca 50 from
Thailand, cca 200 from South African Republic), 270 butterflies, 888 bits of coral, 131
parrots etc.

**Illegal imports**

The illegal trade in endangered species consists of illegal imports of live exotic fauna and
flora from the wild of foreign countries or of unknown origin as well as of trophies,
souvenirs and products made from animals and plants. As the smuggling of live animals is
more difficult, the main part of the black market is focused on products made from
endangered species, like traditional Chinese medicine, products from leather, fur and
ivory, caviar, products from exotic timber etc.\(^33\)

As similar to the legal trade, the total volume of illegal trade does not change significantly;
it depends upon the demand. Due to the *Act on CITES* No. 16/1997 Coll. the total number
of occasional smugglers (people who are rather enthusiasts who just want to bring
something home than to gain profit) declined. But as for the people who smuggle for
commercial purpose, the situation did not change.

Methods used by importers when smuggling are of a very wide range: consignments
hidden in cars and cargo space of trucks, exemplars illegally transported within legal
consignments (higher number of exemplars or exemplars of other species than declared),
misdeclaration, forged documents – registration documents, licences etc. Conductors,
pilots or stewards, customs officers and vets may also be involved. Attempts to colour the
CITES exemplar in such a way that it looks like an easily replaceable specimen, that is not
protected by CITES agreement were also recorded. A very often method is that one when

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\(^{32}\) CIZP Press office, May 2001

\(^{33}\) Newspaper for the Exhibition “Smuggled Pleasure”, which took place 22\(^{nd}\) March – 9\(^{th}\) June 2002 in the National Museum,
Prague
the consignment is led through several countries to disguise documents or through countries where the documents can be gained from officers (Balkan countries).34

The smuggled animals are often stuffed to various boxes and PET bottles or wrapped in adhesive tape to prevent any movement and put into transport boxes. In several cases the animals are drugged with sedatives.35

Despite the high mortality during catching, transport and the quarantine due to anxiety and diseases of the animals, the financial profit for all the stakeholders remains quite sizable because the price of the animal paid in the country of origin is only a fraction of the price paid by the customer to the middleman.36

The most frequently imported species are birds, mainly parrots of which gray parrots, amazons, arras, or cockatoos (price for one exemplar is between 400 – 8000 EUR) mainly from Latin America, Oceania, New Zealand, Australia; apes (gibbons, Barbary apes worth of 500 – 1000 EUR) and other mammals from Thailand, Indonesia, Vietnam, Latin America and Africa; predators (800 – 8000EUR), reptiles (150 – 850 EUR), terrestrial tortoises or. Butterflies, caterpillars and cocoons are also illegally transported across the border. As for plants, cactuses, succulents and orchids and their seeds or bulbs are most endangered with smuggling.37

Inanimate exemplars (e.g. sea mews, shells and scallops), preserved animals and products made from animals – leather bags and shoes, tortoise-shell, ivory, caviar or ostrich, frog or whale meat make up a significant part of illegal market. Cases of prepared heads of alligators and snakes canned in alcohol are also very frequent in recent times.38

Statistics of seized CITES-regulated exemplars is maintained in the Czech Republic. This includes all cases of imports or exports without valid permissions and cases of mere ignorance of law are recorded. The failure to prove the origin, sales or breeds without the register list or an exemption, non-performance of exemptions etc. are included into the same statistics.39

34 An Interview with Mgr. Pavla Říhová, inspector of Regional Inspectorate Prague, Division of Nature Protection, CIZP (24.3. 2002)
35 ibid.
36 ibid.
38 ibid.
39 CIZP, 10th March 2003
Table 7: Survey of seized live animals

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>Total (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invertebrates</td>
<td>2</td>
<td>200</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>9,5</td>
</tr>
<tr>
<td>Reptiles</td>
<td>573</td>
<td>412</td>
<td>39</td>
<td>33</td>
<td>88</td>
<td>56</td>
</tr>
<tr>
<td>Birds</td>
<td>450</td>
<td>961</td>
<td>56</td>
<td>5</td>
<td>105</td>
<td>34</td>
</tr>
<tr>
<td>Mammals</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0,5</td>
</tr>
</tbody>
</table>

Illegal exports

The illegal export from the Czech Republic involves strictly protected species of local fauna and flora as well as exotic reptiles and birds. The cases mainly involve attempts to illegally re-export animals taken from the wild in another country of origin and animals from hobby breeders in the Czech Republic exported without permits.

As for illegal internal trade, controls directed towards zoo-shops and exotic animal fairs and exhibitions show that the infringements involve the sale of specimens without registration papers or with inappropriate registration papers as well as avoidance of the obligation to unambiguously mark live specimens.

Distribution opportunities

Official markets of animals and plants were used for illegal distribution before the Act No. 16/1997 Coll. came into force. Due to the new act and the activity of the inspectors, illegal trade disappeared from public places. However, official markets are still the best opportunity for smugglers to meet in context with legal activities. Therefore, more effective co-operation with the Police and the use of intelligence technology would be desirable.

40 "Čemí pasažéři proti své vůli" in: Květy 16/2003
41 Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
42 An Interview with Mgr. Pavla Říhová, inspector of Regional Inspectorate Prague, Division of Nature Protection, CIZP (24.3. 2002)
**Possibilities for approval**

Export of living as well as of dead CITES specimens is possible only with valid export permission issued by the Ministry of Environment. The permission is issued if the applicant proves that following conditions are met:

- export does not threaten survival of the specimen in the wild
- the specimen was not gained in violation of law
  
- the possibility the specimen dies or is damaged during transport is limited to the lowest possible degree
- a specimen of CITES I will not be used for commercial purpose
- import permission of the state to which the specimen of CITES I is imported

Import of living as well as of dead CITES specimens is admissible only on the basis of import permission issued by the Ministry of Environment and export permission issued by the exporting state. The Ministry issues the import permission under following conditions:

The applicant proves that

- import does not threaten survival of the specimen in the wild;
- the recipient of the specimen is properly equipped for its placement and care;
- a specimen of CITES I will not be used for commercial purpose;
- a specimen is secured in such a way that the threat of dying or impairment of health is limited to the lowest possible degree.

Before issuing a permit either for export or import it is necessary to have a positive decision from the Scientific Authority – the Agency for Nature Conservation and Landscape Protection of the Czech Republic. The positive decision states that the export or import of the given species does not threaten its survival in the wild.

The owner of a CITES specimen has 14 days from the time of its acquisition to declare it for a compulsory registration. The compulsory registration is carried out by the Regional Office or the Administration of protected area pertinent to the owner's place of residence. The specimen has to be marked in a unambiguous way (microchip-transponder, ring...). All specimens involved in CITES I and CITES II Appendix and some non-living specimens have to register according to Ministerial Decree No 216/2001.

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43 An interview with Dr. Jan Kučera, Department of Nature Protection, Division of International Agreements on the Protection of Nature, Ministry of Environment (7.4. 2003);
Act No. 16/1997 Coll.
**Illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste**

Disposal of wastes is a worldwide problem. Illegal disposal of wastes and especially hazardous wastes is one of the most lucrative fields of environmental crime, many times committed in organized form or in the form of criminal conspiracy. To the best of our knowledge, there is no comprehensive survey on the volume of the worldwide illegal trade in wastes. Nevertheless, German environmental experts estimate that profits incurred by illegal trade in wastes are surmounted only by profits from drug trafficking. The reason is that illegal trade in wastes is a relatively safe criminal activity in comparison to drug or weapon trafficking.

**Legal market in the Czech Republic**

The Czech republic has a relatively high production of wastes. The largest proportion is represented by industrial wastes, waste from energy industry and agricultural wastes.

**Table 8: Production of wastes - OECD origin-based classification (thousands of tons/year)**

<table>
<thead>
<tr>
<th>Origin of wastes</th>
<th>Production</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1998</td>
</tr>
<tr>
<td>Agriculture and Forestry</td>
<td>7 831</td>
</tr>
<tr>
<td>Mining industry</td>
<td>2 246</td>
</tr>
<tr>
<td>Industry</td>
<td>11 656</td>
</tr>
<tr>
<td>Energy industry (except for radioactive)</td>
<td>8 273</td>
</tr>
<tr>
<td>Municipalities</td>
<td>4 175</td>
</tr>
<tr>
<td>Other</td>
<td>9 452</td>
</tr>
<tr>
<td>Total</td>
<td>43 633</td>
</tr>
</tbody>
</table>

a) preliminary results

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44 Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002
Production of hazardous wastes

Until 2002, the Czech Republic used a classification of wastes, including hazardous wastes, which was different from the classification of wastes used in the EU. Please note that the Czech list of hazardous wastes was more comprehensive and included more sorts of wastes than the EU list. For that reason, figures expressing the total hazardous waste production in the Czech Republic and the EU should not be compared.

Table 9: Production of hazardous wastes in 1998 – 2001 (tons/year)46

<table>
<thead>
<tr>
<th>Year</th>
<th>Production of hazardous wastes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>3 399 468</td>
</tr>
<tr>
<td>1999</td>
<td>2 380 171</td>
</tr>
<tr>
<td>2000</td>
<td>2 603 337</td>
</tr>
<tr>
<td>2001a)</td>
<td>2 818 196</td>
</tr>
</tbody>
</table>

a) preliminary results

Relative numbers which are more comparable show that less than 1% of all hazardous wastes in the Czech Republic is produced by municipalities. According to the Ministry of Environment, this figure does not correspond with reality and it is a clear signal that hazardous municipal waste is not efficiently separated from non-hazardous municipal waste. The largest proportion of hazardous waste - 50% - are produced by the industry.

Waste disposal methods

Various waste disposal methods are applied in the Czech Republic. The most frequent method is landfilling. At present, there are 386 legal landfills, out of which 46 are hazardous waste landfills. Only a small proportion of wastes is incinerated with respect to the high costs which are involved. In 2001 only 1,9 % of hazardous waste and 2,2% of other waste were incinerated. In 2000, there were 67 incinerators for hazardous wastes, most of which did not comply with the requirements of the new Act No. 86/2002 Coll., on air pollution control. These incinerators must comply with the legal requirements by the end of 2004.

46 ibid
Table 10: Waste disposal methods in the Czech Republic OECD classification in 2001 (thds of tons/year)\(^1\)

<table>
<thead>
<tr>
<th>Origin of waste</th>
<th>Physical and chemical methods</th>
<th>Biological methods</th>
<th>Incineration</th>
<th>Landfilling</th>
<th>Recycling</th>
<th>Storage</th>
<th>Export</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture and Forestry</td>
<td>77</td>
<td>2 809</td>
<td>38</td>
<td>20</td>
<td>1 561</td>
<td>128</td>
<td>0</td>
<td>4 633</td>
</tr>
<tr>
<td>Mining industry</td>
<td>82</td>
<td>49</td>
<td>0</td>
<td>492</td>
<td>3 299</td>
<td>19</td>
<td>0</td>
<td>3 941</td>
</tr>
<tr>
<td>Industry</td>
<td>1 780</td>
<td>161</td>
<td>300</td>
<td>1 511</td>
<td>2 432</td>
<td>377</td>
<td>269</td>
<td>6 830</td>
</tr>
<tr>
<td>Energy industry (except radioactive)</td>
<td>141</td>
<td>1</td>
<td>15</td>
<td>3 310</td>
<td>2 905</td>
<td>270</td>
<td>1</td>
<td>6 643</td>
</tr>
<tr>
<td>Municipal</td>
<td>169</td>
<td>439</td>
<td>383</td>
<td>2 575</td>
<td>424</td>
<td>53</td>
<td>28</td>
<td>4 071</td>
</tr>
<tr>
<td>Other</td>
<td>2 196</td>
<td>714</td>
<td>91</td>
<td>2 597</td>
<td>2 249</td>
<td>763</td>
<td>339</td>
<td>8 949</td>
</tr>
<tr>
<td>Unspecified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3 750</td>
</tr>
</tbody>
</table>

1) preliminary data

Illegal market

Imports

According to the Ministry of Interior\(^48\), significant quantities of waste are illegally imported into the Czech Republic. The Czech Republic has a position of target as well as transit country. Illegal imports of wastes constitute a highly latent criminality. Illegal imports of car wrecks from Western Europe (Netherlands, Italy, Germany) are an exception as they are frequently uncovered by the Customs in cooperation with the CIZP (Czech environmental inspection)\(^49\).

Organized criminal groups which are involved in these imports use a wide range of methods enabling them to gain enormously high profits without being detected by enforcement authorities. They forge documents to obtain exportation permits (interchange

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\(^{47}\) Proposal of the Waste management plan of the Czech Republic for 2003 to 2012 – Ministry of Environment, Department of Wastes, 22.10.2002

\(^{48}\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002

\(^{49}\) the CIZP’s response to our questionnaires, 1.4.2003
commodities in customs forms, fill in customs forms with incorrect data), declare hazardous waste as safe substances or mix hazardous waste with harmless substances. The official reason for importation is recycling. In reality, the waste ends up in landfills, incineration facilities or metallurgical plants. Various materials containing heavy metals, oil products and other hazardous materials are transported by railway network. Transported material is being covered with other kind of material (mainly loose ground) making the customs control difficult. The material is then transported to leased localities and deposited. After a longer time, containers erode and the chemical content soaks into the soil contaminating the groundwater. As there is a long time between the criminal act and its harmful effect, prosecution starts with a great delay.

Cases ascertained by the Police show that suitable conditions for illegal imports are constituted by loopholes in the legislation, inconsistent checking of transported consignments at the borders and irresponsibility of owners of localities who rent them without checking the purpose of the renting. As a result, these localities are used for depositing various recepticals with hazardous waste.

Illegal handling of waste within the Czech Republic

According to Czech waste management experts\(^5^0\), there is a large market of illegal handling of waste with exclusively Czech background. Interviewed experts could not confirm that there is a large-scale illegal trade in waste with international context. This means that the international trade is carried out only in a very small extent or it is very latent. The reason is that the Czech legislation in force (Act No. 185/2001 Coll., on waste management) principally prohibits imports and exports of waste. An exemption from the prohibition can be granted by the Ministry of Environment on very strict conditions only. Also, transporting the waste across the borders involves a high risk of capture by the Customs officers.

As a result, illegal activity on the territory of the Czech Republic involves significantly lower risks and should be in the opinion of the experts considered more serious. The offenders are Czech business companies which resort to following illegal methods:

a) breaking the operating conditions

Under Czech law, a waste disposal facility can be brought into operation only after its operating conditions had been approved of by authorities. The operating conditions contain a binding list of wastes which can be processed in the facility. Some facility operators intentionally break the law in that they accept and process wastes which are not mentioned in the list.

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\(^{50}\) interview with ing. Pražák, environmental expert of Česká zbrojovka a.s., company treating hazardous wastes, seated in Uherský Brod, Czech Republic; interviews with other waste management experts;
b) forged documents

An operator of a waste disposal facility issues for a waste supplier a confirmation that waste was accepted for processing in the facility. In fact the waste was not accepted and it is disposed of illegally on the supplier’s own land or land of someone else without notifying that (hazardous) waste is involved.

There are also cases where facility operators are victims of the crime. Waste suppliers who normally deliver waste to the operator on correct terms sometimes deliver waste with a false laboratory analysis stating that the waste has a less toxic character (e.g. waste water containing cyanides is declared as water containing hydroxides). During the processing in the facility, the employees’ health and the environment can be put into danger. Therefore, operators defend themselves by making their own analyses before they process the waste. However, if they meet with a false analysis, they do not report it to the police, as the outcome of the prosecution is not sure and they are dependant on the supplier’s deliveries.

c) mixing the wastes

The law forbids to mix wastes of different hazard levels. The law further stipulates that more hazardous wastes have to be disposed of in better and more expensive facilities. On the other hand less hazardous wastes can be disposed of in simpler and cheaper facilities. In practice more hazardous waste is mixed with the less hazardous one so that the final mixture can be considered a less hazardous waste which ends up in the cheaper facility. The negative result is that more wastes are disposed of in cheaper and less efficient facilities with a higher risk of toxic emissions.

d) mixing the waste with fuels

A special form of mixing is mixing illegal waste into legal fuels. The fuel itself can be made of waste and is then called refuse derived fuel (RDF). In such a case it is very difficult to find out that illegal waste was added to RDF. As a result, the waste, which was added to the RDF fuel, is burnt in heating boilers, central heating plants etc. instead of proper incineration facilities. The negative effect are again toxic emissions.

Suggestions for improvement

The criminal activities mentioned above could be tackled as follows:

\[51\text{ibid.}\]
a) The authorities do not have sufficient funds to carry out large-scale inspections of waste that is processed in waste disposal facilities. More funds would enable them to take samples of waste and have them analysed by accredited laboratories. The analyses would provide clear evidence whether illegal waste was processed.

b) Any waste producer is obliged to have a confirmation that his waste was disposed of in a legal waste disposal facility. The waste producer receives this confirmation from the facility operator and submits it to the authorities. Besides that, the facility operator issues a declaration of the amount and quality of waste that he accepted and submits it to the authorities as well. However, the confirmation for the supplier and the declaration of the facility operator are never matched in a centralised register. Therefore, the authorities cannot detect cases when the facility operator issues confirmations for more waste than he mentions in his declaration. These criminal activities would be easily stopped by the establishment of a centralised waste disposal register.

Distribution opportunities

The waste market in the Czech Republic is quite small and the number of waste management companies decreases. These companies merge into a few but large entities supported by foreign capital. Big municipalities such as Prague, Brno and Ostrava have their own waste management companies which handle their municipal waste. Besides that, there is still a large number of smaller companies (s.r.o.) of local importance.

It can be assumed that the same companies run legal an illegal activities parallelly. Bigger companies seem to shift problematic activities with potential criminal background to small daughter companies. According to experts’ statement, illegal activities are very much based on personal relationships which means that business partners resort to concerted illegal activities after they have cooperated on a legal basis for a long time.

Possibilities for approval

Handling of waste can be practised by legal entities or natural persons which are authorized to do business and operate a waste disposal facility.

Authorization to do business – a trade licence for non-hazardous wastes or trade permit for hazardous wastes - is issued by the local Trade Licence Office on request. The applicant has to prove satisfying general conditions or/and special conditions (proving professional competence).

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52 Proposal of the Waste management plan of the Czech Republic for 2003 to 2012 – Ministry of Environment, Department of Wastes, 22.10.2002
Besides the above stated conditions and detailed regulations for waste disposal stipulated by the Act No. 185/2001 Coll., on waste management, it is necessary to obtain a permission for the following waste handling procedures:

- handling of hazardous waste in general;
- mixing hazardous wastes with other hazardous wastes or other waste;
- refraining from waste sorting or separate storing;
- export, import and transit of waste;
- use of funds deposited in a special purpose tied account and any use of the financial reserve funds is subject to and approval by the regional office.

The permissions are issued by Local Designated Authorities, Regional Offices or the Ministry of Environment (in case of exports, imports and transit of waste).
Illegal commercial trade in ozone depleting substances

The ozone depleting substances currently are not produced in the Czech Republic. The production was banned by the law No. 86/1995 Sb. - about the ozone layer protection – in 1995.

The Ministry of Environment can issue resolutions concerning import and export of products containing ozone depleting substances.

Legal Market

The Spolchemie company had formerly been the only producer of freons in the Czech Republic. Until 1995 the chlorofluorocarbons had been an essential products of its division specialized in inorganic chemical technology. After 1995, the production of freons was ended – according to the Montreal Protocol (in which the Czech Republic also participated). Presently the Spolchemie company dispose of the technology serving to their regeneration. The technology was developed in cooperation with the Institute of Inorganic Chemistry in Ústí nad Labem.

Presently, a special appliance for liquidation of those freons which cannot be regenerated is being developed. The technology is based on the thermal hydrolysis (destruction). This method is also developed in cooperation with the above-mentioned institute.

On March 3rd, 2003, a specialized company started to liquidate old refrigerators in the city of Plzeň. There will be liquidated 13 200 refrigerators in the Plzeň region. This is the first region, which performed the liquidation within the Czech Republic. The liquidation is performed by means of a mobile appliance – the only one within the Czech Republic. The appliance is able to liquidate up to 12 refrigerators per hour. Freons and oil are pumped from the cooling system, the freons are liquidated and the oils are recycled. All the refrigerators containing freons also in the isolation band are transported to one place where are liquidated. For this purpose a liquidation unit is available in Western Europe – but it comes for 10 days per 1 year.

The liquidation is supported by local authorities (approx. 14 millions of CZK). The authorities suppose that producers of the refrigerators will participate in the liquidation.

Illegal Market

In 1999 there were registered a few cases of illegal import and export of medication which may contain the above-mentioned substances. In most cases the medicines originally containing freons have their names changed, therefore it can be a long-term task to find out the harmful products.
According to the Czech Environment Inspection (Annual Reports 2001, 2002), controls of the law (about the ozone layer protection) observance were performed by regional inspectorships and the Air Protection Division of the directorship of the Czech Environment Inspection. Each person handling with the ozone depleting substances was controlled once a year. The most common found out lacks were: non-observance of liability to notify, unpaid charges for realized import, exceeding of the extent of the permission and treatment without valid permission.

The Czech Environment Inspection is also in charge of controlling persons who perform transport, collection and liquidation of cooling systems containing the regulated substances. There have not been found out any violation.

**Table 11: Awarded Fines in the are of ODS (according to the Czech Environment Inspection):**

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
<th>Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>33 fines within the range 2 500 – 100 000 CZK (100 000 CZK only once, commonly 2 500 – 5 000 CZK).</td>
<td>Non-observance of the law, especially incorrect documentation, unpaid charges, exceeding of the extent of the permission, treatment without valid permission.</td>
</tr>
<tr>
<td>2002</td>
<td>12 fines within the range 2 500 – 10 000 CZK.</td>
<td>Non-observance of the law, especially incorrect documentation, treatment without valid permission.</td>
</tr>
</tbody>
</table>

**Case:**

A private company specialized in waste management (Ekotron) obtained the state support (60 millions CZK) to build a plant for the purpose of refrigerators with freon filling liquidation. The plant had to start the work until 1988. But until that time the company had built a hall only. Meanwhile, the National Environment Fund had invested 3 millions CZK to transport of the refrigerators to the plant place. Approx. 20 000 refrigerators were put together. Subsequently, they were liquidated by another company (Rethmann-Jeřába Recycling), the freons had to be burnt in a local incinerator, which had finished its operation in the meantime. The freons will probably be burnt in the mobile incinerator, borrowed from Germany for this purpose.
**Illegal dumping and shipment of radioactive waste**

*Suppliers, customers - legal market*\(^{53}\)

The legal base for handling nuclear material and sources of ionising radiation is the *Act No. 18/1997 Coll., on peaceful usage of nuclear energy and ionising radiation (Atomic Act)*. Under the regulation in force, *nuclear material* is not subject of common business. Its storing, transferring or any other handling is closely monitored by the State Office of Nuclear Safety (SUJB) and requires a special permit of SUJB. In 2001, there were 193 permanent permit holders and another 91 permits were issued for individual imports or exports of nuclear materials.

The Czech Republic has two nuclear power plants, one in Dukovany and one in Temelín. There are also smaller reactors for scientific purposes in Řež and Prague. All four sites have their own deposits for burnt-out nuclear fuel. The safety of the reactors and the deposits is continually inspected by SUJB.

*Sources of ionising radiation* are frequently used in medicine, industry and science. SUJB issued permits for handling of the sources for about 5,600 legal entities most of which are active in the field of medicine.

*Highly hazardous substances* are highly hazardous wastes, toxic materials, components of bacteriological and chemical weapons. They are subject of control by the Department of Control of Prohibition of Chemical Weapons, SUJB. In 2001, highly hazardous substances were present in 126 premises in the Czech Republic. 104 licences for export and import of these substances were issued.

*Illegal market*\(^{54,55}\)

The data of the Police Unit for detecting of organised crime (UOOZ) and Office for international contacts and information allow the conclusion that there are cases when highly hazardous wastes are uncontrollably imported into the Czech Republic and deposited in illegal landfills or burnt in inappropriate incinerators. This practice could significantly damage the Czech Republic’s environment.

As for trade in fissile materials, the UOOZ experts detected neither demand nor supply of them. More frequent are contaminated consignments, which cross the borders. Items of other (second) type represent a new aspect. These items are not directly radioactive materials but they are necessary for the realisation of nuclear programmes or production of nuclear weapons.

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\(^{53}\) *Annual report of the State Office for Nuclear Safety (SUJB) - 2001*

\(^{54}\) *Analysis of environmental crime, Ministry of Interior, May 2002*

\(^{55}\) *Report of SUJB, presented in the Meeting on Combatting Illicit Trafficking of Nuclear Materials, Karlsruhe, Germany, November 2000*
Illegal logging

Legal market

Forest coverage of the Czech Republic makes up cca 33% of its area. This fact makes the Czech Republic to the woodiest European countries. The woodedness differs in particular regions of the country with the lowest in the central lowlands and the highest in the frontier mountain and submountain regions. The area of forests per inhabitant makes 0,25 ha.\textsuperscript{56}

Reserves of timber in forests were 638 mill. m\(^3\) in 2001. It means that since 1930 (307 mill. m\(^3\)), the reserves doubled. In Europe only Germany, Austria and Switzerland as countries with comparable forest management have higher reserves of timber.\textsuperscript{57}

From 1945 till half of the 80’s the logging had a rising tendency. After 1990 there was a decline caused by the fact that planned fallings were discontinued in the forests underlying restitutions. Since 1996 the increase has occurred again.\textsuperscript{58}

Table 12: Felling of timber 1985-2001 in the Czech Republic

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total in mill. m(^3)</td>
<td>13,91</td>
<td>13,33</td>
<td>12,37</td>
<td>13,49</td>
<td>13,99</td>
<td>14,2</td>
<td>14,37</td>
</tr>
<tr>
<td>In m(^3) per 1 ha</td>
<td>5,29</td>
<td>5,07</td>
<td>4,70</td>
<td>4,13</td>
<td>5,31</td>
<td>5,39</td>
<td>5,45</td>
</tr>
</tbody>
</table>

The price of all forests in the Czech Republic including the land is estimated to more than 650 bill. CZK. The proportion of forest management to the GNP of the Czech Republic was 0,6 % in 2000 and it shows a long-term constant level.\textsuperscript{59}

Timber is sold at free national market. Since 1991 contractual prices had been applied. Since the beginning of 1995 the prices of wood began to rise very slightly. This is connected with the increasing demand for wood mass on national as well as foreign market. However the prices stagnate nowadays. Crucial commodities are coniferous logs, pulpwood and other coniferous wood.\textsuperscript{60}

\textsuperscript{56} Data on the current state of forests at: http://www.sweb.cz/lazare/Lespol5.rtf
\textsuperscript{57} ibid.
\textsuperscript{58} ibid.
\textsuperscript{59} ibid.
\textsuperscript{60} Data on the current state of forests at: http://www.sweb.cz/lazare/Lespol5.rtf
Neither import nor export of rough timber is regulated by the state. The so-called automatic licences are used for exports of selected commodities only to record the number of exported goods. No duty is imposed on the import of rough timber. Export and import are thus recorded only in customs statistics.\(^{61}\)

As for the employment market, 29,804 people were employed in forest management in 2001 (1999 – 33,314, 2000 – 32,264)\(^{62}\). About 112,000 workers were employed in the wood-processing industry in 2001. It represents about 3.1% of the total number of employees in the Czech Republic.\(^{63}\)

For legal market with timber in the Czech Republic see the following tables:

**Table 13: Timber supply (1,000 m\(^3\))\(^{64}\) in the domestic market**

<table>
<thead>
<tr>
<th>Total timber supply</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14,203</td>
<td>14,441</td>
<td>14,374</td>
</tr>
<tr>
<td>Of which:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coniferous</td>
<td>12,422</td>
<td>12,851</td>
<td>12,680</td>
</tr>
<tr>
<td>Broadleaved</td>
<td>1,781</td>
<td>1,590</td>
<td>1,694</td>
</tr>
</tbody>
</table>

**Table 14: Annual volume of roundwood exports and imports (mill. CZK)\(^{65}\)**

<table>
<thead>
<tr>
<th>Balance of trade</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exports</td>
<td>Imports</td>
<td>Balance</td>
</tr>
<tr>
<td>Total</td>
<td>5,646</td>
<td>1,293</td>
<td>4,353</td>
</tr>
<tr>
<td>EU</td>
<td>5,404</td>
<td>867</td>
<td>4,537</td>
</tr>
<tr>
<td>CEFTA</td>
<td>215</td>
<td>331</td>
<td>-116</td>
</tr>
</tbody>
</table>

**Table 15: Exports and imports of round wood - average price (CZK/m3)\(^{66}\)**

---

\(^{61}\) Report on the State of Forests and Forestry in the Czech Republic, by December 31, 2001, Ministry of Agriculture of the Czech Republic

\(^{62}\) ibid.

\(^{63}\) Data on the current state of forests at: http://www.sweb.cz/lazare/Lespol5.rtf

\(^{64}\) Report on the State of Forests and Forestry in the Czech Republic, by December 31, 2001, Ministry of Agriculture of the Czech Republic

\(^{65}\) ibid.

\(^{66}\) ibid.
Illegal market

Cases of illegal logging have been reported since 1996. Czech forests, which are 80 and more years old and therefore have a high market price, have been severely affected by illegal logging. The number of cases of illegal logging had a rising tendency, culminating in 1999-2000 (see table below). Illegal logging then declined due to the adoption of the “small amendment” to the Act No. 289/1995 Coll., on forests, in 2000, and the incentive of the forest managers and the Police. However, the method of illegal logging has changed from clear-cutting to selective logging. The offenders select the best trees often in forests younger than 80 years.

According to CIZP, 20 % of forests are now endangered by illegal logging. 1.564, 38 ha of forests were clear-cut and 548.171 m³ of wood mass were logged illegally from 1996 to 2002. Illegal reduction of forest density occurred on 523, 43 ha of forests resulting in loss of 53.108 m³ of wood mass.

The proportion of illegal to legal logging is estimated at 4,16 % (approximately 14 441 000 m³ of wood mass) with the estimated profit of 1 082 mil. CZK per year.

The amount of the above-described direct damage based on the market price of the wood is only a small part of the real environmental damage based on the environmental function of the wood. Exact scientific method has been developed by the workgroup of Prof. Ilja Vyskot of the Mendel University of Agriculture and Forestry in Brno under the guarantee of the Ministry of Environment. This method evaluates the extent of real environmental damage in multiples of the direct damage.

The main objects of interest of the offenders are private forests with economically valuable growth sizing up to 50 hectares.

Table 16: Number of crimes of illegal logging

<table>
<thead>
<tr>
<th></th>
<th>Exports</th>
<th>Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>1449</td>
<td>1227</td>
</tr>
<tr>
<td>CEFTA</td>
<td>1236</td>
<td>1243</td>
</tr>
</tbody>
</table>

68 Information provided by the CIZP Directorate, Forest Protection Division, 8.4.2003
69 ibid.
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of crimes</td>
<td>192</td>
<td>227</td>
<td>246</td>
<td>322</td>
<td>335</td>
<td>291</td>
</tr>
<tr>
<td>% (In relation to 1995)</td>
<td>100%</td>
<td>118%</td>
<td>128%</td>
<td>168%</td>
<td>174%</td>
<td>152%</td>
</tr>
</tbody>
</table>

Table 17: Total amount of illegal logging in years 1996 - 2002 according to particular regions and categories\(^{72}\)

<table>
<thead>
<tr>
<th>Region</th>
<th>Forest area ha</th>
<th>Extent of clear-cutting</th>
<th>% Damaged forests</th>
<th>Reduction of forest density</th>
<th>Damaged trees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ha</td>
<td>m(^3)</td>
<td>ha</td>
<td>m(^3)</td>
<td>ha</td>
</tr>
<tr>
<td>Central Bohemia</td>
<td>304 454</td>
<td>78,7</td>
<td>22257</td>
<td>0,026</td>
<td>182,67</td>
</tr>
<tr>
<td>South Bohemia</td>
<td>373 439</td>
<td>297,64</td>
<td>113488</td>
<td>0,080</td>
<td>7,47</td>
</tr>
<tr>
<td>Plzen</td>
<td>305 203</td>
<td>60,73</td>
<td>17913</td>
<td>0,020</td>
<td>4,66</td>
</tr>
<tr>
<td>Karlovy Vary</td>
<td>142 767</td>
<td>25,44</td>
<td>13581</td>
<td>0,018</td>
<td></td>
</tr>
<tr>
<td>Usti nad Labem</td>
<td>158 237</td>
<td>13,06</td>
<td>3245</td>
<td>0,008</td>
<td></td>
</tr>
<tr>
<td>Liberec</td>
<td>137 760</td>
<td>27,58</td>
<td>2153</td>
<td>0,020</td>
<td>3,7</td>
</tr>
<tr>
<td>Hradec Kralove</td>
<td>146 673</td>
<td>56,1</td>
<td>17800</td>
<td>0,038</td>
<td>1180</td>
</tr>
<tr>
<td>Pardubice</td>
<td>132 441</td>
<td>110,52</td>
<td>37096</td>
<td>0,083</td>
<td>13,3</td>
</tr>
<tr>
<td>Vysochina</td>
<td>209 705</td>
<td>274,5</td>
<td>107126</td>
<td>0,131</td>
<td>119,56</td>
</tr>
<tr>
<td>South Moravia</td>
<td>195 945</td>
<td>48,68</td>
<td>10395</td>
<td>0,025</td>
<td>10,52</td>
</tr>
<tr>
<td>Olomouc</td>
<td>176 525</td>
<td>174,55</td>
<td>65186</td>
<td>0,099</td>
<td>46,59</td>
</tr>
<tr>
<td>Zlin</td>
<td>156 862</td>
<td>282,17</td>
<td>97624</td>
<td>0,180</td>
<td>117,76</td>
</tr>
<tr>
<td>North Moravia</td>
<td>196 346</td>
<td>114,71</td>
<td>40307</td>
<td>0,058</td>
<td>17,2</td>
</tr>
<tr>
<td>CZ total</td>
<td>2 636 597</td>
<td>1564,38</td>
<td>548 171</td>
<td>0,059</td>
<td>523,43</td>
</tr>
<tr>
<td>Area of potentially endangered estates</td>
<td>527 271</td>
<td>0,396</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 18: Trend of illegal logging in years 1996 – 2002 according to regional inspectorates of CIZP (RI CIZP) - data of district bodies and CIZP\(^{73}\)

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\(^{72}\) ibid.
Organised crime in the sphere of environment in a few Candidate Countries

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha M3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td>ha m3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberec</td>
<td>0,47</td>
<td>0</td>
<td>1,13</td>
<td>231</td>
<td>8,24</td>
<td>295</td>
<td>9,19</td>
<td>1348</td>
<td>18,68</td>
<td>3374</td>
<td>2,22</td>
<td>0</td>
<td>0,35</td>
<td>85</td>
<td>40,28</td>
</tr>
<tr>
<td>Ostrava</td>
<td>12,99</td>
<td>3733</td>
<td>10</td>
<td>2637</td>
<td>55,16</td>
<td>14289</td>
<td>145,36</td>
<td>51035</td>
<td>96,39</td>
<td>27212</td>
<td>32,56</td>
<td>7296</td>
<td>13,93</td>
<td>2865</td>
<td>366,39</td>
</tr>
<tr>
<td>Olomouc</td>
<td>6,18</td>
<td>1809</td>
<td>5,37</td>
<td>1493</td>
<td>44,03</td>
<td>15119</td>
<td>172,93</td>
<td>53104</td>
<td>105,17</td>
<td>32056</td>
<td>55,02</td>
<td>16955</td>
<td>3,76</td>
<td>1650</td>
<td>392,46</td>
</tr>
<tr>
<td>Brno</td>
<td>0,73</td>
<td>140</td>
<td>2,46</td>
<td>641</td>
<td>5,35</td>
<td>893</td>
<td>25,01</td>
<td>7423</td>
<td>24,23</td>
<td>4968</td>
<td>39,12</td>
<td>5547</td>
<td>13,42</td>
<td>2128</td>
<td>110,32</td>
</tr>
<tr>
<td>Havlickuv Brod</td>
<td>2,57</td>
<td>960</td>
<td>5,12</td>
<td>2160</td>
<td>136,42</td>
<td>26766</td>
<td>81,23</td>
<td>29848</td>
<td>77,1</td>
<td>29537</td>
<td>94,37</td>
<td>39565</td>
<td>25,67</td>
<td>9710</td>
<td>422,48</td>
</tr>
<tr>
<td>Hradec Kralové</td>
<td>3,8</td>
<td>155</td>
<td>3,79</td>
<td>1511</td>
<td>9,26</td>
<td>2409</td>
<td>17,52</td>
<td>4430</td>
<td>40,83</td>
<td>13023</td>
<td>12,81</td>
<td>3729</td>
<td>6,5</td>
<td>3000</td>
<td>94,51</td>
</tr>
<tr>
<td>Usti Nad Labem</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2,81</td>
<td>859</td>
<td>1,79</td>
<td>543</td>
<td>0,1</td>
<td>23</td>
<td>0</td>
<td>0</td>
<td>4,7</td>
</tr>
<tr>
<td>Plzen</td>
<td>26,04</td>
<td>13580</td>
<td>1,33</td>
<td>197</td>
<td>3,94</td>
<td>1278</td>
<td>9,43</td>
<td>3347</td>
<td>24,46</td>
<td>5739</td>
<td>19,08</td>
<td>5289</td>
<td>5,91</td>
<td>2509</td>
<td>90,19</td>
</tr>
<tr>
<td>České Budejovice</td>
<td>5,16</td>
<td>1860</td>
<td>6,32</td>
<td>3021</td>
<td>31,38</td>
<td>15163</td>
<td>67,36</td>
<td>25327</td>
<td>105,64</td>
<td>38728</td>
<td>73,83</td>
<td>25496</td>
<td>15,42</td>
<td>5654</td>
<td>305,11</td>
</tr>
<tr>
<td>Praha</td>
<td>1,76</td>
<td>576</td>
<td>5,68</td>
<td>1823</td>
<td>44,3</td>
<td>5996</td>
<td>24,43</td>
<td>6773</td>
<td>140,62</td>
<td>6559</td>
<td>44,28</td>
<td>5720</td>
<td>0,3</td>
<td>90</td>
<td>261,37</td>
</tr>
<tr>
<td>in total</td>
<td>59,7</td>
<td>22813</td>
<td>41,2</td>
<td>13714</td>
<td>338,08</td>
<td>82208</td>
<td>555,27</td>
<td>183494</td>
<td>634,91</td>
<td>161739</td>
<td>373,39</td>
<td>109620</td>
<td>85,26</td>
<td>27691</td>
<td>2087,81</td>
</tr>
</tbody>
</table>

Ascertained cases of illegal logging represent only the visible part of total illegal logging. Hundreds of cases, especially those concerning the state property managed by the state-owned company Lesy České Republiky s.p. are remedied by means of direct restitution without formal procedure. Illegal logging that reaches the intensity of crime is separately prosecuted by the Police. The Police registered 291 crimes in connection with illegal logging in 2000. Thousands of cases of illegal logging of minor extension (up to 10 m³) and with lower financial damage (up to 5000 CZK) are ascertained with delay or accidentally and they do not lead to a prosecution. According to CIZP’s findings, North Moravia is the region most affected by operations of firms specializing in illegal logging.

Methods74

73 Information provided by the CIZP Directorate, Forest Protection Division
74 An interview with Ing. Jaroslav Šura, Chief of the Forest Protection Division, Regional Inspectorate Prague, CIZP (31.3.2003)
a) Pretended transfer of ownership

Potential offenders apply at Land Registries in forest areas for lists of forest owners. In accordance with the present legal regulation the applicants are provided with such information for an administrative fee (today such information can be obtained on the Internet for a fee).

Then the offenders contact the forest owner (hereinafter referred to as the primary owner) personally and offer him to buy the forest. Parties sign a contract on the purchase of the forest. However, the buyers promise to submit the contract to the Land Registry and to apply for the transfer of ownership but they do not keep their word. Or buyers intentionally make formal mistakes in the contract (wrong birth number, number of cadastral territory, etc.) and submit the contract to the Land Registry. Due to these mistakes, the Land Registry must refuse the application and ownership is again not transferred.

In any case, buyers start logging immediately after the contract was signed. A higher number of workers cut the forest in a few hours, usually in evening hours or at weekends. During the following days chopped trees are processed by forest workers who prove themselves with a contract which is limited to processing the chopped wood mass and they deny to tell who had chopped the trees. The offenders do not follow instructions of the forest manager (in several cases the forest manager is not appointed at all), they are not familiar with the Forest Act or ignore it at all. The offenders usually do not keep the forest management records or refuse to provide the state bodies with overviews and records on the extent and amount of logging.\(^{75}\)

As a result, the offenders unlawfully appropriate the wood and the primary owner is left with the ownership of a clear-cut area and. Please note that the owner has a statutory duty to reforest the area.

b) Intentional damaging

The lawful owner intentionally damages his trees with notches and cuts. Subsequently, he announces to the authorities that an unknown person has damaged his forest and applies for a logging permission. As a reason he states that the trees have to be cut down before the lose all value.

Suppliers, Customers, Distribution opportunities\(^{76,77,78,79}\)

\(^{75}\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002, p.17

\(^{76}\) An interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)

\(^{77}\) Information provided by the CIZP Directorate, Division of Forest Protection

\(^{78}\) An interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)
Illegal logging is often carried out within business environment. Legal persons – smaller Czech, German or Austrian logging firms as well as organized groups of individuals hire forest workers, car drivers for illegal logging. Forensic experts from the area of forest management are also engaged as well as lawyers when negotiating contracts with the forest owner. Many of loggers are well educated both in law and forestry, which allows them to log semi-legally and effectively avoid punishment.

Illegally logged timber is bought by domestic saw premises and wood-processing firms. Austria and Germany are often final destinations of the timber. There are reports that Austrian and German firms buy the timber, make it to furniture and export it to the Czech Republic.

The CIZP further reports that round timber is illegally imported from Eastern Europe, mainly the Ukraine and Russia, to be processed in the Czech Republic or it directly goes to its final customers in Austria and Germany.\(^{10}\)

**Possibilities for approval**

Generally the owner of the forest can carry out felling in a forest only in accordance with an approved forest management plan or guidelines. Forest management plans and guidelines are instruments are prepared, as a rule, for a period of 10 years. District or Regional offices, depending on the area of the forest, approve the plans. The maximum aggregate volume of felled timber is a binding provision of the plan/guidelines.

Every owner is obliged to give priority to incidental felling to prevent the development, spreading and mass outbreaks of harmful organisms. Should such incidental felling result in continuous clear felled areas exceeding 0,2 hectares, the forest owner is obliged to notify the relevant state forest administration body of such incidental felling no later than fourteen days prior to such felling.\(^{11}\)

Incidental felling is included in the total volume of felled timber. Should the total volume of felling as set out by the approved plan or guidelines be exceeded through incidental felling, the forest owner is obliged to ask the relevant state forest administration body to amend the plan or the guidelines.\(^{12}\)

Felling in a forest that the forest owner manages without an approved plan or guidelines can only be carried out with the consent of a forest manager. If felling is to exceed 3 m\(^3\) per hectare per calendar year, the owner of the forest, and the person who bought the standing forest growth and the person who carries out the felling must inform the state forest administration body in advance and in writing and document the statement of the

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79 Information provided by the CIZP Directorate, Division of Forest Protection
80 ibid.
81 Art. 33, Section 1 of the Forest Act No. 289/1995 Coll.
82 Art. 33, Section 2 of the Forest Act No. 289/1995
relevant forest manager. If within thirty days, the state forest administration body does not inform the person who informed the body in writing of the intention to carry out felling of its opinion, that person may carry out the felling.83

Following general limits determining admissible effect on the environment are stated:

- It is prohibited to carry out planned main felling in forests under 80 years of age; in justified cases, in the process of approving the plan or preparing the guidelines or at the request of the forest owner, the state forest administration body may grant exemptions from this rule84.

- During main planned felling, the area of clear felling must not exceed 1 hectare and the width of clear felling must not exceed once the average height of the felled stand on exposed management sets and twice the average height on other sites; in justified cases, the state forest administration body may, in the process of approving the plans or preparing the guidelines, or at the request of the forest owner, grant exemptions from the specified area or width of clear felling85.

- It is prohibited to use planned felling to reduce stand density to under seven tenths of full density; this shall not apply to opening up in favour of the next generation of stand or for the purposes of reinforcement of the stand86.

The relevant state forest administration bodies are Local Designated Offices and Regional Offices.

**Illegal Fishing**

One of the biggest threat to biodiversity in surface waters today is overfishing. Most of the world’s major fisheries in oceans are exhausted or rapidly deteriorating. The main problem is exceeding ecological limits of oceans. The threatened marine biodiversity also threatens the oceans as a vital and productive part of the Earth’s life support system. That is why, the fishing industry is responsible for this unsustainable evolution.

The world's oceans and seas cover 71% of the surface of the earth. This huge biological system comprises very diverse habitats and is, in some respects, richer in biodiversity than life on land - more major taxonomic groupings (phyla) of animals can be found in the oceans than on land. Oceans are very important for human existence, not only because they supply us with fish and other coastal resources, but also because they function as a regulator of atmospheric composition, nutrient cycling and biological control of natural systems.

83 Art. 33, Section 3 ibid.
84 Art. 33, Section 4 ibid.
85 Art. 31, Section 2 ibid.
86 Art. 31, Section 4 ibid.
The biggest problem is a pirate fishing. Many governments do not act enough to stop or slow down the growing pirate fishing problem. Pirates operate world-over, their companies often buy and fly "flags of convenience" from countries whose flags are for sale without regulations.

The United Nations Food and Agriculture Organisation (FAO) has established international negotiations involving up to 100 countries to produce an International Plan of Action to combat pirate fishing. This process was reinforced in April 1999 by the United Nations Convention on Sustainable Development, which called on the International Maritime Organisation to develop legally binding measures to close the loophole in international law, which allows boats to fish under flags of convenience.

Also, the United Nations General Assembly adopted another resolution addressing pirate fishing on November 24, 1999. In debating the threats to the world's oceans, the UN Secretary General and the General Assembly placed particular accent on the need to eradicate illegal fishing, primarily by fishing boats flying flags of convenience.

Legal Market in the Czech Republic

The legal performance of fishing in the Czech Republic has been controlled by the Fishing Law approved in 1963 (102/1963 Sb.). The legislation covers all areas dealing with freshwater fishes breeding, research, veterinary treatment, food quality, business activities support, and environment protection. The law was amended, lastly in 2002. Within the period from 2001 until 2002 all the legislation was harmonized with the European Union Legislation in this domain.

In 2001 the production in fishing reached 20 098 t, in comparison with year 2000 there was an increase by 3.2 %. In 2002 the value had been expected comparable with 2001, but because of floods, long-time rains and expected early frosts the final number will not probably be rather uncertain. The most spread product of fishing in the Czech Republic is carp (about 50 %), which is also in a high degree exported to other European countries.
Table 19: Average numbers of workers (manual and non-manual) in the fish sector of the national economy (by Czech Statistical Office)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 020</td>
<td>2 089</td>
<td>2 039</td>
<td>2 065</td>
<td>2 149</td>
<td>2 521</td>
<td></td>
</tr>
</tbody>
</table>

Table 20: Usage of freshwater fishes produced by breeding (in thousands of t in live weight):

<table>
<thead>
<tr>
<th>Year</th>
<th>Fish Production</th>
<th>Usage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Fishes for Inland Distribution</td>
</tr>
<tr>
<td>1990</td>
<td>19,3</td>
<td>9,1</td>
</tr>
<tr>
<td>1991</td>
<td>18,7</td>
<td>9,1</td>
</tr>
<tr>
<td>1992</td>
<td>20,8</td>
<td>9,9</td>
</tr>
<tr>
<td>1993</td>
<td>20,1</td>
<td>9,2</td>
</tr>
<tr>
<td>1994</td>
<td>18,7</td>
<td>9,4</td>
</tr>
<tr>
<td>1995</td>
<td>18,7</td>
<td>9,7</td>
</tr>
<tr>
<td>1996</td>
<td>18,2</td>
<td>8,5</td>
</tr>
<tr>
<td>1997</td>
<td>17,6</td>
<td>7,6</td>
</tr>
<tr>
<td>1998</td>
<td>17,2</td>
<td>7,5</td>
</tr>
<tr>
<td>1999</td>
<td>18,8</td>
<td>8,5</td>
</tr>
<tr>
<td>2000</td>
<td>19,5</td>
<td>8,5</td>
</tr>
<tr>
<td>2001</td>
<td>20,1</td>
<td>7,8</td>
</tr>
</tbody>
</table>

Source: Fishing Association of the Czech Republic

The consumption of bred freshwater fishes in the Czech Republic has been gradually decreasing to 0.93 kg/person in 2001. The consumption of fishes obtained by means of fishhook has not changed (about 4646 t in the Czech Republic). The increase in the fish production has been used in export (in 2001 almost 10 000 t – the biggest amount within
the considered period). The most important consumers are Germany, Poland, Slovakia, Belgium, Austria, Yugoslavia, Hungary, Italy and France.

Table 21: Fish catches in ponds, rivers and streams: by species (in tonnes)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Common carp</td>
<td>19 219</td>
<td>17 482</td>
<td>17 960</td>
<td>19 454</td>
<td>20 664</td>
<td>20 981</td>
</tr>
<tr>
<td>Tench</td>
<td>320</td>
<td>414</td>
<td>371</td>
<td>362</td>
<td>275</td>
<td>206</td>
</tr>
<tr>
<td>Northern pike</td>
<td>226</td>
<td>226</td>
<td>243</td>
<td>246</td>
<td>243</td>
<td>245</td>
</tr>
<tr>
<td>Pike-perch</td>
<td>190</td>
<td>192</td>
<td>165</td>
<td>171</td>
<td>174</td>
<td>170</td>
</tr>
<tr>
<td>Brown trout</td>
<td>58</td>
<td>57</td>
<td>70</td>
<td>64</td>
<td>55</td>
<td>56</td>
</tr>
<tr>
<td>Rainbow trout</td>
<td>669</td>
<td>528</td>
<td>584</td>
<td>761</td>
<td>724</td>
<td>752</td>
</tr>
<tr>
<td>Freshwater bream</td>
<td>286</td>
<td>232</td>
<td>253</td>
<td>297</td>
<td>261</td>
<td>247</td>
</tr>
<tr>
<td>Wels catfish</td>
<td>80</td>
<td>89</td>
<td>92</td>
<td>96</td>
<td>105</td>
<td>108</td>
</tr>
<tr>
<td>European eel</td>
<td>35</td>
<td>30</td>
<td>29</td>
<td>29</td>
<td>25</td>
<td>30</td>
</tr>
<tr>
<td>Grayling</td>
<td>16</td>
<td>15</td>
<td>13</td>
<td>16</td>
<td>16</td>
<td>15</td>
</tr>
<tr>
<td>Coho salmon</td>
<td>13</td>
<td>15</td>
<td>16</td>
<td>16</td>
<td>13</td>
<td>17</td>
</tr>
<tr>
<td>Grass carp</td>
<td>290</td>
<td>265</td>
<td>202</td>
<td>239</td>
<td>242</td>
<td>294</td>
</tr>
<tr>
<td>Crucian carp</td>
<td>39</td>
<td>40</td>
<td>40</td>
<td>43</td>
<td>35</td>
<td>37</td>
</tr>
<tr>
<td>Bighead carp and silver carp</td>
<td>433</td>
<td>512</td>
<td>385</td>
<td>331</td>
<td>537</td>
<td>929</td>
</tr>
<tr>
<td>Orfe</td>
<td>31</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>European perch</td>
<td>46</td>
<td>61</td>
<td>53</td>
<td>58</td>
<td>58</td>
<td>52</td>
</tr>
<tr>
<td>Brook trout</td>
<td>47</td>
<td>83</td>
<td>99</td>
<td>122</td>
<td>133</td>
<td>95</td>
</tr>
<tr>
<td>Houting</td>
<td>93</td>
<td>140</td>
<td>109</td>
<td>70</td>
<td>53</td>
<td>31</td>
</tr>
<tr>
<td>Common carp</td>
<td>19 219</td>
<td>17 482</td>
<td>17 960</td>
<td>19 454</td>
<td>20 664</td>
<td>20 981</td>
</tr>
<tr>
<td>Tench</td>
<td>320</td>
<td>414</td>
<td>371</td>
<td>362</td>
<td>275</td>
<td>206</td>
</tr>
<tr>
<td>Northern pike</td>
<td>226</td>
<td>226</td>
<td>243</td>
<td>246</td>
<td>243</td>
<td>245</td>
</tr>
<tr>
<td>Freshwater fishes n.e.c.</td>
<td>517</td>
<td>500</td>
<td>499</td>
<td>590</td>
<td>516</td>
<td>479</td>
</tr>
</tbody>
</table>
The legal performance of fishing in the Czech Republic has been controlled by the Fishing Law approved in 1963 (102/1963 Sb.). The legislation covers all areas dealing with freshwater fishes breeding, research, veterinary treatment, food quality, business activities support, and environment protection. The law was amended, lastly in 2002. Within the period from 2001 until 2002 all the legislation was harmonized with the European Union Legislation in this domain.

**Illegal market**

The most serious problems are connected with advanced poaching within the area of fish farming and subsequent sale of fishes. The last novelization (in 2002) of the Fishing Law established the status of public officer to the fishing guard. The local authorities have obtained larger rights to affect the poaching more effectively.

*Table 22: Example – statistics for dead fishes in 2000 including poaching for the region of North Moravia and Silesia:*

<table>
<thead>
<tr>
<th>Damages In</th>
<th>Cause of Damage</th>
<th>In Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>unit</td>
<td>Industry</td>
</tr>
<tr>
<td>Breeding Pond</td>
<td>kg</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>3,3</td>
</tr>
<tr>
<td></td>
<td>CZK</td>
<td>600</td>
</tr>
<tr>
<td>Breeding Stream</td>
<td>kg</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>CZK</td>
<td>n/a</td>
</tr>
<tr>
<td>Trout Chase</td>
<td>kg</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>CZK</td>
<td>n/a</td>
</tr>
<tr>
<td>Non-Trout Chase</td>
<td>kg</td>
<td>420</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>24,9</td>
</tr>
<tr>
<td></td>
<td>CZK</td>
<td>295 486</td>
</tr>
<tr>
<td>In Total</td>
<td>kg</td>
<td>8 111</td>
</tr>
<tr>
<td></td>
<td>CZK</td>
<td>919 531</td>
</tr>
</tbody>
</table>
2.3. MARKETS IN ESTONIA

Illegal trade in endangered species

The Estonian CITES management authority deals with CITES issues very seldom. From 1995 to 2000 on average 8 import permits, 60 export permits, 3 re-export certificates and 1 other certificate (for exhibitions or for scientific purposes) were issued per year. Legal trade involves hunting trophies from lynxes, brown bears and wolves exported mainly to Germany, Denmark and Finland. There is also an exchange of life animals between Tallinn zoo and other zoos around the world. The kind of species which are subject to CITES transactions has changed essentially throughout the years. In 1993 live animals were objects of transactions between zoos. Only one permit was issued for the export of a hunting trophy. In recent years hunting trophies have become the main trade items.

Table 23: Seizures of CITES specimens made in relation to trade by Estonia 1992-1999

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Species</th>
<th>Quantity</th>
<th>Direction of trade</th>
<th>Reported by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Cactaceae spp. (alive)</td>
<td>Plants</td>
<td>2</td>
<td>Export by Estonia</td>
<td>United States</td>
</tr>
<tr>
<td>1996</td>
<td>Poicephalus senegalus (alive)</td>
<td>Birds</td>
<td>1</td>
<td>Import by Estonia</td>
<td>Estonia</td>
</tr>
<tr>
<td>1999</td>
<td>Phelsuma guimbeaui (alive)</td>
<td>Reptiles</td>
<td>15</td>
<td>Import by Estonia</td>
<td>Netherlands</td>
</tr>
<tr>
<td>1999</td>
<td>Phelsuma cepediana (alive)</td>
<td>Reptiles</td>
<td>15</td>
<td>Import by Estonia</td>
<td>Netherlands</td>
</tr>
<tr>
<td>1999</td>
<td>Phelsuma ornata (alive)</td>
<td>Reptiles</td>
<td>15</td>
<td>Import by Estonia</td>
<td>Netherlands</td>
</tr>
<tr>
<td>1999</td>
<td>Acipenser spp. (alive)</td>
<td>Birds (eggs)</td>
<td>2 kg</td>
<td>Re-export by Estonia</td>
<td>Spain</td>
</tr>
</tbody>
</table>


88 Berkhoult, Karin: Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries, TRAFFIC Europe, 2002, p. 29
There have not been many CITES infringements detected and there have been no convictions for CITES offences in Estonia. The most frequent illegal trade is done with personal items made from endangered species by people who are not aware that they need special permits for these goods. The seizures of 48 specimens and 2 kg of specimen made in relation to trade by Estonia from 1992 to 1999 are shown in the table below. Whether organised criminals are involved in illegal trade of endangered species cannot be established due to a lack of information.

Illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste

Today there are about 220 small landfills for municipal waste and 42 landfills for industrial waste. According to the policy of the Ministry of the Environment most of those landfills will be closed in mid-term period and will be replaced by a small number of large landfills complying with modern technical standards and EU law. Uncontrolled dumps are frequent as there are no control mechanisms or legislation. This allows dumping of hazardous waste without control. Other sources report that illegal waste dumping in forests and ditches occurs frequently to avoid charges for waste collection services.

In its environmental strategy the Estonian Ministry of the Environment declared the preparation of an inventory of past pollution originated from abandoned military sites, industrial enterprises and municipal landfill sites and an assessment of their environmental risks as a task to be fulfilled by the year 2000. There is no information on the outcome available. From this it can be concluded that there is no clear idea about the amount and type of waste and the way it has been disposed of.

Today there are 25 companies with a licence for hazardous waste treatment. A manager of a hazardous waste treatment company is quoted by a German weekly with the concern that due to fierce competition between the companies and low prices infringements are likely. The Estonian government seems to share this concern and set up a hazardous waste storage site in Northern Estonia. Three sites are planned in other parts of the country.

Due to a lack of figures it is difficult to draw a meaningful picture of the extent of illegal waste activities in Estonia. Information about organised criminal activities could not be established. According to information from the scientific department of the European

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90 Berkhoult, Karin: Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries, TRAFFIC Europe, 2002, p. 29
91 Ibid., p. 32
96 Johannsmeyer, Birgit: Ölverseuchtes Grundwasser, radioaktiver Müll, giftige Kampfstoffe, in: Das Parlament, 16.11.02
Parliament the number of contraventions increased from 143 to 647 between 1992 and 1995. The increase is ascribed to more consequent action by the environmental inspectors.\textsuperscript{97} Beside these figures data is only available for 2002 when the Estonian Environmental Inspectorate established 648 offences in the field of waste handling. Only two criminal cases have been started by the Inspectorate in the same year. 417 people have been fined for illegal storage of waste and 200 legal entities have been fined for violations of waste storage regulations. The average amount of fine is low: in case of the people who have been fined for illegal storage only 42,40 Euro and in case of the fined companies only 492,70 Euro. Concerning the outcomes of the two criminal proceedings no information is available.\textsuperscript{98}

\textit{Transfrontier shipment of waste}

Conclusions on illegal transfrontier shipment of waste are also difficult due to a lack of data. Import of waste in the period 1993-1999 has been low with an average of 0,33\% of waste generation. The import consisted mainly (93\%) of scrap iron and other ferrous and non-ferrous ruptured metals. Additionally accumulators have been imported to Estonian from Baltic countries for treatment and further export (6\% of imported waste). Waste produced on ships (ballast and bilge water), board and cardboard waste, textile waste and used tyres for recovery accounted for the rest of import waste.\textsuperscript{99}

Export of waste amounted on average to 2,1\% of the total amount of generated waste. In 1999 exported waste consisted of scrap metal and metal waste (276.002 t), wood waste (83.928 t), oil shale slags (14.048 t), paper and board waste (10.711 t) and accumulators (5.387 t) as well as fibre and textile waste, plastic waste, film and celluloid waste, low pressury mercury lamps, etc. Reason for the export is the lack of treatment facilities in the country. Export and import of waste have been increased from 1993 to 1999.\textsuperscript{100}

German enforcement bodies report that there is a certain amount of illegal cross-border waste shipments related to the Baltic Sea Countries, however there are only a few cases registered by the police.\textsuperscript{101} According to information provided by the Estonian National Environment Inspectorate no cases of illegal transfrontier shipment have been registered.\textsuperscript{102} However, illegal activities have to be assumed as control seems to be inadequate. A meeting of representatives of the ministries of environments of Estonia, Lithuania and Latvia concluded in 2000 that the Estonian customs are not able to identify illegal transboundary shipment of waste.\textsuperscript{103} From the 2002 Regular Report on Estonia’s

\begin{footnotesize}
\begin{enumerate}
\item European Parliament: Die Umweltpolitik in Estland, Luxembourg and Brussels 1998, p. 9
\item Estonian Environmental Inspectorate, www.kki.ee
\item Ibid.
\item Ibid., p. 13
\end{enumerate}
\end{footnotesize}
Progress Towards Accession it can be concluded that the situation has not improved since then. External border control has to be further reinforced by improving number of staff, equipment, training and infrastructure. Training of Border Guards should also be reinforced regarding detection of falsified documents.\footnote{European Commission: Regular Report on Estonia’s Progress Towards Accession 2002, p. 103} Later is crucial to identify falsified shipment documents.

The Report also points out that living conditions of the Border Guards have to be improved.\footnote{Ibid.} Bad living conditions are one reason for corruption, which is a big problem with a view to the Estonian Customs and the Border Guard\footnote{Open Society Institute: Corruption and Anti-corruption Policy in Estonia, 2002, p. 197}. This provides fertile ground for organised criminal activities. In 1998 Estonian security police uncovered a major fuel tax fraud involving bribery of customs inspectors by an organised crime group.\footnote{Ibid., p. 228} Against this background the existence of illegal transfrontier shipment of waste cannot be ruled out.

\textit{Illegal commercial trade in ozone depleting substances}

No ozone depleting substances (ODS) are manufactured in Estonia. Their consumption has decreased by 81\% from 1986 to 1996. In 1995 total consumption was 159,2 t, which is equal to 131,2 ODP\footnote{Ozone depletion potential} t. In 1996 consumption amounted to 73,9 t or 36,5 ODP t. Figures increased slightly in 1998 when amortized cooling equipment was used. It is expected that consumption will come to an end in 2002.\footnote{Estonian Environment Information Centre: State of Environment in Estonia on Threshold of XXI century, 2001, http://grida.no/enrin/htmls/estonia/env2001/content/soe/stateofenvironment.htm}

According to UNEP\footnote{United Nations Environment Programme} specialists illegal trade in ODS in transition countries has become a cause of serious concern in recent years. Lack of funding and institutional capacity, inadequate information and training, telecommunication difficulties, language barriers and lack of familiarity with working in international protection systems are the reason for insufficient control and enforcement.\footnote{Demkine, Volodymyr: Facing the Challenge in Countries with Economies in Transition, in: United Nations Environment Programme (UNEP): Illegal Trade in Ozone Depleting Substances: Is There a Hole in the Montreal Protocol, 2001, p. 9} This is mirrored by the fact that only very few of the transition countries have been able to compile statistics on actual incidents of violations.\footnote{Ibid., p. 10}

There are no figures available which illustrate the situation in Estonia. However there are hints that Estonia is among the “smuggling countries”. When in the mid-1990s the production ban on CFCs and halons came into effect in the industrialized countries a network of fly-by-night brokers emerged. Several of them set up offices in Estonia to organize the shipment of Russian CFCs to the lucrative Western markets. At that time Russia was unable to meet its Montreal Protocol commitments and provided huge
quantities of cheap CFCs. The CFCs was smuggled to Europe but mainly to the USA, with its large black market demand.\textsuperscript{113}

Although there are no figures available it can be assumed from the above that Estonia at least played a role as a transit country for smuggled goods from Russia. This may include not only CFC but also other goods such as timber or waste. There are three reasons for this assumption. First, notwithstanding the decline in the Estonian-Russian bilateral economic relations and political tensions Estonia continued to be an important transit country for Russian products.\textsuperscript{114} Second, although the situation of the large Russian minority in Estonia (25.6% of total population) improved in recent years discrimination continues in terms of lack of command of the Estonian language, access to language teaching and employment.\textsuperscript{115} Third, Estonian government neglected regional and economic development in the regions at the border to Russia where the share of Russians in the population is high.\textsuperscript{116} Pulled these facts together it is likely that against the background of a lack of control and enforcement parts of the Russian minority decided for smuggling or other illegal activities to earn their livelihood. Above all Russians with access to trade and industries might have chosen such way, e.g. people who are involved in transit trade or the former members Soviet nomenklatura who were directors of state owned companies in Estonia and are now unemployed.

\textit{Illegal dumping and shipment of radioactive waste}

There are no figures for a thorough assessment of the extent of illegal dumping and shipment available for Estonia. There are no nuclear power plants in Estonia but radioactive waste facilities originated from the Soviet occupation era.\textsuperscript{117} Today there are two nuclear and radioactive waste storage sites which cause environmental harm.
Table 24: Nuclear and radioactive waste storage sites in Estonia

<table>
<thead>
<tr>
<th>Name</th>
<th>Type of facility</th>
<th>Type of waste</th>
<th>Operational status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paldiski</td>
<td>Former nuclear submarine training center of the USSR</td>
<td>Two submarine nuclear reactors, solid radioactive waste storage facility, liquid radioactive waste storage facility, liquid radioactive waste treatment facility</td>
<td>Closed. Partly decommissioned or embedded in sarcophagi. Further planning of decommission is underway.</td>
</tr>
<tr>
<td>Tammiku, Sillamae waste depository</td>
<td>Interim storage</td>
<td>Low and intermediate level radioactive waste</td>
<td>Operating</td>
</tr>
</tbody>
</table>


The number of registered facilities radiation sources in Estonia is low compared to the neighbouring Baltic countries.

Table 25: Registered facilities and radiation sources in 2000

<table>
<thead>
<tr>
<th></th>
<th>Total number</th>
<th>Above 10⁸ of the exemption level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Estonia</td>
<td>Latvia</td>
</tr>
<tr>
<td>Facilities/licences</td>
<td>37</td>
<td>102</td>
</tr>
<tr>
<td>Radiation sources (total)</td>
<td>578</td>
<td>4.051</td>
</tr>
<tr>
<td>- industrial</td>
<td>417</td>
<td>944</td>
</tr>
<tr>
<td>- medical</td>
<td>25</td>
<td>81</td>
</tr>
<tr>
<td>- scientific</td>
<td>32</td>
<td>113</td>
</tr>
<tr>
<td>- others</td>
<td>104</td>
<td>2.913</td>
</tr>
</tbody>
</table>


Training level of the facility employees, quality assurance and control, audit systems and the number of inspectors per facility are considered to be insufficient. Today there are 3
inspectors for nuclear facilities and radiation sources in Estonia. Due to a lack of information it is not possible to establish whether or not state responses ensure appropriate control and risk prevention. Therefore it is not possible to establish whether there any illegal activities or not. Situation might improve in the future as by the year 2000 a programme for radioactive waste treatment should be developed. By the same date the government want to ensure that existing disposal sites are environmental safe.

Illegal logging

Forestry and timber industry is an important pillar for the Estonian economy. In 1999 total export of wood, wood products, paper and furniture was about 20% of total export capacity which corresponds to the most important export branch after machinery with 24%.

The NGO Estonian Green Movement estimates that 40% of the timber products from Estonia are illegal. The percentage might be higher due to insufficient forestry statistics. According to this source the head of the Estonian Forestry Board, Mr. Aigar Kallas, declared in 2002 that illegal forestry is not a problem as official statistics prove. Data of the Statistics office and the Environmental Inspectorate indicate the detected forest thefts with 1-2 % of the total volume. Other expert estimations state that illegal cutting accounts for approximately 4 % of total cut volumes, which is equal to 300,000 m³.

According to another source a large number of smaller timber thefts out of private and state forests remain undiscovered. This number is also affected by the fact that land parcels have remained without an owner due to the land reform. The existence of illegal logging can also be deduced from the volume of logged timber. In 2001 the volume of logged timber accounted for 13 million solid meters, which exceeded the maximum annual volume of 7.8 million solid meters approved by the Estonian authorities.

From the official statistics about violations of forestry regulations it can be seen that the number of incidents waved. The number of incidents of illegal logging increased by more than 300 % from 1998 to 2000. In the same period the number of violations of forestry standards increased even by 375 %.

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120 Puttfarken, Jan: Die Holzwirtschaft in Estland, Bundesforschungsanstalt für Forst- und Holzwirtschaft, 2002, p. 4
Table 26: Official statistics about violations of forestry regulations 1994 - 2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidents of violation of forestry standards</th>
<th>Incidents of illegal felling</th>
<th>Illegally felled timber, solid metres</th>
<th>Losses, caused by violation of forestry standards, EEK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>797</td>
<td>704</td>
<td>22,802</td>
<td>7,323,469</td>
</tr>
<tr>
<td>1995</td>
<td>1208</td>
<td>1001</td>
<td>38,150</td>
<td>13,035,300</td>
</tr>
<tr>
<td>1996</td>
<td>671</td>
<td>491</td>
<td>18,691</td>
<td>13,094,800</td>
</tr>
<tr>
<td>1997</td>
<td>621</td>
<td>535</td>
<td>26,026</td>
<td>19,444,600</td>
</tr>
<tr>
<td>1998</td>
<td>604</td>
<td>549</td>
<td>35,155</td>
<td>23,725,700</td>
</tr>
<tr>
<td>1999</td>
<td>1773</td>
<td>n.a.</td>
<td>n.a.</td>
<td>75,810,495</td>
</tr>
<tr>
<td>2000</td>
<td>2267</td>
<td>1681</td>
<td>172,331</td>
<td>116,707,604</td>
</tr>
<tr>
<td>2001</td>
<td>1981</td>
<td>1006</td>
<td>141,168</td>
<td>92,250,692</td>
</tr>
</tbody>
</table>


More interesting is that the amount of solid metres of illegally logged timber increased constantly except from a decline in 1996. Against the background of the number of registered illegal fellings it has to be established that more timber has been illegally logged in proportion to each incident. In 1994 on average 32,38 solid metres have been illegally logged per incident. The amount of illegally logged timber increased to 140,32 solid metres per incident in 2001. This points to more sophisticated organisational structures and technical means of the offenders. From this it can be concluded that offenders use organisational structures for illegal logging. This backed by an OECD study stating that after a peak in 1995 illegal cutting in private forests has in general decreased, because short-term capital needs have been satisfied.124 Private owners of forests have satisfied their immediate needs and shifted their attention to other areas of business, whereas long-term capital interests became deeper involved in exploiting forest resources. This happened in the mid-nineties when formerly state-owned companies have been privatised.125 From this moment on organisational structures and assets necessary for large-scale logging were available to criminals respectively less control allowed illegal activities. This cannot be proved by statistics as there are no figures on the involvement of organised criminals for the time before 1999. However, as can be seen from table below that there are a number of criminal offences of illegal wood feeling and wood theft, which includes also illegal logging activities, that have been committed by organised groups.

Failures in the reform of the forestry policy and ineffective control due to weak police forces and inability of the administration to cope with the huge amount of privatisation and surveillance documents as well as corrupted officials\textsuperscript{126} can be assumed as reasons for the increase in illegal activities by both individual and organised criminals.

\textit{Table 27: Illegally felled timber per incident of illegal felling}

\begin{tabular}{|c|c|c|}
\hline
Year & Incidents of illegal felling & Average solid meters per incident of illegal felling \\
\hline
1994 & 704 & 32,38 \\
1995 & 1001 & 38,11 \\
1996 & 491 & 38,06 \\
1997 & 535 & 48,64 \\
1998 & 549 & 64,03 \\
1999 & n.a. & n.a. \\
2000 & 1681 & 102,51 \\
2001 & 1006 & 140,32 \\
\hline
\end{tabular}


Table 28: Illegal fellings and wood theft committed by organised groups (registered offences by the Estonian Police)

<table>
<thead>
<tr>
<th>Year</th>
<th>Illegal wood felling</th>
<th>Wood theft</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>1995</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>1996</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>1997</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>1998</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>1999</td>
<td>24</td>
<td>116</td>
</tr>
<tr>
<td>2000</td>
<td>121</td>
<td>75</td>
</tr>
<tr>
<td>2001</td>
<td>12</td>
<td>107</td>
</tr>
</tbody>
</table>

Source: Official statistics of the Estonian Police Board

Whether the above indicated figures mirror reality cannot be said. Even the government admits that a lack of resources makes it difficult to reveal all illegal activities.\textsuperscript{127} Other sources establish higher figures. The scientific service of the European Parliament indicates 1862 cases of illegal logging in 1995. This source establishes without further explanation also a severe increase of offences.\textsuperscript{128} The most frequent infringements of forestry regulations are violation of felling regulations, disturbing soil and biota and violation of forest restoration regulations.\textsuperscript{129} According to information gathered during the research only six cases of organised criminal activities in the sense of the study could have been established.

The increase of offences has to be taken in connection with the increase in annual fellings and the restitution of formerly state-owned forests. Between 1998 and 1999 the annual felling has more than doubled in Estonia. Most of the increase has been on private land, whereas the harvest volumes in state-owned forests have been comparatively stable.\textsuperscript{130} The number of private forest owners increases through privatisation and restitution which results in an increase in fellings as the owners see the potential forests as a source of income.\textsuperscript{131} In 2000 40\% of the Estonian forests had been privatised\textsuperscript{132} and with the end of the privatisation process, it is estimated that the share of private forests might be 60\%.\textsuperscript{133}

\textsuperscript{128} European Parliament: Die Umweltpolitik in Estland, Luxembourg and Brussels 1998, p. 10
\textsuperscript{129} Ahas, Rein: Illegal forestry in Estonia, Estonian Green Movement 2002, www.roheline.ee/forest/illegal_logging_estonia.doc
\textsuperscript{131} European Environment Agency: Europe’s environment: the third assessment, 2003, p. 57
Privatisation and restitution resulted in many very small private forest areas. The owners of these areas may show only limited interest in sustainable forest management.\footnote{European Environment Agency: Europe’s environment: the third assessment, 2003, p. 57} Thus it is not surprising that infringements are first and foremost detected in privately owned forests.\footnote{Ahas, Rein: Illegal forestry in Estonia, Estonian Green Movement 2002, \url{www.roheline.ee/forest/illegal_logging_estonia.doc}} Illegal activities are eased as forest owners need no permission to carry out harvesting activities in their forests. They only have to notify the nature conservation authorities.\footnote{OECD: Environmental Performance Reviews. Estonia Second Review, New York and Geneva 2001, p. 64; European Commission, DG Environment: Administrative Capacity for Implementation and Enforcement of EU Environmental Policy in the 13 Candidate Countries, 2000, p. 125}

It should also not be underestimated that poverty is a reason for illegal logging. Financial incentives to do illegal logging are quite high, which is an important factor in countries with social and economic problems caused by transition.\footnote{Although the following example is not from Lithuania it illustrates the high profit margins: A cubic meter of ash costs one dollar if stolen in Russian forests and it could be sold about 300 EUR to Japan (Bouriard, Laura/Niskanen, Anssi: Illegal logging in the context of sound use of wood, Paper for Seminar on Strategies for the Sound Use of Wood, UN Economic Commission for Europe and Food and Agricultural Organization (FAO), 2003, p. 7). Associated Press reports that in the Russian Far East illegal logging became a source of income in times of high unemployment. Small firms and family-run businesses are the main players in that game (Associated Press: Illegal Logging Biz Grows in Russia, 5 July 2000).} This has not to be seen only in regard to forest owners who utilise their small forest resources with the aim of satisfying their capital needs, but also to unemployed people. It can be assumed that in rural areas where unemployment is high willingness to be involved in illegal activities is also high. This can be deduced from the fact that there is a very extensive forest use with surprisingly low number of employed workers\footnote{Ahas, Rein: Underlying causes of deforestation and forest degradation in Estonia: A local level case study in Põva county, Estonian Green Movement, Tartu 1998, \url{www.roheline.ee/index.php3?what=forest/deforest.html}} but also from the wage payment practice in forestry industries.

The companies, which are cutting and processing both state and privately owned forests, are adopting a widely used routine of undeclared “envelope” wages. Modest calculations estimate that this practice accounts for at least 50 % of total wages paid in the forestry industry.\footnote{Ahas, Rein: Underlying causes of deforestation and forest degradation in Estonia: A local level case study in Põva county, Estonian Green Movement, Tartu 1998, \url{www.roheline.ee/index.php3?what=forest/deforest.html}} By paying “envelope” wages the companies do not only avoid paying taxes and social security contributions but also conceal their involvement in illegal cutting as they can deny responsibility in case the workers are detected by enforcement authorities while illegal logging. The workers do often have no choice as participating in this illegal activities when there are no other jobs available in their village or region.

There is another reason for increasing criminal activity which is rooted in the political transition of the country. As politicians now come to power in democratic elections they have to convince voters and this is not possible through enforcing though economic and legal reforms as they might result in increasing poverty which in turn results in non-(re-) election of the politician: “The unofficial regional policy for the ‘rural’ parties (in coalition with the Soviet directors) is to have less control in the countryside to give local people a chance to survive and to use raw materials for their own business.”\footnote{Ahas, Rein: Underlying causes of deforestation and forest degradation in Estonia: A local level case study in Põva county, Estonian Green Movement, Tartu 1998, \url{www.roheline.ee/index.php3?what=forest/deforest.html}} Such behaviour is
likely in transition societies in which compliance with law is not strongly developed due to negative historical experiences with state authorities. This pattern is dangerous for the emerging democracy in the transition countries as people will tend to think that they do not have to adhere to laws. Environmental crime in the field of logging is therefore a large-scale problem for society.

It is difficult to investigate the offences and to punish the offenders. In many cases of serious violations of logging regulations the offenders conceal personalities to avoid fines or responsibilities. Inadequately, missing or falsified documentation is often used to conceal the origin of illegally logged timber. Typical are also networks of intermediary companies with unclear ownership, which helps to hide profits, real actors and launder money. Tax frauds and fictive contracts are also common tools. The existence of such company networks and methods is a clear indication for the involvement of organised crime.

**Illegal fishing**

Commercial fisheries, both marine and freshwater are economically important in Estonia. As in the other Baltic countries the contribution of fishery and fish processing to the overall GDP is not very high according to official statistics. Notwithstanding that, many people in coastal areas depend fully on local fishery, fish processing and export. Due to a lack of alternative employment opportunities in coastal villages and high fish prices not only legal but also illegal fishing is attractive. Reported fish catches seem to be incorrect and real catches are estimated to be much higher. Unreported cod catches were evaluated by ICES to be 30% of the total catch in 1993-1996. Since 1997, unreported cod landings have decreased as the result of the enforcement of IBSFC’s special regulatory measures. Unregistered herring catch is supposedly to be at the 10% level. Please note that these figures cover Estonia, Lithuania and Latvia together and that there are no Estonian specific figures available.

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144 International Council for the Exploration of the Sea
145 International Baltic Sea Fishery Commission
Table 29: Illegal fishing in 2002

<table>
<thead>
<tr>
<th>Total number of offences</th>
<th>Offender unknown</th>
<th>Resource utilisation without permit</th>
<th>Violation of compulsory regulations</th>
<th>Number of fined persons</th>
<th>Total amount of fines in Euro</th>
<th>Average fine per person in Euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>3433</td>
<td>1350</td>
<td>1090</td>
<td>993</td>
<td>1998</td>
<td>70,454</td>
<td>35,31</td>
</tr>
</tbody>
</table>

Source: Estonian Environmental Inspectorate, www.kki.ee

For Estonia itself there are only few data on illegal fishing available. For 1995 1904 cases of illegal fishing have been reported which is a severe increase of offences.\(^{147}\) Statistics from the Estonian Environmental Inspectorate, which are available for 2002 only, indicate that violations of fishing regulations account for the most frequent environmental violations. 3422 (49% of all environmental offences) offences have been registered. 1998 people have been fined with a total fine of 70,454 EUR, which on average is equal to 35,31 Euro per fined person. The statistics indicate only 6 cases related to criminal offences and two convicted persons.\(^{148}\) Except from one case established in the course of the research no information on organised criminal activities could be established.

\(^{147}\) European Parliament: Die Umweltpolitik in Estland, Luxembourg and Brussels 1998, p. 10
\(^{148}\) Estonian Environmental Inspectorate, www.kki.ee
2.4. MARKETS IN HUNGARY

**Illegal trade in endangered species and their products**

Trade in endangered species is covered by the CITES convention of 1973 (with later amendments) and its appendices. List I of the Convention includes some 800 animals and plants in which no trading can take place. List II and III contain an overview of 23,000 animals and plans in which hunting and trading can only take place after permission from national government and in consultation with the CITES secretariat. Council Regulation (EEC) No 3626/82 of December 1982 implemented the Convention in the Community legal system. On 29 May 1985 Hungary ratified its accession to the Convention. The Convention was promulgated into Hungarian law by law decree 15 of 1986, and entered into force in Hungary on 11 September 1986.

Looking at the legal trade it can be established that Hungary is a large market for CITES-listed species. Among the Candidate Countries, Hungary is the largest importer of reptile specimens (other than live), the second largest importer of live plants (after Poland) and of live fish (after Romania). After Poland the country was the second largest exporter of life fish, the largest re-exporter of reptile specimens (other than live, of life fish and of mammal species (other than live) with wild origin.149

Statistics indicate a total trade of 2,175,081 species from 1992 to 1999. These figures concern gross trade data, which means that the same specimens can be involved several times, e.g. when they are re-exported. As this statistic concerns only specimen reported in numbers, specimen reported in other units such as kilogram have to be indicated separately. According to available statistics 12,252 kilogram bird specimen were imported and 2,369 pairs, 5,223 pairs and 154,626 pairs of mammals specimens were respectively imported, exported and re-exported.150

Looking at the extent of illegal trade in endangered species it has to be mentioned that there are several court cases each year ending with convictions. Most of these cases are closed by confiscation or fine. In 1996 the strictest conviction (1,5 years of imprisonment, suspended sentence) was given for illegal possession or trade in four birds of the species Falco cherrug.151

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149 Berkhoult, Karin: Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries, TRAFFIC Europe, 2002, p. 35
150 Ibid.
151 Ibid., p. 34
Table 30: Seizures of CITES Specimens made in relation to trade by Hungary from 1992-1999

<table>
<thead>
<tr>
<th>Year</th>
<th>Taxon</th>
<th>Species</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Re-export by Hungary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>Elephants maximus</td>
<td>mammals</td>
<td>1</td>
</tr>
<tr>
<td>1996</td>
<td>Ateles geoffroyi</td>
<td>mammals</td>
<td>1</td>
</tr>
<tr>
<td>1997</td>
<td>Testudo graeca</td>
<td>reptiles</td>
<td>160</td>
</tr>
<tr>
<td>1998</td>
<td>Boa constrictor</td>
<td>reptiles</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Import by Hungary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
</tr>
<tr>
<td>1992</td>
</tr>
<tr>
<td>1994</td>
</tr>
<tr>
<td>1994</td>
</tr>
<tr>
<td>1994</td>
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<td>1994</td>
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<tr>
<td>1996</td>
</tr>
<tr>
<td>1997</td>
</tr>
<tr>
<td>1998</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Export by Hungary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
</tr>
<tr>
<td>1997</td>
</tr>
<tr>
<td>1997</td>
</tr>
<tr>
<td>1998</td>
</tr>
<tr>
<td>1998</td>
</tr>
</tbody>
</table>

Source: Berkhoult, Karin: Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries, TRAFFIC Europe, 2002, p. 34
It has to be mentioned that in most cases the seizures have been reported by other countries except from two cases of re-export by Hungary where report was made by Hungarian authorities. This may underline the findings of Traffic Europe which establish a lack of personnel and equipment resources among the enforcement institutions.

Illegal trade in protected species occurs to be an area of environmental crime, where cases occur on a massive scale. There are some indications on the involvement of organised crime, however, there is no further information available proving this assumption. In general, it has been a problem that Italian hunters assisted by Hungarian counterparts shoot in great quantities protected birds, in order to smuggle these to Italy. The final destination of the birds are restaurants in Italy, but there has been a case where the birds have been caught to conserve and prepare them for collectors. Until 2002, cases of this sort have been reported frequently. The number of birds involved ranged from a dozen to 11,000 in a case. According to estimations published in the press, Hungary has become a large market for illegal hunting and smuggling of protected birds by Italian hunters.

There is, however, a certain tendency of improvement. The most spectacular case in November 2001 had the effect that border control has been reinforced on the Southern frontiers of Hungary. Further, the CITES office has concluded an agreement with the border guard on the basis of which training is given to the officials of guard so that they can fulfil their respective task more effectively. Besides that, foreign hunters can only operate under the supervision of a Hungarian hunter association, which reduces the possibility of illegal activities. This leads to a tendency that traffic in protected species is decreasing, whereas the perpetrators now try to leave the country towards Austria, instead of the now strictly controlled Southern frontiers. It is also a new development that the Government, supported by WWF, started a campaign for the reduction of traffic with protected species.

**Illegal pollution, dumping and storage of waste, including transfrontier shipment of waste**

Hungary has made relatively recent and piecemeal progress with a view to waste management. The greatest attention so far has been paid to hazardous waste. A 1996 Government Decree clearly defines the responsibilities of the generator, and licences for
handling and disposal of hazardous waste are now systematically reviewed. Results have also been obtained, through the application of the 1995 Product Charge Act, to a number of types of waste and the distribution of part of the revenues to support collection of used batteries, old refrigerators and refrigerants, packaging materials and used tyres. The quantity of industrial waste produced annually drastically decreased in the early nineties, following the decline in industrial production, and should now be monitored in view of current industrial growth.162

Only hazardous waste is covered by statistics, whereas other specifications are based on estimations.163 The amount of waste decreased from 106 million tons before 1990 to about 80 million tons in 1998.164 Nevertheless households produce annually 2,5% more waste.165 The National Environmental Plan of 1997 refers to a total amount of waste of 104 million tons annually, out of which 4 million tons was solid waste of municipalities, and about 20 million tons sewage. The rest is produced by the industry, agriculture and other economic activities.166

Hazardous waste is being produced in a decreasing amount. Whereas the 1997 National Environmental Plan mentioned an annual 4,2 million tons, in 1998 3,9 million tons have been registered, which was further reduced to 3,4 million tons in 2000.167 It seems to be a general problem that there is insufficient capacity for the treatment of dangerous waste.168 Large amounts of industrial hazardous waste have accumulated over the last decades awaiting treatment.169 According to estimations, factories store about 206 million tons of waste that have not been treated properly.170

Waste management is one of the major environmental problems in Hungary. Treatment capacities are insufficient. There are only a few incineration plants in the country and only 1000 of 3700 municipalities have an organised waste treatment system at their disposal.171 In 2000 only half of the Hungarian population had access to waste collection services. The other half disposed of their waste in forests or at mining sites.172 It is unclear how many illegal waste dumps do exist in Hungary. According to information of the Australian government there are 2.200 illegal dumping grounds in Hungary.173 There are also reports of thousands of illegal waste dumps close to Roma settlements.174

162 Bundesagentur für Außenwirtschaft (BFAI): Umweltsituation EU-Beitrittskandidaten, Köln 2002, p. 166-167
163 Ibid., p. 166
164 Ibid., p. 166-167
165 Ibid., p. 166-167
166 Resolution Nr. 83/1997. (IX. 26.) of Parliament on the National Environmental Plan
168 Resolution Nr. 83/1997. (IX. 26.) of Parliament on the National Environmental Plan
169 OECD Environmental performance review Hungary
172 Ibid., p. 27
sources report 2000 landfills for municipal waste of which only 701 operate with a permit.\textsuperscript{175}

In January 2003 former Ministry of Environment, Mária Kóródi, declared that the government wants to fight illegal dumping sites as the bad condition of Hungary’s environment is above all caused by them. A modification of the waste treatment legislation and severe punishments were declared as necessities for prevention of illegal waste dumping. In 2002 the government started with the preparation of a special map to assess the dimension of this problem.\textsuperscript{176} According to information of Greenpeace the Hungarian government is not aware of how many illegal waste dumps exist in the country.\textsuperscript{177}

It seems that the problem of illegal waste disposal is partly linked to the lack of an appropriate waste management infrastructure. The construction of a modern landfill in Gyál south of Budapest shall help to solve the problem of numerous illegal dump sites in this region.\textsuperscript{178} However, illegal waste dumping seems to be a relatively new problem which is above all linked to the introduction of fees for municipal waste collection. When the city of Budapest introduced such a fee in 1997 illegal waste dumping was largely unknown. Today a fee of 260 Forint (about 1 Euro) per tonne entices a lot of citizens to dispose of their waste illegally. 41.000 cubic meters, mostly construction waste, but also pots, old clothes and refrigerators have been disposed of at about 180 known sites in the city.\textsuperscript{179} In 1999 it was estimated by the Budapest city maintenance company FKF Rt. that there are about 230.000 cubic meters of illegally dumped waste in Budapest.\textsuperscript{180} The lord major of Budapest, Gábor Demszky, complained that citizens are encouraged by offenders to act in the same way. Most popular illegal disposal sites are forest borders in the urban area.\textsuperscript{181}

Although there are no figures in detail available, in can be said that companies also illegally dispose of their waste, e.g. by sinking their waste in the Danube river. Illegal waste dumping by companies is assumed to be frequent as the control mechanisms are weak.\textsuperscript{182}

In 2001 the President of the Environment Protection Committee of Parliament declared that illegal deposition of hazardous waste is carried out by organised groups. He claimed that companies are established to take over hazardous waste for treatment. Instead of proper treatment, however, waste is deposited in abandoned houses in the country. The deposits are discovered after years. At this point proof is often insufficient, and the company in question is not in the position to come up for the damages, since it either no

\textsuperscript{175} Bundesagentur für Außenwirtschaft (BFAI): Umweltsituation EU-Beitrittskandidaten, Köln 2002, p. 167
\textsuperscript{177} Telephone conversation with Judith Kalovitś, Greenpeace Hungary, 3 September 2003; In this telephone conversation it was explained that Hungarian NGOs prepare an inventory of illegal waste dumps by addressing the public.
\textsuperscript{178} Budapester Zeitung online: Moderne Mülldeponie in Gyál, 6 March 2003, www.bz.hu/artikel.php?artikelid=991
\textsuperscript{180} The Budapest Sun online: City receives a clean sweep, 23 September 1999, www.budapestsun.com/full_story.asp?Artikelid=3DAB0D6370ECE11D3BA0504F49069EA2&From=News
\textsuperscript{182} Telephone conversation with Bob Dormir, Humusz (Hulladék Munkaszövetség), 3 September 2003
longer exists, or it is undercapitalised.\textsuperscript{183} Examples include Tatabánya, where a major amount of galvanic mud was found.\textsuperscript{184} The situation is exacerbated by the fact that different types of hazardous waste can legally be deposited in one single site in the country. For instance, galvanic mud can only be deposited in Aszód. As irregularities were discovered, the site was closed for a longer time, so that the mud had to be provisionally deposited in even less appropriate sites. Thereby it is assumed that several hundred tons of hazardous waste “disappeared”.\textsuperscript{185} Another example is used oil which can only be treated in Zalaegerszeg by the leading oil company. It is claimed that the deposition of used oil is too expensive, so that this most hazardous material, out of which somewhat 40 thousand tons are produced annually, is not treated properly at an appropriate site.\textsuperscript{186}

There are also indirect signs that Hungary is being used as a transit route for dangerous waste from Austria.\textsuperscript{187}

Illegal deposition of dead animals seems to be also an area where organised activities exist. In one case in Egyek (a village East of the Danube) more then 50 tons of dead pigs were buried by a collective in violation of nature protection laws.\textsuperscript{188} Later it turned out that the same collective also buried somewhat 80 cows in violation of relevant laws. This warranted the removal of more than 130 tons of polluted soil.\textsuperscript{189}

Table 31: Hungarian criminal statistics: Illegal disposal of waste

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlawful deposition of waste dangerous for the environment (§ 281/A Hungarian Criminal Code)</td>
<td>10</td>
<td>22</td>
<td>26</td>
<td>26</td>
<td>88</td>
<td>24</td>
</tr>
</tbody>
</table>

Source: Office of the Attorney General

No well-funded conclusions can be drawn regarding criminal activities. From the above it can be concluded that illegal waste dumping is indeed a problem with a view both to households and companies. But when looking at the statistics the number of crimes is amazingly low. As illegal disposal of waste became a crime not until the modification of the criminal code in 1996 figures are available only for 1997-2002. The number of

\textsuperscript{183} Magyar Hírlap, 9 June 2000
\textsuperscript{184} Magyar Hírlap, 9 June 2000
\textsuperscript{185} Magyar Hírlap, 19 January 2001
\textsuperscript{186} Magyar Hírlap, 3 June 2002
\textsuperscript{187} Österreichisches Innenministerium: Öffentliche Sicherheit - Das Magazin des Innenministeriums, Nr. 9-10/2002 September-Oktober.
\textsuperscript{188} Magyar Hírlap, 26 May 2000
\textsuperscript{189} Magyar Hírlap, 9 June 2000
convictions is unknown. Further unknown is the distribution of crimes between individuals and companies.

**Illegal commercial trade in ozone depleting substances**

As regards the market for illegal commercial trade in ozone depleting substances, the definitions of the term „substances which deplete the ozone layer“ defined in the Vienna Convention on the protection of the ozone layer and the Montreal Protocol on ozone depleting substances, as well as at the Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer190 shall apply.

Hungary ratified the Vienna Convention on 4 May 1985. It was, however, promulgated into Hungarian law only in 1990 by government Decree No. 31/1990. (II. 16.) MT. Nevertheless the Decree ordered the application of the Convention in Hungary as from 22 September 1988. The Montreal Protocol was ratified by Hungary on 20 April 1989. The Protocol was promulgated into Hungarian law by Government Decree No. 35/1990. (II. 28.) MT, and entered into force on 19 July 1989.

In Hungary, all ozone depleting substances (ODS) are imported, as the country has no facilities for their production.191 In 1993 Hungary consumed 2,224 metric tons of ozone-depleting substances, most imported from the European Union. Chlorofluorocarbons (CFCs) accounted for roughly three-quarters of the total. CFCs and other ozone-depleting substances were used in refrigerator and freezer production and servicing, insulation for refrigerator devices, aerosols, foams, halons, and solvents.192

The National Programme for ODS Phase-out was prepared by the Ministry of Environment and Regional Policy. The quantity of ODS used as propellants has rapidly decreased, partly due to governmental regulations and partly due to fundamental changes in the Hungarian economy. Product fees for chlorofluorocarbons (CFC) refrigerants and refrigeration appliances were introduced in 1995. They serve as economic incentives for recovery, reclamation, and recycling of refrigerants. New regulations stipulate that only 25% of CFCs could be used in 1994 and 1995 compared to the base year, while 15% of carbon tetrachloride (CTC) and 50% of methyl chloroform (MCF) were allowed for use in 1995. Firms are aware of these regulations under the Montreal Protocol. They study the experiences of other countries, but they cannot undertake similar measures or introduce new ODS technologies because of the declining economic situation.193

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190 OJ L 244, 29/09/2000 p.1
In the course of the study no information on illegal commercial trade in ozone depleting substances could be found.

**Illegal dumping and shipment of radioactive waste**

Hungary has a nuclear energy plant in Paks South to Budapest at the Danube. This plant has, however, a most enhanced security system, which also covers the transport of radioactive waste. It is by this token that no irregularity has been reported in this respect. Beside the nuclear waste produced by the nuclear power plant in Paks there are about 1700 work places where radioactive techniques are used. Currently on average 30-35 m³ low and medium activity, basically short half-period wastes are produced at workplaces dealing with isotope application. This quantity includes 500-600 pieces/year exhausted radiation source which are produced at industrial, agricultural and medical workplaces. Several producers have only a few closed radiation sources. Concerning the amount of radioactive waste produced by non-electricity generation activities there are deviating indications. The Hungarian Atomic Energy Authority (HAEA) reports an annual amount of approximately 20 m³ waste stemming from such activities. Hungary has one storage site for radioactive waste treatment and disposal for the disposal of radioactive waste from health care, research, educational and industrial applications. The site, which is reaching its disposal capacity in a few years, is located in Püspökszilágy and started operation in 1976.

There are no information on illegal activities relating to disposal or shipment of radioactive waste available.

**Illegal logging**

Hungary has a territory of about 9303 thousand ha, out of which 1803,9 thousand ha are covered by forests. In other words forests make up 19,4% of the territory of the country. Out of that, 62,5% serves economic purposes. 33,1% of the forests serve the protection of different goods, i.e. wildlife, soil, water etc. 1,7% of the forests are used for health care, and tourism, or research and education. 59% of all forests are property of the state, 26,4 % is held by individuals. In the case of somewhat 13,8% of the forests the manager can not be identified on the basis of the registry of the State Forestry Agency.

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196 Erdővagyon, erdő és fagazdálkodás Magyarországon, Published by Forestry Office of the Ministry of Agriculture and rural development, Budapest, 2002
197 Ibid.
198 Ibid.
Management of forests is regulated by Act. No. LIV/1996 on forestry and on protection of the forests). According to that Act., forests are managed by forest managers appointed by the owner and registered by the State Forest Agency. Forest managers can be either natural or juridical persons, but shall possess relevant qualifications, or in the case of juridical persons at least one of its employees shall possess such qualifications. Logging of wood my only take place pursuant to a plan adopted by the State Forestry Agency for ten years. Each forest must be managed according to the relevant plan. Logging also requires an authorisation by the State Forest Agency.

Annually 7 million m\(^3\) wood is logged legally. It is estimated that further 200 – 300 thousand m\(^3\) is logged in violation of the relevant laws.\(^{199}\) In some instances, illegal logging does not go further than spontaneous covering of some needs of inhabitants of villages.\(^{200}\) In most cases illegal logging is committed by the owner or with the consent of the owner. Problems arise from the fact that sanctions are inappropriate for such cases. Whereas the forest manager may be heavily fined for illegal logging – in practice 10,000 Ft. (EUR 400) per m\(^3\) as a so called forest management fine -, anybody else shall pay an insubstantial amount as a so called forest protection fine. Should the owner be different from the forest manager and decide to log the wood illegally without the consent of the forest manager, no effective sanctions may be imposed by the authorities. In such cases, theft does not take place either. Since illegal logging does not constitute a crime, no criminal prosecution will take place.

As far as it can be traced, organised crime groups, which fall within the scope of definition of organised crime in the sense of study, have also shown interest in illegal logging in Hungary. Although in 2001 the Forestry Office has carried out an investigation on the extent of illegal logging in general, no dependable statistics are available concerning the illegal logging committed by the organised groups.

**Illegal fishing**

For the purposes of this study illegal fishing refers to activities conducted by national or foreign vessels or individuals in waters under the jurisdiction of a State, without the permission, or in contravention of its laws and regulations.\(^{201}\) Since Hungary is a landlocked state, the question of illegal sea fishery does not arise. It further follows that fishery plays a minor role within the economy.

Fishing in general is governed by Act. No. XLI of 1997 on fishing and angling. Fishing may take place according to a five year plan to be approved by the fishing authority, that is the fishing supervisor.\(^{202}\) The owner or – should the fishing area be leased – the leaser is

\(^{199}\) Interview with Gábor Barátossy, President of the Forestry Office of the Ministry of Agriculture, August 2003

\(^{200}\) Ibid.

\(^{201}\) Definition based on definition provided in FAO, International Plan for Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Rome 2001, p.24

\(^{202}\) Act. No. XLI of 1997 on fishing and angling, Section 25. Para. 2 and Section 26 Para. 1
obliged to manage the fishing area in a manner that the amount and diversity of fish is reserved.

Should the owner or the leaser inter alia disregard his or her obligation arising from the fishing management plan, plant such fish as not allowed by law or the fishing management plan, or otherwise violate the provisions of the Act on the protection of the fish, the fishing authority impose a fish management fine. The amount of such fine may vary from HUF 100 to HUF 10,000 (ca. EUR 0.4 to EUR 40) per ha. Others may be sanctioned with a fish protection fine ranging from HUF 2,000 to HUF 100,000 (ca. EUR 8 to EUR 400). Such a fine may be imposed inter alia, if fishing or angling takes place without permission.203

Illegal inland fishing may be divided into two areas. It is first common, that individuals angle without permission, exceed the limits of their permission or violate the rules applicable to angling. Although this phenomenon is quite general, in most cases it does not constitute a crime.204 Rather, a fish protection fee is being imposed. Since these cases do not involve a major amount of fish, the crime of theft in the sense of Section 316 of the Criminal Code is not committed. The crime of theft namely requires that a value of at least HUF 10,000 is involved. Damaging of the nature in the sense of Section 281 of the Criminal Code is not applicable either. The same applies to Section 280 of the Criminal Code on damaging the nature. Apparently only in one case have been German anglers convicted of theft following the seizure of more than 200 kg of illegally caught fish.

Another major area of illegal fishing is, where illegal fishing is carried out on a wider scale by groups. It may be assumed that such fishing takes place on all major fishing areas, namely on Balaton, in the Szigetköz section of Danube and on the river Tisza as well. Fishing companies regularly collect several hundred meters of nets of unknown origin.205 Criminal prosecution for theft could theoretically take place in such cases. Nevertheless it is almost impossible to find the perpetrators. Further, fish guards cannot undertake effective measures, should they encounter a larger group of illegal fishers.206

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204 Interview with Tibor Győrbíró, Department of Fishery and Wildlife, Ministry of Agriculture, August 2003
205 Ibid.
206 Ibid.
2.5. MARKETS IN LITHUANIA

Illegal trade in endangered species

Lithuania became party of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in December 2001. In March 2003 the convention entered into force. In October 2001 an order on import, export, re-export and trade in wild animals was adopted. In this framework administrative and scientific authorities have been designated for the implementation of CITES.²⁰⁷

Although Lithuania was not member of the CITES convention the Ministry of Environment already issued CITES permits in accordance with the CITES regulations. The permits are required on the state border. From 1992-1999 eight import permits, six export permits and seven re-export certificates were issued on average per year.²⁰⁸ In 2000 the Ministry of Environment issued 40 permits to export, import and re-export of CITES-listed species.²⁰⁹

Table 32: Lithuanian CITES permits in 2000

<table>
<thead>
<tr>
<th>Purpose / Permit holder</th>
<th>Number of permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re-export of caviar</td>
<td>8</td>
</tr>
<tr>
<td>Circuses</td>
<td>7</td>
</tr>
<tr>
<td>Zoos</td>
<td>13</td>
</tr>
<tr>
<td>Commercial transport of animals</td>
<td>9</td>
</tr>
<tr>
<td>Personal transport of animals</td>
<td>3</td>
</tr>
</tbody>
</table>


Permits are said to be issued for circuses, zoos, commercial purposes and hunting trophies. According to representatives of the Lithuanian CITES management authority trade in protected animals, their parts and products is permitted to juridical persons who have been involved in the protection and breeding of animals.²¹⁰

As Lithuania did not submit CITES annual reports from 1992 to 1999 an outline of legal wildlife trade can only be drawn by using figures reported by other countries that were

involved in trade with Lithuania. From this data can be concluded that Lithuania has only a small market for CITES-listed species. A total number of 3,693 specimens was reported in trade with Lithuania from 1992 to 1999. Most of the specimen were imported to Lithuania (2,972). Export of species accounted for 28, whereas re-export ran up to 962 specimen. Main countries of origin for the specimen imported by Lithuania were Argentina, Czech Republic and Canada (87% of imports). Sweden and Germany were main destination countries of export (43% of export). The main countries of origin for the specimen re-exported by Lithuania are unknown, while the main destination country was the United States (97% of re-exports). The re-export concerned nearly exclusive (> 99%) sturgeon eggs/caviar (from Acipenser gueldenstaedtii).

Caviar re-exports from Russia to Western Europe are said to account for illegal trade. In some cases applicants could not provide needed documents, whereas in other cases falsified Russian CITES permits have been identified. Beside the illegal trade in caviar there are some cases of import and export of animals (mainly reptiles) with unclear origin. In the period 1992 to 1999, for which information is available, only two seizures of CITES-listed species have been made in 1998. None of these infractions was reported by Lithuania.

Table 33: Seizures of CITES specimens made in relation to trade by Lithuania 1992-1999

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Species</th>
<th>Quantity</th>
<th>Direction of trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>Moschus spp.</td>
<td>Mammals</td>
<td>1</td>
<td>Export by Lithuania to United Kingdom</td>
</tr>
<tr>
<td>1998</td>
<td>Acipenser gueldenstaedtii</td>
<td>Fish</td>
<td>933</td>
<td>Export by Lithuania to USA</td>
</tr>
</tbody>
</table>


According to the available information there have been no convictions in Lithuania related to CITES offences. Violations of rules on possession and export can be punished under the Administrative Code with a fine of maximum 55 Euro for citizens and 137 Euro for officials.

Enforcement of sanctions related to illegal trade in wildlife seems to be weak. According to findings made by TRAFFIC EUROPE enforcement bodies such as police, State Environmental Inspectorate and State Veterinary Service are not well informed about

212 Ibid., p. 45
213 Ibid., p. 48
214 Ibid., p. 45
CITES and EU regulations. Special literature and training is needed.\(^{215}\) Training measures have been arranged in the framework of the preparation for EU accession.\(^{216}\) Due to a lack of information no information about organised criminal activities could have been established. However, there might be organised crime involved in smuggling of caviar from Russia to the USA and Europe, which is eased by weak control mechanisms.

*Illegal pollution, dumping and storage of waste, including transfrontier shipment of waste*

The extent of illegal waste disposal and shipment is difficult to assess as there are no detailed figures on illegal activities available. As in Estonia and Latvia illegal waste dumping in forests and ditches occurs frequently so to avoid charges for waste collection services.\(^{217}\) How many illegal waste dumps exist cannot be established due to a lack of information. Further there are no reliable statistics, both on municipal waste and hazardous waste.\(^{218}\)

There is a large number of pesticide storage facilities in the country constituting serious environmental problems and an area for criminal activities. The problem is inherited from the time of Soviet occupation when collective farms were supplied with large quantities of pesticides going beyond their actual needs. After the collapse of the collective farm system most of the pesticide storage facilities were left without any control.\(^{219}\) Today the major part of mentioned dangerous materials are stored under the supervision of municipal authorities. As the municipal authorities lack the needed means for cleaning up the sites they delegate this to private enterprises by the way of public tenders. As the utilisation of the pesticides is too expensive, some winners of the public tenders tend to bury these substances. In most cases these companies do not have the necessary knowledge to treat pesticides.\(^{220}\)

The case-by-case review of the study revealed for 1990-2002 14 cases of such nature when dangerous or poisonous materials (mostly pesticides) were illegally buried in Lithuania or smuggled to foreign countries. Only one case has been on trial at the court. The person was convicted for the negligent dumping of mercury to the environment.

Two cases are still under investigation. The first criminal case was instituted upon the detection of the illegally buried pesticides (4950 tones) at Nemezis local division in Vilnius region district. The damage to the environment was 300,286, 43 Euro. It was detected under investigation that the pesticides where transported from the warehouse of public


\(^{219}\) Lithuanian Ministry of Environment: State of the Environment 2001, p. 78

\(^{220}\) General prosecutor’s office of the Republic of Lithuania, April 2003
company “Chemija”. The company, which transported the pesticides, form the warehouse, was the winner of public tender for utilisation of pesticides. The case is suspended till the authorities of foreign countries deliver the replies to the requests of mutual legal assistance, issued by Lithuanian authorities. This case hardly belongs to the category of organised crime. However the investigation is no over and the final conclusions might follow later.221 A second criminal case has been instituted for the company, who has won a public tender for utilisation of pesticides. The dangerous substances (48 tones of barium chloride) instead of utilising were buried in Vilnius district. Investigation is ongoing and investigative bodies therefore do not to disclose any additional information.222

Illegal transfrontier shipment of waste

There are only few information on illegal transfrontier shipment of waste. German police reports four cases of illegal shipment of waste from Lithuania to Germany. In most of the cases Germany was a transit country and the waste was destined to Israel or South Korea.223

Table 34: Illegal transfrontier shipment of waste from Lithuania to Germany

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of waste</th>
<th>Destination</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>5,000 t of metal sludge</td>
<td>Germany</td>
<td>No valid notification.</td>
</tr>
<tr>
<td>1999</td>
<td>40 t of used batteries</td>
<td>Israel (via Hamburg)</td>
<td>No valid notification.</td>
</tr>
<tr>
<td>1999</td>
<td>Used batteries.</td>
<td>Israel (via Hamburg)</td>
<td>Shipment was sent back to place of origin.</td>
</tr>
<tr>
<td>2000</td>
<td>Used batteries.</td>
<td>South Korea (via Hamburg)</td>
<td>No valid notification. Shipment was sent back to place of origin.</td>
</tr>
</tbody>
</table>


221 General prosecutor’s office of the Republic of Lithuania, April 2003
222 Ibid.
Another incident of illegal cross-border shipment was revealed on 15th December 2000 when the environmental institutions of the Russian Federation issued a protest to the official institutions of the Republic of Lithuania concerning the trafficking of out-of-date pesticides (39,8 tones) into the territory of the Republic of Byelorussia. During the subsequent investigation it was discovered that Lithuanian company imported the dangerous materials to Byelorussia. In 1999 the company won a public tender organised by the Ministry of Environment for utilization the pesticides. The pesticides were imported to Byelorussia as “agricultural materials (fertilizers)”, afterwards under the Donation agreement the pesticides were handled to the Russian enterprise and were stored in the warehouse not complying with special requirements for the storage of the out-of-date pesticides. The criminal case was not initiated in the Republic of Lithuania, as no damage to the environment of the Republic of Lithuania was done and no evidences of other crimes, e.g. bribery, smuggling etc., were found. Lithuanian authorities have no information on the developments of the investigation in the Republic of Byelorussia.224

Illegal commercial trade in ozone depleting substances

Lithuania does not produce ozone depleting substances (ODS). Main consumer of ODS is the cooling and air conditioning sector. Demand for ODS is satisfied by imports from abroad. Consumption decreased from more than 400.000 t p.a. in 1995 to 50.000 t p.a. in 2000.225 Import and use of pure CFC, methylchloroform, carbon tetrachloride and halons have been prohibited in 2001. Import of products and articles with ODS to Lithuania will be prohibited in 2002-2004. It is also foreseen to strengthen control of ODS recovery and installations containing ODS.226

As there are no reported illegal activities or incidents only the following general remarks can be made with view to Lithuania. According to UNEP227 specialists illegal trade in ODS in transition countries has become a cause of serious concern in recent years. Lack of funding and institutional capacity, inadequate information and training, telecommunication difficulties, language barriers and lack of familiarity with working in international protection systems are the reason for insufficient control and enforcement.228 This is mirrored by the fact that only very few of the transition countries have been able to compile statistics on actual incidents of violations.229

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224 General Prosecutor’s Office
226 Ibid., p. 31-32
227 United Nations Environment Programme
**Illegal dumping and shipment of radioactive waste**

Lithuania is the only Baltic State operating a nuclear power plant. About 70% of the electricity needs is provided by the plant which will be closed by 2009. The decommissioning of the nuclear power plant – the first reactor will be closed in 2005, the second in 2009 – may increase the amount of radioactive waste due to possible dismantling.

There are two operating storage sites: one radioactive waste storage facility and one storage facility for spent nuclear fuel. A third radioactive waste storage facility has been closed in 1989.

As can be seen from the table below Lithuania is the largest consumer and producer of radioactive waste with the most facilities using radioactive devices in the Baltic countries. Radiation sources are mainly used in industries.

**Table 35: Registered facilities and radiation sources in 2000**

<table>
<thead>
<tr>
<th></th>
<th>Total number</th>
<th>Above $10^6$ of the exemption level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Estonia</td>
<td>Latvia</td>
</tr>
<tr>
<td>Facilities/licences</td>
<td>37</td>
<td>102</td>
</tr>
<tr>
<td>Radiation sources (total)</td>
<td>578</td>
<td>4.051</td>
</tr>
<tr>
<td>- industrial</td>
<td>417</td>
<td>944</td>
</tr>
<tr>
<td>- medical</td>
<td>25</td>
<td>81</td>
</tr>
<tr>
<td>- scientific</td>
<td>32</td>
<td>113</td>
</tr>
<tr>
<td>- others</td>
<td>104</td>
<td>2.913</td>
</tr>
</tbody>
</table>


As in Estonia or Latvia quality assurance and control is insufficient with respect to the training of the employees at the facility level. Furthermore there are only 11 inspectors for nuclear facilities and radiation sources in Lithuania. A lack of information does not allow to assess whether the state ensures appropriate control and risk prevention.

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**Shipment of radioactive waste**

According to the procedure established in the Republic of Lithuania, it is allowed to import, export, carry in transit, carry within the country radioactive materials and waste only with the permit issued by the Ministry of Environment. 111 permits to carry radioactive materials and waste were issued in 2000. The total activity of radioactive materials and waste that have been carried through the territory of the country amounted to 650 TBq. The largest number of permits was issued to carry radioactive waste to the repositories of Ignalina Nuclear Power Plant (53 %). Their activity amounted to 443 TBq. Mainly closed sources of used ionising radiation were carried to the repositories. The activity of the imported radioactive substances used for medicine purposes was 5.5 TBq. The main consumer of these radioactive substances are the medical institutions of the largest cities of Lithuania - Vilnius, Kaunas, Klaipėda.233

**Illegal activities**

According to information by the General Prosecutor’s Office in the course of the study six criminal cases linked to illegal disposal of radioactive materials were under investigation since 1990. All cases were prosecuted as smuggling under Article 312 Para. 2 of the Criminal Code. As the investigation was carried out by the State Security Department the results are classified information. The General Prosecutor’s Office has carried out one investigation linked to the illegal disposal of radioactive materials. The case was terminated as no suspects were detected. From the available information it can be concluded that it concerns the attempt to sell radioactive material (beryllium) on the black market and not the attempt to illegally dispose of radioactive waste. The radioactive material was temporarily imported to Lithuania with the aim to find buyers in Western Europe.

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Table 36: Registered illegal import, export and deposition of radionuclides

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>18</td>
</tr>
<tr>
<td>1998</td>
<td>2</td>
</tr>
<tr>
<td>1999</td>
<td>4</td>
</tr>
<tr>
<td>2000</td>
<td>2</td>
</tr>
<tr>
<td>2001</td>
<td>2</td>
</tr>
</tbody>
</table>


The 1998 OECD Environmental Performance Review of Lithuania stressed that insufficient border control caused by a lack of training and equipment is a reason for illegal freight transport of radioactive waste. Registered illegal transports and disposal of radioactive waste consists mainly of weak radioactive scrapmetal or ionising radiation sources contaminated in scrapmetal. The radioactive scrapmetal is registered while it is shipped across the border or during inspections of scrapmetal collection facilities. Cesium and cobalt isotopes, which are both characteristic to nuclear reactors, is the most often registered reason for contamination. Scrapmetal contaminated radium and thorium is less often registered. Both cases reported in 2001 concerned aluminium scrap contaminated by radioactive sources used in aviation. In 2000 two cases have been established of which one concerned the attempt to export scrap metal contaminated by radionuclides from Lithuania. The second case was an attempt to illegally sell a radioactive Cesium 137 source. Whether organised crime has been involved in the above activities cannot be established due to a lack of information.

Illegal logging

Since 1991 volumes of forest fellings have increased in Lithuania. In 1995-1996, due to elimination of storm consequences and massive spruce desiccation, volumes of forest fellings significantly increased and were up to 6 million m$^3$ in 1995. Volumes of fellings in private forests constantly intensify due to increasing private forest areas. During the last years volume of illegal forest fellings has also increased in Lithuania. In particular, large volumes of illegal fellings are observed in private forests. If in 1995 volume of illegal forest fellings in private forests was 3,1 thousand m$^3$, in 2001 this volume increased up to 41,3 thousand m$^3$ and amounted about 84% of total volume of illegal forest fellings in this year.

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Increasing number of illegal fellings in private forests can be explained by restitution of forests that increases the number of private forest areas and owners.\textsuperscript{237}

\textbf{Table 37: Amount of illegal timber felling (approx.)}

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount in m\textsuperscript{3}</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>13000</td>
</tr>
<tr>
<td>1999</td>
<td>15100</td>
</tr>
<tr>
<td>2000</td>
<td>24000</td>
</tr>
<tr>
<td>2001</td>
<td>48000</td>
</tr>
</tbody>
</table>


Compared with annual volume of forest fellings, volumes of illegal fellings are relatively small. Taking into account stricter liability for illegal forest fellings and strengthened forest control, it is foreseen to prevent volumes of illegal forest fellings from increasing in the future in our country\textsuperscript{238}.

In 2000 State forest officials of forest enterprises and National Parks have established 1405 cases of illegal logging, including 620 cases in private forests. The amount of illegally logged wood amounts to 25,000 m\textsuperscript{3}, including 18,800 m\textsuperscript{3} in private forests. Furthermore 135 cases of plunder of manufactured timber (1,420 m\textsuperscript{3}) have been established. 1,457 individuals were punished for illegal forest felling and other violations of the requirements of the Law on Forests of the Republic of Lithuania, 181,302 EUR of fines were imposed, 574 individuals were punished for the violations in the forests of private owners and they were subject to 131,777 EUR of fines.\textsuperscript{239} It has to be noted that Lithuanian statistics on illegal logging also record the violations against other administrative norms, e.g. labor protection, tax rules, etc.\textsuperscript{240} Therefore not every offence must be based on the illegal logging itself.

Illegal felling of trees and shrubs in the state and private forestland poses treat to sustainable use of forest. Volumes of illegal fellings rapidly grow in increasing private forest areas. Tighten liability for illegal forest fellings is enforced in order to ensure efficient control. Changing size of fines for illegal felling of trees and shrubs in forestland indicate raising liability. In 1994-1998 the size of fine did not depend on the volume of illegal timber fellings, however, there was a possibility set up in laws to take possession of equipment that were used in violation. Since 1998 differentiated size of fine depending on volume of

\textsuperscript{238} Ibidem.
\textsuperscript{239} Ibid., p. 113
\textsuperscript{240} Bouriard, Laura/Niskanen, Anssi: Illegal logging in the context of sound use of wood, Paper for Seminar on Strategies for the Sound Use of Wood, UN Economic Commission for Europe and Food and Agricultural Organization (FAO), 2003, p. 2
illegal timber felling has been set up. Moreover, fine for large volume of illegal timber felling has been increased. Since 2002 fine can be imposed along with taking possession of violation equipment and means.

Table 38: Size of fine to citizens for illegal felling of trees and shrubs in forestland

<table>
<thead>
<tr>
<th>Years</th>
<th>Size of fine (Lt) to citizens for illegal felling of trees and shrubs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>up to 10 m³</td>
</tr>
<tr>
<td>7.5.1994 – 3.4.1998</td>
<td>up to 200</td>
</tr>
<tr>
<td>3.4.1998 – 15.3.2000</td>
<td>100 - 500</td>
</tr>
<tr>
<td>15.3.2000 – 27.3.2002</td>
<td>200 - 400</td>
</tr>
<tr>
<td>Since 27.3.2002</td>
<td>200 - 400</td>
</tr>
</tbody>
</table>

Source: Forestry Development Division of Forest Department of the Ministry of Environment

Illegal deforestation is quite a spread criminal activity in the Republic of Lithuania, taking into account the small number of the environmental crimes. Every year police authorities register approximately 30 reports concerning thefts of the erect forest (illegal deforestation). However, the issues certainly do not fall under the category of environmental organised crime, as such crimes are usually committed by single individuals. Moreover, in a number of cases the owners of the forests are involved in illegal deforestation and only afterwards trying to avoid responsibility report the authorities about alleged thefts.241

The said activities might be attributed to the category of environmental organised crime, as a large number of persons are participating in criminal activities, the precise division of roles within the group is present, the organised criminals operate on the different levels, the conspiracy and the planning is present. The said groups operate for the longer time and have corrupt relation with the officers of customs and State Tax Inspectorate. The investigative bodies have launched a large scale of investigation. However it must be underlined that in most cases the environment is not the real object of the crime, the criminals target state financial system, and environment and the products thereof are mainly the tools. In the following there are two recent cases described that show the existence of organised environmental crime.

The first criminal case is under investigation at Central Investigative Department at the Ministry of Interior. The criminals are involved in a VAT fraud scheme, which consists of the following stages: illegal deforestation - legalization of the illegally deforested wood making use of counterfeited VAT invoices - export of the said wood - refund of not paid VAT. The said criminal scheme is implemented involving fake enterprises, i.e. enterprises established especially for such criminal activities. The investigation embraces examination

241 Statement of the prosecutor Simonas Minkevičius of the General prosecutor’s office of the Republic of Lithuania, April 2003
of activities of more than eighty enterprises, which were involved in the illegal VAT scheme described above. The said case might be ascribed as environmental organised crime case as damage is done to environmental resources. The presence of organised crime might be illustrated by the fact that the investigators have already faced pressure from the organised criminals and certain politicians. Due to the large scale of this case and its classified nature, further information on the investigation is not accessible.²⁴²

The second criminal case was instituted for activities, which took place from 1997 till 1999. A private enterprise registered in Lithuania, has exported 6.089 m³ of illegally acquired wood with the value of 1.829.706 Euro. The wood was acquired in an illegal way with counterfeited VAT invoices of eight other companies. After the export was performed the company has illegally refunded 329.520 Euro of VAT. During investigation it was discovered that the illegal activities were carried out by the group of at least of seven persons with the precise division of the roles within the group, each of the criminals was responsible for the specified activities, e.g. purchasing of the wood, forgery of VAT invoices etc. The investigation shall be finished soon.²⁴³

**Illegal fishing**

The Lithuanian fishery water consists of Lithuanian territorial waters of the Baltic Sea, the Curonian Lagoon and the internal surface water bodies. In 1992 Lithuania joined the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries that was signed in Ottawa on 24 October 1978. Following Article II of the Convention the Northwest Atlantic Fisheries Organisation (NAFO) was founded. The Fish Resources Department was authorised to regulate and control fishing of Lithuanian vessels in the NAFO region. Lithuanian vessels were fishing in the Northwest Atlantic Convention region following the NAFO protection and control measures, as well as the Procedure for fishing of Lithuanian vessels in the Northwest Atlantic Convention region was approved by the Ministry of Environment in 1997.

Lithuanian vessels unload a large part of fish (about 50\% of cod) caught in the Baltic Sea in Denmark and Sweden. Information was checked in accordance with the data of fishing logbooks, which was presented by the services of mentioned countries. No violations were established in the year 2000. The catch of Lithuanian vessels is controlled more efficiently when the information about unloading is being received from foreign countries²⁴⁴.

Many people in coastal areas depend fully on local fishery, fish processing and export. Due to a lack of alternative employment opportunities in coastal villages and high fish

²⁴² Ibid.
²⁴³ Ibid.
²⁴⁴ Ministry of Environment Annual report, 2000, p. 120.
Since 1990 the investigative authorities have investigated approximately 30 cases concerning the illegal fishing, however the cases might hardly be attributed to the category of environmental organised crime.\textsuperscript{247} The large number of the cases involves the sole criminals do not operating in the group. In most cases the small numbers of the fish are used for small retail or for consumption. However the investigative authorities have already traced tracks of organised criminals in other type of crimes, where illegal fishing is combined with the illegal VAT refund.

The organised criminals are employing the following scheme: illegal fishing in the Baltic Sea or Curonian Lagoon – legalization of illegal amount of fish using counterfeited VAT invoices of specially established enterprises – selling of the legalised amounts of fish – receiving revenues including illegal VAT, which is equal eighteen percent of the price.

\textsuperscript{247} Statement of the General prosecutor’s office of the Republic of Lithuania, April 2003
2.6. MARKETS IN POLAND

Illegal trade in endangered species

The following study investigates the market for illegal commercial trade in endangered species and their products.

For the purposes of this study the following definitions shall apply:

- “Species” means any species, sub-species, or geographically separate population thereof.
- “Specimen” means any animal or plant, whether alive or dead.
- In case of an animal for species included in Appendices I and II of the Convention any, any readily recognizable part or derivative thereof. For the species included in Appendix III of the Convention any readily recognizable part or derivative thereof specified in Appendix III of the Convention in relation to the species.
- In case of a plant: for the species included in Appendix I of the Convention any readily recognizable part or derivative thereof.
- “Trade” means export, re-export, import, and introduction from the sea. “Re-export” means export of any specimen that has previously been imported. “Introduction from the sea” means transportation into a state of specimens of any species, which were taken in the marine environment not under the jurisdiction of any state.

Trade in endangered species is covered by the CITES convention of 1974 (with later amendments) and its appendices. List I of the Convention includes some 800 animals and plants in which no trading can take place. List II and III contain an overview of 23,000 animals and plans in which hunting and trading can only take place after permission from national government and in consultation with the CITES secretariat.


On 12 December 1989 the Republic of Poland ratified its accession to the Convention, which entered into force, in Poland, on 12 March 1990. The Government’s proclamation about the ratification and the text of the Convention were published in the Official Journal of Laws of the Republic of Poland of 4 April 1990 (the date on which the Convention was implemented in Polish law).249 However the Convention was implemented in the Polish

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249 Dz.U. 1990 No 27, item 112 and 113
legal system in 1990 the CITES coordinators were appointed not till 1998. Due to the this
fact precise statistical data was available only from that date.

The string of supply in respect of the Polish market normally includes poachers and
collectors, local wholesalers and national distributors with links to retailers in demanding
countries. In Poland illegal market has been controlled by groups of 3 – 4 persons which
are specialized in import of endangered species into Europe.\footnote{Statement of P. Talalaj
CITES Coordinator in Air Port in Warsaw, Readers’ Digest, Egzotyczna kontrabanda, Anna
Sobczyk, Październik 2000.} In some cases criminal groups cooperate with diplomats whose luggage is excluded from custom check. Once
species illegally enter Europe, supplier distributes them among curriers, who are
responsible for further distribution. Usually curriers are students and unemployed persons.
They pick up the species from an airport and smuggle them in cars or trains to Poland.
Curriers directly deliver species to the end purchasers.\footnote{Ibidem, p.5} The end purchasers are either
keepers of live pets or collectors of endangered species or materials thereof. Since trade
in non-endangered species is permitted, smuggling groups in many instances provide in
official transport documents false numbers of species transported or present fraudulent
transport documents.\footnote{Ibidem, p. 5}

Due to the fact that controls at the airports in Poland are most complex, smugglers choose
land trip to reduce the risk of being caught. Poland is a destination and transit country for
species originated from Africa, Asia and South America. Poland is a transit country for
species smuggled to Germany, France and the Netherlands from Africa, Asia and
Russia.\footnote{Readers’ Digest, Egzotyczna kontrabanda, Anna Sobczyk, Październik 2000, p.2.}

A large number of seizures were from ordinary tourists who are usually not aware of the
fact that they brake the law. Species or their products listed in the CITES Convention are
brought by tourists bringing them from holidays as souvenirs.\footnote{Ibidem.}

Due to the fact that profitability of illegal trade in endangered species is second only to
trafficking in drugs and fact that that illegal trade of endangered species constitutes in
Poland a law only misdemeanor offence we can observe in this sphere criminal structure
comparable to drug trafficking.\footnote{Rzeczpospolita, 1999.01.30, Z dzungli, przez Polskę dalej, Krystyna Forowicz, statement of Renata Wolanin, Director of Wydział Śródków Pozataryfowych in Główny Urząd Cel} Networks of the highest sophistication will consist of
corrupt game wardens, customs officers, wildlife officers controlled by transnational
networks of purchasers, couriers, wholesalers and backing of a street-level sales
organization. This closely resembles the type of organizations dealing in drugs or
counterfeit goods. There is no official evidence that such high sophisticated groups
operate in Poland. There was one case reported that four cacadu parrots were
confiscated by the customs officers from the Warsaw air port personnel in 1997.\footnote{Statement of P. Talalaj CITES Coordinator in Air Port in Warsaw, Readers’ Digest, Egzotyczna kontrabanda, Anna Sobczyk, Październik 2000}
However statement that groups of the highest sophistication described above operate in Poland shall be an exaggeration.

Polish system of fighting organized crime in the sphere of illegal commercial trade in endangered species and their products has not improved the practice which enable to set up criminal relations and links between individuals involved in such criminal activity. It is necessary to carefully examine each incident to establish such links that may be considered highly organized in their pursuit of criminal acts, and also the level of sophistication involved. The practice of Custom Service usually differentiate a unaware tourist with two pieces from the CITES Convention and “a tourist” who undertakes multiply trips to sell the species to collectors.\textsuperscript{257} First case is considered as a minor offence however in a second situation the Custom Service practice shows that an organized crime may be involved. In such cases the volume, the sophistication, the prices items may fetch, the level of endangeredness and again, the existence of buying and selling networks are examined. However even the signs of organized crime being involved are found by the Custom Service further, investigations carry out by the Police do not follow such paths, what results in the fact that in last ten years there were no indictments of persons involved in organized crime in the sphere of unlawful commercial trade in endangered species and their products\textsuperscript{258}.

\textit{Division into legal and illegal market segments}

The value of the global legal trade ranged from 6 to 25 billion USD and the percentage of illegal cases varied from 25 \% to 70 \%. All figures remain approximations because there is no exhaustive register of world-wide legal trade nor an indicator of the number of undetected cases\textsuperscript{259} In respect of Poland all figures shall remain also approximations due to the data collecting problems.

Polish Custom Service has registered increasing number of CITES-related seizures. In 1998 Polish Custom Service registered 16 CITES-related seizures what resulted in confiscation of 256 specimen including 64 animals alive, in 1999 the number of CITES-related seizures increased to 54 what resulted in confiscation of 527 specimen including 305 animals alive, in 2000 the CITES-related seizures increased to 107 what resulted in confiscation of 1706 specimen including 1172 animals alive and 606,6 kilo of caviar, in 2001 the number of CITES-related seizures increased to 159 what resulted in confiscation of 1436 specimen including 835 specimen alive, 64,4 kilo of caviar, 81,5 kilo pharmaceuticals\textsuperscript{260}.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{257} Marcin Woźnicki’s statement – an independent natural environment protection specialist , interview dated 07 May 2003.
\item \textsuperscript{258} Ibidem.
\item \textsuperscript{259} United Nations Center for Interregional Crime and Justice Research Institute, Criminal Organizations and Crimes against the Environment – a desktop study, p. 29, www.unicri.it
\item \textsuperscript{260} Official statistics from the Ministry of Finance Departament of the Custom Service Organizatio- latter dated 20.03.2003..
\end{itemize}
\end{footnotesize}
Due to the lack of dependable statistics it is impossible to estimate the number of animals illegally smuggled into Poland each year.

The price of endangered species smuggled into Poland is approximately 20 times higher than in Africa. For the same animal, which can be bought in Africa for the price between 2 and 3 USD the end purchaser has to pay several hundred USD in Poland. The main species “exported” from Poland are birds (white eagles and bullfinches). Poland is a transit country for species smuggled from Russia and Ukraine and caviar from Russia to EU countries. The illegal transport of 12,000 kilo of the type of caviar listed in the CITES Convention was stopped in March 2003 on the Russian-Polish border. The estimated value of the transport was 12,000,000 USD. In this case Poland was the transit countries and EU countries were destination states. The sophistication involved, high profitability and the practice in Russia may indicate that organized crime is involved in illegal trade of „black gold” (common name for caviar) in Poland.

Poland is also transit country for illegal trade of cacada parrots. Illegal trade of cacada parrots is very profitable. One pair of cacada parrots costs 10 USD in Australia (country of origin), the end purchaser in Germany has to pay 20,000 USD for the same pair.

As it was mentioned above profits generated by the illegal trade of endangered species and their products are considerably high. Young Iguana iguana costs in South America 1 USD, in Czech Republic 10 USD. In Poland and final price of young Iguana Iguana amounts to 50-60 USD. The price of palm cacada parrots (Probosciger aterrimus) pair amounts 200 USD in New Guinea (country of origin). In Thailand the market price for the same pair increase up to 1,000 USD and in Poland the smuggled pair costs up to 5,000 USD. Smuggling of endangered species and their products involved highly organized and sophisticated means targeting the most endangered species. The Polish Custom Service on Polish-Ukraine border in Dorohusk caught a Ukrainian citizen while trying to smuggle 120 Mauritanian turtles. Turtles were placed in three rows and hidden between the floor and back seat of the car. 61 parrots were found on Czech and Polish border. These parrots were packed in stocking and hidden under a car upholstery and in a car spare wheel. The smuggler was caught and parrots were confiscated by the Polish Custom Service. Parrots were smuggled from the Czech Republic to Poland as a destination country.

There were no investigations concerning organized crime which shall undercover details how trafficking occurs.

There are clear indications that organized crime infiltrates the illicit trade in endangered animals, plants or parts thereof in Poland. For all other types of activities, organized crime

\[\text{References:}\]

261 K. Forowicz, Polskie gile przemycane na zachód, Rzeczpospolita 03.11.1999
262 K. Forowicz, Jaja w termosie, żabki w biełźnie, Rzeczpospolita 03.10.1998
263 Readers’ Digest, Egzotyczna kontrabanda, Anna Sobczyk, Październik 2000, p.3
264 Ibidem, p.3
265 Readers’ Digest, Egzotyczna kontrabanda, Anna Sobczyk, Październik 2000, p.2.
266 Ibidem, p. 3.
seems to be involved to some extent. It is important to note that trading in endangered animals are, with a few significant exceptions, conducted by traders running legitimate breeding facilities or pet shops. Once the legislation outlawed importation of several animals they were unwilling to stop their importation. Instead they decided to increase their profits by providing for the black market. Several observers have argued that a low level of vigilance, a modest level of penalties applied and the need for skills in smuggling have all attracted the attention of criminal organizations. 268

The low risk involved and high gains derived have also contributed to the gloomy situation (see point 3.2. part The relationship between Article 181 of the Polish Criminal Code and CITES Convention). Many of the convictions in Polish courts reflect the involvement of professional traders who are intentionally carry out criminal activities. If this is correct, there is a hidden market beneath the legitimate trade in exotic animals and plants as well as another type of emerging criminal organization focusing exclusively on wildlife products and catering for collectors and exotic animal-lovers world wide.

Possibilities for approval

The following procedure shall be observe in order to import into Poland endangered species or their products listed in CITES Convention. The export of any specimen of a species included in the Convention shall require the prior grant and presentation of an export permit obtained by the importer from the export country. The permit shall be valid up to six months. In the further stage of the procedure the importer shall obtain from the Ministry of the Environmental Protection the import permit prior presentation of the export permit. The import permit costs 105 PLN i.e. 25 EUR and covers all species listed in the permit. 269

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269 Information received from the Ministry of Environment – Department of Nature Conservation (telephone conversation dated 05.04.2003).
**Illegal pollution, dumping and storage of waste, including transfrontier shipment of waste**

The following study investigates the market for illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste.

For the purpose of this study the hazardous waste means the waste included in the Commission Decision 94/3/EEC commonly referred to as the European Waste Catalogue.

In the last decade we can observe the increasing number of cases concerning illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste.

Poland became an attractive destination as well as transit country for transports containing hazardous waste. The following study is generally based on the information and data received from the National Boarder Guard and from press releases. The National Border Guard is the institution which plays most active role in fighting transfrontier shipment of hazardous waste. The National Border Guard has an exclusive right to stop at the national border chemical and biological hazardous waste and send back to country of sender.

For the methodological purposes this study shall describe dumping and storage of waste in Poland and export of such materials from Poland separately from transfrontier shipment of hazardous waste. Each of the part shall consist of information concerning supplier and custom, division into legal and illegal market, distributions opportunities, possibilities for approval and cases describing the given problem. Please note that illegal pollution shall not be discussed in this study in details due to the fact that there are no objective signs that organized crime groups have been involved in this illegal activity. Usually illegal polluters are commercial entities, which exceed pollution limits legally granted by the self-government bodies according to quotas given by the Minister of the Environment.

**Transfrontier shipment of hazardous waste**

The global waste management industry was estimated to climb to 500 billion USD by the year 2000. The largest exporter of waste to other countries is Germany. Since the collapse of the Berlin Wall, waste shipments to Poland have nearly doubled amounting to an trade of 27 billion USD in 1993.
Due to its geographical location, Poland became major receiver of illegal hazardous waste from Germany thereupon.

At the same time when all official criminal statistics in Germany acknowledged decreasing number of ordinary crimes, the number of crimes against the natural environment considerably increased. Official statistics of the Federal Criminal Office noticed 32,092 crimes against natural environment in 1994 i.e. 7.3 % more than in 1993.

The biggest increase in 1994 was noticed in the sphere of illegal transfrontier shipment of hazardous waste from Germany. The increase was estimated on 16.2 % comparing to 1993.274

The number of crimes against natural environment in Germany increased almost five times after West and East Germany had been united. The environmental crimes constitute 1% of all criminal offences in Germany. Only in 1995 Berlin Police reported 2,500 of illegal tranfrontier shipment of the hazardous waste. Due to lack of efficient control on the border between Poland and Germany, Poland became for organized criminal groups specialized in illegal trade of hazardous waste very attractive market. In 1995 Hans Jörg Richter – Director of Environmental Crimes Unit in Berlin Police clearly confirmed that uncontrolled transport of hazardous waste from Germany to Poland was possible due to lack of sufficient protection of the Polish border.275 The largest number of transports containing hazardous waste was observed in 1991 and at the beginning of 1992 when thousands of tons of hazardous waste (inter alia used chemical agents) were transported from the former DDR276.

In Germany storage of one thousand kilo of hazardous waste cost between 10,000 and 15,000 EURO. It is estimated that in 1995 organized criminal groups were able to earn approximately 250,000 EUR per one transport.277 Those groups used all available means of transport including tracks and ships to bring hazardous waste to Poland. In 1994 Berlin Police discovered 2,300 illegal transports of hazardous waste to Poland, comparing 2,000 such transport were stopped in 1992. In 1985 only 518 of illegal transport of hazardous waste were stopped on the Polish border.278 The above data displays only those transports, which were stopped and return to Germany. It is hard to estimate the real number of transports entered Poland; therefore any numbers in this respect shall be estimated only.

In last few years due to intensification of work of the National Border Guard, The Inspection of Environmental Protection and Police illegal import of hazardous waste to Poland has been stopped to some extent. However in 1995 Andrzej Wasilewski – the Main Inspector of the Environment Protection declared that illegal import of hazardous waste to Poland had been stopped, reality turned to be completely different.279 The

274 M. Rybiński, Macki sięgają do Polski, Rzeczpospolita 31.08.1995
275 K. Forowicz, Walka ze śmieciową mafią, Rzeczpospolita 23.11.1995
276 K. Forowicz, Śmieciowy biznes, Rzeczpospolita, 13.11.1995
277 K. Forowicz, Walka ze śmieciową mafią, Rzeczpospolita 23.11.1995
278 Ibidem,
279 K. Forowicz, Śmieciowy biznes, Rzeczpospolita 13.11.1995
practice shows that there are approximately 10,000 illegal rubbish dumps (only one tenth of all rubbish dumps in Poland operate legally). Still considerable part of all hazardous waste in Poland (between 5,000 and 6,000 ton) had been illegally imported (in most cases from EU countries). Due to lack of dependable statistics it is impossible to estimate which part of illegally imported hazardous waste had been brought to Poland by organized crime groups.

The following examples display the general pattern how illegal trade in hazardous waste accrue.

For example only in 1994 approximately 4,400 ton of plastic waste were illegally imported to Poland. It is estimated that in June 1994 approximately 8,000 ton of fuel named "INDUSTRY COAL CARBO PLUS" (further: coal) was imported to Poland from Germany. After the coal was used in all major Polish municipal heat – generating plants it appeared that the coal had been mixed with extremely toxic hazardous waste.

Due to increasing number of transports in most cases customs officers are only able to control transport documents without seizure of transport itself. In such transport documents hazardous waste are usually declared as semi manufactured product. In practice it means that part off illegal import is not reported in official statistics and official statistics concerning semi manufactured products are not accurate thereupon.

In last two years only 2 transports of sewers and postproduction waste, 6 transports of used paints and varnishes, 57 transports of plastic waste and 41 transports of chemicals have been stopped on the border and return to a country of sender. The most common returns to a country of sender regard used house equipments – 2027 transports, used tires – 571 transports, car scrap 91 transports and all mechanical scrap 776 transports. Due to lack of information concerning transports which illegally entered Poland the above statistics present only part of the scale of illegal import of hazardous waste to Poland.

Only between June 1993 and December 1994 companies from Western Europe offered storage of 5,153,000 kilo of waste to Polish commercial entrepreneurs. Due to the fact that The Act on the Protection and Management of the Environment, which came into force in 1993 abolished complete prohibition of hazardous waste import, the Import of waste was legal in clearly defined circumstances thereupon. In most cases offered waste contained waste paper, scrap, plastic waste and textile waste.

According to The Act on the Protection and Management of Environment storage of imported waste did not constitute a criminal offence if the company had been granted special permission from the Main Inspector of Environment Protection (further: the Inspector). Before The Act on the Protection and Management of the Environment came

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280 J. Blikowska, Śmietnik Polska, Wprost, No 1044, 01.12.2002
281 K. Forowicz, Śmieciowy biznes, Rzeczpospolita 13.11.1995
283 Information from The Headquarter of the National Border Guard (letter dated 27 February 2003)
284 K. Forowicz, Śmieciowy biznes, Rzeczpospolita 13.11.1995
285 Information from The Headquarter of the National Border Guard (letter dated 27 February 2003)
into force only import of multi use waste had been allowed. As the result of requirement that obtaining permission from the Inspector was obligatory, the hazardous waste import was subject of Inspector’s control. In 1994 the Inspector received 526 applications for granting permission for waste import (in 1993 the Inspector received 263 applications). From all applications 253 considered import of textile waste, 159 scrap waste, 65 plastic wastes, 59 natural fiber wastes, 51 waste paper and 51 waste gums. By the end of 1994 the inspector granted 160 permissions and rejected 158 applications due to hazardous character of the waste to be imported.  

The regulations of The Act on the Protection and Management of the Environment were too ambiguous what resulted that many transports of hazardous waste entered Poland base on fraudulent permissions and documents.

The Law of Waste which came into force on 1 October 2001 introduced absolute prohibition of hazardous waste import, which had existed before 1993. From that moment any attempts of import of hazardous waste shall constitute criminal offence with a penalty of imprisonment between 3 months and 5 years. After the Law of Waste came into force we can observe the considerable limitation of illegal import of hazardous waste to Poland.

Illegal trade of hazardous waste in the world as well in Poland is highly sophisticated and organized. The organization of illegal trade of hazardous waste is comparable to drug trafficking. The monopolization of trade of hazardous waste (also in Poland) may indicate that organized crime is involved. Those companies which illegally export waste including hazardous waste abroad are able to cut its operational costs and be more competitive than companies using legal methods of utilization therefore. “Legal companies” are not able to compete with “illegal companies” and vanish from the market.

For the permission for storage of hazardous waste illegal importers pay to the owners of grounds the equivalent of 125-500 EURO. Usually owners of the lands where the hazardous waster are storage are not aware of the fact that such waste create serious threat to their life and people living even in remote neighborhood. It is very common that owners of land where hazardous waste are illegally storage are informed about the character of waste and its extremely toxic character during the Inspection of Natural Environment’s control or if containers with hazardous had poisoned the environment.

65,000 kilo of hazardous waste has been abandoned on the farmstead in Stawno (western part of Poland). That hazardous waste contain varnishes, toxic chlorines from varnish and paint factory, which had been liquidated in Dresden. The hazardous waste has been imported to Poland as a component used in paint production.
such hazardous waste poses a serious threat (including a disease called chloroza) to all habitants of village Stawno.

There are clear indications that organized crime infiltrates the transfronier shipment of hazardous waste to Poland and from Poland to other countries.\textsuperscript{293} In 1996 two businessmen from Berlin died in an airplane crash. Both of them had a long criminal record. One had been sentenced for 4,5 years imprisonment second had been accused of committing a crime penalized with up to 14 years imprisonment. Both were involved in environmental scandal. This scandal was directly related to the activities of chemical factory “Chemulack” (further: the Company). One criminal was the President of the Company, second was the Company’s liquidator. The Environmental Agency from Berlin ordered to utilized 100.000 kilo of chemical hazardous waste arose in the Company’s production process. The official order have never been fulfilled by the Company. Instead of utilization the said “businessmen” contacted a Polish citizen in ordered to illegally import the hazardous waste to Poland. Illegal transport was stopped by Police and containers of hazardous waste were seized. Polish citizen involved in criminal procedure while interrogated by Polish and German Police denied everything.\textsuperscript{294}

\textit{Official Statistics}

The below table displays general number of transports of materials, substances and hazardous waste which were stopped by the National Border Guard on the Polish border and returned to a country of sender. Stopping on the border and returning transports of hazardous waste to the country of sender fall within exclusive competency of the National Border Guard. The above-mentioned materials, substances and hazardous waste were defined as substances creating potential threat to a natural environment and a human health.

\textsuperscript{293} W. Pomianowski, Błąd pilota czy zamach, Rzeczpospolita, 23.02.1996
\textsuperscript{294} Ibidem. The case number 16 in the database.
Table 39: General number of transports of materials, substances and hazardous waste

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of transports stopped and returned by the National Border Guard to the country of sender</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>4</td>
</tr>
<tr>
<td>1991</td>
<td>47</td>
</tr>
<tr>
<td>1992</td>
<td>1,332</td>
</tr>
<tr>
<td>1993</td>
<td>2,160</td>
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<tr>
<td>1994</td>
<td>4,581</td>
</tr>
<tr>
<td>1995</td>
<td>7,248</td>
</tr>
<tr>
<td>1996</td>
<td>12,217</td>
</tr>
<tr>
<td>1997</td>
<td>11,251</td>
</tr>
<tr>
<td>1998</td>
<td>7,566</td>
</tr>
<tr>
<td>1999</td>
<td>5,025</td>
</tr>
<tr>
<td>2000</td>
<td>3,757</td>
</tr>
<tr>
<td>2001</td>
<td>3,049</td>
</tr>
<tr>
<td>2002</td>
<td>5,648</td>
</tr>
</tbody>
</table>

Source: Information from The Headquarter of the National Border Guard (letter dated 27 February 2003)

In order to present accurate data the following table is structured in the way to present different categories of hazardous waste found in transports stopped by the National Border Guard and returned to the country of sender. The below categories of waste fall within the scope of the Council Directive of 15 July 1975 on waste (75/442/EEC) and the Council Directive of 18 March 1991 amending Directive 75/442/EEC.
Table 40: Categories of hazardous waste found in transports stopped by the National Border Guard and returned a country of sender

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal or after expiration date Plants Protection Agents</td>
<td>-</td>
<td>2</td>
<td>18</td>
<td>21</td>
<td>19</td>
<td>12</td>
<td>22</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Paints and varnishes after expiration date</td>
<td>-</td>
<td>19</td>
<td>27</td>
<td>21</td>
<td>18</td>
<td>37</td>
<td>65</td>
<td>21</td>
<td>9</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Postproduction waste</td>
<td>-</td>
<td>8</td>
<td>35</td>
<td>6</td>
<td>2</td>
<td>5</td>
<td>10</td>
<td>6</td>
<td>3</td>
<td>48</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Plastic waste</td>
<td>-</td>
<td>-</td>
<td>42</td>
<td>52</td>
<td>14</td>
<td>85</td>
<td>255</td>
<td>212</td>
<td>84</td>
<td>69</td>
<td>29</td>
<td>35</td>
<td>22</td>
</tr>
<tr>
<td>Waste paper and waste leather</td>
<td>-</td>
<td>6</td>
<td>51</td>
<td>57</td>
<td>242</td>
<td>95</td>
<td>117</td>
<td>66</td>
<td>28</td>
<td>60</td>
<td>27</td>
<td>81</td>
<td>10</td>
</tr>
<tr>
<td>Glass and bottles waste</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>28</td>
<td>95</td>
<td>47</td>
<td>13</td>
<td>15</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Used tires</td>
<td>-</td>
<td>3</td>
<td>64</td>
<td>79</td>
<td>143</td>
<td>416</td>
<td>933</td>
<td>714</td>
<td>571</td>
<td>363</td>
<td>366</td>
<td>277</td>
<td>571</td>
</tr>
<tr>
<td>Car scrap</td>
<td>-</td>
<td>20</td>
<td>321</td>
<td>703</td>
<td>582</td>
<td>1419</td>
<td>2295</td>
<td>1673</td>
<td>685</td>
<td>483</td>
<td>519</td>
<td>369</td>
<td>591</td>
</tr>
<tr>
<td>Damage household equipment</td>
<td>-</td>
<td>8</td>
<td>231</td>
<td>362</td>
<td>678</td>
<td>2016</td>
<td>3290</td>
<td>3817</td>
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<td>91</td>
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<td>144</td>
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<td>142</td>
<td>106</td>
<td>2</td>
<td>325</td>
<td>41</td>
</tr>
<tr>
<td>Other</td>
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<td>2</td>
<td>115</td>
<td>128</td>
<td>219</td>
<td>959</td>
<td>1966</td>
<td>1747</td>
<td>1452</td>
<td>1238</td>
<td>1024</td>
<td>398</td>
<td>1036</td>
</tr>
</tbody>
</table>

Source: Information from The Headquarter of the National Border Guard (letter dated 27 February 2003)
Organised crime in the sphere of environment in a few Candidate Countries

The above official statistics display only number of transports, which had been stopped by the National Border Guard and returned to the country of sender. According to above tables used tires, car scrap, damage household equipments (including equipments with ozone depleting substances) are most often illegally imported to Poland.

*Illegal pollution, dumping and storage of waste in Poland*

Companies operating in Poland produce thousands of tons of hazardous waste. Considerable part of produced hazardous waste is storage on illegal waste dumps. The Supreme Chamber of Control’s audit rapports indicate that approximately 80% of Local-Government Organs do not collect any records concerning amount of hazardous waste storage in the dumps located in their administration control and for how long the waste had been storage.295

Example 1:

Hazardous waste containing toxic metals were bought by Stanislaw D. from still works for utilization purposes. (Stanislaw D. was the owner of utilization company). However Stanislaw D. was paid for utilization of the hazardous waste he illegally abandoned them instead. Illegal activity last for approximately 10 years. The case has been brought against him before Circuit Court in Swidnica thereupon. Three illegal dumps were discovered thereupon. One was placed in old brickyard in Zabkowice Slaskie (city of fifteen hundreds inhabitants). Second was found in farm silo in village Kloczyna. Third was found in Borowo where Stanislaw D used a toxic hazardous waste for construction material of public parking place. The hazardous waste poisoned ground water used in public water supply system for Legnica. Environmental experts, who testified before the Circuit Court in Swidnica declared that such poisoned water created serious threat to a public health.296

Example 2:

450 tons of waste (including 170 of hazardous waste i.e. paint waste, oil waste, solvent waste and varnish waste) packed in corroded barrels was found in the company Izomer’s warehouse in Aleksandrow (Silesia Province).297

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295 J. Blikowska, Śmietnik Polska, Wprost, No 1044, 01.12.2002
296 Ibidem. The case number 10 in the database.
297 Ibidem. The case number 8 in the database.
Example 3:

For 12 years approximately 7,000 tons of waste from electrical steel furnace has been illegally stored in the seaport in Szczecin – Swinoujscie.\textsuperscript{298} Due to insufficient financial means the hazardous waste has not been utilized so far.

Example 4:

Dozens of tons of toxic substances were found in Pokrzywdowo by the Plant Protection Institute’s controllers. Bottles with toxic substances were hidden under the ground close to the Drweca River. Drweca River supplies water for public water system in the large city (Toruń).\textsuperscript{299}

The Law of Waste concerning emitting and storage of hazardous waste is violated not only by companies and individuals who have illegally imported hazardous waste to Poland but also by the biggest Polish producers. The Supreme Chamber of Control reported that one of the biggest companies in Poland “Orlen” (fuel industry) supplied part of its hazardous waste to purchasers without any evidence.\textsuperscript{300} Other commercial entities like nitrogen factory in Tarnow – Mosciska, chemical factory “Organika –Azot” in Jaworzno or chemical factory “Organika Zachem” in Bydgoszcz storage their hazardous waste illegally (without appropriate permissions).\textsuperscript{301} Metallurgical factory Silesia was fined for illegal storage of hazardous waste in place not propositioned for that purposes by the inspectors from the Inspection of Protection of Natural Environment.\textsuperscript{302} A fine was imposed on the company “Chlodnie Kominowe” in Gliwice for illegal storage of asbestos waste. Finally the fine was annulled by a court.\textsuperscript{303} The above cases shows that crime groups or individuals do not monopolize violation of environment law. Very often public companies are perpetrators on equal terms. Having in mind above examples we can conclude that in some cases we can observe a lack of public awareness of a natural environment, which may create “a conductive atmosphere” for environmental crime groups thereupon.\textsuperscript{304}

Utilization of one ton of hazardous waste costs from a several up to several dozen thousands of PLN\textsuperscript{305}. Commercial entities in order to multiply their profits (reduction of utilization costs) decide very often to utilize hazardous waste illegally, including using contacts with organized groups thereto\textsuperscript{306}. Common practice is to use hazardous waste

\textsuperscript{298} Ibidem.

\textsuperscript{299} Ibidem. The case number 7 in the database.

\textsuperscript{300} Ibidem.

\textsuperscript{301} Ibidem.

\textsuperscript{302} Ibidem.

\textsuperscript{303} Ibidem.

\textsuperscript{304} Ibidem.

\textsuperscript{305} Marcin Woźnicki’s statement – an independent natural environment protection specialist, interview dated 07 May 2003.

\textsuperscript{306} 1 EURO = 4.3 PLN – average exchange rate from the National Bank of Poland dated 8 May 2003.
directly as a component in production of building materials.\textsuperscript{307} The owner of the company Utex from Swidnica was accused in 2001 of use of hazardous waste in bricks production. Toxic materials exceeded in this case even 50\% of all included materials (5\% is a permissible maximum). The owner shall be penalized with up to 5 years imprisonment.\textsuperscript{308} “Illegal use of hazardous waste and illegal storage is a common practice in Poland” – said Jacek Bożek, the President of Non-governmental environmental organization “Gaja”.\textsuperscript{309} Nevertheless only few present of all case are disclosed and reported to appropriate environmental controllers or prosecutors.\textsuperscript{310}

Due to the lack of official evidence of hazardous waste its storage and trade, it is rather impossible to control and prevent activities of organized crime groups engaged in illegal trade of hazardous waste thereupon.

Additionally it is impossible to clearly determine the scale of the problem due to the fact that no official records are available in common courts, prosecutor office or police concerning involvement of organized crime in the sphere of illegal trade of hazardous waste.

It seems that institutions responsible for fighting organized crime are not fully aware of the scale of the problem and did not possess operational recognition and information about organized crime groups engaged in illegal trade of hazardous waste.\textsuperscript{311} As the result of that no charges against persons participating in organized crime group have been brought before courts in last ten years although clear indictments that organized crime groups are involved in the said criminal activity exist.\textsuperscript{312}

The official monitoring system of waste (including hazardous waste) is being created in Poland according to EU standards. The system shall enable appropriate institutions to control trade in hazardous waste from a producer to an end-purchaser. Such system shall also enable to identify moments where organized crime groups are involved and to make a fight with organized crime more effective.\textsuperscript{313} The system is structured in the way to enable all records from the regional monitoring systems to be collected in the central electronic register of waste in the Ministry of Environment. All records from the central register shall be available also to prosecutor offices and police units.

Process of utilizations and transfer of hazardous by waste producer to the companies specializing in utilization of such waste are the situations when there is great probability that organized crime is involved. Very often those companies do not posses any kind of technical measures for legal utilization of such waste. In many cases those fraudulent companies are controlled by organized crime.\textsuperscript{314} Relations, interaction between persons involved in those groups and means used by them in relations with third parties shall be

\textsuperscript{307} I. Leszcznińska, Polska Odpadowa, Newsweek, No. 20/2002, p.22
\textsuperscript{308} Ibidem.
\textsuperscript{309} Ibidem.
\textsuperscript{310} Ibidem
\textsuperscript{311} Zbigniew Rau, Author of the book, Organized crime in Poland, Zakamycze 2002, interview dated 15.02.2003
\textsuperscript{312} Ibidem.
\textsuperscript{313} I. Leszcznińska, Polska Odpadowa, Newsweek, No. 20/2002, p.22
\textsuperscript{314} Cały kraj w śmieciach, Newsweek, 03.11.2002
described as activates of organized crime group. After a transport of waste is transferred to those companies usually the waste is illegally storage in special warehouses, abounded in forests or hidden under the ground. The remaining part of hazardous waste is illegally used as a component in production of building materials (see the example of the company UTEX described above).315

**Export of the hazardous waste from Poland**

Till 1995 four cases of illegal export of hazardous waste from Poland were disclosure by inspectors of Inspection of Environmental Protection. In one case the transport was stopped by the Custom Office in the Netherlands and sent back to Poland.316 The biggest illegal export of hazardous waste took place between October 1993 and September 1994 when approximately 50,000 tons of hazardous waste produced by the copper works “Legnica” were effectively sent from Poland to Kazacstan.317 In one case illegal transport of hazardous waste produced by copper work “Głogów” was stopped on the Polish-Slovak border.318 No evidence of involvement of organized crime in the above cases was collected however the engagement of such groups can not be excluded.

Due to the fact that Poland has lost a significant part of its attractiveness as a destination country (new Criminal Code, new Law of Waste, more effective control system on the borders and inside land control), Poland became a transit country for hazardous waste transported from European Union countries to Russia in particular. In 1995 Poland was qualified by German Police as a transit country for millions of ton of asbestos transported from EU countries to Russia and former Soviet Republics.319

In order to multiply profits Germany companies export their hazardous (in particular plastic waste and gum waste) to Russia and former Soviet Republic i.e. Lithuania, Latvia, Belarus, Ukraine, Georgia and Kazakhstan using Poland as a transit country. As far as such transports are concerned Polish law does not authorize any control of transports, which had been declared on the border as a transit transports. However in practice majority of transports are undertaking with at least silence acceptance from official institutions of the importing countries thus the principal condition of transfronier shipment of waste is observed.320 Due to lack of dependable data it is hard to estimate involvement level of organized crime in transfrontier shipment of hazardous waste from EU through Poland to the said countries. However taking into consideration fact that organized crime is engaged to some extend in illegal import of a hazardous waste to Poland as well as its engagement in trade and storage of a hazardous waste inside Poland we can assume

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315 Ibidem.
316 Ibidem.
317 Ibidem.
318 Ibidem.
320 Cały kraj w śmieciach, Newsweek, 03.11.2002
that part of transit of hazardous waste through Poland may be controlled by organized
groups therein.321

**Illegal commercial trade in ozone depleting substances**

The following study investigates the market for illegal commercial trade in ozone depleting
substances. For the purposes of this study the definitions of the term „substances which
deplete the ozone layer“ defined in the Vienna Convention on the protection of the ozone
layer322 and the Montreal Protocol on ozone depleting substances323, as well as the
2000 on substances that deplete the ozone layer324 shall apply.

The growing concern for the depletion of the ozone layer resulted that Poland signed on
11 November 1990 the Montreal Protocol, which followed the Vienna Convention on
ozone depleting substances from 1987. The aim of the Protocol was to reduce the use as
well as illegal trade of substances with ozone depleting potential. Governmental
Declaration of 16 March 2001 on approval of the amendment to the Montreal Protocol on
Substance that Deplete the Ozone Layer. Dz.U. 2001 no.44 item 493 is the main
executive legal act.

Ozone Depleting Substances (ODS) often referred to as chloro fluor carbons or freons are
preferred cooling agents in refrigerators and in stationary and mobile air – conditioning
equipment.

However the Montreal Protocol dated on 16 September 1987 concerning ozone-depleting
substances was signed by Polish authorities on 11 November 1990, illegal import has not
been stopped.325 From the collected information it appears that organized crime groups
are not engaged in illegal trade of ozone depleting substances in Poland.326

In most cases import ozone depleting substances from Russia and China is made by
individuals rather then organized groups.327 Lack of engagement of illegal trade in ozone
depleting substances in Poland is caused by marginal scale of the phenomenon. The total
amount of freon smuggled in whole 1996 did not exceed the amount of alcohol smuggled
in one day.328

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322 OJ L 297, 31/10/1988 p.10
323 OJ L 297, 31/10/1988 p.21
324 OJ L 244, 29/09/2000 p.1
325 K.Forowicz, czarny rynek polskiego freonu, Rzeczpospolita, 28.07.1997
326 Interview with Michał Dobrzyński from PROZON (Non-governmental organization) dated 28 April 2003
327 Ibidem.
328 K.Forowicz, czarny rynek polskiego freonu, Rzeczpospolita, 28.07.1997
The substance most commonly smuggled from Russia and China is Freon (CFC 12). Legal import of CFC 12 was abandoned on 31 December 1995. 329

Supplier and Consumer. Distribution opportunities

In illegal market of ozone depleting substances the key actors are retail and wholesale smugglers. On the end-purchaser’s request the retail smugglers are able to import illegally from Russia even up to 5 tons of R12. 330 The wholesale smugglers are able to smuggle relatively bigger amounts of R12. The end-purchasers are recruited in most cases from service stations, where distributions of ozone depleting substances is included in subject of their activity. In order to set smuggled R12 legally in the market, service stations declare to environmental controllers that the said substances had been retrieved. However import of substances from CFC group has been bounded since the beginning of 1996, retrieved CFC substances are still subject of legal commercial trade. It is very hard to find any evidence of illegal trade in ozone depleting substances due to the fact that service stations do not annotate any illegal purchases of CFC substances in their evidences. In 1997 approximately 3,000 service stations (end-purchasers) were registered. Official authorities assumed that the end of 2003 when total prohibition of use of CFC substances in Poland shall come into force should stop distribution of CFC substances originated from illegal import. 331

a) A wholesale smuggling

As far as a wholesale smuggling is concerned we can observe the existence of some degree of organizational structure however not in the sense of the study. Only one exemption from this rule has been found in last ten years (for the exemption see in-depth example)332. Wholesale smugglers usually declare to Custom Services that transported substances do not belong to CFC group. Due to technical problems (lack of appropriate equipment) in most cases Custom Service is not capable to verify weather the transported substances are HCFC 22 substances or other cooling substance as declared by the importer (import of HCFC 22 substances is legal) or CFC substances, which import has been totally banded. 333

329 Ibidem.
330 Ibidem.
331 Interview with Michał Dobrzyński from PROZON (Non- governmental organization) dated 28 April 2003
332 The case number 2 in the database.
333 Interview with Michał Dobrzyński from PROZON (Non- governmental organization) dated 28 April 2003
b) A retail smuggling

The most popular way of retail smuggling used by “freon tourists” is transport of CFC substances in small bottles designated for LPG storage or in car or bus gaz fittings. Due to the fact that approximately 30 kilo of CFC 12 can be placed in car gas fitting in one transport this means is chosen more and more often as relatively most effective. One kilo of CFC 12 costs in Russia approximately 3 USD meanwhile in Poland the same quantity of CFC 12 can be sold for approximately 15 USD (one kilo of certified CFC 12 i.e. from a legal source costs approximately 20 USD). Taking the above balance into consideration profits for retail smugglers are high. 70 % of all cars crossing Polish – Russian border are equipped with gaz fitting however due to the lack of dependable statistics it is hard to estimate how many present of cars transport in its gaz fittings CFC substances.

Division into legal and illegal market segments

In 1997 one third of all freon used in Poland came from illegal sources i.e. illegal import. There are no dependable statistics concerning the problem for last years. In last 10 years only in one custom unit an attempt of smuggling of ozone depleting substances has been reported (see in – depth example). The National Border Guard’s statistics does not provide separate data concerning import or export of ozone depleting substances. Courts and police statistics have not recorded any sentences passed against any person involved in organized crime group engaged in illegal trade in ozone depleting substances. The above consideration prove that smuggling of ozone has a marginal character and is controlled by individual criminals rather than by organized crime groups.

Possibilities for approval

The Law of Ozone Depleting Substances dated 02 March 2001 is the main legal act which enable execution of Montreal Protocol in Poland. According to this Act any import and export of ozone depleting substances is subject of approval from the Minister of Economy and Ozone Protection Office in Warsaw.

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334 Ibidem.
335 Ibidem.
336 Ibidem.
337 Dz.U. 52, item 537 with further amendments
**Illegal dumping and shipment of radioactive waste**

The following study investigates the market for illegal dumping and shipment of radioactive waste and potential radioactive material in Poland.

For the purposes of this study “radioactive waste” means any material, which contains or is contaminated by radionuclides and for which no use is foreseen.\(^{338}\)

For the methodological purposes the following studies shall be divided into two segments:

- illegal transfrontier shipment of radioactive waste and potential radioactive materials (including export and import);
- illegal trade of these materials in Poland.

Polish institutions responsible for fighting environmental crime have not developed separate complex system responsible exclusively for monitoring and control of illegal dumping and shipment of radioactive waste and potential radioactive materials. We can observe ad hoc activities rather than systematic and planned work in this respect (see information provided in points 1-4). Only the National Border Guard has developed its own practice and keeps own records concerning fighting those crimes (see point V. 3.3. and information below).

Courts, police and prosecutor offices do not conduct any separate statistics concerning those crimes. Also the Custom Service has not noticed any attempts of transfrontier shipment of radioactive waste and potential radioactive materials.

**Illegal transfrontier shipment of radioactive waste and potential radioactive material**

The data provided below concerning transfrontier shipment of radioactive waste and potential radioactive material provided by the National Border Guard cover only the number of interventions (i.e. situations when equipment signaled transport with radioactive materials or materials with heightened radiation) and number of transports returned to the country of sender. The table displayed in this part does not specify number of illegal transports and amount of materials, which fall within the definition included in Council Directive 92/3/ Euratom of 3 February 1992.

According to the National Border Guard Act dated 12 October 1990\(^{339}\), the National Border Guard has a right to stop and return to a country of sender all transports containing radioactive materials or materials with heightened radiation. However there are no dependable statistics concerning the scale of contraband of radioactive waste and

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\(^{339}\) Dz.U. 1990, No 78, pos. 469 with further amendments.
potential radioactive materials to Poland and from Poland we can assume based on the information below that such contraband exists and to some extent may be controlled by organized crime groups.\textsuperscript{340}

\textit{Supplier and Customer}

Due to the international pressure (particularly USA and European Union countries) the fight with illegal trade of nuclear materials was prioritized by Polish institutions responsible for fighting organized crime. It has appeared that such prioritization was made too early. In practice illegal trade of nuclear materials turned up to be a marginal problem in Poland. The illegal trade in radioactive waste became a real problem instead. It appeared that illegal trade of radioactive waste became a threat to a legal order due to the fact that some signs of organized crime structures were observed.

Despite the fact that no official records are collected, we can assume that several hundred cases of radioactive waste dumping have been taken place in Poland in the past few years. Potentially harmful wastes are reportedly being brought to Poland from Russia, Belarus, Ukraine, and Germany.\textsuperscript{341} There are many indications that illegal transfrontier shipment of radioactive waste is directly linked with illegal transfronier shipment of hazardous waste and is structured in a similar way.\textsuperscript{342} The principal conclusions from part concerning supplier and customer, division between legal and illegal market segments, distribution opportunities and possibilities for approval in point concerning hazardous waste shall apply for illegal market of radioactive waste description thereupon.

The below table displays the number of total interventions and Number of transports stopped on the Polish border by the National Border Guard and sent back to the country of sender. Due to lack of dependable sources information concerning the materials shipped by the investigated transports are not available.

\begin{table}
\begin{tabular}{|c|c|}
\hline
& \\
\hline
\end{tabular}
\end{table}

\textsuperscript{341} Ibidem.
\textsuperscript{342} Ibidem.
Table 41: number of total interventions and Number of transports stopped on the Polish border

<table>
<thead>
<tr>
<th>Years</th>
<th>The number of total interventions*</th>
<th>Number of transports stopped on the Polish border by the National Border Guard and sent back to the country of sender</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
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<td>-</td>
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<td>1991</td>
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<td>1994</td>
<td>1.648</td>
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<td>1995</td>
<td>11.347</td>
<td>409</td>
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<td>1996</td>
<td>18.995</td>
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<td>13.866</td>
<td>285</td>
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<td>16.945</td>
<td>133</td>
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<tr>
<td>2000</td>
<td>12.382</td>
<td>23</td>
</tr>
<tr>
<td>2001</td>
<td>13.490</td>
<td>130</td>
</tr>
<tr>
<td>2002</td>
<td>16.342</td>
<td>34</td>
</tr>
</tbody>
</table>

Source: Information from The Headquarter of the National Border Guard (letter dated 27 February 2003)

In 1995 Poland was qualified by German Police as a transit country for millions of tons of asbestos transported from EU countries to Russia and former Soviet Republics. The increase of illegal trade of radioactive waste is determined by the fact that contrary to radioactive materials it is relatively easier to find a potential end purchaser. The end purchasers of radioactive waste are owners of warehouses or land who have little knowledge of the character of storage waste and threats related to it (the end purchasers are usually the same persons, who decided to storage hazardous waste).  

* Intervention – cases when reaction of equipment for radiation control were activated.

**Division into legal and illegal market segments**

Due to the fact that all import of hazardous waste (including radioactive waste) to Poland has been banned there is no legal market segment concerning transfrontier shipment of radioactive waste. The number of transports of radioactive waste which illegally entered Poland can not be determined, due to the lack of dependable statistics.

**Distribution opportunities**

Approximately 70% of all transports stopped on Polish border come from Germany. The rest usually come from the Czech Republic. Radioactive waste as it was stated above are distributed using the same distribution channels as used for hazardous waste.

**Potentially radioactive materials (including nuclear materials)**

Organized crime groups have shown little interest in illegal trade of radioactive material in Poland however some involvement of those groups may be observed in a control of transit of those materials from Russia to EU countries.

Although there are some signs of organized crime being involved in smuggling radioactive materials, so far the extent of smuggling and its relation to organized crime appear to be exaggerated in Poland.

**Customer and Supplier**

The smuggling pathway runs from east to west, not south. Interpol identifies Poland as the most important transit country for radioactive materials that originate in the former Soviet Union. Interpol also ranks Germany, Austria, and Switzerland as frequent destinations for nuclear contraband. According to Interpol, Germany has made approximately 70 percent of all seizures of radioactive materials in Europe.

First signs of involvement of Polish criminals in illegal trafficking of radioactive materials appeared in October 1992 when German police arrested two Poles in Frankfurt-on-Main and found containers of cesium 137 and strontium 90 in their hotel room. According to press reports, an international gang that was smuggling radioactive materials from the

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344 Interview with T. Holysz, the National Border Guard Headquarter dated 15 March 2003
346 Ibidem
348 Ibidem.
former Soviet Union to Switzerland had hired the men. But a police investigation found no proof of the existence of the organized group, nor did it find the buyers. Another arrest occurred a couple of weeks later when Belarussian police detained three Poles at the Belarussian - Polish border.

The Poles admitted to smuggling uranium and gave the police the name of their boss in Terespol (eastern Poland). With these suggestions, Polish police found 1.5 kilograms of uranium hidden in a plastic bag in the house in Terespol. Police have not revealed to what extent the uranium had been enriched, if at all, or who intended to buy it.

However Polish professional criminals have shown little interest in procuring and brokering radioactive substances, probably because it is not as much profitable as drug or gun trafficking. Searching for a buyer of stolen radioactive materials can take weeks or months, and there is no guarantee that a buyer will ever be found and the risk of arrest is relatively high. Also Russian Federal Security Service routinely asserts that Russia’s major organized crime groups are not interested in nuclear trafficking.

**Distribution opportunities**

In its most visible manifestations, nuclear smuggling is a minor international irritant, not a strategic threat. Traffickers have no established links to customers, lack processing or brokering connections, and belong at best to loose or ad hoc criminal networks that are easily entrapped by aggressive law enforcement officers.

There are few links between sellers and customers. Indeed, authorities in Russia and Central Europe including Polish authorities are hard put to identify any buyers of stolen nuclear substances who were not undercover police, intelligence agents, or journalists searching for a story. On January 1991 former Deputy Minister of Culture and a former security officer were arrested in Warsaw after attempting to sell uranium to German reporters posing as businessmen. In September 1994 a Polish national tried to sell 1 kilo of U-235/238 in Germany. A German court subsequently sentenced him for two years imprisonment for trading in radioactive uranium.

Similarly, BKA environmental crime chief Peter Krömer, reported that his organization could not document a single case in which money had actually changed hands. In most instances, sellers have been arrested while searching for buyers. In 1992 the German

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350 The case number 4 in the database
353 Ibidem.
354 Ibidem.
357 Ibidem.
Foreign Affairs Ministry sent memoranda to the governments of Poland, Russia, Ukraine, Belarus, Lithuania, Latvia and Estonia, urging them to put an end to illegal exports of radioactive materials to Germany.\textsuperscript{358} The involvement of Polish criminal factor in illegal trafficking of radioactive materials to Germany was relatively high.

For example in 1992 German authorities arrested five Poles who attempted to smuggle five containers of radioactive material into Germany from Lithuania via Poland. One container held strontium, another cesium, and two others uranium.\textsuperscript{359} Poland has responded by treating all cases of nuclear smuggling very seriously. By the end of 1992 all customs checkpoints had been armed with hand-held Geiger-Miller meters. In June 1996, Poland received a sophisticated X-ray/nuclear detection vehicle through a U.S. Customs Service program. The vehicle, first developed for U.S. Customs, contains a conveyor belt for suitcases and can examine up to 1,500 packages every hour. Currently more than 40 such vans are in service in the United States.\textsuperscript{360} Aid from the West and the Polish government’s constant vigilance may be part of the reason that smuggling appears to be more common in the countries to the south and west of Poland. Nuclear commerce appears to be a game played by loosely structured groups with extremely varied memberships. These ad hoc networks usually coalesce around specific targets or opportunities, which are often merely the blandishments of undercover agents.\textsuperscript{361}

Networks can include active or former nuclear workers, opportunistic businessmen, and sometimes, petty criminals. In some cases, the participants have no criminal record. In other cases, according to data from Interpol and the German police, participants typically have histories of drug dealing, car theft, bank fraud, or weapons trafficking.\textsuperscript{362}

In conclusion, then, the visible market seems disorganized, chaotic, dominated by bumbling amateurs, and artificial. Genuine buyers with real money seldom materialize. No nuclear mafia or transnational criminal organization dominates the business including Poland. The nuclear materials detected in international supply channels are frequently mere artifacts of undercover operations.\textsuperscript{363}

However a few Western and Russian observers believe that nuclear smuggling including Polish market is more professional, better organized, and perhaps more dangerous than it now appears, however no dependable information and statistics are available.\textsuperscript{364}

\textsuperscript{358} NIS Nuclear Trafficking Data Base, www.nti.org/db/nistraff/1999/19990530.htm
\textsuperscript{360} B.Weglarczyk, Smoke, but no fire, The Bulletin of the Atomic Scientists, September 1996, p.15
\textsuperscript{362} Ibidem.
\textsuperscript{363} Ibidem.
\textsuperscript{364} Ibidem.
The illegal trade of radioactive waste and potential radioactive material in Poland

Poland itself is not a significant source of radioactive materials and waste. Its military has no nuclear research program and the only civil nuclear reactor, located at a small research facility a few miles outside of Warsaw, has a robust security system.

Four brass containers weighing 2 kilos each containing radioactive americium – 241 and cesium – 137 were stolen from a storeroom of isotopes in Wroclaw.\textsuperscript{365} However it was a single example. There are no evidence or potential signs that trade of radioactive waste and potential radioactive material produced relies on structures of organized crime in Poland.

There are no official statistics and information concerning how do hospitals and research facilities proceed with their radioactive waste.

Illegal logging

The following studies investigated the market for illegally harvested and traded timber. For the purposes of this study the following working definition shall apply:

Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national or directly nationally binding international law. It includes for example activities such as logging without permit, non-respect of nature protection and forest laws or of forests management plans and regulations, tax evasion, corruption, misdeclaration to customs, etc.\textsuperscript{366}

Illegal logging was declared in 1998 as the most serious threat to the national forests in Poland. The organized crime groups, which fall within the scope of definition of organized crime in the sense of study, have shown little interest in illegal logging.\textsuperscript{367}

Additionally no dependable statistics are available concerning the illegal lodging committed by the organized groups in the sense of study (see point Supplier and Customer).

\textsuperscript{365} United Nations Center for Interregional Crime and Justice Research Institute, Criminal Organizations and Crimes against the Environment – a desktop study, p. 64, www unicri it

\textsuperscript{366} Definition provided in Annex I (Technical Annex) to Study Contract B4-3040/2002/342085/MAR/A3 signed between the European Community and Dr. Poppe mbH, Study on organized environmental crime in a few candidate countries, p.8.

Supplier and Customer

As it was pointed above the expression “organized crime” often used by the Polish officials in respect of illegal logging is rather lay expression and does not fall within the scope of definition of organized crime provided by the European Union organs and regulations of Polish law.\textsuperscript{368} Illegal logging in most cases is brought about by ad hoc created groups of two – three people. Participants of those groups are recruited in most cases from unemployed persons, who use illegally logged timber for their own purposes or for sell to individual purchasers. 80\% of illegally logged timber is used for private purposes of the perpetrators.\textsuperscript{369} In some parts of Poland (e.g. Kielce region) illegal logging has been there for generations and has historical traditions. It is very common that all families are involved in illegal logging.\textsuperscript{370}

The following reasons define a constant increase of illegal logging in Poland:\textsuperscript{371}

- large structural unemployment and pauperization of the society: in most cases perpetrators come from poor rural areas, where illegally logged timber is used very often in small construction works as well as a fuel,

- increasing demand for middle – sized timber. Middle-sized timber is used for pallets and garden box production as well as a fuel for fire – places,

- relatively easy access to forest local roads for mini tracks: timber is stolen in such cases directly from stocks of timber situated by forest local roads. Once timber is stolen it is impossible to track down perpetrators,

- too liberal court judgment resulted that most of the perpetrators feel like being with immunity: it is common practice of courts that criminal liability for illegal logging is excluded due to “low public harm effect”.

Organized groups operate most extensively in the Świętokrzyskie Province. They use high technology equipment for harvest and transport of timber. They are also equipped in small arms, which is used by them if caught by the National Forest Guard patrol. Organized crime groups operate in other part of Poland sporadically. Two cases with engagement of organized groups were reported in 2001 in Łódzkie Province. In the first case the mass of stolen timer was equal to 20.45 cubic meters and amounted to 4.626 PLN i.e. 1.150 EURO. The perpetrators were caught and timber was recaptured. In this case three persons were involved. Two of them (co-owners of sawmill) purchased from a person directly involved in stealing the timber. The theft was sentenced for three years imprisonment suspended for two years.\textsuperscript{372} The owners of sawmill were penalized only with a fine. In the second case the mass of stolen timber was equal to 7,41 cubic meters

\textsuperscript{368} Annual European Union Organized Crime Situation Report, 6204/1/97 (ENFOPOL 35 REV 2) DG H II.
\textsuperscript{369} Interview with Mariusz Kwiecinski from the Forest National Guard Directory in Warsaw dated 25.04.2003.
\textsuperscript{370} Ibidem.
\textsuperscript{371} http://www.lasy.com.pl/a/artykul/ida/1/
\textsuperscript{372} Interview with Jerzy Laszczyk from the National Forest Guard Unit Przedbórz dated 25.04.2003, case number in the database 14.
and amounted to 1.619 PLN i.e. 400 EURO. Also in this case the perpetrators were caught.\textsuperscript{373} Although some cases concerning organized crime factors can be observed, involvement of such groups has a marginal character.\textsuperscript{374}

\textit{Division into legal and illegal market segments}

Due to its very nature, the trade in illegal timber and clear division into legal and illegal market segments is hard to estimate thereupon. The following data provide the general overview based on the rapport prepared by the National Forests for the year 1998.

In 1998 the following amount of timber was stolen\textsuperscript{375}:

- timber for common use - 27653 m\textsuperscript{3}, 20,0\% less than in 1997;
- fuel timber - 6926 m\textsuperscript{3}, 22,2\% less than in 1997;
- total number of stolen timber - 34579 m\textsuperscript{3}, 20,5\% less than in 1997\textsuperscript{376}.

We can observe a constant (however small) decrease of illegal logging. Illegal logging decreased in 16 Regional Direction of the National Forests (further: RDLP). The small rise of illegal login was reported in RDLP in Krosno. In 1998 the biggest amount of illegally logged timber was reported in:

- RDLP\textsuperscript{377} in Radom - 4667 m\textsuperscript{3},
- RDLP w Lublin - 4088 m\textsuperscript{3},
- RDLP in Cracow - 2510 m\textsuperscript{3},
- RDLP in Krosno - 2447 m\textsuperscript{3},
- RDLP in Wroc\l\aw - 2423 m\textsuperscript{3}.\textsuperscript{378}

Least number of illegal logging was reported in RDLP in Pi\l\a - 592 m\textsuperscript{3}, RDLP Zielona Góra - 595 m\textsuperscript{3}. In remaining 10 RDLP illegal logging did not exceed average number.\textsuperscript{379}

In total number of 11.243 of illegal loggings from national forests were reported in 1998, i.e. 13.3\% less than in 1997. The average percentage of perpetrators tracked down by the

\textsuperscript{373} Case number 15 in the database.
\textsuperscript{374} Interview with Jerzy Laszczyk from the National Forest Guard Unit Przedbórz dated 25.04.2003
\textsuperscript{375} the average price for one cubic meter of timber in 2001 was 120 PLN i.e. 30 EURO - http://www.lasypanstwowe.gov.pl/gospodarka/danestat/01/LPraport01.pdf
\textsuperscript{376} www.lasy.com.pl
\textsuperscript{377} RDLP – Regionalna Dyrekcja Lasów Państwowych
\textsuperscript{378} Ibidem
\textsuperscript{379} Ibidem
Organised crime in the sphere of environment in a few Candidate Countries

National Forests Guard in 1998 amounted to 39.8% and less than in 1997 (41.5%) and in 1994 (41%). The total gross value of all damages caused by illegal logging in the Polish National Forests Holding State Forests amounted in 1998 to 4,146,688 PLN i.e. 1,036,667 EURO and was lower by 11.8% of the analogous damages in 1997. In 1994 the amount 74,000 m³ was stolen from national forests amounted to 1,200,000 EURO. The damages caused by illegal logging constitute 66.3% of all kind of national forests damages in Poland. 76.5% of all damages caused by illegal logging have been recompensed by the Polish National Forests Holding State Forests - 2,533,265 PLN, i.e. 633,316 EURO – fines from the perpetrators, 637,745 PLN, i.e. 159,436 EURO the value of confiscated timber.

There are no statistics concerning the amount and value of timber illegally lodged by organized crime groups. In last 10 years there were no charges for participation in organized crime groups.

Distribution opportunities

Organized crime groups supply illegally lodged timber to sawmills where timber is converted into planks and sell to end purchasers. It is very common due to evidence problems that perpetrators do not bear criminal liability unless they are caught in the act of illegal logging. It is very hard for public prosecutors to prove before common courts illegal origin of the timber. The common practice for legalization of illegal timber is that after municipal corporations grant to applicants official approval for logging in private forest they log from national forests instead. Other way of legalization, which is often used, be organized crime groups is stealing certificates of origin from legally logged timber and providing illegally logged timber with those certificates.

Possibilities for approval

The Polish National Forests Holding State Forests is the only entity which is entitled for harvest of timber (the only exception is harvest of timber by natural persons in limited amount for private purpose with prior permission from appropriate forester officer) in national forests. Harvesting of timber by other entities than The Polish National Forests Holding State Forests shall create petty offence (if the value of illegal harvested timber does not exceed 75 PLN i.e. 20 EURO) or criminal offence penalized between 3 months and 5 years imprisonment if the value of illegally harvested timber exceeds the said amount.

Ibidem
K. Forowicz, Leśna mafia, Rzeczpospolita 28.04.1995
Ibidem
Ibidem
Ibidem
Interview with Jerzy Laszczczyk from the National Forest Guard Unit Przedbórz dated 25.04.2003
Harvest of timber from private forests is possible due to a prior permission granted by forester officer. The permission is granted base on local harvesting plans. Examination of the application and granting the permission is free of charge.\textsuperscript{385}

\textbf{Illegal fishing}

The following study investigates the market for illegal fishing. For the purposes of this study illegal fishing refers to activities conducted by national or foreign vessels or individuals in waters under the jurisdiction of a State, without the permission, or in contravention of its laws and regulations.\textsuperscript{386}

For the purposes of this study illegal unreported fishing refers to fishing activities\textsuperscript{387}:

- which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

- undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported in contravention of the reporting procedures of that organization.

For the methodological purposes the following studies shall be divided into two segments: illegal inland fishing and illegal sea fishing.

\textbf{Illegal inland fishing}

Illegal inland fishing in Poland is controlled by organized crime groups, which usually consist even up to a dozen people. In order to accelerate profits organized groups use different types of equipment like electrical aggregates, illegal nets, special illegal sticks (ended with harpoon). As the result of that their activities have catastrophic environmental consequences. Some species are endangered only because of illegal fishing which taken place during the protective periods. Usually organized crime groups use for illegal fishing sophisticated high technology equipment i.e. new models of powerboats, field and night glasses, radio equipment that make eavesdrop of Police and Inland Fisheries National Guard (IFNG) possible\textsuperscript{388}. Groups equipped with such instruments are very mobile and hard to locate by Police or IFNG. The following model of working method is applied by different organized groups: special van coolers adopted for transport of all kinds of fishes

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{385}]Information received from the National Forest Holding Office in Czerwonak on 25.04.2003.
\item[\textsuperscript{386}]Definition based on definition provided in FAO, International Plan for Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Rome 2001, p.24
\item[\textsuperscript{387}]FAO, International Plan for Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Rome 2001, p.24
\item[\textsuperscript{388}]F.Gawryś, Ryba w potrzasku, Rzeczpospolita, 30.07.1997. Information received from National Inland Fisheries Guard, Unit in Leszno.
\end{itemize}
\end{footnotesize}
pick up illegally caught fishes directly from poachers. Fishes are delivered to wholesale dealers who distribute fishes among restaurants and shops all around Poland.

Constant increase of the organized crime engagement in illegal inland fishing is caused by increasing market demand for cheap fresh water fishes and increase of profits thereupon. The increase of demand for illegally caught fishes is caused by attractive price of illegally caught fishes. The end price of fishes from illegal sources is sometimes two times lower than the end price of fishes derived from legal sources.\textsuperscript{389} The profits of organized crime groups are very high. Organized groups are able to catch within few hours even up to dozens of kilo of fishes, which value amounts even to 125 EURO (value in 1999).\textsuperscript{390} Part of generated profits are invested in new high technology equipment, which enable organized groups to continue their illegal activities even more effective. The gap between equipment status of organized groups and IFNG constantly increases thereupon.\textsuperscript{391}

Despite of the recent enlargement law of IFNG’s enforcement powers, due to personnel problems IFNG is not capable for efficient fight with organized crime groups. For example in Olsztyn Province (the biggest inland water area in Poland where illegal fishing is most extensive) one IFNG’s officer controls over 6,000 hectare of lakes. It is easy to understand that in such cases control cannot be effective.\textsuperscript{392} IFNG units in other Provinces are facing similar personnel problems.\textsuperscript{393}

Once perpetrators are caught in action they are acting very brutally. Few years ago criminals first attacked fishing anglers with a stun grenade and than opened fire to IFNG officers who tried to help the anglers.\textsuperscript{394}

Sometimes all families are involved in illegal fishing. In some villages (especially Olsztyn Province) „specialized“ in illegal fishing it is rather common that groups are formed with family members\textsuperscript{395}. The personnel and financial issues are not the only problems faced by IFNG. The lack of appreciation of the problem is visible when we observe practice of common courts concerning sanctioning practice. Very often criminals are able to persuade a criminal court that he was compelled to illegal fishing by his low material status and profits generated by illegal fishing were the only family income.

Meanwhile Wiesław Niemyjski (commandant of IFNG Unit in Olsztyn) estimates that only 20 % criminals poach for their own purposes. 30% of all defenders spent profits generated by illegal fishing on alcohol. The rest shall be categorized as professional criminals whose involvement in criminal activity is determined by pursuit of profits. We can assume that 50% of all criminals engaged in illegal fishing are involved in different types of organized criminal groups thereupon.\textsuperscript{396}

\begin{flushright}
\textsuperscript{389} Ibidem.\textsuperscript{390} Information from Rzeczpospolita, 11.05.1999\textsuperscript{391} Ibidem.\textsuperscript{392} Ibidem.\textsuperscript{393} Ibidem.\textsuperscript{394} F.Gawryś, Ryba w potrzasku, Rzeczpospolita, 30.07.1997.\textsuperscript{395} Ibidem.\textsuperscript{396} Ibidem.\textsuperscript{397} Ibidem.
Usually official statistics concerning illegal fishing do not represent clear and total view of the problem due to the fact that only cases, which had been brought before common courts, are included thereto. Many cases are not reported in the official statistics due to the fact that prosecutors define offences as causing „law public harm” and do not launch further investigations thereupon. 397 Another problem is related to the length of judicial proceedings. Yet in some courts, waiting period for a first hearing may exceed in some cases even one year.

The following numbers shall describe a scale of the problem i.e. in 1996 only in Olsztyn Province, IFNG officers confiscated 152 special nets for illegal fishing (one net enable to catch up to 20 kilo of fishes), approximately 700 different types of equipment for illegal fishing. 398 It is estimated that confiscated equipment constituted approximately 20% of all equipment being in possession of all fish farms in Olsztyn Province. 399 In IFNG Regional Unit in Leszno (there are 50 Regional Units in Poland), 400 23 persons were caught in action between 1999 and 2000 and 200 kilo of fishes and 1200 meters of special nets were confiscated. 401 Discussed cases have identified that criminals operate usually in group of 2-3 persons.

Cases, which have been disclosed, constitute only a small percentage of the problem. Most cases have never been reported to appropriate institutions. Although the IFNG declared in 1999 that illegal fishing became a major problem which create a threat to environmental balance, no convictions for participation in organized group engaged in illegal fishing has emerged in a last decade (see point sanctioning practice in 3.2). 402

Former Olsztyn, Suwałki and Toruń Provinces (due to administration reform this provinces have been united in one Warmińsko-Mazurskie Province) are regions where organized groups operate most extensively. However due to administration reform which had taken place in 1998 funds received by IFNG in the above mentioned provinces are relatively lower than funds received by IFNG in other provinces where number of lakes and as a result the number of organized groups is much lower403.

Wiesław Niemyjski – commandant of IFNG Unit in Olsztyn stated that in Warmińsko-Mazurskie Province four main organized groups engaged in illegal fishing have been identified. 404 Each of identified group use different operational methods (see in - depth example), which are also representative in respect of groups operating in other parts of Poland. He also estimated that the amount of all illegally caught fishes by organized groups constitute approximately 20 % of all legal fishing. He admitted that due to financial and personnel problems IFNG is able to control only 25% of all reported cases. 405

397 Rzeczpospolita, 11.05.1999.
399 Ibidem.
400 Information received from National Inland Fisheries Guard Unit in Kielce.
401 Information received from National Inland Fisheries Guard Unit in Leszno.
402 Information from Rzeczpospolita, 11.05.1999
403 Ibidem.
405 Ibidem.
Damages caused by illegal fishing cannot be considered only from a financial perspective. The problem has very complex angels. As the result of illegal fishing the ecological balance has been endangered. It is estimated that poachers who catch fishes migrating to Baltic Sea during protection periods control most of estuarias. In such cases illegal fishing devastate ecological balance to a great extend.

*Illegal sea fisheries*

In a period covered by the report District Inspectors of sea fisheries (okręgowi inspektorzy rybołówstwa morskiego) responsible for illegal sea fishing have not noticed any signs that may indicated that organized crime is involved. As far as illegal sea fisheries are concerned it should be pointed that the only illegal aspect appears when fishermen exceed legally prescribed fishing limits. It is also very common that the Polish Border Guard find Danish or Russian ships in Polish exclusive economic zone conducting illegal fishing i.e. without desired permissions.\(^{406}\) In most cases Polish fishermen are compelled to exceed the fishing limits due to very difficult financial standing rather than by pursuit of illegal profits. However sporadically attempts of illegal sea fishing are disclosed by the National Border Guard (in 1993 the National Border Guard confiscated 143 sets of equipments for illegal sea fishing of a total length of 6 kilometers), the assumption that organized crime has been engaged would be exaggerated.\(^{407}\) As the result it is safe to assumed that no organized crime has been involved in illegal sea fishing in Poland for last decade.

\(^{406}\) Z. Lentowicz, Strzały na pokładzie, Rzeczpospolita 02.11.1993

\(^{407}\) Ibidem
2.7. CASES IN THE CZECH REPUBLIC

Endangered species

8 cases reported.

Waste

11 cases reported.

Ozone depleting substances

0 case reported.

Radioactive waste

0 case reported.

Timber

24 cases reported.

Fishing

1 case reported.

In-depth example

Illegal logging in the Vsetín district

The following case is a typical case of organised environmental crime in the sense of the study. The criteria of collaboration or more than two people, each with appointed tasks, for a prolonged or indefinite period of time, using some form of discipline and control suspected of the commission of serious criminal offences and determined by the pursuit of profit and/or power are matched. Their offence is a criminal one according to Article 181a of the Czech Criminal Act which provides for punishment the endangering and damaging of the environment.

408 Sources: judicial file No. 1T 100/2001-1421, District Court of Vsetín, Czech Republic; interview with ing. Petr Bareš, state attorney, Office of the State Attorney of Vsetín, 13 May 2003; interview with JUDr. Koudela, judge, District Court of Vsetín, 13 May 2003; Lidové noviny, 19 March 2002
Case details

The accused persons M.P., R.P., T.C., T.P. a P.H. ordered clear-cutting of certain forest areas in the district of Vsetín, Šumperk and Strakonice in the time from March 1998 to September 1999 (please note that the district of Strakonice is very distant from the first two districts). The cutting was carried out in breach of law and resulted in clearings of approx. 16 ha. The price of round wood was at that time between 44 and 57 EUR for m³ so that illegal profits reached millions of CZK.

The offenders were unemployed or small business people, e.g. individual natural persons with a trade licence for wood processing, buying and selling. According to the judge Radomír Koudela, the accused were aware of their malfeasance. Two of the offenders acted as “white horse” as they were responsible for the purchase. Their method was usually to conclude a purchase contract with the forest owner and cut the forest down before the contract was submitted to the Land Registry to transfer the ownership. Some of the growths were in protected landscape regions. The aim of the accused was to obtain round wood, have it processed by Czech saw factories or leave it unprocessed and deliver it to final customers probably in Austria.

The forest manager responsible for the area reported the crime to the environmental department of the District Office of Vsetín which informed the Police. An investigation was started and an expert was appointed and asked to assess the damage. The expert estimated the total damage at approx. 830,000 EUR,- CZK. The expert further stated that it is not possible to set a clear date of the cutting so that it was difficult to ascribe certain cuttings to certain accused people.

All of the accused were found guilty of committing the offence of endangering of the environment § 181a par. 3 of the Criminal Act and they were sentenced to three to four years of imprisonment. The court simultaneously prohibited them to perform any business activities connected with the organisation of wood logging and buying and selling of wood mass for the time of eight years.

The judgment was passed on 18th March 2002 and came into legal force for the accused M.P. and R.P. in April 2002. These accused are serving the sentence at present. The accused T.C., T.P. and P.H. appealed. The appeal was submitted to the Regional Court of Ostrava which is superior to the District Court of Vsetín.

In the meantime, the Criminal Act was fundamentally amended with effect on 1st July 2002. Among other changes the new § 181 c “Damage to forests by excavation” was included. As a result of the amendment, the Regional Court was obliged to finish the proceedings under the new law with respect to Section 16 par. 1 of the Criminal Act (“Whether an act is illegal must be decided in accordance with the law which was in force at the time of the commission of the act; a later law must be applied if it is for the benefit of the accused.”).

Following the appeal, the Regional Court cancelled the original sentence of T.P. and condemned him pursuant to the new § 181c par. 2 of the Criminal Act to 18 months of impris-
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Enforcement suspended for three years of probation and further prohibited him to perform any business activities connected with the organisation of wood logging and buying and selling of wood mass for the time of three years.

Following the appeal of the accused P.H., the Regional Court cancelled his original sentence and condemned him on the same legal basis to twelve months of imprisonment suspended for two years of probation and further prohibited him to perform any business activities connected with the organisation of wood logging and buying and selling of wood mass for the time of two years.

The new judgment was passed on 10th October 2002. The prosecution against the accused T.C. was excluded from the common proceedings and has not been concluded yet.

Expert opinions on the case

Judge JUDr. Koudela who passed the first judgement in the case strongly criticised the new provision on illegal logging (§ 181c Criminal Act) for following reasons: The new provision makes it a crime to clear-cut an area larger than 1,5 ha or reduce the density of forest on an area larger than 3 ha. With respect to the principle “in dubio pro reo”, the courts have to interpret the provision restrictively and cannot add up single areas where clear-cutting or reducing of density occurred. For this reason, offenders who perform logging on separate areas smaller than 1,5 ha, resp. 3 ha, can evade criminal liability and are liable in administrative law only (they can be fined up to 1.000.000,- CZK pursuant to Act No. 289/1995 Coll., on forests).

State attorney Ing. Bareš who prosecuted in the case confirmed the words of JUDr. Koudela. He further made following comments on the prosecution of illegal logging in general: the old general provision on Endangering of the environment § 181a of Criminal Act covered also illegal logging. The old provision was based on the concept of environmental damage and the extent of environmental damage was decisive for the terms of the punishment. However, environmental damage was only vaguely defined in the Act No. 17/1991 Coll., on the environment, which delegated detailed definition to a regulation of the Ministry of Environment. As the regulation had not been passed at that time (and is not passed yet), the prosecution appointed forensic experts to assess the environmental damage ad hoc.

One of the experts doc. Vyskot of Mendels University of Forestry and Agriculture in Brno developed an original method for assessing environmental damage caused by illegal logging. This method modified by opinions of other experts and supported by the Ministry of Environment was confirmed by the Supreme Court of the Czech Republic (see its judgement No. 5Tz 274/2001 of 28th November 2001). However, the amendment of the Criminal Act with effect on 1st July 2002 completely abandoned the criterion of environmental damage and instead made relevant the area affected by logging. Therefore the method and the judgement of the Supreme Court are no more of relevance.
Ing. Bareš regarded as incorrect that the new law does not distinguish between different types of forests (e.g. forests in national parks (NP), forests in protected landscape areas (CHKO) or production forests without particular protection).

Also, the new provision makes it difficult to impose imprisonment without probation. The old provision made it possible to condemn offenders to up to 8 years of imprisonment. However, the new provision has the limit of 2 years of imprisonment. This is relevant in context with § 39 par. 2 (General Part) of Criminal Act which stipulates that offences with the maximum time of imprisonment of 3 years can lead to imprisonment without probation only in cases where the aim of punishment with respect to the personality of the offender obviously cannot be achieved by some other punishment. As a result, offenders who committed illegal logging can be sentenced to imprisonment without probation in exceptional cases only. None of the experts was aware of any case where organised environmental crime was indicted. In some cases, complicity was proven.

**Overall remarks**

Although the Czech Republic is the country in which most of the cases of organised environmental crime could have been identified, public authorities did not disclose much information on their background. Except from classification of cases as organised crime in the sense of the study they provided the researchers only with few information on the background of the cases. Huge workload and confidentiality were the most referred explanations by the contacted authorities.

In general it can be concluded that compared to the other countries under study in the Czech Republic distinctive enforcement structures do exist. A specialised enforcement structure regarding organised crime does not exist, however, at least one police officer is assigned to each department of economic crime. The Police structures responsible for organised crime did not deal with a case of organised environmental crime yet. Other agencies such as Customs, the Environmental Inspectorate and State Office for Nuclear Safety are also involved in tackling environmental crime. Co-operation between the authorities can be assessed as good. Notwithstanding the above it has to be mentioned that facilitation with personnel and technical resources was partly described as insufficient.

The Czech authorities openly disclosed information for the purpose of this project. Information gathering was much easier than in other countries under study. This concerns especially information on organisation and working methods of enforcement structures, but also cases of environmental crime.
2.8. CASES IN ESTONIA

Endangered species

0 case reported.

Waste

0 case reported.

Ozone depleting substances

0 case reported.

Radioactive waste

0 cases reported.

Timber

6 cases reported.

Fishing

1 case reported.

In-depth examples

Illegal logging in the Lahemaa National Park

The following criteria of organised crime apply in this case:

• collaboration of more than two people;
• each with appointed tasks;
• for a prolonged or indefinite period of time;
• using some form of discipline and control;

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• suspected of the commission of serious criminal offences;
• using commercial or businesslike structures;
• determined by the pursuit of profit and power.

Case details

On 14 May 2002, inspectors from the Environmental Inspectorate identified illegal cutting on 130 hectares in the Lahemaa National Park. Margo Klementa (age 24, previous criminal case for extraction of money from bank based on false documents and membership in organised crime group) ordered the cut of 6,000 trees on his private land based on permit for thinning cut with a value estimated on 1 million EEK.

A fine of 4,800 EEK for cutting without permit was established, an amount based on the mitigating circumstance that Margo Klementa did not have permanent income.

On 10 July 2002 the inspectors of Environmental Inspectorate identified a second illegal cutting on the privately owned land of Margo Klementa in the Lahemaa National Park. 467 tm of wood was cut without cutting permit. Tankman Keijo Kauna and workmen were found on the location. The value of cut timber was estimated at 500,000 EEK, and the environmental damage at 956,292 EEK.

On 15 July 2002, interrogations on Kejo Kauna and Margo Klementa were conducted by Environmental Inspectorate and the documentation obtained was transferred to Harjumaa Police Prefecture on 16th September 2002.

A pre-trial investigation was extended until 16th November 2002. During the investigation it was established that the owner, Margo Klementa sold the cutting right to Polarpuu company. The authorisation for using the registered immovable (land) was transferred by Klementa to Kauna. During the investigation it was further established, that Klementa and Kauna had signed a written contract for the use and cut of the land. The timber had to be sold to the Estonian biggest timber company, Sylvester.

In October 2002 the nature protection activists identified a third illegal cutting on Margo Klementa’s privately owned land. On 1 November 2002, the Environmental Inspectorate initiated misdemeanour procedure against Margo Klementa based on the missing of forest notification, which also requires the acceptance of manager of the protected area Lahemaa National Park.

On 27 May 2003 criminal charges against Margo Klementa were withdrawn as the Central Criminal Police could not find sufficient evidence against Klementa. The case against 20-year-old Keijo Kauna is currently open and a maximum 5 year of punishment can be expected, as evidence shows that Kauna organised both the cutting and selling of timber in the second cutting incident.
Specialists indicate, that the Central Police could not find any witnesses willing to testify against Klementa, as he probably had bribed witnesses or those were debtors to Klementa.

The case has been presented in the press as an example of insufficient legal possibilities to bring charges against the real key people behind illegal cuttings and the arrogance and extent of arbitrary actions of illegal wood cutters.

**Illegal logging “Cutting without permit”**

The following criteria of organised crime apply in this case:

- collaboration of more than two people;
- each with appointed tasks;
- for a prolonged or indefinite period of time;
- using some form of discipline and control;
- suspected of the commission of serious criminal offences;
- determined by the pursuit of profit and power.

**Case details**

Two Estonian citizens, Rain Lõhmus and Jaan Niklus, cut a total of 725.0m³ wood during the period of 10 February 1999 to 13 May 1999 on privately owned and state-owned land. They did not have a cutting permit and a contract for standing crop transfer. The accused cut from privately owned land 658.2m³ wood of which 287.4m³ were pine logs, 125.2m³ spruce logs, 43.3m³ birch logs, 80.7m³ pine paperwood, 53.0m³ spruce paperwood, 38.6m³ birch paperwood, 0.7m³ aspen and alder logs, 29.3m³ aspen and alder firewood (with a total value of 279,460EEK) and from state owned land 67.1m³ wood of which 16.2m³ pine logs, 15.5m³ spruce logs, 6.6m³ birch logs, 9.5m³ pine paperwood, 7.6m³ spruce paperwood, 4.1m³ birch paperwood, 7.6m³ firewood.

The purpose of cutting has not been defined mentioned in the case file. The case has been classified as concealed theft of property. The accused agreed on simplified proceedings, according to which they both received 1 year and 6 months conditional imprisonment with 3 year probation period with appointed probation supervisor. Whether other people were involved is unclear but likely.

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410 Court decisions’ database, Jõgeva Maakohus, Kriminaaltoimik nr. 1-20/01, [http://kola.just.ee](http://kola.just.ee)
An arrested Audi 5000 was sold as compensation for caused material damage and the accused were to compensate caused material damage by monthly payment of 900 EEK at least to the end of probation period. Both accused had to pay 2,160 EEK compensation levies to State revenues.

**Overall remarks**

Information gathering on cases of organised environmental crime and environmental crime in general was difficult due to a lack of statistics and background information. Statistics on environmental criminal investigations are available from 2000 to 2002 only. For the previous years only statistics on illegal logging and wood theft are available. Detailed background information on the cases is not available, neither from public nor from press or NGO sources. Only few general information can be obtained from data from court databases and press and NGOS sources.

The public authorities did not provide information on cases of organised environmental crime requested by questionnaires which have been used by the researchers. Partly they refused co-operation under reference to confidentiality and non-existence of such cases.

Estonian police declared that there are no cases of organised environmental crime. Organised crime is mainly related to illegal trade with alcohol and cigarettes, narcotics, prostitution and criminal official misconduct. There are no indications pointing at environmental crimes committed by organised groups.\(^{411}\)

However, the analysis of the markets for environmental products directs to the assumption that there is not only a high number of estimated environmental offences. Organised structures seem to be existent with a view to illegal logging, illegal commercial trade in ozone depleting substances and illegal disposal of waste at least.

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\(^{411}\) Interview with Märt Palo, Deputy Police Director of the Central Criminal Police, 8 May 2003
2.9. CASES IN HUNGARY

**Endangered species**

1 case reported.

**Waste**

0 case reported.

**Ozone depleting substances**

0 case reported.

**Radioactive waste**

0 cases reported.

**Timber**

0 cases reported.

**Fishing**

0 case reported.

**In-depth example**

*Illegal hunting of protected birds*\(^{412}\)

The following criteria of organised crime apply in this case:

- collaboration of more than two people;
- suspected of the commission of serious criminal offences;
- using commercial or businesslike structures;
- operating at an international level,
- determined by the pursuit of profit.

As this case does not meet all criteria of organised crime in the sense of the study it has to be classified as “borderline case”. However, due to a lack of available information this classification is subject to reservation.

\(^{412}\) There could be a link to an Italian case of organised environmental crime (so-called “Balkan birds case”) that has been reported by Corpo Forestale Regione Autonoma Friuli Venezia Giulia, Mr. Emilio Gottardo, in the course of the study on organised environmental crime in the EU member states (Case questionnaire, 26 November 2002, case no. 73).
Case details

On 5 November 2001 more than eleven thousand dead birds were found in an Italian truck at the Hungarian frontier at Udvari. The birds mostly belonged to protected species under Hungarian law, and were shot in Bács-Kiskun county. The purpose of their hunting and of the transport was apparently consumption in Italian restaurants. The value of the birds was estimated at about EUR 1 200 000. Some of the species found in the truck were also internationally protected and endangered by extinction. Two days later, environment protection NGOs declared in the press that the involvement of Italian and Hungarian hunters may be supposed and that there is a high chance of an organised crime – smuggling - in the specific case. On 12 November 2001 the police identified the Italian hunters who supposedly shot the animals. On 26 November 2001 the police interrogated several Hungarian hunters who may be involved in the crime. After a longer investigation it was reported on 15 February 2003 that the Bács-Kiskun County Police completed the investigation and proposed to the State Attorney to raise criminal charges against three Italian and six Hungarian citizens. Amongst the accused is an employee of a travel agency. Criminal charges were raised by the Bács-Kiskun County State Attorney before the Bács-Kiskun County Court on 19th May 2003.

The case does not seem to be an isolated one. Previously, in December 2000 and March 2001, Italian hunters have been stopped at the Hungarian frontier. Later, in August 2002, Italian hunters were caught in the Körös-Maros national park, who have shot several protected birds.

It seems, however, that concentrated efforts of the police, the nature protection authorities and of border control have lead to a significant decline in the illegal hunting activity of Italians in Hungary. According to Attila Steiner, Traffic Europe, even if smuggling of protected birds takes place in Hungary, this is now rather a transit through the country. It is remarkable that the smugglers as a tendency try to leave Hungary towards Austria, believing that control is less strict at that frontier.

Overall remarks

Information gathering proved to be difficult in Hungary. There is no or only few awareness of the enforcement authorities regarding environmental crime and organised environmental crime.

Although there is information available from press and NGO sources, it is more general and is mostly based on estimations and assumptions. Assessment of reliability is difficult.

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413 Interview with Attila Steiner, Traffic Budapest, May 2003
414 Magyar Hírlap, 8 November 2001
415 Magyar Hírlap 6, 8, 12, 18, 20 November 2001; Magyar Nemzet 15 February 2003
416 Magyar Hírlap 3 December 2000; Magyar Hírlap 2 March 2001
417 Magyar Hírlap, 24 August 2002
418 Interview with Attila Steiner, Traffic Budapest, May 2003
However, against the background of the analysis of the markets for environmental crime a large number of yet unidentified cases is likely.
2.10. CASES IN LITHUANIA

Endangered species

0 cases reported.

Waste

1 case reported.

Ozone depleting substances

0 case reported.

Radioactive waste

0 cases reported.

Timber

2 cases reported.

Fishing

1 case reported.

Cases of organised environmental crime

The research was complicated as none of the state institutions except for the General Prosecutors office are concerned by such specific area of crime. Interviews with investigators, police officers, officials of the Ministry of Environment and agencies thereof as well as representatives of NGOs did not reveal any information of interest for the research.

There are no databases available which give information on environmental crimes and crimes committed by organised criminals. Moreover the general statistic databases on crimes, which are maintained by the Ministry of the Interior and the Ministry of Justice, do not particular outline environmental crimes. Environmental crimes are one of the few categories which are not indicated in the databases.

Therefore research concentrated on criminal cases/files. The research was complicated as not all files are publicly available and not all parts of public available files are to be of access to researchers or other interested persons. The cases which are under investiga-
Organised crime in the sphere of environment in a few Candidate Countries

In order to identify cases of organised environmental crime which meet the criteria of the study a case-by-case review of the court files at the 51 of 54 district courts and at 4 of 5 county courts has been conducted.\textsuperscript{419} All court files since 11 March 1990 have been reviewed. Further a case questionnaire has been used to interview the Chairmans of each of the courts in order to find targeted cases.

\textit{Low number of convictions linked to environmental provisions of the Criminal Code}\textsuperscript{420}

The research brought only six cases of environmental crime to light which are related to the Lithuanian environmental provisions of the Criminal Code and resulted in a conviction:

- **Klaipeda City District Court**, court procedure 1993. The criminal case was instituted upon one individual for the pollution of the environment (Article 245\textsuperscript{1} of the Criminal Code). The person has been convicted.

- **Siauliai County Court**, court procedure in 1995. The criminal case was instituted upon one person for the illegal disposal of radioactive materials (Article 231\textsuperscript{2} of the Criminal Code) and smuggling of the said materials (Article 312 of the Criminal Code). The person has been convicted;

- **Kaunas City District Court**, court procedure in 1995. The criminal case was instituted upon one individual for illegal hunting (Article 330 of the Criminal Code). The person has been convicted;

- **Panevezys City District Court**, court procedure in 1998. The criminal case was instituted upon one person for illegal hunting (Article 330 of the Criminal Code). The person has been convicted;

- **Utena Region District Court**, court procedure in 2002. The criminal case was instituted upon one individual for the illegal fishing and production of the devices for the illegal fishing (Article 331 and 331\textsuperscript{1} of the Criminal Code). The person has been convicted;

- **Alytus Region District Court**, court procedure in 2003. The criminal case was instituted upon two individuals for the illegal fishing and production of the devices for the illegal fishing (Article 331 and 331\textsuperscript{1} of the Criminal Code). The persons have been convicted;

\textsuperscript{419} Three district courts and one county court have refused cooperation in the research.

\textsuperscript{420} Information has been taken from the court files.
Examples of cases which show traces of organised environmental crime:

The below described cases have been considered as organised crime as they show traces of organised crime according to the criteria of the study. As there is no further information available no in-depth examples could be prepared.

Burying of dangerous and poisonous substances including smuggling

During the Soviet occupation dangerous or poisonous substances of agricultural designation, e.g. pesticides, were not recycled or utilised and were stored at the sites of the collective farms. Nowadays the biggest part of the said dangerous substance are stored by the municipal authorities. As the municipal authorities lack the necessary financial resources they delegate the disposal of the waste to private enterprises by the way of public tenders.

Since 1990 the investigative bodies have been investigating fourteen cases of illegal burying of dangerous or poisonous substances (mostly pesticides) in Lithuania or smuggled to foreign countries. Only one case from the above-mentioned ones has been on trial at the court. The said case does not fall within the category of environmental organised crime as the person was convicted for the negligent dumping of mercury to the environment and as it was mentioned above any kind of conspiracy is excluded in crimes committed by negligence.421

Please find below two examples of the cases under investigation and one example of a suspended case, where the tracks of the organised crime were detected. Apart from the latter the cases still are under investigation, though there are no final conclusions on the involvement of organised criminals.

Case: Illegal disposal of pesticides

The first criminal case was instituted upon the detection of the illegally buried pesticides (4950 tones) at Nemezis local division in Vilnius region district. The damage to the environment was 300.286, 43 Euro. It was detected under investigation that the pesticides where transported from the warehouse of public company “Chemija”. The company, which transported the pesticides, form the warehouse, was the winner of public tender for utilisation of pesticides. The said case is suspended till the authorities of foreign countries deliver the replies to the requests of mutual legal assistance, issued by Lithuanian authorities. This case hardly belongs to the category of organised crime. However the investigation is no over and the final conclusions might follow later.422

421 General Prosecutor’s Office, April 2003
422 Ibid.
Case: *Illegal disposal of barium chloride*

A further criminal case was instituted for the company, who has won a public tender for utilisation of pesticides, however the said dangerous substances (48 tones of barium chloride) instead of utilising were buried in Vilnius district. The said investigation is ongoing and investigative bodies are unable to disclose any additional information.\textsuperscript{423}

Suspended case: *Illegal import of dangerous substances to Byelorussia*

The above mentioned suspended case relating to smuggling of pesticides indicates the involvement of organised crime. On 15\textsuperscript{th} December 2000 the environmental institutions of the Russian Federation issued the objection to the official institutions of the Republic of Lithuania concerning the trafficking in to the territory of the Republic of Byelorussia the amounts of out-of-date pesticides (39,8 tones). The investigation was launched after the receiving of the objection. During investigation it was discovered that Lithuanian company imported the dangerous substances to Byelorussia. The said company in 1999 won a public tender by the Ministry of Environment for utilisation of pesticides. The pesticides were imported to Byelorussia as the “agricultural materials (fertilisers)”, afterwards under the Donation agreement the pesticides were handled to the Russian enterprise and were stored in the warehouse not corresponding special requirements for the storage of the out-of-date pesticides. The criminal case was not initiated in the Republic of Lithuania, as no damage to the environment of the Republic of Lithuania was done and no evidences of other crimes, e.g. bribery, smuggling etc., were found. Lithuanian authorities have no information on the developments of the investigation in the Republic of Byelorussia. The Officers from the General Prosecutor’s office tend describing this case as belonging to the category of the environmental organised crime cases, as it is obvious that a number of persons has been involved in the crime, the gang was operating on multinational level, the members of the gang had the division of roles within the group. Moreover, there are suspicions that the gang had corrupt relations with the customs officers.\textsuperscript{424}

*Illegal logging*

Illegal deforesting is a quite spread criminal activity in the Republic of Lithuania, taking into account the small number of the environmental crimes. Every year police authorities register approximately thirty reports concerning thefts of the erect forest (illegal deforesting). However, the said issues certainly do not fall under the category of environmental organised crime, as single individuals usually commit such crimes. Moreover, in a number of cases the owners of the forests are involved in illegal deforesting and only afterwards trying to avoid responsibility report the authorities about alleged thefts.

\textsuperscript{423} Ibid.

\textsuperscript{424} Ibid.
Tracks of organised crime might be discovered in a related area of criminality.\textsuperscript{425} The organised criminals are involved in a VAT fraud scheme, which consists of the following stages: illegal deforestation - legalisation of the illegally deforested wood making use of counterfeited VAT invoices - export of the said wood - refund of not paid VAT. The said criminal scheme is implemented involving fake enterprises, i.e. enterprises established especially for such criminal activities.

The said activities might be attributed to the category of environmental organised crime, as a large number of persons are participating in criminal activities, the precise division of roles within the group is present, the organised criminals operate on the different levels, the conspiracy and the planning is present. The said groups operate for the longer time and have corrupt relation with the officers of customs and State Tax Inspectorate. The investigative bodies have launched a large scale of investigation. However in must be underlined that in most cases the environment is not the real object of the crime, the criminals target state financial system, and environment and the products thereof are mainly the tools. In the following there are two recent cases described that show the existence of organised environmental crime.

\textit{Case: Illegal logging and VAT fraud I}

This criminal case is under investigation at Central Investigative Department at the Ministry of Interior. The investigation embraces examination of activities of more than eighty enterprises, which were involved in the illegal VAT scheme described above. The said case might be ascribed as environmental organised crime case as damage is done to environmental resources. The presence of organised crime might be illustrated by the fact that the investigators have already faced pressure from the organised criminals and certain politicians. Due to the large scale of this case and its classified nature, further information on the investigation is not accessible.\textsuperscript{426}

\textit{Case: Illegal logging and VAT fraud II}

The second criminal case was instituted for activities, which took place from 1997 till 1999. A private enterprise registered in Lithuania, has exported 6.089 m\textsuperscript{3} of illegally acquired wood with the value of 1.829.706 Euro. The wood was acquired in an illegal way with counterfeited VAT invoices of eight other companies. After the export was performed the company has illegally refunded 329.520 Euro of VAT. During investigation it was discovered that the illegal activities were carried out by the group of at least of seven persons with the precise division of the roles within the group, each of the criminals was responsi-

\textsuperscript{425} Ibid.
\textsuperscript{426} Ibid.
ble for the specified activities, e.g. purchasing of the wood, forgery of VAT invoices etc. The investigation shall be finished soon.\textsuperscript{427}

The attributing of the said cases to the category of environmental organised crime cases is complicated to the extent that environmental resources are only tools (object) of the crimes and the damage is done to other values such as state budget and financial stability of the state. The damage is also done not to the environment but to the state financial system – VAT refunding, as the investigative authorities are unable to identify whether the wood was illegally deforested in Lithuania or smuggled from other post-Soviet countries.

**Illegal fishing**

Since 1990 the investigative authorities have investigated approximately thirty cases concerning illegal fishing. Although most of the cases are committed by individuals the investigative authorities have already traced tracks of organised criminals in other type of crimes, where the illegal fishing is combined with illegal VAT refund.

The organised criminals are employing the following scheme which is similar to cases of illegal logging: They illegally fish in the Baltic Sea or Curonian Lagoon and legalise the illegal fish by using counterfeited VAT invoices of specially established enterprises. When they sell the fish they realise revenues which include via refunding illegally obtained VAT, equal to eighteen percent of the price. Still there is no criminal cases instituted linked to the criminal activities described above.

**Overall remarks**

The examination of the two groups of criminal cases – cases under investigation and post trial cases – revealed the fact that the number of environmental crimes under investigation and on trial is very small. From the research the following conclusions can be drawn:

- The provisions of the Criminal Code of the Republic of Lithuania and the criminal law doctrine draw an essential line between organised crime and environmental crimes. The Article 227\textsuperscript{1} of the Criminal Code prescribes definition of organised crime, the said definitions embraces only the serious (grave) crimes; however none of the environmental crimes belong to the category of serious (grave) crimes. Therefore there is no major attention and researched directed towards environmental organised crime and such crimes are considered as irrelevant;

- Organised crime and environmental crimes usually do not overlap. Some overlapping might be observed in the marginal areas between organised and environmental criminality. The cases mentioned above illustrated conditional overlapping between organ-

\textsuperscript{427} Ibid.
ised crime and environmental crime in the schemes of illegal refunding of VAT. However, it would be too far-reaching conclusion to describe the said cases as environmental organised crime. It is obvious that organised criminals are seeking benefits from trading the illegally deforested wood or illegally fished up fish. However, they are also targeting VAT, which compound 18 percent of the value of the good. Organised criminals are involved in large scale VAT refunding operations in the Republic of Lithuania, when different items are used for illegal VAT refunding (textile products etc.). This lead to the conclusion that the environmental items or are only the tools in VAT refunding operations;

- The other example of overlapping between organised crime and environmental crime could be the activities related to burying or smuggling of dangerous substances. However Lithuanian investigative authorities have no firm evidence concerning participation of organised criminals in such activities. Moreover, the experts form General Prosecutors office draw attention that the organised criminals are actually involved in the said activities and this allegation might be supported by the analysis of the element of these crimes, as it was mentioned above;

- The overall conclusion could be that the environment is not main target of the organised criminals, because the Republic of Lithuania is not rich of its environmental resources. Moreover the organised criminals are involved in more profitable areas of criminality, i.e. car thefts, trafficking in drugs etc. The absence of dynamic activities of the organised criminals in the sphere of environmental crimes stipulates the lower activity of researches and state institutions. Therefore there is very little attention paid to the said question in the Republic of Lithuania.
2.11. CASES IN POLAND

*Endangered species*

1 case reported.

*Waste*

3 cases reported.

*Ozone depleting substances*

1 case reported.

*Radioactive waste*

0 cases reported.

*Timber*

0 cases reported.

*Fishing*

1 case reported.

*In-depth examples*

*In-depth example: Illegal fishing*

The following example describes different organised crime groups of Polish citizens operating in Northeast Poland (Warminsko-Mazurskie Province). No case against participants in those groups has been brought before a court. About 3,000 kilo of freshwater fishes, in particular pikes, eels, and tenches, have been fished per year. The value generated by the illegal activities of the groups shall be estimated according to market price to amount of 15,000 EURO per year. Ultimate destination of the fishes were Warsaw and the Silesia region in Southern Poland. Illegal activities in the below described cases started around 1999 and are still ongoing. It has to be mentioned that these are no isolated cases but there are dozens of such groups operating in whole Poland which are using similar or the same methods.

428 No further information on the described cases could be obtained.

429 Interview with Wieslaw Namyjski Inland Fisheries National Guard in Olsztyn dated 22.04.2003
The following criteria of organised crime apply in this case:

- collaboration of more than two people;
- each with own appointed tasks;
- for a prolonged or indefinite period of time;
- suspected of the commission of serious criminal offences;
- using commercial or businesslike structures;
- determined by the pursuit of profit.

**Illegal activities**

The organised criminal groups use different strategies and methods to carry out illegal activities. One of the groups makes the equipment for illegal fishing available to so called “private” private criminals. Usually those are unemployed recruited from villages where the criminal activity takes place. The illegal catches are taken from the fishers by distributors directly after illegal fishing. Fishes are placed in freezer vans and transported to places where they are processed, i.e. eviscerated and smoked, before they are transported to shops in Warsaw and Southern Poland.

Another organised group uses a wholesale company for the sale of illegally caught fish. The wholesale company is located by the road between Elblag and Paslek. When the wholesale company is closed (open hours 9:00 – 19:00), poachers supply illegal catches to the wholesale company’s warehouse. The wholesale company owns a shop by the road Elblag – Paslek where fishes from illegal catches are sold.

In another case individual poachers cooperate with each other. They supply fishes from illegal catches to shops and end-purchasers. Shops and end-purchasers issue prior orders on the quantity and type of fish.

Each of the above mentioned criminal groups demonstrate some degree of organisation. Particularly first two groups demonstrate organisation structure in the sense of this study.

**Blurring by illegal trade of VAT invoices**

According to the Polish law regulations in a case of a control a purchaser has to present documents proving that fishes had been legally caught. In most cases it is enough to present VAT invoice stated where fishes had been purchased. Polish law provide for each fish species a protection period when fishing is illegal and shall constitute a crime. Protec-
tion periods are effective only on inland waters (protection periods are not effective as far as sea fisheries are concerned). Due to the operation of protection periods and fact that documentation concerning the legality of fishing is required, illegal trade of VAT invoices has developed.

Illegal VAT invoices usually are used in the following situations. If Inland fisheries National Guard (IFNG) finds that the owner of controlled shop is not able to present a valid VAT invoice for the fishes he sells, the shop owner declares that he shall present appropriate invoices within a few weeks due to the fact that his booking had been outsourced. Immediately after IFNG control the shop owner informs supplier of illegal fishing that the VAT invoice for appropriate quantity and type of fish is needed. Once the supplier is informed by the shop owner he buys requested VAT invoice from sea fishermen fishing at Wisla River Spit (according to the Polish law regulations Wisla River Spit shall be considered as sea water where fishermen have a status of sea fishermen and privileges thereto). The illegal VAT invoice is deliver to the shop owner who presents it to IFNG. VAT invoice issued by fishermen from Wisla River Spit legalise “illegal fishes” including fishes with effective protection period (sea fishermen do not have to observe protection periods).

Investigation methods

Information which investigative powers/techniques were used in this case is not available. According to information provided by the Inland Fisheries National Guard following powers-techniques are generally available:

- initiation of investigation in case of suspicion;
- surveillance of the transport of fishes in order to detect incriminating fishes;
- surveillance of documents (invoices) in order to detect illegal origin of fishes;
- controls unwarranted by specific events and random controls.

In-depth example: Ozone depleting substances

The following example describe an organised crime group of Polish citizens which attempted to smuggle ozone depleting substances to Poland by a prepared truck in 2001. In general organised groups are no attracted by illegal commercial trade in ozone depleting substances. In most cases illegal import ozone depleting substances from Russia and China is made rather by individuals then organised groups.

430 Information received from Custom Service in Torun – Director Jerzy Drogos and foundation PROZON, Warsaw
431 Interview with Michal Dobrzynski from PROZON (Non-governmental organization) dated 28 April 2003
In the below describe case an indictment was submitted against 6 persons. The case before the Regional Court in Inowroclaw is still pending.

The following criteria of organised crime apply in this case:

- collaboration of more than two people;
- each with own appointed tasks;
- for a prolonged or indefinite period of time (not proved);
- suspected of the commission of serious criminal offences;
- using commercial or businesslike structures,
- determined by the pursuit of profit.

**Illegal activity**

Investigations of the Polish enforcement bodies revealed that the organised criminal group attempted to import illegally 9,036 kg of R-12. The ODS originated from China and has been transported by ship to Hamburg in Germany. From there it was shipped by truck to Poland.

The Importer neither obtained the permission for import of R – 12 substance from the Polish Minister of Economy nor declared R – 12 substances in transit procedure.

There are indications of organised crime involvement. The German custom seal was broken and the truck driver, who had been arrested, presented a forged passport at the border control. In total 6 persons were arrested. Indictment against six individuals has been brought before the Regional Court in Inowroclaw. Each of them has been accused for different form of a criminal activity, i.e. leadership, criminal assistance etc. Persons with a criminal record are involved and there are indications for pursuit of profit. The sum of money which could be generated by this activity is estimated to 220,000 Euro.

The case is still pending before the regional Court in Inowroclaw.

A container with more then 9,000 kilo of R-12 has been confiscated by the Custom Unit in Torun. R – 12 substances shall be rely to PROZON (non governmental organisation) which shall sell R – 12 substances to countries where trade in ozone depleting substances had not been bounded.
Applied investigation methods

Information which investigative powers/techniques were used in this case is not available. According to information provided by the Custom Service following powers-techniques are generally available:

- initiation of investigation in case of suspicion;
- surveillance of the transport;
- surveillance of documents (invoices) in order to detect illegal origin of ozone depleting substances;
- controls unwarranted by specific events and random controls;
- hidden cameras;
- screen search;
- electronic instruments.

Overall remarks

The number of cases of organised environmental crime is surprisingly small in relation to the country’s size and the number of population. Although environmental crime has been identified by the Polish police as one area of possible activities of organised groups no special enforcement unit has been established and no common policy of the main investigation organs in respect of environmental crime has been developed. Other enforcement bodies also do not dispose of specialised enforcement units.

The existence of effective control structures is one of the crucial conditions for fighting organised environmental crime and environmental crime in general. Environmental crime is a “control crime”, which is underlined by the fact that the number of CITES offences increased after the Polish Customs strengthened their controls. Due to a lack of effective control Poland became in the mid nineties a very attractive market for organised criminals in the area of transboundary shipment of hazardous waste. Even today after improvements in most cases customs officers are only able to control transport documents without seizure of the transport itself due to an increasing number of transports. Equipped with forged documents hazardous waste transports can therefore easily cross the border without discovery. Another example for a lack control resources which also points out the need for modern IT-equipment can be found in the field of illegal fishing. Organised crime groups are better equipped than the Inland Fishery National Guard

432 For further details refer to Market Study Poland endangered species
433 For further details refer to Market Study Poland waste
(IFNG) and police. IFNG faces further personnel problems: In spite of a recent enlargement of law enforcement powers IFNG is not able to fight with organised crime groups efficiently due to personnel problems. For example in Olsztyn Province (the biggest inland water area in Poland where illegal fishing is most extensive) one IFNG officer controls over 6,000 hectare of lakes. IFNG units in other Province are facing similar personnel problems Changes in the administrative organisation due to reforms lead to decreased capabilities to tackle organised crime: Former Olsztyn, Suwalki and Torun Provinces (due to administration reform this provinces have been united in one Warminsko-Mazurskie Province) are regions where organised groups operate most extensively. However due to administration reform which had taken place in 1998 founds received by the IFNG in the above mentioned provinces are relatively lower than founds received by the IFNG in other provinces where number of lakes and as a result the number of organised groups is lower.434

The recent Regular Report on Poland’s Progress Towards Accession of 2002 supports the argument of insufficient control resources. There are staffing problems in the Border Guard435 and the police both due to budget limitations. In January 2002 the Police had 103,309 available posts out of which 100,725 were actually filled, resulting in 2,584 vacancies. This represents a small increase in posts available, up by 514, and posts filled, up by 535, compared to 2001. Also the Central Bureau for Investigation (CBI), set up in 2000 as a key factor for the fight against organised crime, faces recruiting problems. Current staffing is 1,476 with 431 vacancies.436 In contrast to the police and customs the Polish environmental inspectorates are well established and well equipped with personnel. However, the accession reports identifies need for improvement: In some cases, the frequency of inspections also needs to be improved, in particular for small and medium-sized industrial installations. Nonetheless, large installations are sufficiently inspected and voivodship inspectorates have a good basis for planning and carrying out inspections and for ensuring follow-up to non-compliance.437

The accession report highlights further the need for further improvement in the area of organised crime as well as police co-operation. Efforts have to be made which ensure an accountable, reliable and fully co-ordinated police by the date of accession. Special emphasises has to be given to co-ordination between the police and the prosecuting and judicial bodies, including transboundary co-operation. As the severe budget constraints in 2001 worsened in 2002 further shortage of personnel and of equipment is faced by the authorities and limits their ability to tackle organised crime.438

The fight against organised environmental crime and environment crime in general might be hampered by corruption. European Commission designated corruption both by the police and the border guard as an important area of concern. Data of 2001 showed an increase in the number of cases detected up to 2384, compared to 1899 in 2000. Convic-
tions increased from 580 in 2000 to 652 in 2001. Concerns persist also with regard to perceptions of corruption among the judiciary. The German daily “Süddeutsche Zeitung” reported “fees” collected by corrupted customs officers. For one illegal shipment of alcohol they charge up to 10,800 Euro and for illegal trafficking in human beings is up to 220 Euro per person. It is likely that such fees do also exist with respect to illegal shipment of waste or illegal trade in endangered species or others.

A further explanation for the small number of identified cases could be forgery of statistics. At the end of 2002 it turned out that police officers forged police statistics to realise a high level of the detection rate. The forgery started with the introduction of the so-called “17x5”-program by the Police headquarter in 2001 to fight the most often crimes (theft, break-in, blackmail, violence and physical aggression). As advancement and salary increase depend also on the success of the program police officers did not launch investigations in all reported cases. By this they kept the number of crimes low which resulted in a higher level of detection. Although the program was limited in scope it turned out that forging statistics is common in the Polish Police. According to police officers only every third crime is covered by the statistics. Conclusions regarding environmental crime cannot be drawn from the available information. However, it cannot be excluded that forgery is also happening with respect to environmental crimes.

440 Ibid., p. 24
441 Süddeutsche Zeitung: Politiker, die was einstecken können, 30 July 2003
442 17 stands for the main Polish cities where the program was started and 5 stands for the most often crimes (theft, break-in, blackmail, violence and physical aggression).
2.12. THE CASES IN COMPARISON

The considered period is from 1992 until 2003. The statistic elements have been split in 6 categories according to the type of crime:

- Illegal commercial trade in endangered species and their products
  10 cases (15,9% of all cases)  abbr.: endangered species

- Illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste
  16 cases (25,4% of all cases)  abbr.: waste

- Illegal commercial trade in ozone depleting substances
  1 cases (1,6% of all cases)  abbr.: ODS

- Illegal dumping and shipment of radioactive waste and potentially radioactive material
  0 cases (0% of all cases)  abbr.: radioactive waste

- Illegal logging and illegal trade of timber
  32 cases (50,8% of all cases)  abbr.: illegal logging

- Illegal fishing
  4 cases (6,3% of all cases)  illegal fishing

The total number of cases reported reaches 63 cases by 01 September 2003.

Further case details rep. assessments on the number of cases in each country are provided in the case database and the case country reports in chapters 2.7. to 2.11.

Figure 1: Cases of organised environmental crime

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Endangered species</td>
<td>10</td>
</tr>
<tr>
<td>Waste</td>
<td>16</td>
</tr>
<tr>
<td>ODS</td>
<td>1</td>
</tr>
<tr>
<td>Radioactive waste</td>
<td>0</td>
</tr>
<tr>
<td>Illegal fishing</td>
<td>4</td>
</tr>
<tr>
<td>Illegal logging</td>
<td>32</td>
</tr>
<tr>
<td>Altogether</td>
<td>63</td>
</tr>
</tbody>
</table>
ANALYSIS PER COUNTRY AND CATEGORY

In total 63 cases were identified. The above chart displays the segments illegal logging and waste which cover the largest amount of organised crime cases identified.

Figure 2: Cases per country

Cases by Country

Above chart shows that the Czech Republic reported the highest number of cases followed by Poland, Estonia, Lithuania and Hungary.

The following list provides an overview for each country including the total amount of cases and aggregation according to category and year.
Czech Republic

44 cases altogether. 69.8% of all identified cases in the five Candidate Countries.

8 cases of endangered species <1992(1); 1998(4); 1999(3)

11 cases of waste <1992(2); 1993(1); 1996(1); 1998(2); 1999(4); 2002(1).

1 case of illegal fishing in year 2002.

24 cases of illegal logging <1992(2); 1996(1); 1997(1); 1998(5); 1999(2); 2000(3); 2001(4); 2002(6).

*Figure 3: Cases in the Czech Republic*
Estonia

7 cases altogether. 11,1% of all identified cases in the five Candidate Countries.

1 case of illegal fishing in year 2002.

6 cases of illegal logging in 1999(2); 2000(1); 2001(2)

*Figure 4: Cases in Estonia*

Hungary

1 case altogether. 1,6% of all identified cases in the five Candidate Countries.

Figure 5: Cases in Hungary

Cases in Hungary

Lithuania

5 cases altogether. 7.9% of all identified cases in the five Candidate Countries.

2 cases of waste in year 2002.

1 case of illegal fishing in year 2001.

2 cases of illegal logging in 1999(1) and 2002(1).

Figure 6: Cases in Lithuania
Poland

6 cases altogether. 9.5% of all identified cases in the five Candidate Countries.

1 case of endangered species in 2002.

3 cases of waste in year 1993(1) and year 2002(2).

1 case of illegal fishing in year 1999.

1 case of ODS in 2001.

*Figure 7: Cases in Poland*
Figure 8: Number of cases per year

Above chart displays the number of cases per year. Decisive for the allocation was the starting date of the investigations.

It is striking that most cases have been reported for the past five years. The reason for this may be increasing environmental standards due to transposing of EU legislation which resulted in an increase of environmental crime. On the other hand, it can be also assumed that awareness regarding environmental crime increased and enforcement structures have been further developed. Another reason may be the lack of detailed statistics and information systems in the years before.
Figure 9: Cases per country and area

Cases by country and area

- Endangered species
- Illegal waste
- ODS
- Radioactive waste
- Illegal fishing
- Illegal logging
Multiple answers were possible per case. Within the categorisation of the case questionnaire the technique “smuggling” was covered by the category “others”. For the above chart this category was split up.

The chart clearly shows the three most preferred techniques being blurring, misde-claration and false documents. In order to determine which techniques are used in which of the six environmental crime sectors, the following table displays the techniques employed per case.

Table 11: Correlation „Area of crime“ and „Technique(s) used“

<table>
<thead>
<tr>
<th>Database case no*</th>
<th>Area of crime</th>
<th>Technique(s) used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 1</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 2</td>
<td>Waste</td>
<td>Misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 3</td>
<td>Waste</td>
<td>Blurring, transport cost</td>
</tr>
<tr>
<td>Case 4</td>
<td>Waste</td>
<td>Misdeclaration, blurring, transport cost</td>
</tr>
<tr>
<td>Case 5</td>
<td>Endangered species</td>
<td>Misdeclaration</td>
</tr>
<tr>
<td>Case 6</td>
<td>Endangered species</td>
<td>misdeclaration, blurring</td>
</tr>
<tr>
<td>Case</td>
<td>Type</td>
<td>Action</td>
</tr>
<tr>
<td>-------</td>
<td>---------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Case 7</td>
<td>Endangered</td>
<td>species misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 8</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 9</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 10</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 11</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 12</td>
<td>Waste</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 13</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 14</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 15</td>
<td>Endangered</td>
<td>species False documents, smuggling</td>
</tr>
<tr>
<td>Case 16</td>
<td>Wood</td>
<td>Blurring, false documents</td>
</tr>
<tr>
<td>Case 17</td>
<td>Wood</td>
<td>Other</td>
</tr>
<tr>
<td>Case 18</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 19</td>
<td>Wood</td>
<td>False documents, bribe</td>
</tr>
<tr>
<td>Case 20</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 21</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 22</td>
<td>Waste</td>
<td>Blurring, false documents</td>
</tr>
<tr>
<td>Case 23</td>
<td>Waste</td>
<td>False documents</td>
</tr>
<tr>
<td>Case 24</td>
<td>Waste</td>
<td>False documents</td>
</tr>
<tr>
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<td>Blurring</td>
</tr>
<tr>
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<td>Blurring</td>
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<td>Case 28</td>
<td>Waste</td>
<td>Blurring</td>
</tr>
<tr>
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</tr>
<tr>
<td>Case 30</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 31</td>
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<td>Other</td>
</tr>
<tr>
<td>Case 32</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 33</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 34</td>
<td>Wood</td>
<td>Blurring, false documents</td>
</tr>
<tr>
<td>Case 35</td>
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<td>Blurring</td>
</tr>
<tr>
<td>Case 36</td>
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<td>Blurring</td>
</tr>
<tr>
<td>Case 37</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 38</td>
<td>Endangered</td>
<td>species Misdeclaration</td>
</tr>
<tr>
<td>Case 39</td>
<td>Endangered</td>
<td>species Misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 40</td>
<td>Endangered</td>
<td>species Misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 41</td>
<td>Fish</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 42</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 43</td>
<td>Endangered</td>
<td>species Misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 44</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 45</td>
<td>Wood</td>
<td>other</td>
</tr>
<tr>
<td>Case 46</td>
<td>Wood</td>
<td>Misdeclaration, blurring</td>
</tr>
<tr>
<td>Case 47</td>
<td>Wood</td>
<td>Blurring</td>
</tr>
<tr>
<td>Case 48</td>
<td>Wood</td>
<td>Other</td>
</tr>
<tr>
<td>Case 49</td>
<td>Wood</td>
<td>Other</td>
</tr>
<tr>
<td>Case</td>
<td>Sector</td>
<td>Other</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Case 50</td>
<td>Fish</td>
<td>Other</td>
</tr>
<tr>
<td>Case 51</td>
<td>Wood</td>
<td>Blurring, false documents, other</td>
</tr>
<tr>
<td>Case 52</td>
<td>Endangered species</td>
<td>Smuggling</td>
</tr>
<tr>
<td>Case 53</td>
<td>Waste</td>
<td>False documents</td>
</tr>
<tr>
<td>Case 54</td>
<td>Wood</td>
<td>Misdeclaration, false documents, bribe</td>
</tr>
<tr>
<td>Case 55</td>
<td>Wood</td>
<td>Misdeclaration, false documents, bribe</td>
</tr>
<tr>
<td>Case 56</td>
<td>Fish</td>
<td>Misdeclaration, transport cost, false documents, bribe</td>
</tr>
<tr>
<td>Case 57</td>
<td>Waste</td>
<td>Misdeclaration, transport cost, false documents</td>
</tr>
<tr>
<td>Case 58</td>
<td>endangered species</td>
<td>misdeclaration, false documents</td>
</tr>
<tr>
<td>Case 59</td>
<td>ODS</td>
<td>Misdeclaration, pretence of treating</td>
</tr>
<tr>
<td>Case 60</td>
<td>Waste</td>
<td>False documents</td>
</tr>
<tr>
<td>Case 61</td>
<td>Waste</td>
<td>blurring, false documents</td>
</tr>
<tr>
<td>Case 62</td>
<td>waste</td>
<td>blurring, false documents</td>
</tr>
<tr>
<td>Case 63</td>
<td>Fish</td>
<td>blurring</td>
</tr>
</tbody>
</table>

Following aggregation according to the relation of environmental crime sector and applied techniques arises from the table. Please note that only the three priority techniques are stated.

Endangered species: the preferred technique is misdeclaration (8), followed by blurring (5) and the use of false documents (2).

Illegal waste: the preferred technique is blurring (11), followed by the use of false documents (8) and misdeclaration (3).

ODS: the preferred technique is misdeclaration (1) and pretence of treating (1).

Radioactive waste: no case reported.
Illegal fishing: the preferred technique is blurring (2), followed by the use of false documents (2) and misdeclaration (1).

Illegal logging: the preferred technique is blurring (24), followed by the use of false documents (6), other (6) and bribe (3).
Figure 12: Appearance of the additional organised crime criteria
The definition of organised crime employed for the research covered four compulsory criteria of organised crime:

- Collaboration of more than two people;
- For a prolonged or indefinite period of time (refers to stability and (potential) durability);
- Suspected of the commission of serious crime offences;
- Determined by the pursuit of profit and/or power;

Additionally at least two further criteria from the list in figure 12 were required.

Figure 12 clearly shows that each of the offenders involved in an organised crime case executed individually appointed tasks (52 cases). Structures of organised crime basically make use of commercial or commercial like business structures (42 cases). Furthermore most of the identified cases show that the offenders use some form of discipline and control (36 cases). 11 cases do have an international dimension.

**Figure 13: The products geographical origin and final destination**

<table>
<thead>
<tr>
<th>Database case no</th>
<th>Geographical origin</th>
<th>Ultimate destination</th>
<th>Area of crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 1</td>
<td>Czech Republic</td>
<td>Czech Republic</td>
<td>Wood</td>
</tr>
<tr>
<td>Case 2</td>
<td>Czech Republic</td>
<td>Czech Republic</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 3</td>
<td>Czech Republic</td>
<td>Czech Republic</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 4</td>
<td>Czech Republic</td>
<td>Czech Republic</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 5</td>
<td>Australia</td>
<td>Czech Republic</td>
<td>endangered species</td>
</tr>
<tr>
<td>Case 6</td>
<td>Ecuador</td>
<td>Czech Republic</td>
<td>endangered species</td>
</tr>
<tr>
<td>Case 7</td>
<td>Not known</td>
<td>Poland</td>
<td>Endangered species</td>
</tr>
<tr>
<td>Case 8</td>
<td>Czech Republic</td>
<td>Czech Republic</td>
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</tr>
<tr>
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<td>Czech Republic</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>Czech Republic</td>
<td>Czech Republic</td>
<td>Wood</td>
</tr>
<tr>
<td>Case 12</td>
<td>Germany</td>
<td>Czech Republic</td>
<td>waste</td>
</tr>
<tr>
<td>Case 13</td>
<td>Czech Republic</td>
<td>Germany</td>
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</tr>
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<td>Wood</td>
</tr>
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</tr>
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</tr>
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</tr>
<tr>
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</tr>
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</tr>
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<td>Czech Republic</td>
<td>Czech Republic, Austria</td>
<td>Wood XXX</td>
</tr>
<tr>
<td>Case 22</td>
<td>Germany</td>
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<td>Waste</td>
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<td>Fish</td>
</tr>
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<td>Case 51</td>
<td>Estonia</td>
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<td>Case 54</td>
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<td>Wood</td>
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<td>Lithuania</td>
<td>Lithuania</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 58</td>
<td>Russia</td>
<td>EU</td>
<td>Endangered species</td>
</tr>
<tr>
<td>Case 59</td>
<td>China</td>
<td>Poland</td>
<td>ODS</td>
</tr>
<tr>
<td>Case 60</td>
<td>Poland</td>
<td>Poland</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 61</td>
<td>Poland</td>
<td>Poland</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 62</td>
<td>Poland</td>
<td>Poland</td>
<td>Waste</td>
</tr>
<tr>
<td>Case 63</td>
<td>Poland</td>
<td>Poland</td>
<td>Fish</td>
</tr>
</tbody>
</table>

Above table shows that:

Illegal trade in endangered species and derivates primarily has an international dimension (10 cases).

The illegal waste segment mainly covers illegal shipment within a country (13 cases) or and neighbouring countries (2 cases). No shipment outside Europe was reported but there is 1 case were the geographical origin is unknown and 1 case were both geographical origin and final destination are unknown.

In the field of illegal trade in ODS (cooling agent R-120) 1 case concern China was reported.

No cases could be identified in the radioactive waste segment.

In the segment illegal fishing four cases in the respective inland waters could be identified. Except one case were the final destination is not known the other three cases final destination is the country of occurrence.
For 15 cases of illegal wood the country of origin and the final destination is the Czech Republic. 3 cases have a neighbouring country as final destination. Noticeable is the number of fifteen cases whose final destination is unknown. This directs attention to insufficient knowledge of markets for environmental crime which is also mirrored by the insufficient availability of statistics.
Figure 14: Sums of profit generated

(if available altogether from their operations, if not, the sum of money gained from the specific case)

<table>
<thead>
<tr>
<th>Database Case no°</th>
<th>Amount</th>
<th>No°</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,270</td>
<td>1</td>
</tr>
<tr>
<td>Case 2</td>
<td>250,000</td>
<td>2</td>
</tr>
<tr>
<td>Case 3</td>
<td>16,000</td>
<td>3</td>
</tr>
<tr>
<td>Case 4</td>
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<td></td>
</tr>
<tr>
<td>Case 5</td>
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<td></td>
</tr>
<tr>
<td>Case 6</td>
<td>2,500</td>
<td>4</td>
</tr>
<tr>
<td>Case 7</td>
<td>4,400</td>
<td>5</td>
</tr>
<tr>
<td>Case 8</td>
<td>2,705,051</td>
<td>6</td>
</tr>
<tr>
<td>Case 9</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>Case 11</td>
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</tr>
<tr>
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<tr>
<td>Case 13</td>
<td>1277</td>
<td>7</td>
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<tr>
<td>Case 14</td>
<td>n.a.</td>
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</tr>
<tr>
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</tr>
<tr>
<td>Case 16</td>
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</tr>
<tr>
<td>Case 17</td>
<td>16,000</td>
<td>8</td>
</tr>
<tr>
<td>Case 18</td>
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<td>9</td>
</tr>
<tr>
<td>Case 19</td>
<td>320</td>
<td>10</td>
</tr>
<tr>
<td>Case 20</td>
<td>6,349</td>
<td>11</td>
</tr>
<tr>
<td>Case 21</td>
<td>12,698</td>
<td>12</td>
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<td>Case 22</td>
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<td>Case 23</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
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</tr>
<tr>
<td>Case 26</td>
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</tr>
<tr>
<td>Case 27</td>
<td>n.a.</td>
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</tr>
<tr>
<td>Case 28</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>Case 29</td>
<td>n.a.</td>
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<tr>
<td>Case 30</td>
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<td>Case 31</td>
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<td>Case 32</td>
<td>320</td>
<td>14</td>
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<td>Case 33</td>
<td>933,100</td>
<td>15</td>
</tr>
<tr>
<td>Case 34</td>
<td>22,222</td>
<td>15</td>
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<tr>
<td>Case 35</td>
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</tr>
<tr>
<td>Case 42</td>
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<td></td>
</tr>
<tr>
<td>Case 43</td>
<td>n.a.</td>
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<td>Case 44</td>
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<tr>
<td>Case 45</td>
<td>895</td>
<td>19</td>
</tr>
<tr>
<td>Case 46</td>
<td>3,892</td>
<td>20</td>
</tr>
<tr>
<td>Case 47</td>
<td>1,714</td>
<td>21</td>
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<td>Case 48</td>
<td>31,419</td>
<td>22</td>
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<tr>
<td>Case</td>
<td>Sum (€)</td>
<td>Notes</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>49</td>
<td>7,466</td>
<td>23</td>
</tr>
<tr>
<td>50</td>
<td>28,206</td>
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<tr>
<td>51</td>
<td>128,000</td>
<td>25</td>
</tr>
<tr>
<td>52</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>1,829,706</td>
<td>26</td>
</tr>
<tr>
<td>56</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>11,500,000</td>
<td>27</td>
</tr>
<tr>
<td>59</td>
<td>220,000</td>
<td>28</td>
</tr>
<tr>
<td>60</td>
<td>80,000</td>
<td>29</td>
</tr>
<tr>
<td>61</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>62</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>17,956,831</strong></td>
<td><strong>29 cases profit known</strong></td>
</tr>
</tbody>
</table>

The amount of the sums listed in the above table totals to € 192,468,400 for 29 cases of (organised) environmental crime. Resulting average per case thus is € 619,201.

Amounts stated in the above table originate from the agencies/organisations that submitted the case questionnaires as well as court documents, press information and further documents. In some cases sums are estimates by the submitting agency/organisation or according to additional documents submitted. For most cases (34) no value for gained profit could be determined. This problem originates for example from the problems to determine the value of endangered species. Therefore the stated sums should be regarded with care since in-depth research might reveal differences.
3. INFORMATION ON THE NATIONAL LEGAL INSTRUMENTS TO FIGHT ORGANISED ENVIRONMENTAL CRIME IN THE CZECH REPUBLIC

3.1. ENVIRONMENTAL LAW

The significance of environmental law in the context of the overall legal system (a brief overview)

Environmental law is a distinctive branch of law and of legal doctrine. However, it is not codified and the regulation is found in a large number of acts of Parliament, decrees of the Government and regulations of ministries.

In the past two decades, environmental law has become an indispensable tool for the protection of environment. Czech environmental law has not developed any new methods of legal regulation, it rather uses methods known and applied in other branches of law. However, new methods penetrate the Czech environmental law in the course of harmonisation with EU-law (e.g. Act on IPPC).

Environmental law has also a close relation and utilizes the elements of other legal fields, namely of the administrative law (regulation of administrative proceedings, administrative torts or forms of administrative acts), financial law (taxes, fees, guarantees, insurance, deposit refund systems), criminal law (offences and criminal proceedings), civil law (ownership right, legal relationship to real estates, compensation for damages), commercial law (selected elements, such as regulations of companies or obligation relationships) etc.

The political significance of environmental protection is seen in the fact that since its establishment in 1993 the Czech Republic has its independent Ministry of Environment (Act no. 2/1969 Coll., jurisdictional law of the central authority system of state administration as amended), the minister is a member of the government. Governmental concept of environmental protection, the document State environmental policy 2001, was approved. Further, other concept programs, such as the State program of nature and land protection in the Czech Republic 1998, were approved. Discussion of an independent Chapter 22 dealing with environment was a part of the screening within the process of harmonization of Czech and European law. The Czech Republic had a governmental delegation at the World summit on sustainable development in Johannesburg 2002. The Czech Republic is a signatory of a majority of significant international multilateral conventions regarding environmental protection, it takes an active part in fulfilment of their goals and it realizes obligations arising from the membership in the respective conventions.

Formulation and enforcement of the state environmental policy in the Czech Republic is a public affair. Citizens and citizen associations, both natural and legal entities, are the state’s partners in all phases of preparation, formulation and practical enforcement of this policy.
In accordance with Article 35 paragraph 2, every citizen has the right for information on state of environment. One has the opportunity to utilize this information within one's social activities.

During the period since November 1989, the Czech Republic has achieved important democratic changes that have positively influenced also the way the environmental problems are dealt with. Environmental issues become a part of development of production fields and services. Rectification of ownership relationships and establishment of the conditions of a renewed business opportunities have become the standard part of the public life of society. However, they opened up the opportunity for different semi-legal activities or activities that are not prohibited by law or even not dealt with by it but which are environmental unfriendly. On the other hand, the self-conscious attitude of many companies (system EMAS) and municipalities in respect of environmental protection should be appreciated. Henceforth, it will be necessary to employ to full extent the polluter pays principle, respectively the user pays principle, utilization of the best available technologies (BAT principle), principle of cost effective solutions, principle of integration, principle of prevention, principle of preliminary diligence etc. The business section and application of voluntary instruments for support of environment (voluntary agreements, ecological insurance, ecolabelling etc.) shall be more supported by positive instruments of economic stimulation (tax privilege, subsidies, etc.) in those cases when businessmen treat environment economically. On the contrary, negative instruments of economic stimulation (fees for pollution or fees for utilization of natural resources, taxes etc.) and sanction instruments (criminal law, misdemeanors, administrative torts) shall be uncompromisingly used against the companies that shall not behave in an economical way.

**Constitutional aspects concerning the protection of environment, identification of the leading principles in the field of environmental policy**

The constitutional law of the Czech Republic does contain provisions on environmental protection. The preamble of the Constitution (Constitutional Act No. 1/1993 Coll.) expresses the citizens' determination to protect their environmental heritage.

Furthermore, Article 7 of the Constitution stipulates that the State is obliged to ensure natural heritage to be protected and natural resources to be exploited in an environmentally sound manner.

The Charter on Fundamental Rights and Freedoms (No. 2/1993 Coll.) which is part of the Czech constitutional order expressly stipulates that:

a) everyone has the right to sound environment

b) everyone has the right to timely and complete information on the state of the environment
c) no one shall upon assertion of his rights endanger or damage the environment, natural resources, biodiversity or cultural heritage more than is permitted by law

As well as in other legal branches, also the environmental law has been stipulating in the Czech Republic since 1993, that duties can be imposed only on the basis of law and within its terms and only under observation of basic rights and freedoms (Article 2 par. 2 Charter on Fundamental Rights and Freedoms). Secondary legal regulations of the European Community Law can only be implemented by law and by implementing regulations thereof.

International agreements, which were ratified in accordance with an approval of the Parliament and by which the Czech Republic is bound, form a part of the legal order; in case the international agreement contains a different regulation from national law, the international agreement prevails.

The state power shall serve all citizens and it shall be applied only in cases, within the bounds and methods, which are stipulated by law. Any citizen can execute activities, which are not banned by law, and no one shall be forced to execute activities, which are not stipulated by law. Legal restrictions of basic rights and freedoms shall apply identically to all cases, which comply with stipulated conditions. At application of provisions concerning restrictions of basic rights and freedoms their substance and meaning shall be observed. Such restrictions shall not be misused for other purposes than for purposes, which they had been determined for.

Legal doctrine derives from these constitutional rules that the content of the so-called internal regulations of individual Ministries and authorities shall be binding only for the Ministries and other authorities and their subordinate organizations, not for third persons.

Environmental policy

The Czech Republic's environmental policy is formulated in the document "State Environmental Policy" adopted by the Government Resolution No. 38 of 10th January 2001. The document defines and proclaims the Government's determination to promote the principle of sustainable development, precautionary principle, prevention principle, polluter-pays principle, subsidiarity principle, integration principle, cost-effect principle, best available techniques principle (BAT) and substitution principle. Furthermore, the document defines goals and means of the state environmental policy.

1 Please note that before 1989 certain authorities published various “methodical” instructions in their bulletins and journals which were frequently considered binding on citizens but did not have sufficient legal base.
Development, principles and techniques of environmental legislation. Relationship between environmental law in general and environmental criminal law

Rules aiming specifically at the protection of the environment appear in the Czech legislation since the early 70s of the 20th century.

Before 1989, the environmental protection by law was not understood as a complex system of legal norms devoted to regulation of individual components and protection against the individual sources of pollution. Although there was a number of norms, much attention was not paid to the regulation of this field and efficient utilization of coercive measures. The field of hygiene – healthy living conditions under which environmental hygiene was included – was traditionally regulated in a rather complicated way. It concerned especially the Act no. 20/1966 Coll. on care for people’s health, specified and amended by one act and two procedural orders. The mentioned act dealt with the issues of environmental hygiene in relation to individual media of environment (e.g. water and air hygiene).

Act on care for people’s health was repealed with effect as of 1st January 2001 in the parts concerning the issues of environmental protection in relation to the man’s health by Act no. 258/2000 Coll. on protection of public health and modification of some related acts that however itself regulated only the question of unfitness of water to drink and protection against noise and vibrations.

As far as other – componental – fields of environmental protection before 1989 are concerned, e.g. the regulation of water protection from the 1970s carried out by Act no. 138/1973 Coll. on waters and by Act related to it no. 130/1974 Coll. on state administration in water management can be mentioned, further the issues of protection of agricultural land resources (it concerned Act no. 48/1959 Coll. later replaced by Act no. 53/1966 Coll. and connected Act of the Czech National Council no. 77/1976 Coll. on competence of authorities of agricultural land resources protection of the Czech Socialist Republic), regulation of forest protection in accordance with Act no. 61/1977 Coll. from the 2nd half of the 1970s or nature protection from mid-1950s in accordance with Act no. 40/1956 Coll. on national nature protection.

The actual commencement of a complex attitude towards environmental protection and adoption of adequate legislation in this field occurred only after 1989. The establishment of the Ministry of Environment or constitutional incorporation of environmental protection (Article 7 of the Constitution, Article 35 of the Charter of Fundamental Rights and Freedoms) is connected with it.

The period after 1989 have so far brought two great waves of regulations adoption for the field of environmental protection.

The first one took place in the first half of the 1990s when first legal regulations were adopted for the purpose of remedy of bad state of environment that was caused by indifference of pre-revolution regime to deal with these issues. In this period laws that were missing until then were passed e.g. Act no. 238/1991 Coll. on wastes, Act no. 309/1991 Coll. on air protection against pollutants, Act no. 17/1992 Coll. on environment or acts that
replaced former, no longer satisfactory acts, such as Act no. 114/1992 Coll. on nature and land protection, Act no. 334/1992 Coll. on protection of agricultural land resources etc. later also some other, such as Act no. 289/1995 Coll. on forests.

This period also registered the beginning of consistent, constantly developing effort to prepare horizontal (cross-sectoral) legal regulations in this field. The Act no. 17/1992 Coll. on environment can be mentioned again as one of the first attempts to regulate the environmental issues after 1989 on a general level, and then also Act no. 123/1998 Coll. on right for information on environment or the first regulation of assessment of influences on environment (Act no. 244/1992 Coll. on assessment of influences of developing concepts and programs for environment). The Act no. 17/1992 Coll., on environment contains only a short framework regulation which cannot be considered as a codification of environmental law. The act itself is too general to be directly applicable, but it serves as a tool of interpretation of other environmental laws.

The object of the act is to:

a) define terms (environment, ecological stability, sustainable development, natural resources etc.),

b) define and introduce certain principles of environmental protection,

c) stipulate basic duties in relation to environmental protection,

d) generally regulate environmental liability,

e) introduce economic instruments.

The second period of increased legislative activity in the field of environmental law can be dated roughly from the beginning of 2000 till the present days. The second wave of adoption, respectively amendments of environmental legal regulations connected with the need for accelerated completion of transposition of the respective legal regulations of community law into the Czech legal order before the accession of the Czech Republic into the European Union.

Either matters not legally regulated until then (e.g. Act no. 153/2000 Coll. on treatment of genetically modified organisms and products and on modifications of some related acts, Act no. 242/2000 Coll. on ecological agriculture, Act no. 477/2001 Coll. on packages, Act no. 76/2002 on integrated prevention and reduction of pollution, on integrated register of pollution and on modifications of some related acts) were regulated by the newly passed acts or they replaced a great part of legal regulations passed previously (this concerns e.g. Act no. 185/2001 Coll. on wastes and on modifications of some related acts, Act no. 254/2001 on waters and on modifications of some related acts, Act no. 86/2002 Coll. on air protection and on modifications of some related acts, Act no. 100/2001 Coll. on assessment of influence on environment etc.).
Impacts of harmonization of Czech environmental law with EU law

During screening, negotiations on individual chapters of community acquis on the basis of positional documents that are elaborated by the candidate countries and in which the current state is analysed and further procedure in the process of harmonization with the community law is provisionally outlined. Chapter of environment 22 was provisionally concluded on 1st June 2001. Consensus was achieved in respect of the proposed program of following acceptance of environmental acquis. Provisional conclusion of a specific chapter is not deemed as a termination of the works concerning harmonization of the candidate countries’ regulations or acceptance of interim periods. Any of the parties of the European Agreement, published under no. 7/1995 Coll. (decision of the Council and the Commission no. 94/910, OJ L 360/1), can require opening a chapter for another round of negotiations provided new problems arise. For the reason that the Czech Republic, as well as majority of other candidate countries, is not at present able to meet all requirement arising from environmental community norms without exception as of the day of expected accession to EU (1st May 2004), 3 interim periods in total were negotiated for the Czech Republic (originally, 10 of them were suggested), regarding 1) recycling of plastic packages and their reutilization (31st December 2005), 2) arrangement of relevant collection of wastewater and its treatment in municipalities of more than 2000 inhabitants (31st December 2010) and 3) integrated permission for facilities built before 1999 which concerns a single facility (31st December 2012).

Legislative development further moves in the direction of transposition of European norms therefore in the following periods, especially amendments to the existing legal regulations in environmental protection can be expected apart from acceptance of some of the remaining legal regulations (such as law on assessment of influence of conceptions on environment, law on Antarctica or law on car wrecks) for the purpose of their full compatibility with the respective norms of law of the European Community (it shall, among others, regard the law on waters, law on packages, law on wastes, law on genetically modified organisms and products, law on nature and land protection and others).

The Czech Republic needs to increase and improve the capability of the state administration to enforce new legal regulation of environmental protection. The tasks newly arising from exercising of law of the European Community in the field of environment will require personal reinforcement of the individual departments and institutions by approximately 1450 employees during the period from 2001 till 2005, expenses of the state budget connected with provision of optimal performance of the state administration (personal reinforcement, monitoring, analyses) are estimated for this period for approximately CZK 5.55 billion. Fulfilment of requirements of the European Community legislation in the field of environmental protection will cause considerable investment expenses until 2005 amounting to approximately CZK 280 billion (data borrowed from the State policy of environment 2001, Ministry of Environment, ISBN 80-7212-170-7).

In the following period, it will be necessary in the field of Czech legal order to complete mainly the regulation of institutes and instruments that will reflect the requirements of sustainable development, including the integration of environmental requirements into policies of other sections and provide an efficient system of enforcement of environmental law.
through measures of administrative and criminal liability and finally to prepare a reform of the systems of public administration and court authorities that shall provide the above-mentioned efficiently.

Development of criminal-law regulation of environmental protection at the territory of the Czech Republic before 1989 and after

Until 1950 an Austrian Criminal Act on offences, delicts and misdemeanours from 1852 was in force at the territory of Bohemia, Moravia and Silesia. This state was incorporated in an incorporation act no. 11/1918 Collection of Acts and Regulations by which a continuity of the newly established Czechoslovak state with the legal system of Austria-Hungary was retained.

A new complex regulation of substantive criminal law was brought by Criminal Act no. 86/1950 Coll. The new act regulated only one category of torts, the offences. Thereby it removed the tripartite regulation effective until then in which both offences and also crimes and delicts existed.

Act no. 86/1950 Coll. did not include any general provision on environmental protection as a special subject suitable for protection by criminal law. The criminal-law clause in protection of this subject was not a politically significant element for Czechoslovakia in the mid-20th century and the environmental protection did not represent a topical problem. Pressure neither of society nor of the international community was at that time strong enough to provoke a special environmental protection. It was the conference of UN in Stockholm in 1972 and ecological accidents with far-reaching consequences that contributed in a material way to incorporation of this element among the basis principles of development but also the very existence of the world community. In Czechoslovakia, the way towards these principles opened up fully upon victory of the civic society values after 1989.

A special part of the Criminal Act from 1950 was divided into ten chapters. None of them was aimed at special environmental protection. However, similarly to the present regulation, there was a number of offences applicable also in cases of endangerment of environment.

Among the offences directly connected with environmental protection, the offence of illegal production and possession of narcotic and psychotropic substances and poisons, spread of contagious diseases of animals and plants, and poaching can be ranked.

As regards application of facts of these offences in practices, it may be claimed that provided environmental interests are concerned, they did not have a special significance. In case some of them were enforced, it was primarily for the protection of a subject that was evident from their systematic classification in the Criminal Act, i.e. among the economic offences, generally dangerous offences, and offences of property.
As far as formulation of facts of the individual offences is considered, they were retained with certain deviations also in the later regulations of the substantive criminal law. After 1989, the offence of damage to property in socialist ownership was completely left out, the offence of spread of contagious diseases was extended also to negligence form, changes occurred in case of facts of offence of poaching and abuse of ownership right.

The offence of abuse of ownership right was modified from the endangerment act to a damaging act and thus covers only the acting that leads to damage of important cultural or other significant general interest by an act in which the offender destroys, damages, makes unusable or loses the thing proper that enjoys protection under special legal regulations. Under the wording of the Criminal Act no. 86/1950 Coll. it should regard property of high value or of high economic significance.

On 1st January 1962, a new Criminal Act no. 140/1961 Coll. came into force. After numerous modifications, this regulation is the basic and effective legal norm even today that regulates the Czech substantive criminal law. The Act no. 140/1961 Coll. in the original wording dealt with environmental protection again only through the formulation of facts of offences that are generally dangerous.

As far as offences directly connected with environmental protection are considered, it regarded the following: illegal production and possession of narcotic and psychotropic substances and poisons (Section 187), spread of contagious diseases of animals and plants (Sections 191, 192).

The offence of poaching was left out completely. It only reappeared in the Criminal Act under Section 178a in the amendment to the Penal and Misdemeanours Law from 10th November 1993 no. 290/1993 Coll. The facts of offence of unlawful appropriation of property in socialist ownership as regulated in Section 132 were enforced for recourse of poaching. The Act no. 92/1998 Coll. by which the Criminal Act was amended, brought a significant change of the facts of offence of poaching.

As regards the other group, the offences indirectly connected with environmental protection, it regarded the facts of damage to property in socialist ownership (Sections 136, 137), abuse of official’s authority (Section 158), general public menace (Sections 179, 180), threat to operation of facilities generally beneficial to the public (Sections 182, 184), damage to property (Section 257) and misuse of property.

For cases of endangerment and damage of environment, especially facts of offence of general menace and damage to property in socialist ownership are applied.

Great reserves have been present in the more general exercise of offence of misuse of property that in a high degree consists in legal interpretation of the general interest and political recognition of the value of environment.

In 1969, Act no. 150/1969 Coll. on delicts was accepted that introduced bipartition of criminal-law torts. Therefore until 1st July 1990, offences and delicts were distinguished in Czechoslovakia.
The division was made on the basis of formal and material signs. Formally, delict was defined as “fraudulent act dangerous for society the signs of which are mentioned in this Act” and materially as an act “that does not reach the degree of an offence dangerous to public” (Section 1 paragraph 1 Act on delicts). From the material point of view, it was further stipulated that “act which degree of danger for society is minute is not a delict although it otherwise shows the signs of it” (Section 1 paragraph 2 Act on delicts).

Out of the delicts that were amended, the delict of poaching (Section 4) and delict against property in socialist or personal ownership (Section 3) were important for environment.

The degree of danger to the public that defined the boundary between delicts and offences was determined in accordance with damage caused by the illegal act.

The delict of poaching was concerned in cases when offence was not concerned with regards to the amount of damage caused.

Sanctions that could be imposed for the delict had the form of a correction (obligation to perform a certain work unapprehended under conditions determined by court), ban on activity, financial penalty up to CSK 10,000 or forfeiture of object.

For comparison, the Criminal Act allowed to impose a sentence of imprisonment up to three years, respectively six years, corrections, ban on activity, or financial penalty from CSK 500 to 50,000 for an offence of damage to property in socialist ownership.

The category of delicts was repealed by the amendment to the Criminal Act in 1990 (Act no. 175/1990 Coll.).

Act no. 159/1989 Coll. that was amended by Criminal Act no. 140/1961 Coll. was a material measure against criminal-law environmental protection. This amendment brought the facts of a new offence in Section 181a and 181b endangerment of environment. Both wilful and negligence form were subjected to recourse.

Protection was based on the list of sectional regulations concerning environment. The provision of Section 181a, paragraph 1 stipulates that actionable is anybody who seriously endangers environment by breaching special regulations on environmental creation and protection concerning air, waters, soils, creatures or plants protection or disposal of nuclear or radioactive, toxic or dangerous biological materials. This regarded blank provisions.

Other modifications made by Act no. 175/1990 Coll. introduced modification of endangerment of environment that was in force until 1st July 2002.

The Criminal Act generally defines that it shall concern endangers of environment leading to serious damage by breaching regulations on environmental protection and natural resources management. Thus sectional attitude as regards the list of breached norms was left out. The proposed amendment of the Criminal Act returns again to the sectional de-
termination in the sense that it makes the offender who pollutes or otherwise damages soil, water, air, forest or another section of environment liable.

Explicit incorporation of regulations regulating disposal of nuclear or radioactive, toxic or dangerous biological materials has been left out by Act No. 175/1990 Coll. This issue inclusive questions concerning dangerous chemical substances shall be presently however subject of considerations concerning codification of new facts.

Act No. 175/1990 Coll. left out facts of offence concerning damage to property in socialist ownership and it also repealed Act on Delicts as of 1969.

Other modifications of provisions of Section 181a paragraph 1 were executed in 1993. Unlawfulness of offence concerning environmental endangerment is then alternatively fulfilled by breach of regulations concerning environmental protection or natural resources management.

Amendment of Criminal Act as of 1993 (Act No. 290/1993 Coll.) again incorporated into the Criminal Act facts of offence concerning poaching.

Amendment of Criminal Act as of 1999 (Act No. 238/1999 Coll.) brought supplementary provisions of Section 89 paragraph 9, which regulate position of officials.

3.2. ORGANISED CRIME

The domestic definition of organised crime

Czech law distinguishes between two forms of organised crime - an organised group and a criminal conspiracy.

The Act No. 140/1961 Coll., Criminal Act, does not define the term of an organised group but refers to it as to an aggravating circumstance. To unify the practical interpretation, legal theory and jurisprudence have developed definition of an organised group:

„An organised criminal group is an association of at least three persons liable under criminal law in which each member has a separate task, all members cooperate, their cooperation is planned and premeditated and increases their chance to achieve their criminal purpose."

Please note that the membership in the group must be intentional (intention direct or indirect), negligence is excluded.

\[^2\] Collection of Judicial Decisions R 53/I/76, R 45/86, R 36/95
Further, the Criminal Act expressly establishes the term of criminal conspiracy. Criminal conspiracy is defined in Article 89 paragraph 17 of the Criminal Act as follows:

"A criminal conspiracy is an association of more persons with an internal organisation structure, separation of functions and assignment of activities, which is aimed at continuous committing of intentional Criminal Acts."

The provision on criminal conspiracy can be applied in two an: as an aggravating circumstance when a crime is committed for the benefit of a criminal conspiracy or as a separate crime when a person establishes, participates or supports a criminal conspiracy. For details see below.

Some remarks on the extension of organised crime in the Czech Republic

According to the Institute of Criminology and Social Prevention\(^3\), there is a large number of organised criminal groups operating in the Czech Republic. These groups can be divided into two types: one-level groups or highly organised multiple-level groups. The proportion of the highly organised groups reaches 30-40 %.

Some groups show a clear specialization of positions and division of labor, separation of task management, focus on high and quick profit, use of corruption and efforts to exercise influence on bodies responsible for penal proceedings, political and administrative bodies and the press, cover-up practices are already apparent. Potential cases of organized crime, provided organized form was proved, were usually prosecuted as organised groups, respectively complicity with two other persons, however not as a criminal conspiracy.

It is expected that in near future the number of highly organised groups will increase and they will progressively take over control of the one-level groups or eliminate them. The criminal groups are undergoing a similar process of globalisation as can be observed with business companies.

More than 50 % of the groups’ members are supposed to be foreigners. Less than 25 % of all groups consist exclusively of Czech citizens.

As for main tendencies, organised crime concentrated in the years 1993-2000 on car-theft and organising of prostitution. In 1995 organised groups also launched activities in the field of production, smuggling and distribution of drugs, in 1998 in the field of illegal immigration. On the other hand, arts-theft which was in the first place during 1993-1994 together with car-theft strongly decreased.

Experts predict that in 2005 most of organised Criminal Activities will consist in drug production and drug-pushing.

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\(^3\) Press Service of the Ministry of Interior, May 2002
As for present situation, it is reported\(^4\) that Czech criminal organizations specialize in criminal activities connected with drugs and precursors, illegal migration of refugees and in motor vehicles theft and smuggling.

Another group of criminal organizations are involved in activities that can be overall called as economic and financial crime, especially artworks theft, trafficking with light heating oils, trafficking with alcohol, recovering of debts (racketeering), securities fraud (so-called kites) etc. This type of crime is the most serious organised crime in the Czech Republic. In this field, a whole continuum of forms from a sophisticated Criminal Activity of the so-called “white collars” to the Criminal Activity that already shows the signs characteristic of organized crime can be expected.

The third most widespread type of organised crime consists of activities connected with organization of prostitution, pornography and women trafficking. Despite the fact that other activities are represented in the range of activities of the Czech criminal organizations, they exist to a relatively smaller extent.

The groups operating in the field of the organized crime are usually connected to the international criminal net although they work relatively independently however with international contacts and connections.

The following information arises from analysis (Scheinost, M., Kriminalistik 2/2000) of statistic data of Police of the Czech Republic executed between 1993 and 1998:

In absolute frequency the number of ascertained cases of offences committed in organized groups (respectively by at least two other persons) amounts to few dozens only in connection with a smaller number of monitored 22 paragraphs; the same applies for numbers of prosecuted persons. This in particular refers to paragraphs 124 (breach of regulations on circulation of goods with foreign countries), in particular if we take into account the number of prosecuted persons, not the number of ascertained offences, 148 (shortening of taxes, fees and similar payments), where number of ascertained offences reached and overpassed the amount of ten only in the last four years, i.e. from 1995 to 1998, 171a (unlawful crossing of state border), where the number of offences overpasses the amount of ten only in the two last years, 187 (illegal production and possession of narcotic and psychotropic substances and poisons), 234 (robbery), 235 (blackmail), 247 (theft), 250 (fraud) and partly 248 (misappropriation), i.e. only nine paragraphs. A higher number of prosecuted persons and ascertained offences committed in organized groups occur mainly under Section 187, Section 234, Section 247, Section 250, partly Section 235. Only individual cases fall under the remaining paragraphs, where number of these cases does not annually overpass the amount of ten, with only minor exceptions. No cases of commitment of offences in organized groups had been recorded under Sections 186 (illegal production and possession of radioactive material), Section 216a (children trafficking) and Section 233 (drag to foreign country) according to statistics of the Police of the Czech Republic during the monitored period from 1993 to 1998 and no persons had been prosecuted under these Sections.

\(^4\) report of JUDr. Vojtech Stejskal, Environmental Law Department, Law Faculty of Charles University, Prague, May 2003
Table 42: Number of ascertained cases and persons prosecuted for criminal offences committed in organised groups

<table>
<thead>
<tr>
<th>Ascertained cases/prosecuted persons</th>
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<tr>
<td><strong>Criminal Act</strong></td>
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<td>937/93</td>
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<td><strong>Section 234</strong></td>
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<td><strong>Section 250</strong></td>
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<td>59/33</td>
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<td>17/22</td>
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<tr>
<td>152/27</td>
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</table>

How extensive is the overlapping between environmental and organised crime? Theoretical and empirical perspectives.

From the theoretical point of view, the Criminal Act does not sufficiently consider environmental crime from the point of view of organised crime. It shall certainly change after the obligations of the Czech Republic arising from the admission to the European Union are accepted (e.g. the above-mentioned document Common Procedure of EU from 21st December 1998, directed to the penalization of participation in criminal organization in the EU member states (98/733/JI No L 351; CELEX 498X0733) or after fulfilment of obligations arising from international treaties (see the above-cited Treaty on Europol).

If the formulations of facts of offences against environment are compared, we realize that a majority of them does not take the organized crime much into account; respectively we do not encounter these elements in the elementary facts of the offence. It is different with regards to the qualified facts of the offence which develop the basic concept of the elementary facts of the offence and which are usually expressed in Articles 2. In the qualified facts the concept of organized group is sometimes used.

Namely, in the field of environmental protection this applies to offences under Section 178a paragraph 2 letter d) – Poaching, Section 181f paragraph 3 letter b) and paragraph 4 letter b) – Unauthorized handling of protected wild plants and animals and Section 186 paragraph 3 letter c) – Illegal production and possession of radioactive material and highly dangerous materials of the Criminal Act. However the concept of the organized group is under Czech Criminal Act a general aggravating circumstance, respectively circumstances makes possible to use a more severe punishment in case of some offences.

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5 report of JUDr. Vojtech Stejskal, Environmental Law Department, Law Faculty of Charles University, Prague, May 2003
Apart from these Sections, it shall be mentioned that the Czech Criminal Act uses the concepts of accomplice (Section 9) and participant (Section 10) which are forms of joint acting when committing a criminal act. Further, participant is a general term which covers the special terms organizer, abettor and assistant (Section 10). These forms will probably be the most common ones they have a tradition in the Czech Criminal Act (however within the framework of general crime, not in the field of crime in the section of environmental protection). These forms can theoretically be applied to all cases of offences against environment as they are not tied to specific formulation of facts of individual offences under the Criminal Act.

As regards criminal conspiracy, it can be theoretically applied to any offence (also environmental) as it need not be expressly mentioned in the formulations of facts of the offence. On the other hand, the other form of organised crime, organised group, must be explicitly expressed in the formulation of the facts of the offence to be applied.

As for criminal conspiracy, the problem lies in the unskilful formulation of the elements of criminal conspiracy that can be proved only with difficulties in practice. Therefore an amendment is possibly being prepared with respect to the re-codification of the Criminal Act.

Please note that an offender can be prosecuted both for committing an offence as a member of an organized group and committing the same offence in favour of criminal conspiracy. The single-acting concurrence of offences is possible.

There are indications that environmental crime frequently takes the form of organised crime\(^6\). However, it is difficult to deliver precise statistical data or other specific conclusions on organised crime, as the enforcement authorities usually do not distinguish it from general crime. Nevertheless, enforcement authorities often refer to a large part of environmental crime as being organised\(^7\). The reason is that certain types of environmental crime can hardly be committed without a well-organised structure of individuals or rather groups with internal hierarchy and structuring.

Further, we would like to examine potential occurrence of criminal activities in the six fields of the study and its potential overlapping with organised crime in general:

a) illegal handling of waste

Illegal manipulation with waste has become a prospering branch of organised crime. Organised groups incur high profits by charging waste producers extensive sums of money for safe disposal; however, they finally depose the waste in an illegal landfill in the Czech Republic or abroad. These organised groups are very often regular business companies which parallelly develop legal activities in the same field.

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\(^6\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, spring 2002

\(^7\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, spring 2002
Experts estimate that profits from illegal imports of waste take second place after profits from drug traffic\(^8\). One of the reasons for the flourishing of illegal trade in waste is that this type of trade implies significantly lower risks than e.g. drug trafficking.

\(\text{b) illegal trade in endangered species}\)

Illegal trade in endangered species often has features of organised crime. According to international sources, this type of trade is frequently carried out by the same organised groups as are active in drug and arms trafficking etc.

In the Czech Republic, official reports suggest that groups of „travellers”, Czech nationals, undertake repeated journeys to Third World countries (e.g. Bolivia, Mexico) to collect required species.

\(\text{c) illegal logging}\)

According to the Ministry of Interior\(^9\), illegal logging is mostly committed by foreign business companies which are connected to Czech citizens. These companies take advantage of forest owners’ indisposition (old age, illness, family disputes, ignorance of the law etc.), they buy up or hire forest property and start immediately logging. They ignore binding instructions of the forest manager (i.e. a forest expert appointed by the authorities to check up on the correctness of private owners’ forest management) or forest managers have not been appointed yet. The companies usually do not keep the obligatory forest management register and refuse to render data on the extent of logging to competent authorities. The extent and rapidness of illegal logging (see statistics) indicates that the offenders are well-organised and have effective distribution channels.

In mid 90s, chains of business companies were involved in tax frauds. The trick was to buy light heating oil (LTO) which was not subject to excise duty and sell it as diesel. Media estimated that illegal profits reached hundreds of millions of crowns\(^10\). These frauds were subsequently halted by new legislation. However, there are indications that people who had been involved in LTO frauds changed over to illegal logging\(^11\).

\(\text{d) Ozone depleting substances}\)

Potential cases will rather be covered by administrative liability, not the criminal one. In respect of the framework of the organized crime, we consider these cases to be very impractical from the theoretical point of view.

\(^8\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002
\(^9\) Analysis of environmental crime, Ministry of Interior, Security Policy Department, 1.5.2002
\(^10\) Lidove noviny, 4.1.2003, 14.3.2003, 23.5.2003
\(^11\) interview with ing. Petr Bareš, state attorney, Vsetín, 13th May 2003
e) Radioactive waste

In practice, some of the offences are dealt with, however only in the form of complicity and not as an organized crime. However, from the theoretical point of view, Section 186, Criminal Act can be taken into account with respect to organized crime, the qualified facts of the offence include the potential acting of the offender within the organized group.

f) Illegal fishing

Within the Czech Republic, it regards only fishing in freshwater rivers, lakes and ponds since the Czech Republic has no sea. The criminal liability can be considered as poaching under Section 178a of Criminal Act; this Section can be considered with regards to the organized crime, qualified facts of the offence include acting of the offender within an organized group.

From the empirical point of view, the Law Faculty in Prague\textsuperscript{12} is not aware of any case of criminal conspiracy in the field of environmental protection. With regards to the high standards required by the Criminal Act for proving criminal conspiracy, it is more practicable to prosecute an organised group under the qualified facts of the offence. So far organised groups were prosecuted only under Section 178a, Criminal Act – Poaching.

This statement of the Faculty quite corresponds with the statement of the Police Headquarters who are not aware of any case prosecuted as organised environmental crime (neither in the form of criminal conspiracy, nor organised group)\textsuperscript{13}. They further state that there are often indications but not evidence that an environmental crime was committed in organised form. For this reason, environmental crime is usually prosecuted as individual crime or crime committed in complicity or with participation of other persons.

As for the offence of Unauthorized handling of protected and wild plants and animals under Section 181f paragraph 3 letter b) and paragraph 4 letter b) – this offence was introduced into Czech law in July 2002 and we are not aware of any final judgement. There are certain indications of organized crime, however in the field of administrative torts, not in case of offences the Criminal Act. Admittedly, administrative authorities do not know of cases concerning the organized crime (criminal conspiracy) but often uncover or suspect groups of two or three people (participation, complicity) without inner organization (that are not focused on continuous commitment of criminal activity) or individuals.

In case of an offence under Section 186 – paragraph 3 letter c) - Illegal production and possession of radioactive material and highly dangerous materials – no case of organized crime has been registered until now, it was prosecuted as individual crime only.

\textsuperscript{12} report of JUDr. Vojtech Stejskal, Environmental Law Department, Law Faculty of Charles University, Prague, May 2003
\textsuperscript{13} Interview with pplk. Soukup, Police Headquarters, Prague, April 2003
For the future, elements of the organized crime even in other fields of environmental protection, such as unauthorized disposal or illicit trade with genetically modified organisms and their products, etc. cannot be excluded. Nevertheless, this shall require a new criminal-law amendment to these relatively new “environmental offences”. The attention shall also be drawn to the parallel between some of the subjects of protection under the environmental law (e.g. species of endangered fauna and flora) and the subjects of historic and cultural wealth.

One of the most developed activities in the field of general organized crime is the pillage of art and historic collections and consequent export of art historic objects that form the national cultural wealth from the Czech Republic. The parallel with endangered species of animals and plants can be seen in that often it also regards objects of inestimable value, respectively that besides the economic value they have another value which is difficult to objectively assess by economic criteria. However, unlike the species of endangered plants and creatures, unauthorized disposals of cultural objects (historic collections, historic monuments etc.) do not have the special facts of crime and usually these offences are qualified as theft (property crime) or damage to the property.
3.3. CHRONOLOGICAL LIST INDICATING THE TITLE AND PUBLICATION REFERENCE OF THE RELEVANT TEXTS IN FORCE

A selection of the most important legislation in force concerning organised crime

Zákon č. 140/1961 Sb., trestní zákon, § 34 písm. g), § 41 – 44, § 89 odst. 17, § 163a – 163c (Act No. 140/1961 Coll., Criminal Act, Sec. 34 letter g), Sec. 41 – 44, Sec. 89 par. 17, Sec. 163a – 163c)

A selection of the most important legislation in force concerning environmental crime

Zákon č. 140/1961 Sb., trestní zákon, § 178a, § 181a – 181h, § 186 (Act No. 140/1961 Coll., Criminal Act, Sec. 178a, Sec. 181a – 181h, Sec. 186)

Zákon č. 102/1963 Sb., o rybářství, § 19 odst. 1 písm. a), g) a f) (Act No. 102/1963 Coll., on fishery, Sec. 19 par. 1 letter a), g) and f))


Zákon č. 289/1995 Sb., o lesích a o změně a doplnění některých zákonů (lesní zákon), § 21, § 39 odst. 2, § 53 – 57 (Act No. 289/1995 Coll., on forests and on modifications of and amendments to some acts (Forest Act), Sec. 21, Sec. 39 par. 2, Sec. 53 – 57)

Zákon č. 16/1997 Sb., o podmínkách dovozu a vývozu ohrožených druhů volně žijících živočichů a planě rostoucích rostlin a dalších opatřeních k ochraně těchto druhů a o změně a doplnění zákona ČNR č. 114/1992 S., o ochraně přírody a krajiny, ve znění pozdějších předpisů, (§ 22 odst. 7 – 9, § 25 – 27) (Act No. 16/1997, on conditions of exports and imports of endangered species of wild fauna and flora and other measures of protection of such species and on modifications of and amendments to Act No. 144/1992 of the Czech National Council, on nature and landscape protection, in the wording of the pursuant regulations, Sec. 22 par. 7 – 9, Sec. 25 – 27)

Zákon č. 18/1997 Sb., o mírovém využívání jaderné energie a ionizujícího záření (atomový zákon) a o změně a doplnění některých zákonů, § 40 – 42 (Act No. 18/1997 Coll., on peaceful utilisation of nuclear energy and ionising radiation (Atomic Act) and on modifications of and amendments to some acts, Sec. 40 – 42)
Zákon č. 185/2001 Sb., o odpadech a o změně některých dalších zákonů, § 66 – 70 (Act No. 185/2001 Sb., on wastes and on modifications of some of the acts related to it, Sec. 66 – 70)

Zákon č. 449/2001 Sb., o myslivosti, § 63 – 64 (Act No. 449/2001 Coll., on game management, Sec. 63 – 64)

Zákon č. 86/2002 Sb., o ochraně ovzduší a o změně některých dalších zákonů (zákon o ochraně ovzduší), § 38 – 41 (Act No. 86/2002 Coll., on air pollution control and on modifications of some other acts (Air Pollution Control Act), Sec. 38 – 41)

A complete list of legislation concerning environmental organised crime

Zákon č. 140/1961 Sb., trestní zákon, § 178a odst. 2 písm d), § 181f odst. 3 písm. b), odst. 4 písm. b), § 186 odst. 3 písm c) (Act No. 140/1961 Coll., Criminal Act, Sec. 178a par. 2 letter d), Sec. 181f par. 3 letter b), par. 4 letter b), Sec. 186 par. 3 letter c))

Further explanation of the legal texts

A selection of the most important texts concerning both organised crime and its legislation

Section 89 par. 17 of the Criminal Act:

„A criminal conspiracy is an association of more persons with an internal organisation structure, separation of functions and assignment of activities, which is aimed at continuous committing of intentional Criminal Acts.“

Section 43 and 44 Criminal Act:

„A perpetrator who committed an intentional crime as a member of criminal conspiracy, or a perpetrator who committed such crime knowingly with a member of a criminal conspiracy or with the intention to aid a criminal conspiracy, is considered a perpetrator of a crime which is committed for the advantage of a criminal conspiracy if the circumstances of the

14 Here we indicate only the facts of offence under Criminal Act which expressly mention organised crime in the form of organised group. In fact, all provisions on intentional environmental crime under the Criminal Act (sub 2.2) can be applied concurrently with the general provisions on criminal conspiracy (sub 1.1). In this broad context, all provisions on intentional environmental crime could be considered as provisions on organised environmental crime.
crime or the perpetrator’s person significantly increase the degree of social danger of the crime."

The upper limit of the duration of imprisonment stipulated by this Act is increased by one third for a perpetrator of a crime which was committed for the advantage of a criminal conspiracy. The court shall impose a punishment of imprisonment in the upper half of the increased duration of imprisonment.

The upper limit of the increased duration of imprisonment must not exceed 15 years. When an exceptional punishment of imprisonment is imposed, the upper limit of duration must not exceed 25 years."

Section 163a Criminal Act:

Participation in criminal conspiracy

“(1) A person who establishes criminal conspiracy, or participates in the activities of such conspiracy or supports criminal conspiracy will be punished by imprisonment for 2 to 10 years or by forfeiture of property.

(2) Sections 43 and 44 shall not be applied to the perpetrator pursuant to par. 1.

Section 163b Criminal Act:

“A person who committed a crime under Section 163a is not punishable if he/she reported the criminal conspiracy to the state attorney or the police at the time when the danger posed by another crime of the criminal conspiracy than the crime under Section 163a could be prevented. A soldier may report to his superior or commander in chief."

Section 163c Criminal Act:

“(1) A policeman fulfilling his tasks as an agent pursuant to special laws who participates in the activities of a criminal conspiracy or supports a criminal conspiracy is not punishable for the crime of participating in a criminal conspiracy pursuant to Section 163a par. 1 if he committed such crime with the aim to uncover a perpetrator of a crime which was committed for the advantage of a criminal conspiracy."

“(2) An agent who established or arranged a criminal conspiracy is always punishable."
A selection of the most important texts concerning both environmental crime and its legislation

a) Endangered species of plants and animals

Criminal-law liability is regulated by Section 178a, 181f, 181g, 181h, 203 of the Penal Law. There is no complex legal regulation concerning protection of creatures and plants in the Czech Republic, but it is incorporated in a whole number of Acts and other generally binding legal regulations.

These legal rules can be divided into the following main groups:

1a) The first group consists of Acts, which include general protection of gene pool, i.e. legal regulation concerning protection of biodiversity of all species of wild-growing plants and feral creatures and their populations, it respectively protects them within ecosystems. Among these belongs especially Act No. 114/1992 Coll., on Conservation of nature and land.

1b) The second group consists of Acts, which provide special protection of specific rare and endangered species. It includes especially Act No. 114/1992 Coll., on Conservation of nature and land, Act No. 16/1997 Coll., which regulates international trade in worldwide endangered and rare species and Act No. 115/2000 Coll., on provision of compensation for damages caused by specific especially protected creatures.

1c) The third group of Acts is focused on provision of protection of plants and creatures against extraneous harmful influence. This protection is guaranteed in particular by Act No. 246/1992 Coll., on Protection of animals against maltreatment. This protection is further guaranteed by Act No. 166/1999 Coll., on Veterinary care, and Act No. 147/1996 Coll., on Phytosanitary care.

1d) The fourth group consists of Acts, which ensure protection of creatures within the scope of gamekeeping and fishing, issue of livestock production inclusive beekeeping and protection of animals within the scope of agricultural and forestry management. This group includes Act No. 449/2001 Coll., on Gamekeeping and Act No. 102/1963 Coll., on Fishing. Within the scope of agricultural plant and livestock production and forestry management it is necessary to mention except for Act on Forestry also Act No. 242/2000 Coll., on Ecological agriculture, Act No. 154/2000 Coll., on Grading, breeding and recording of farm animals (both include beside others also partial regulation concerning beekeeping), further e.g. Act No. 115/1995 Coll., on Viniculture and wine growing, Act No. 92/1996 Coll., on Species, seeds and planting of grown plants, Act no. 97/1996 Coll., on Protection of Hop, etc.

Grounds of the legal regulations are formed also by international-legal conventions in the sphere of conservation of nature, which were signed and ratified by the Czech Republic in accordance with Article 10 of the Constitution (No. 1/1993 Coll.). These refers in particular to Convention on International trade in endangered species of feral creatures and plants, Convention on Protection of migrating species of feral creatures, Convention on
Biological diversity, Convention on Protection of European fauna and flora and natural habitats or to Convention on Wetlands which are of international importance in particular as biotypes of water birds. From other international legal documents it is possible to mention agreements concerning protection of animals kept in captivity, in particular the European Agreement on Protection of animals kept in interest breeding, or the European Agreement on Protection of animals during international transport, etc. These may be applied only in case they stipulate something different than the law.

b) Waste

This refers to Act No. 185/2001 Coll., on Wastes, as the basis regulation at section of environmental protection against special sources of endangerment, among which belong also wastes. The Act on Wastes incorporates basic legal regulation of waste management in the Czech Republic. However it does not cover all its aspects. Disposal of some special types of wastes is regulated by other legal regulations, either completely (e.g. radioactive wastes, waste waters, emission into atmosphere, etc.) or in the form of special legal regulations dealing with some aspects (packing wastes, stock-piling of wastes into underground spaces, etc.). The criminal-law liability arises from Section 181e of the Penal Law.

c) Substances damaging ozone layer

This refers to Act No. 86/2002 Coll., on Atmosphere. The criminal-law liability could be derived from Section 181a, 181b of the Penal Law, a problem issue could be prove of causal connection. These cases shall be taken into account within the Czech environmental law in practice maximally in the frame of administrative liability, nay criminal liability.

d) Radioactive waste

This refers to Act No. 18/1997 coll., on Peace usage of nuclear power and ionising radiation and Section 186 of the Penal Law.

e) Illegal felling of woods and illegal trade in wood

This refers to regulation stipulated in Act No. 289/1995 Coll., on. Forests, regulating general bans and duties in relation to forest stand, inclusive sanctions in the form of administrative torts, special regulation of these relations can be found also in Act No. 114/1992 Coll., on Conservation of nature and land, further such regulation is incorporated in the
Penal Law (Section 181c) and in case of illegal trade in wood of rare tree species it is Act No. 16/1997 Coll., on Conditions of import and export of endangered species CITES.

f) Illegal fishing

This refers to regulation incorporated in Act No. 102/1963 Coll., on Fishing, the criminal-law end is Section 178a of the Penal Law. However this refers to fishing in fresh waters not fishing in seas or oceans. The Czech Republic, as an inland country, does not record any similar problems concerning organized criminality in the sphere of illegal fishing as the coastal countries do.

Criminal Act

The most important regulation is contained in the Criminal Act. Below we quote all facts of offences of the Criminal Act which are related to the protection of environment and the scope of the study. Please note that the facts of offences under the Criminal Act are always blanket norms which refer to special laws on environmental protection. A breach of the special laws is a precondition for committing an environmental crime under the Criminal Act.

Endangering and damaging of the environment

Section 181a

(1) A person who intentionally pollutes or by any other means damages the soil, water, air, forests or other elements of the environment, violates environmental legislation or legislation on the protection and utilization of natural resources over large areas, on specially protected land or water protection zones, endangers communities or populations of wild plants or animals (damage to the environment), or intentionally damages the environment and increases or hinders the prevention or reduction of damage, will be sentenced to a maximum of three years' imprisonment or prohibition of activity or will be issued a fine.

(2) A prison sentence of between 1 to 5 years will be imposed should the perpetrator,

a) repeatedly commit a crime included in paragraph 1,

b) cause permanent or long-term damage to the environment, or

c) cause damage to the environment, the remediation of which incurs substantial costs.

(3) A prison sentence of between 2 to 8 years will be imposed should the perpetrator,
a) commit a crime included in paragraph 1 by damaging on specially protected land or water protection zones in such a way as to significantly reduce the reason for the special protection, or

b) cause damage to the environment, the remediation of which incurs high costs.

Section 181b

(1) A person who increases or causes damage to the environment by negligence (Section 181a) or hinders its prevention or reduction, will be sentenced to a maximum of six months' imprisonment or prohibition of activity or will be issued a fine.

(2) A prison sentence of a up to 2 years or prohibition of activity or a fine will be imposed on a perpetrator who,

a) causes a crime included in paragraph 1 through a breach in the duties of employment, permission, position or function or imposed on him pursuant to the act,

b) causes permanent or long-term damage to the environment, or

c) causes damage to the environment, the remediation of which incurs substantial costs.

(3) A prison sentence of between 6 months and 5 years will be imposed should the perpetrator,

a) commit a crime included in paragraph 1 by damaging on specially protected land or water protection zones in such a way as to significantly reduce the reason for the special protection,

b) causes damage to the environment, the remediation of which incurs high costs.

Endangering and damaging of the environment, Section 181a, Section 181b

The criminal offence of “endangering and damaging to the environment” can be characterized as a basic or general criminal offence against the environment in the sense that it shows the need for its protection as a whole. We can talk about it as a comprehensive approach.

Facts of the offence of the criminal offence in Section 181a and 181b endangering to the environment was stated for the first time in the first Act 159/1989 Coll., which amended
the Criminal Act from 1961. The punishment applies to intentional and negligent forms of the crime.

Protection was based on the list of environmental regulations. In Section 181a paragraph 1 it specifies that anyone is punishable who seriously endangers the environment by violating the regulations on the formation and protection of the environment i.e. air, water, soil, protection of plants and animals, handling of nuclear, radioactive, toxic, or hazardous biological material. It was a blanket provision.

Further alterations made by Act 175/1990 Coll. brought the adjustment of endangering to the environment, which was valid and in force until the ‘euro amendment’ of the criminal act made by the Act 134/2002 Coll.

The criminal act, after the changes in 1990, defined that the environment must be endangered by violation of the regulations on protection of the environment and agriculture. Therefore the branch approach was dropped, considering the determination of violation of standards or endangering to elements of the environment. By amendments made in 2002 the facts of the offence reverts back to the branch definition making the perpetrator responsible, i.e. the one who polluted or by other means damaged soil, water, air, forests or other elements of the environment.

Act 175/1990 Coll. drops the incorporation of regulations defining handling of nuclear or radioactive, toxic or hazardous biological material. However, this issue including questions related to hazardous chemicals should be the subject of debate for the codification of a new facts of the offences.

Another change was made to Section 181a paragraph 1 in 1993. This change brought the facts of the offences that the illegality of the crime of threat to the environment was alternatively fulfilled by violation of regulations on environmental protection or agriculture.

In 2002 a very important change took place concerning the protection of the environment against crime. Act 134/2002 Coll. amended the provisions of Sections 81a and 181b of the criminal act and brought several new facts of the offence of environmental crime. Act 134/2002 Coll. also fulfills the commitments towards the European Union, thus transposing a series of standards (Council resolution No. 259/93 from 1.2.1993 on the control and conduct of the movement of waste within, to and from the European Union, council resolution No. 338/97 from 9.12.1996 on the protection of species of wildlife by regulating their trade).

The significance of environmental crime, related to its real use in practice, has yet to be apparent, due to e.g. its blanket provision that delivered uncertainty as to which illegal action can be separately included under it, and also the issue of substantiation of causal relation and culpability in environmental crime.
Changes that the amendment of the criminal act brought in 2002, should aid more efficient implementation of commented facts of the offence. It deals with the following changes:

1) In definition of objects of criminal offence it reverts to the determination of individual elements of the environment i.e. soil, water, air, forests and other elements.

2) The set criteria for endangering and damage to the environment: an offence must endangering a community or population of wild animals or plants over a large area (minimum of 5 ha or 2 km for watercourses), in protection areas or water protection zones. Protection is focused on areas of special interest, whose definition can be found in Act 114/1992 Coll., on the protection of nature and landscapes and in Act 254/2001 Coll., on water and the wording of several other acts and preservation of individual ecosystems.15

For evaluation of the severity of the environmental impact (the impact must be severe enough to reach the necessary level of social danger - material page of the criminal act) it will be necessary to consider:

- the areal scale of the affected land including watercourses,
- uniqueness and significance of the affected ecosystem,
- scale of damage limiting the function or presence of organisms,
- impact on the link between individual ecosystems,
- permanence of the damage.16

The amendment drops the term environmental nuisance and in cases of qualified facts of the offence, where the act of endangering becomes a criminal offence, operates with the costs necessary for the removal of the damage. Fees from the bodies active in criminal proceedings create the necessity to generate a “price list” of individual elements of the environment. Costs are on a quantitative scale and are an equivalent expression of the damage, which is also given by an amendment of the provision of Section 89 paragraph 11 of the criminal act, which states what is understood by not diminutive, not small-scale, larger-scale, considerable and large-scale damage, while from these points of view the costs for the removal of the results of damage to the environment and value of items are used together for defining the level of the benefit. This can mean costs in considerable or large scale, whilst always being the necessary costs. The question of practice will be to

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15 An ecosystem is a functional system of biotic and abiotic components of the environment connected by exchange of the substances, energy flow and information transmitting and interacting and developing in certain space and time, see provision para.3, Act 17/1992 of the Coll.
17 Ecological nuisance is a loss or debilitation of natural functions of the ecosystems caused by damage of the components or disturbance of internal links and processes due to human activity, see provision of para. 10, Act 17/1992 of the Coll. Before the amendment of the criminal act 134/2002 of the Coll., it was necessary to use the general regulations of damage responsibility and compensation of damage. To measure the scale of the damage it was necessary to use the rules of the damage scale caused by the crime stated in paragraph 89, Art.11. However, this amendment did not respect the specifics of the environment. One of the main differences between the damage and ecological detriment is their content. Whereas the content of damage is defined quantitatively, the content of the detriment is mostly qualitative.
assess these costs and in particular incorporation of the time scale for returning the affected environmental elements to their original state. If we take for example damage or pollution of watercourses which causes eradication of a specific species of aquatic animals in that place, to the costs it probably will be necessary to include both the remediation of the pollution and the replacement of these animals including their care up to a point where they are at the same state as prior to the pollution.

Qualified facts of the offence is further defined for cases where the perpetrator commits a crime leading to permanent or long-term damage to the environment or repeatedly commits a crime or causes damage to a special protected areas or water protection zones that due to this action disappear or lessen the reason for special protection of such land.

This deals with damage crime, which causes a change of the original state.

3) punishable is also the endangering or damage of the environment or impediment of its diversion or alleviation.

4) in order for an offence to be committed, regulations on environmental protection or protection and use of natural resources have to be violated.

The question of which regulations can be incorporated under this provision is answered only at the doctrinaire level, e.g. court interpretation. It is worth mentioning that environmental protection includes, according to various authors, questions of care for monuments and several elements of health care.

For all environmental crimes, the cessation of culpability based on the effective repentance is possible (Section 66 of the criminal act).

The overall concept of the amendment in provisions Sections 181a and 181b specifies originally quite vague facts of the offence in both the definition of objects, and the consequences of a crime. For using terms pollution and damage, it correlates with the adjustment used in the environment act. In basic facts of the offence the points of view of territorial and ecosystem protection are considered.

Not even this adjustment can avoid the problems with substantiation of causal relation, but their concreteness could aid in finding it and also increase the legal clarity of which interventions to the environment are considered as punishable, i.e. they must be socially dangerous, and thereby verify the path of their prosecution by the bodies active in criminal proceedings.

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18 E.g. Šámal, P., Púry, F., Rizman, S : Criminal act: commentary, Beck, Praha 1998, pg. 886/887; Stibořík, V., Criminal aspects of the endangering of the environment, in EKO, 2/1993, pg.4-7
21 Provision paragraph 8, Art.1 and 2 of the Act 17/1992 Coll are:
Polluting the environment is an input of physical, chemical or biological factors into the environment due to human activity, which are foreign for the given environment by their nature or amount.
Damage of the environment means aggravation of its condition by polluting or other human activity exceeding the scale stated by special regulations.
The criminal act does not bring/state the definition of individual terms, therefore it is necessary to look for them in other regulations, particularly in Act 17/1992 Coll. on the environment.

The environment is considered to be everything that constitutes the natural conditions for the existence of organisms including human and creates conditions for their further development. Its compounds are above all air, water, rocks, soil, organisms, ecosystems and energy.

The environment does not include the artificial environment created by humans (social relations, cities, traffic, etc.)

We can find parallels and also differences in the relation with another generally dangerous crime, public nuisance. Public nuisance occurs, if the human environment is endangering (i.e. everything that surrounds man) regardless of its natural or man-made origin and also the endangering is to such a scale and caused in such a way specified in the criminal act.

As opposed to this, the provision on the endangering of the environment applies also to an endangering that does not reach the level of public endangering.22

Should such consequences of endangering occur, e.g. damage to the environment, which means danger for the health or life of several people (the environment and the values will be endangered) and such consequences will be covered by the criminal act of public nuisance and in the case of ‘accumulation’ of this offence and the offence of menace and damage to the environment, the first one will be applied according to the law for concourse of offences. The fact that importance of object – environmental protection effaces in this case is a subject of consideration above specific adjustment of the possible concourse of anti-environmental and other offences and in particular retrieval/reparation of their consequences.

If it deals with sanctions that can be imposed for the offence of endangering and damage to the environment, see the following table. In addition to these sanctions it is necessary to consider the general provisions of the criminal act on imposing and types of punishment.

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Table 43: Punishments Article 181a, b Criminal Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Imprisonment</th>
<th>Fine</th>
<th>forfeit of items</th>
<th>prohibition of activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>181a</td>
<td>(1) up to 3 years</td>
<td>√</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td></td>
<td>(2) from 1 to 5 years</td>
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<tr>
<td></td>
<td>(3) from 2 to 8 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181b</td>
<td>(1) up to 6 months</td>
<td>√</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td></td>
<td>(2) up to 2 years</td>
<td>√</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td></td>
<td>(3) from 6 months to 5 years</td>
<td>√</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 181c

**Damage to forests by excavation**

(1) Excavation of forest areas, even if through negligence, performed in contradiction to valid legislation which leads to the creation of bare cuttings on the overall forest area or thinning of the forest area under the level stocking on the overall forest area, will be punished by a maximum prison sentence of 2 years or prohibition of activity or a fine.

(2) A prison sentence of up to 3 years will be imposed should the perpetrator,

a) repeatedly commit a crime included in paragraph 1, or

b) create bare cuttings or thin the forest area stocking on a substantial forest area in a way described in paragraph 1.
Section 181d

Common Provisions

(1) A larger area pursuant to Sections 181a and 181b is understood as being an area of a minimum of 5 ha and in the case of a watercourse no less than 2 km in length.

(2) The overall larger forest area pursuant to Section 181c is understood as being an area no less than 1,5 ha and in the case of a substantial forest area no less than 3 ha.

Damaging of forest areas by excavationSection 181c

Damage to forest areas by excavation is an offence which was brought only by the amendment to the Criminal Code 134/2002 Coll., and which previously did not exist in Czech criminal law. This provision can be considered a privileged fact, i.e. lesser typical relevance than is basic fact in Section 181a.

According to the preamble to the amendment proposal it should prevent from socially unwanted excavation, which leads to devastation of the forest areas of the Czech Republic and which according to statistics are continuously growing.

The formulation of this offence accentuates the significance of the forest area considering its climatic, land shaping, anti-erosion or protective function according to relationships with biological diversity\(^{23}\). Other than the environmental function, the cultural aspect and the social significance of the forest areas are also important.

Pursuant to Section 181c, punishable is only unauthorized felling - sign of illegality - and this felling must be of a certain scale - unwanted state. The scale is set by the creations of bare cuttings on the overall larger forest area (regarded as an area greater than 1,5 ha; subject of amendment in preparation of the Criminal Code will include the clause that damaged forest areas are to be calculated together, otherwise it would be possible to easily elude the punishment) or thinning of forest areas under the stocking level on the overall forest area.

Establishment of a level of stocking is made in Act 289/1995 Coll., on Forestry, Amendments and Supplements of further acts which Section 181c para. 1 of the Criminal Code refers to as a special regulation.

Lesser typical relevance is given with the fact that costs for the renovation of forest areas are lower than e.g. the restoration of quality of a water course after its major contamination. Due to the reason of relatively low costs for restoration it is not possible to punish such unauthorized excavation pursuant to Section 181a. If it were possible to include the period of care of the forest until it reaches its state prior to the unauthorized excavation

\(^{23}\) Preamble to the proposal of the Criminal Code, chamber press nr. 972.
into the costs, the resulting costs would be much higher. It is a question of experience and interpretation, what will be considered for the required costs for restoration of the forest.

A qualified example and stricter punishment is given to a perpetrator who commits an offence of damaging a forest by repeatedly excavation or in the above-mentioned way damages a substantial area of a forest (i.e. greater than 3 ha; the areas are to be calculated together).

The facts of the offence of offence of damaging forest required a specific situation of the state of the forests in the Czech Republic that was caused by large motiveless devastation of forest areas in earlier periods.

Sanctions that can be imposed are a prison sentence of up to 2 to 3 years or fines.

Section 181e

Hazardous Waste Handling

(1) Even if through negligence, in contradiction to valid legislation, the person who stores or transports or otherwise handles hazardous waste, leading to a endangering to the environment will be punished by a maximum prison sentence of up to 2 years or prohibition of activity or by a fine.

(2) The same punishment will be applied on the person who even by negligence violates valid legislation defining waste handling by transporting hazardous waste across state boundaries without notification or consent from the relevant administrative authority, or the notification or application for consent or the attached documentation contain false or misleading data or important data is missing.

(3) A prison sentence of up to 3 years or prohibition of activity or a fine will be imposed on a perpetrator who,

a) obtains material gain from the crimes included in paragraphs 1 or 2,

or

b) repeatedly commits such a crime.

(4) A prison sentence of between 6 months to 5 years or a fine will be imposed on a perpetrator who obtains large-scale material gain from the crimes included in paragraphs 1 or 2.
**Handling of Hazardous Waste Section 181e**

Amendment of the Criminal Code from 2002 (Act 134/2002 Coll.) also imposed several completely new **facts of the offence**, which have punished such cases of endangering or damage to elements of the environment or with it coherent factors, whose intensity requires criminal punishment, while it deals with a situation which can be in this way regulated together with other states and on the largest area possible, otherwise this protection loses its efficiency and cannot protect against damage of protected interest.

Such a case is the handling of hazardous waste or whatever waste and trade and other handling which threatens the life of endangered species of wild animals and plants.

Entering into force on 1.7. 2002 in the Criminal Code, the **facts of the offence** of offence – handling of hazardous waste is found specifically in the provision of Section 181e (a more appropriate title would be unauthorized handling of hazardous waste, from which it would be more clear the sign of illegality).

Punishable is intentional and negligent illegal handling of hazardous waste. To complement the elements of offense it is necessary the illegality defined as conflict with legislation and consequence in the form of endangering or damage to the environment.

Definition of terms for endangering and damage to the environment can be found in Act 17/1992 Coll., on the Environment and in the Criminal Code in the provision of Section 181a as general environmental crime (see above).

The concept of commented **facts of the offence** is that according to paragraph 1 and 2 it is possible to punish only subjects during commercial activity, refer to the reference on relevant waste legislation. However, the principle that Czech criminal law punishes only physical persons, and does not recognize the criminal duty of legal persons, is still valid.

Pursuant to para. 2 a perpetrator, by the means stated in the Criminal Code, violates regulations covering the rules for trans-boundary transport of hazardous waste should be punished in conformity with the Basle convention on the control of the trans-boundary movement of hazardous waste.

Stricter penalties can be imposed in cases where the perpetrator obtains material gain or commits the crime repeatedly.

To define what is a substantial or large-scale benefit it is necessary to use the explanatory provision - Section 89 para. 11 of the Criminal Code, in which it is stated that damage not diminutive is understood as being damage reaching the amount of no less than 5 000 CZK, damage not small is understood as being damage reaching the amount of no less than 25 000 CZK, larger damages are understood as being damages reaching the amount of no less than 50 000 CZK, considerable damages are understood as being damages

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24 Preamble to the proposal of the criminal law, chamber press nr. 972.
25 Basle Convention was published as 100/1994 Coll.
reaching the amount of no less than 500 000 CZK and large-scale damages are understood as being damages reaching the amount of no less than 5 000 000 CZK. Provision of the above damages will also be applied on the height of the benefit obtained by the crime.

The duties during the handling of hazardous waste, or waste in general are regulated by Act 185/2001, on Waste and the Amendments of Several Other Acts. This Act also defines hazardous waste. It deals with the wastes included in the List of Hazardous Waste included in the implementing legal regulation (MoE DEcree No 381/2001 Coll., which constitutes a Waste Catalogue, a List of Hazardous Wastes and lists of wastes and countries for purpose of import, export, and transit of waste and an approach for permitting the import, export or transit of waste (Waste Catalogue)) and any other waste embodying one or more hazardous properties included in Annex 2 of this Act (i.e. toxicity, irritant, flammable, mutagen or ecotoxicity).

The perpetrator of the crime of handling hazardous waste must be issued either a prison sentence of up to 5 years (in case of qualified facts of the offence), a fine or prohibition of activity.

Section 181f

Unauthorized Handling of Protected and Wild Plants and Animals

(1) The killing, damaging, processing, importing, exporting, transferring, harboring, offering, mediating, obtaining for oneself or for another person a specimen of specially protected species of plant or animal or specimens of endangered species in contradiction to valid legal regulations and

a) committing such an crime on more than 50 individual animals, plants or specimens, or

b) committing such a crime despite being punished for similar offence within the last two years or despite of being convicted or punished for similar offence within the last three years

will be punished by a prison sentence of up to 3 years or prohibition of activity or a fine.

(2) The same punishment will be applied for killing, damaging, processing, importing, exporting, transferring, harboring, offering, mediating, obtaining for oneself or for another person a specimen of specially protected species of plants or animals or specimens of species critically endangered or directly endangered by extinction in contradiction to valid legislation.

(3) The perpetrator will be punished by a prison sentence of between 6 months to 5 years for,
a) committing a crime stated in paragraph 1 or 2 with the view of obtaining substantial material gain

b) committing such a crime as a member of an organized group.

(4) The perpetrator will be punished by a prison sentence between 2 to 8 years for

a) committing a crime stated in paragraph 1 or 2 with the view of obtaining large material gain or

b) committing such a crime in connection with an organized group operating in several countries.

Section 181g

Even if through negligence, the killing, damaging, importing, exporting, transferring, obtaining for oneself or for another person a specimen of specially protected species of plant or animal or more than 50 specimens of endangered species, or a single critically endangered species or a single species directly endangered by extinction will be punished by a maximum prison sentence of 1 year or prohibition of activity or a fine.

Section 181h

Even if through negligence, the violation of valid legislation or a decision of the state administration of taking away wild animals and plants in such a scale as to endanger the local population of these plants or animals, will be punished with a maximum prison sentence of up to 1 year or prohibition of activity or a fine.

Unauthorized Handling of Protected and Wild Animals and Plants Sections 181f, 181g, 181h

Another new facts of the offence, brought by Act 134/2002 coll., is the crime of unauthorized handling of protected and wild animals and plants, whose punishment is permitted and required by Sections 181f, 181g, and 181h.

It deals with protection against an activity hazardous for the life of protected species of plants and animals both at the local and global level.

Definition of terms can be found in Act 114/1992 Coll., on the Protection of Nature and Landscapes and in Act 16/1997 Coll., on the Conditions for Import and Export of Protected Species on Wild Animals and Plants and Other Measures for the Protection of Na-
ture and Landscapes elaborated for the implementation of the CITES\textsuperscript{26} Convention (Con-

Act 114/1992 Coll. in part 4 adjusts special protection of plants and animals. Pursuant to
the provision of Section 48 of this act it is possible to grant special protection to species of
plants and animals that are endangered or valuable, or are scientifically or culturally very
significant. These species are divided based on the degree of endangerment:

a) critically endangered,

b) greatly endangered,

c) endangered.

The Act also states that specially protected plants are protected in all their parts and in
each stage of development (Art. 49 para. 1). Similarly, specially protected animals are
protected in all stages of development (Art. 50 .para. 1).

A list and degree of endangerment of specially protected species is set in MoE Decree

The aim of the CITES Convention is the protection of wildlife whose survival is threatened
by international trade (Art 1). It deals with endangered species which

- are directly endangered by extermination,

- must be protected by regulations of import and export, to avoid the endangering of, or
  for the purpose of protecting other endangered species,

- are protected by a proposal submitted by a state who is a member of an international
treaty.

A list of these species is stated in the MoE Decree No. 82/1997 Coll.

Protection in the Criminal Code comes from the degree of endangerment of the species
and other circumstances.

Intentional illegal handling of a single specially protected species or endangered species
is punishable. However, only action directed towards at least fifty of these (must be a mul-
tiple attack) or repeated action (the perpetrator was previously punished for a similar
crime) is prosecuted.

\textsuperscript{26} The CITES Convention was declared by an announcement of the Federal Ministry of Internal Affairs in Coll. 572/1992
At present, newly proposed CITES Convention is in the legislation process. Its validity depends on the accession of the
Czech Republic to the EU.
Stricter protection is given in the case of critically endangered species or species directly endangered by extinction. In this case it is enough to attack a single specimen of these species. It is a question of practical enforcement, whether it is possible to judge each attack on a specimen as a crime, i.e. whether it will always create a higher degree of danger to society, in order for the perpetrators to act to qualify as a crime. Among the critically endangered species e.g. endangered by extinction are beside vertebrates or mammals included also several species of invertebrates. It is necessary to remark however that a single diction of the Criminal Code is explicit in this sense and does not allow any other differentiation of critically endangered or directly endangered species according to e.g. the size of the species or the ability of the particular species to feel pain etc.

For practical use of this provision of the Criminal Code it is however necessary to refer back to its basic sense, which is above all the protection of biological diversity, i.e. conservation of specific endangered species without any further differentiation.

Special emphasis is placed on the punishment of organized crime in this field, see Section 181f para. 3 letter b): “committing the crime of being a member of an organized group” and Section 81f para. 4 letter b): “committing a crime in connection with an organized group operating in more than one country” (this provision is focused on punishment within international trade).

Higher punishment is also determined for a perpetrator who commits this crime to obtain considerable or large-scale profit.

These provisions are particularly important in relation with continuously expanding domestic and in particular international trade with protected species or their parts.

Negligent illegal handling is also punishable, whilst it is necessary to fulfill the condition of a widespread attack, if it deals with individuals of specially protected or endangered species. For critically endangered species or species directly endangered by extinction it is again punishable to attack a single specimen.

The provision of Section 181h should protect against reckless exploitation of individual species of wildlife. Illegality is given by either violation of legal regulations or the decision of the state administration. A detrimental state is characterized as a endangering to the local population of plants or animals that are taken away.

In practical exercise it will be important to separate cases of lesser social relevance, which will be left for prosecution by the state administration as administrative delicts, and the newly formulated crimes as wrongs that pose greater danger to society. Facts of the offence of administrative delicts are included in acts 114/1992 Coll. and 16/1997 Coll. General provisions for committing administrative delicts are included in Act 200/1990 Coll., on Administrative Delicts.

27 Preamble to the proposal of the criminal law, chamber press no. 972.
Considering the penalty provisions, the sanction of imprisonment, fines and prohibition of activity are enforced, see below.

Table 44: Punishments Article 181f, g, h Criminal Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Imprisonment</th>
<th>Fine</th>
<th>Forfeiture of Items</th>
<th>Prohibition of Activity</th>
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<td>(1) up to 3 years</td>
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<td>✓</td>
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</tr>
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<td>(2) up to 3 years</td>
<td>✓</td>
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</tr>
<tr>
<td></td>
<td>(3) from 6 months to 5 years</td>
<td>✓</td>
<td></td>
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<tr>
<td></td>
<td>(4) from 2 to 8 years</td>
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<tr>
<td>181g</td>
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<td>✓</td>
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<tr>
<td>181h</td>
<td>Up to 1 year</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
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</table>

With the efficiency of the criminal law as the “ultima ratio” tool, 1.7.2002 capped the above-mentioned amendment the protection of specially protected species and plants, i.e. biological diversity, natural and cultural-natural treasure.

Section 186

Unauthorized Production and Possession of Radioactive and Extremely Hazardous Material

(1) The unauthorized production, import, transfer, export, harboring or obtaining for radioactive or extremely hazardous material or subjects used in their production, will be punished by a maximum prison sentence of from one to five years, prohibition of activity or a fine.

and

(2) The perpetrator will be punished by a prison sentence between 2 to 10 years for

a) causing by such a crime grave detriment to health
b) committing a crime with a view to obtaining substantial material gain

(3) The perpetrator will be punished by a prison sentence of between 8 to 15 years for

a) causing by such a crime stated in the para. 1 grave detriment to health of many people or death,

b) obtaining large material gain from committing a crime or

c) committing a crime as a member of an organized group.

Illega.l Production and Possession of Radioactive Material and Highly Hazardous Substance, Section 186

Facts of the offence of such a crime was incorporated into the criminal law by the amendment from 1993. Originally it applied only to the radioactive material. The highly hazardous substances were covered in 1997. This crime belongs to the group of generally dangerous crimes (Chapter IV. of the Special Part of the Criminal Code).

It adjusts the punishment of the illegal handling (production, import, export, transit, possession, supplying to others) of the radioactive material or highly hazardous substance or elements used in its production.

The definition of terms can be found in the Act 18/1997 Coll., on Peaceful Use of Nuclear Energy and Ionizing Radiation (Nuclear Act) and in Act 19/1997 of the Coll., on Some Measures Related to the Prohibition of Chemical Weapons.

Also of importance is the UN. Treaty related to the prohibition of chemical weapons from 1993.28

The objective is the protection of people against the potential threat from uncontrolled handling of radioactive material or extremely hazardous substances or elements used in their production.

That is intentional criminal act of threatening nature.

Pursuant to the nuclear act (para. 2, letter j) radioactive or nuclear material is understood as being:

aa) original material such as uranium found in nature containing a mixture of isotopes, uranium depleting isotope 235U or thorium, and additionally, each of these in the form of a metal, alloy, chemical compound or concentrate, as well as materials containing one or

28 The UN Treaty on Prohibition of Development, Production, Storage and Use of the Chemical Weapons and their Disposal was accepted by the Member States of the UN on the 14th of January, 1993 in Paris.
more of the above-mentioned components in concentration or amount exceeding the values given by the relevant legislation,

bb) special fission material, \( {\text{Pu}}^{239} \), \( {\text{U}}^{233} \), uranium enriched isotopes \( {\text{U}}^{235} \) or \( {\text{U}}^{233} \) and materials containing one or more of the aforementioned radionuclides, except for the original materials, in concentrations or volumes exceeding values set by the relevant legislation,

c) other materials, if so stated in the relevant legislation.

Radioactive material is any material that contains one or more radionuclide and whose activity or mass activity should not be neglected from the point of view of nuclear safety, and also materials, subjects or equipment containing or contaminated by radionuclides, for which is not supposed any further use.

Production activity pursuant to the nuclear act is only possible on the basis of a permit issued by the State Office for Nuclear Safety. The mentioned state office oversees state supervision of nuclear safety, physical protection, nuclear safety and emergency preparation and controls supervisory duties pursuant to the Nuclear Act.

The issue of extremely hazardous material was addressed by the above-mentioned Act 19/1997 Coll., on Several Measures Connected with the Prohibition of Chemical Weapons. The materials to which this Act relates are listed in Section 2 of this Act, and are further divided for the purpose of this Act, from the point of view of hazard of their toxic characteristics, into extremely hazardous, hazardous, and less hazardous materials (Section 7). The criteria for listing the specified materials, including lists of materials pursuant to Section 7 para. 1, is established by a decree of the State Office for Nuclear Safety (who also see over the control of the prohibition of chemical weapons). It is only possible to handle extremely hazardous substances on the basis of a license issued by the State Office for Nuclear Safety and the Act requires several conditions to be fulfilled prior to its issue.

Subjects used for the production of highly hazardous materials are both raw materials and the operational equipment used for their production.

Stricter action will be imposed in cases of qualified facts of the offence, i.e. if the crime is unauthorized production and possession of radioactive material and extremely hazardous materials causing severe damage to health, e.g. severe damage to the health of many people or death, or if the perpetrator obtains substantial material gain through such activity (i.e. minimum of 5 thousand CZK), e.g. large-scale benefit (i.e. minimum of 5 mil. CZK) or commits the crime of being a member of an organized group.

The sanction in these qualified cases is in particular imprisonment from 2 (8) to 10 (15) years.

In these cases, sanctions should also be set whilst considering mitigating or aggravating circumstances in the framework of the general principles for imposing penalties.
For the sake of completeness it is of advantage to include a summary of all crimes that could potentially apply in relation to environment protection pursuant to the Criminal Code:

* * *

Table 45: Crimes that could potentially apply in relation to environment protection pursuant to the Criminal Code

<table>
<thead>
<tr>
<th>Chapter III. Crimes against Public Order</th>
<th>Section 158</th>
<th>Abuse of Power by a Public Official</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Section 178 a</td>
<td>Poaching</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter IV. Crimes of Public Endangering</th>
<th>Public endangering</th>
<th>(intentional endangering)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Section 179</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Section 180</td>
<td>(negligent endangering)</td>
</tr>
</tbody>
</table>

**Endangering and damage to the environment**

<table>
<thead>
<tr>
<th>Section 181 a</th>
<th>(intentional endangering)</th>
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</thead>
<tbody>
<tr>
<td>Section 181 b</td>
<td>(negligent endangering)</td>
</tr>
<tr>
<td>Section 181 c</td>
<td>Damage to Forests by Excavation</td>
</tr>
<tr>
<td>Section 181 e</td>
<td>Handling of Hazardous Waste</td>
</tr>
</tbody>
</table>

**Unauthorized Handling of Protected and Wild Animals and Plants**

<table>
<thead>
<tr>
<th>Section 181 f</th>
<th>(intentional endangering)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 181 g</td>
<td>(negligent endangering)</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
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<tr>
<td>----------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>181</td>
<td>(intentional endangering)</td>
</tr>
<tr>
<td>182</td>
<td>(intentional endangering)</td>
</tr>
<tr>
<td>184</td>
<td>(negligent endangering)</td>
</tr>
<tr>
<td>186</td>
<td>Unauthorized Production and Possession of Radioactive and Extremely Hazardous Material</td>
</tr>
<tr>
<td>187, 187a, 188</td>
<td>Unauthorized Production and Possession of Narcotic and Psychotropic Substances and Poisons</td>
</tr>
<tr>
<td>191</td>
<td>(spreading among animals)</td>
</tr>
<tr>
<td>192</td>
<td>(spreading among plants)</td>
</tr>
<tr>
<td>203</td>
<td>Torture of Animals</td>
</tr>
<tr>
<td>257</td>
<td>Damage to Other Peoples’ Property</td>
</tr>
<tr>
<td>258</td>
<td>Abuse of Ownership</td>
</tr>
</tbody>
</table>
Sanctions in the field of organized environmental crime

Penal system of criminal law related to environmental crime

An integral part of the formulation of the Criminal Code is the establishment of penalties (from general legal theory it is possible to remark that legal norms in order to be complete, require the establishment of hypotheses, disposition and sanction.). Punishment in criminal law has several meanings.

A perpetrator of a crime should be punished. By this, it serves also as an element of individual prevention. Punishment represents personal detriment for the perpetrator.

Punishment is an element of general prevention, as its bearing on the perpetrator, discourages other members of society from committing crime.

The sentence imposed to the perpetrator together with the crime committed become an object of the public denouncement.

The imposed sentence protects the community from further criminal activity committed by the perpetrator.

The sentence which is imposed to the perpetrator for criminal activity stops him from continuing the action.

The purpose of the punishment is defined in Section 23 of the Criminal Code.

Penalization is a tool for implementation of state enforcement whilst the constitutional principle “state authority can be exercised only within the limits and in manner provided for by law” must be respected. The Charter sets basic requirements for punishing a perpetrator in criminal law. These requirements must be embodied at a constitutional level because punishment is the deprivation of perpetrator’s liberty, and is only possible if legal order allows it. Several principles are also contained in the Constitution.

Section 27 of the Criminal Code states punishment which can be imposed - as follows:

- imprisonment,
- community work,
- loss of honorary title and decorations,
- loss of military rank,
- prohibition of activity,

26 Articles 7, 8, 39, 40 of the Charter of Human Rights and Fundamental Freedoms.
- forfeiture of property,
- fines,
- forfeiture of items,
- expulsion,
- prohibition of residence.

It is always possible to issue a prison sentence, which is in this case universal, whilst its length and other characteristics are further differentiated according to the threat to society of the crime.

As far as criminal acts against environment, imprisonment and several material penalties (forfeiture of property, forfeiture of items, fines) can be imposed alternatively or possibly cumulatively, when special conditions are met. In addition, it is possible to impose several penalties on the basis of general provisions on the imposition of penalties; these are not specified for individual offences from other areas of the Criminal Code.

**Table 46: Overview of possible sanctions for selected environmental crimes pursuant to valid Czech criminal law**

<table>
<thead>
<tr>
<th>Punishments that can be imposed according to specific provisions in Special Part of the Criminal Code</th>
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<tbody>
<tr>
<td><strong>Section</strong></td>
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<td>178a</td>
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<td>181a</td>
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<td>181g</td>
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<td>181h</td>
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<tr>
<td>186</td>
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<td>203</td>
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Should future introduction of the criminal duty of legal persons (in a specific group of cases where e.g. environmental crime would have a considerable place) be considered, other types of sanctions could also be proposed. Taking a wide view on the given problem it would be possible to impose sanctions of warning or reproach and fines or compulsory termination together, e.g. suspension of activities of legal persons, duty to restore into the original state or prohibition of certain activities. Other possible sanctions could have a declaratory character: denunciatory judgment without punishment, removal of fiscal relief and support, publication of judgment including imposing sanctions or change of management.

The sanctions to be considered can be separated into material, personal, punishment of particular person and moral with probable economic consequences.

Sanctions and criminal punishment of legal persons in Czech legislation is at present only a subject of de lege ferenda discussion.
**Imposition of the relevant individual penalties**

As previously mentioned in the above summary, the relevant punishments in cases of environmental crime are: imprisonment, fines, forfeiture of items and prohibition of activity. Penalties that are listed in Special Part of the Criminal Code can be imposed either individually or together. In addition to the penalties expressly stated in Special Part of the Criminal Code, other penalties listed in Section 27 can be imposed. For their imposition the conditions in Section 39 and the following sections of the Criminal Code, where imposition and the implementation of individual penalties are adjusted, must be fulfilled.

A maximum sentence of either 15 years of imprisonment or the time included in Special Part of the Criminal Code can be imposed. Special rules are to be applied on a perpetrator who committed an offence on behalf of a criminal conspiracy. It can relate to a perpetrator who either commits a intentional offence as a member of a criminal conspiracy or willingly commits an offence with a member of a criminal conspiracy, or aids a criminal conspiracy (Section 43 of the Criminal Code is relevant only in the case that the circumstances relating to the crime or to the perpetrator substantially increase its level of danger to society).

In the case that the perpetrator commits a crime on behalf of a criminal conspiracy, the more severe punishment in the upper half of a range of imprisonment (the mentioned punishment is included in Special Part of the Criminal Code) is increased by a third and the court imposes imprisonment in the upper half of the imposed sentence of imprisonment (refer to Section 44 of the Criminal Code).

Fines of between 2 000 CZK and 5 millions CZK can be imposed in cases where the perpetrator deliberately commits a crime to obtain material gain, or in cases where this penalty is included in Special Part of the Criminal Code, or it is imposed in the case where an offence would carry a prison sentence of up to 3 years, and according to the nature of the committed crime and the possibility of perpetrator’s rehabilitation a prison sentence is not imposed at the same time.

The severity of the fine is considered by the court based on the personal and material conditions of the perpetrator, whilst fines are not imposed if it is clear that they would not be recoverable. In addition to the fine the court sets an alternative penalty of imprisonment in cases where a fine would not be recovered in the given time limit.

Forfeiture of items can be imposed by the court if the items were either used or intended to be used in committing the crime or which the perpetrator obtained from the committing the crime either directly or as a reward, or which the perpetrator obtained even partially by the item obtained by committing a crime. In each case the item must belong to the perpetrator.

Prohibition of activity can be imposed for a period of between 1 to 10 years in cases where a perpetrator committed a crime in relation to this activity. The imposition of this penalty prohibits the perpetrator from performing the activity abused in committing the crime e.g. that allowed him to commit the crime. The sense of this penalty is to prevent
the perpetrator from committing further offences and the penalty is also a disciplinary tool. The sentenced person cannot practice certain employment, occupation or function or an activity that requires a specific permit or which performance is adjusted by a specific regulation, whilst it must always relate to a concrete activity that was misused directly during the crime.

In the framework of general principles for imposing a penalty, the Criminal Code states that the court takes account the degree of danger of the offence to society, the possibility of rehabilitating the perpetrator and his standard of living.

When setting the punishment mitigating and aggravating circumstances are also taken into consideration. These are considered to be the circumstances related to the crime e.g. its perpetrator, and individualizes the committing of criminal activity. For the issue of organized criminal activity Section 34 letter g) of the Criminal Code is of relevance where it is stated like aggravating circumstances committing an offence as the organizer, as the member of a criminal conspiracy or group.

*Evaluation of the penal system of criminal law in relation to environmental crime*

It follows from the above table that the basic penalties for committing offences against the environment are imprisonment, fines and prohibition of activity.

While being a universal penalty, a prison sentence is not always the best solution. It is necessary to substitute it with an alternative punishments not related to the deprivation of liberty and by isolation from “due” members of the society. New penalties should require activity from the perpetrator not to represent just passive receipt of the penalty. The solution could be an expansion of the possible forms of community work and both an expansion in the conditions for its use and content (work for the environment).

Imposing fines is an appropriate legal recourse for environmental crime; nevertheless it is necessary to rank among the sanctions the duty to restore to the original state, if possible. Rehabilitation must precede other sanctions and must be considered a priority. This do not eliminate the accumulation of other penalties that will be needed to avoid the idea that it is possible to fearlessly damage the environment as it is enough to return everything to its original state and there is no further penalty for the perpetrator. Another solution could contradict the principles of prevention and even the purpose of criminal law.

In the case of the introduction of criminal liability for legal persons the scale of possible penalties is increased by further very effective provisions e.g. compulsory liquidation of companies, compulsory administration, compulsory change of management and others included above.

A particularly important element of the entire concept of the penalty of perpetrators of environmental crime would be the involvement of the public, or the ‘influence of public opinion’ in cases of illegal damage to the environment. The penalty must communicate the danger of crime to other members of society. The effect of prevention is even more impor-
tant due to the fact the environmental crime exceeds the character of the local hazard and its content and irreversibility requires consistent repressive reaction including heavy public condemnation.

In particular, in case of punishment of legal persons it would be appropriate to introduce the element of making the sentence public which itself, i.e. without imposing any other penalties, would probably bring negative economic consequences.

**Description of the link between environmental criminal law and organised crime legislation**

1. As we have already mentioned above, the offences against environment as well as the provisions concerning organized crime are both contained in the Act No.140/1961 Coll., Criminal Act.

2. The Criminal Act uses the concepts of accomplice (Section 9) and participant (Section 10) that include joint acting, as the case may be forms of participation as organizer, abettor and assistant (Section 10). These cases will probably be the most common and they have a tradition in the Czech criminal law. These provisions can be theoretically applied in all cases of offences against environment as they are included in the General Part of the Criminal Act and they are not tied to formulation of facts of the offence under the Special Part of the Criminal Act.

3. The provisions of criminal conspiracy can theoretically be applied to any offence against environment provided the conditions of the Section 89 paragraph 17 (General Part), Section 163a (Special Part) of the Criminal Act are met. The term of criminal conspiracy is, however, misleading since criminal conspiracy can also be a form of preparation (Section 7 of the Criminal Act) of an offence, therefore a developmental stadium of an offence. Provisions on preparation can be applied to all offences against environment.

4. Commission of a crime within an organized group is an aggravating circumstance defined in the General Part of the Criminal Act and justifies the imposition of a higher punishment. However, this aggravating circumstance is relevant only when it is expressly mentioned in the facts of the offence. In the field of environmental protection, the existence of organised group is relevant only for 3 offences under the Criminal Act, namely Section 178a paragraph 2 letter d) – Poaching, Section 181f paragraph 3 letter b) and paragraph 4 letter b) – Unauthorized handling of protected wild plants and animals and Section and Section 186 paragraph 3 letter c) - Illegal production and possession of radioactive material and highly dangerous materials.

5. The commission of a crime within an organised group is not relevant for the offences under Sections 181a – Endangering and damaging of the environment (intentional), 181b - Endangering and damaging of the environment (negligent), 181c – Illegal logging, 181e – Illegal handling of wastes, 181g – CITES-related crimes (transit of
specimens - negligent), 181h – CITES-related crimes (illegal collection of specimens - negligent), 203 – Mistreatment of animals, of the Criminal Act. We remind that the application of provisions on complicity, participation or criminal conspiracy is hereby not excluded. We assume that a provision on organised group should be included into Section 181c – Illegal logging, Section 181e – Illegal handling of wastes and Section 181h - Unauthorized handling of protected wild plants and animals since there are indications that organised groups are frequently involved. Please note that organised crime cannot be indicated by definition in offences of negligence (e.g. Section 181b, Section 181g, Section 181h of the Criminal Act).

3.4. FRAMEWORK OF THE APPLICABLE LEGISLATION

Key principles of environmental criminal law

As we have mentioned above, the Czech criminal law does not have an independent sector of environmental criminal law. Within the environmental law, we have the concept of environmental liability which can be divided into environmental liability in in delict and liability for environmental loss. Within the environmental liability in delict, administrative liability and criminal liability is distinguished. Environmental criminal liability arises fully from the Criminal Act in force that regulates among others the offences against environment. As regards the interpretation of the facts of offences against environment, besides the common principles of the general criminal law both substantive and procedural, also the main principles of environmental law are applied in the same way as mentioned above in Chapter 3.1 c). It especially concerns the restoration principle, principle of state responsibility, principle of originator’s liability, polluter-pays principle, integrated protection principle, prevention principle and precautionary principle.

Tortious liability for environmental protection

Tortious liability is liability for unlawful actions, i.e. such actions by which are breached individual provisions (duties of persons) concerning environmental protection or its parts. Criminal liability (criminal-law, for offences) and also administrative liability (administrative, for administrative torts) is applied in this sphere in the Czech law, where the last mentioned liability is much more often applied in practice.

Liability for administrative torts against environment

It is possible to include into the term administrative torts in its broadest sense any unlawful activities breaching regulations from the field of administrative law, respectively in our case from the environmental law. It includes a/ misdemeanours and b/ other administrative torts of natural persons, as well as c/ administrative torts of legal entities and natural persons at performance of entrepreneurial activities. The key criteria for classification of
an illegal act as a tort of a specific category is the actual entity, which committed it and what position did the entity hold then. Whereas in cases of tortious liability of natural persons (in case the act is not committed at their entrepreneurial activities) this refers to subjective liability, in cases connected with legal entities and natural persons at performance of their entrepreneurial activities this refers to objective liability for consequences. The last mentioned category of tortious administrative liability has been playing a key role in the Czech law in section of environmental protection in recent years, not only because of frequency of commitment of these torts, but also their extent and gravity.

Tortious liability of natural persons

If we abstract from this category objective tortious liability of natural persons at performance of their entrepreneurial activities, which is in the Czech legal order construed similarly and jointly with tortious liability of legal entities, then misdemeanours and other administrative torts of natural persons stay in this group. Category of other administrative torts of natural persons, no matter how often it was applied also in the sphere of environmental protection in 70s and 80s of 20th century, has become a rather outdated institute, not only because of legal reasons (constitutes inequality of entities, is very imperfectly regulated), but also because of factual reasons (low effectiveness, possibility to replace liabilities by misdemeanours, etc.). This category was therefore gradually excluded from legal regulations in section of environmental protection (except for the sphere of hygiene).

Misdemeanours represent a typical subjective liability (for culpability), and are not only relatively complexly regulated by an individual Act (Act of Czech National Council No. 200/1990 Coll., Misdemeanours Act, as amended by subsequent legal regulations), but are also quite often applied for sentences passed in connection with offences against environmental protection and its components (inclusive problem issues related and connected).

Facts of misdemeanours are incorporated beside the Misdemeanours Act also in some special Acts in section of environmental protection (Building Law, Act on Conservation of nature and land, Act on Forests, Act on Protection of animals and against maltreatment, etc.). In these Acts it is possible to find more exact and detailed determination of facts of individual groups of misdemeanours in various sections (contrary to the Misdemeanours Act), but the sanctions for these misdemeanours are also differently regulated and authorities competent to impose such sanctions are stated. The special regulation enjoys priority over the general regulation incorporated in Misdemeanours Act. In connection with this the question, whether the special facts are to be incorporated (regulated) in special regulations or whether all are to be incorporated in the joint Misdemeanours Act, arises. The situation here slightly differs from situation of administrative torts and a solution cognate with the Penal Law could also be possible in the future.

Facts of misdemeanours against environment can be divided (similarly as offences) into the three following groups:
1. special (incorporated in special Acts),

2. basic (incorporated in individual paragraphs of Misdemeanours Act, in case these include facts of acts against environment),

3. residual (incorporated in Misdemeanours Act under Section 45 „Misdemeanours in section of environmental protection“, as the case may be also Section 46 „Other misdemeanours against order of state administration and misdemeanours against order of municipal authorities“).

In case commitment of unlawful activities, which could be regarded as a misdemeanour in section of environmental protection, is discovered then it is necessary to investigate to which of the above-mentioned types of facts the activities belong (which facts were fulfilled thereby), and it is necessary to follow the above-indicated order (from special to general).

The actual Czech misdemeanour law is regulated quite sufficiently in the section of environmental protection.

Tortious liability of legal entities and natural persons at entrepreneurial activities

Administrative torts of legal entities (associations) later extended also by liability of natural persons at performance of their entrepreneurial activities form a relatively new part of the Czech legal order. First of them occurred in the Czech law approximately in the middle of 50s of the last century, however they have been more frequently applied since 70s. Necessity to introduce this category of objective tortious liability (in the Czech law defined as absolute liability, with limited features of possible moderation) arose not only from a high and permanently growing number of legal entities (and newly also natural persons entitled to perform entrepreneurial activities), but especially from a high level of social dangerousness of their possible activities. Technical, financial and personal opportunities and equipment of these entities and thus also consequences of their unlawful activities (ecological damage, extent of pollution or damage caused to environment, etc.) are incomparable with opportunities of natural persons (citizens). The category of administrative torts was introduced for these and a number of many other reasons in general and in the section of environmental protection in particular, and this category has been gradually amended and extended and sanctions for these torts have been continuously made more restrictive.

Administrative torts are not codified anywhere and moreover the procedural issue of their proceedings and sentences is not uniformly regulated. Provisions concerning administrative torts and determination of their facts can be then found in a considerably high number of Acts. Even though it might seem that administrative torts are regulated rather uniformly concerning material and also procedural issue, at least in section of environmental protection, the very opposite is the true.
Individual legal regulations differ not only by determination of facts of the assigned type and especially by extent of sanctions (various extent structures), but especially by sphere of authorities entitled to sanction, by compulsoriness, respectively by facultativness of imposing sanctions, by purpose-boundedness of financial funds arising from penalties, by determination of terms and their counting (subjective and objective), by extinction of culpability any by many other features.

Non-uniformity and fragmentation of legal regulation of administrative torts is surely not only a theoretical problem but also a practical one. It considerably weakens not only legal consciousness of entities, but it also affects rather counter-productively when applying this liability in practice. Thoughts concerning introduction of an act on administrative torts have appeared and this act should procedurally and partly also materially unify and especially simplify the entire legal regulation of liability for administrative torts (i.e. not only the sphere of environmental protection right) within the Czech legal order, most probably with procedures similar to misdemeanours. It could moreover solve other questions - e.g. concurrence of liabilities, competence of administrative authorities (positive or negative disputes concerning competence), partly also issues of reformatory measures, etc.

Relation of criminal-law liability to other forms of liability

It is necessary to point out, that one act can lead not only to criminal-law liability, but it can also result in a whole „chain“ of liability relations. So for example if a legal entity (association) sets up a waste dump at a spring of a brook within an outstandingly protected area, it is possible to take into consideration liability of this association for a joint number of administrative torts (in this respective case e.g. in sections of water management, disposal of wastes, hygiene and conservation of nature), and further liability of offence, as the case may be misdemeanour of a physical entity (employee), who acted on behalf of it. Further liability for damages and/or for ecological damage and finally as a general rule also labour-law liability arise.

Individual liability relations do not usually excluded each other in accordance with various Acts and can run parallelly, this cannot be however applied in all cases. A number of questions has not been solved yet at the general-theoretical level and also in the special sphere (environmental right). The question of application of the consumption principle (absorption) in connection with administrative torts of legal entities and natural persons at performance of their entrepreneurial activities (single-acting concurrence of administrative torts), but also question of mutual relation between damage and detriments at their overlapping within subsequent process of their reparation.

Some competency issues still stay unsolved (authorities entitled to sanction in relation to authorities entitled to impose reformatory measures or to enforce remedy of ecological damages) and procedural issues (terms and their course). It is necessary to further solve herein indicated problems, i.e. reflection of practice of law into jurisprudence and in particular into the legislative process.
Key principles of organized crime legislation

Key principles of criminal legislation in general

The concept of organized crime in the Czech law is based on the general criminal law, represented in the material form by the Act No. 140/1961 Coll., Criminal Act.

The system of criminal liability in a legal state is based on the principle of subsidiarity of criminal repression, which means that the protection by means of criminal law comes only when other forms of liability do not provide a sufficient protection for the protected values.

Criminal law includes the elements of individual and general prevention. This is based on the fact that sentence for the commitment of an offence is a punishment for the offender, but also a deterring example for the entire society as far as level and type of punishment is concerned.

Natural persons exclusively are subjected to the criminal liability and their liability is based on fault (intentional or negligent), we speak of the so-called subjective liability. Evidence must be furnished for acting, harmful consequence or danger of harmful consequence, causal connection and mens rea which covers all these elements of the facts of the offence.

Criminal law is governed by the principle nullum crimen sine lege, nulla poena sine lege that is incorporated also in constitutional Charter of Fundamental Rights and Freedoms (Article 39) and therefore put at the top of the legal order.

Criminal law knows the only category of criminal delicts which are called “criminal acts” (to distinguish it from the Criminal Act as a legal rule we use the term “offence”). Offences are regulated in the Criminal Act only. Offence is an act dangerous for society the elements of which are mentioned in the Criminal Act. An offence whose level of danger for society is minute, is not an offence although otherwise it shows all elements of an offence. Punishability of an act requires intentional fault, unless it is stipulated therein explicitly that negligence is sufficient. The degree of dangerous of the offence for society is determined especially by the meaning of value that was affected by the offence, by the way the offence was carried out and its consequences, circumstances under which the offence was committed, by the offender, degree of fault and by his/her motive. Under the provision of Section 89 paragraph 1 of the Criminal Act, an offence is deemed only a an offence triable in court, also in the form of preparation or attempt or in the form of participation distinguishing between organization, abetment and assistance.

To fulfill the principle of lawfulness of criminal-law sanction it is necessary to define the relation of the offence and other acts injurious to the public. It shall regard the relation offence – misdemeanor since the very two institutes are defined by a number of common signs (injuriousness to the public, infringement of protected interests of society, natural person, blame etc.), however, it differs in one fundamental sign that is the injuriousness to the public (their material sign) that shall be higher than negligible in case of offences. The mutual competition is resolved by the proportion of subsidiarity and specialty. Offence is
special in comparison with the misdemeanor in a way that culpable illegal acting can be a misdemeanor only in case it is not a different administrative tort or offence. Provision on misdemeanor is therefore subsidiary to the provision on offence. In the overall concept of legal order, the competition of administrative law and criminal law shall be dealt with and it shall be stipulated when an administrative-law protection is still sufficient and when the level has been exceeded and there is space for exercise of criminal law.

Key principles of organised crime legislation

In Czech criminal law the basic term ‘criminal conspiracy’ is used in the area of organized crime. The basis of the valid legislation is the Criminal Code No. 140/1961 Coll. Amendment of the Criminal Code in 1995 (Act No. 152/1995 Coll.) incorporated the new term of criminal conspiracy’ and the legal definition of this term. It would be more appropriate to regulate the term criminal organization as the term criminal conspiracy, can imply, under certain circumstances, certain stage of criminal act, i.e. preparation. The Criminal Code in Section 89 para. 17 introduces five conceptual attributes: association of several people, internal structure, allocation of functions, differentiation of activities and a view to obtaining material gain by systematically participating in intentional criminal activity. It is necessary to emphasize that the current existence of these five elements distinguishes the concept of criminal conspiracy from the concept of organized group.

According to Czech criminal law, the term organized group is generally aggravating circumstance or a factor which is a condition for greater punishment for some criminal acts. In the field of environmental protection, criminal acts are pursuant to Section 178a para. 2 letter d) – poaching, Section 181f para. 3 letter b) and para. 4 letter b) – unauthorized handling of protected and free wild animals and plants and Section 186 para. 3 letter c) – Unauthorized Production and Possession of Radioactive Material and Extremely Hazardous Substances.

The internal structure is characterized by superiority and subordination, stability, and rules covering secrecy, structure and activity. Repeated intentional criminal activity with a view of obtaining material gain is judged from the point of view of the criminal conspiracy as a whole, because individual criminal acts of a single perpetrator do not necessarily have to earn a direct profit.

An important fact is that, pursuant to Section 88 para. 2 of the Criminal Code, a perpetrator committing a crime as a member of an organized group can also be punished as a perpetrator of a criminal act committed on behalf of a criminal conspiracy.

Committing a criminal act as a member of a criminal conspiracy has significant legal consequences. Division 4 of Chapter 3 of the Criminal Code from 1995 sets provisions reflect-

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ing the phenomenon of organized crime. Section 163a of the Criminal Code deals with the fact that it is a criminal act to be a member of a criminal conspiracy. It cites three forms of criminal activity:

1. Establishing a criminal conspiracy,
2. Being a member of a criminal conspiracy,
3. Supporting a criminal conspiracy.

The latter of the three cannot be committed by a member of a criminal conspiracy.

A special case of active repentance is in Section 163b of the Criminal Code, when a perpetrator committing a crime referred to in Section 163a, is not punishable, if he notifies the criminal conspiracy to a state representative or police body at the time when danger, other than those included in Section 163a, committed by the conspiracy can be avoided.

The provision of Section 163c complements Section 34b of Act No. 283/1991 Coll, on the Police Force of the Czech Republic and implements impunity conditions for police agents, who during investigation of major criminal activity, hold false documents, hide the real purpose of their activity and attempt to infiltrate a criminal environment. For this purpose they commonly join a criminal conspiracy, whereby committing a crime pursuant to Section 163a, but Section 163c guarantees them impunity. This does not relate to so-called agent provocateurs, who establish or stage a criminal conspiracy, and other police agents who commit other crimes than those pursuant to Section 163a.

It is necessary to consider that the crime of Failure to Report an Offence pursuant to Section 168 of the Criminal Code can be committed by whoever knows by authentic means that another committed a criminal act by participating in a criminal conspiracy (Section 163a para. 1).

Consequences for investigation methods

If we compare the concepts of “organized group” and “criminal conspiracy”, we can conclude that a criminal conspiracy is the higher form of organized crime. A criminal conspiracy will be better organized with a detailed separation of functions and imposition of sanctions for disobeying internal rules etc. In practice, it is very difficult to convict a criminal conspiracy. Basic-level offenders are usually convicted but not the leaders, very often members of a criminal conspiracy know other members on the same level of the conspiracy only.

29 Information by Por. Bc. Jaroslav Hruška, agent of the Police Unit for detecting organized crime (UOOZ)
Por. Hruška of UOOZ stated that the police have in some cases good information on the activities of criminal conspiracies. This information is gathered with the use of the following instruments:

- Intelligence means and devices, i.e. sham transfer of a thing, surveillance of persons and things, use of agent (Section 158b of Act No. 141/1961 Coll., on criminal procedure)

- Supporting intelligence means and devices (Section 23a of Act No. 283/1991 Coll., on the Police of the Czech Republic)

- Means for detention of persons and seizure of property (Act No. 141/1961 Coll., on criminal procedure)

Supporting intelligence means and devices are:

- false identity documents
- conspiratorial means
- alarm device
- special financial means
- use of informant

Under the conditions set by the Criminal Procedure Act the Police are also entitled to use following means of investigation of crimes: co-operation with confidants, interceptions and records of phone calls, opening, seizure and swap of mails, searches.30

All the methods and instruments are used both for the investigation of a criminal group and a criminal conspiracy. However, the conviction of a criminal conspiracy requires more evidence and effort of the Police than the conviction of an organised group. Offenders often take counter-measures such as exchanging SIM-cards in their mobile phones, exchanging cars, distorting information even within the group, hiring lawyers etc.

In Por. Hruška’s opinion, organized environmental crime is not prioritized yet in the eyes of the Czech justice, police and the society as a whole. This can be a reason why no environmental crime has not been prosecuted as organized crime yet.

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30 Further details of the investigation methods are confidential and therefore could not be included in the study.
Deficiencies in legal regulation regarding criminal conspiracy are:

Either (i) in problematic and heavily restricted conditions of punishment in the Criminal Code, or (ii) in the fact that it is not in complete correlation with international relations of the Czech Republic.

Ad a) the problem lies in the single incorporation of the term of criminal conspiracy itself, it would be more appropriate to use the term criminal organization as identification of a criminal conspiracy can under certain circumstances imply a criminal act, i.e. preparation. The term should be determined comprehensively as an enterprise, not by current specification of attributes of hierarchical structure. In addition, the determination of elements characterizing the criminal conspiracy should also be addressed. Obligatory attributes are determined in too much detail which most probably inhibits the more regular application of the relevant provisions of the Criminal Code related to organized crime, because it creates evidence difficulties during criminal proceedings. Therefore, criminal activities and enumerative determination of goals to which these activities are directed and the method of achieving these goals should be defined.

Ad b) The Czech Republic signed an U.N. Treaty on International Organized Crime on the 12.12.2000. Part of this Treaty is the legal definition of organized crime. It has yet to be announced in the Collection of International Treaties. The Czech Republic has bilateral agreements on the fight against organized crime and terrorism with e.g. Italy (No. 37/2000 Coll. of International Treaties), Croatia (No. 110/2002 Coll. of International Treaties) and Romania (No. 33/2003 Coll. of International Treaties).

It is also necessary to mention the document “Joint Action on Making it a Criminal Offence to Participate in Criminal Organization in the Member States of European Union” – 98/733 JHA (Official Journal of the European Communities No. L351/1, Dec. 29, 1998). Its significance lies in the fact that it is not an international convention requiring ratification of the relevant bodies of Member States, but an executive measure, binding all Member States. This has relevance for the Czech Republic who signed an agreement on the Accession to the EU in Athens on 16. 4. 03 and who will be holding a referendum on accession in June 2003.

This document combines both basic approaches to the definition of criminal organizations, i.e. from the qualitative point of view, characterizing a certain level of the constitution of a given organization and from the point of view of an enumerative determination, defining the sphere of criminal acts typically committed by criminal organizations. From the given approach it logically follows that organized crime is understood as being qualified criminal activity defined according to specific objects, committed by an entity who joins in the activity of the organization, which is considered to be criminal..

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24 Based on Article K.3 of the Contract on European Union
Article 1 of the document specifies the crimes for the purpose of this document as those included in Article 2 of the Europol Convention (Convention on European Police Office) and in the Annex thereto which carry a maximum sentence of at least 4 years and more severe punishment. It is significant that the Czech Republic signed and announced in the Collection of International Treaties an agreement on cooperation between the Czech Republic and Europol (No.108/2002 Coll.of International Treaties) and the change of this agreement was made by exchange of notes from 13th of February 2002 and 5th of March 2002. This amendment was of particular importance from the point of view of environmental protection, as originally in the agreement there was no reference to criminal acts against the environment. The above-mentioned notes supplement Article 3 and Annex 1 of the agreement in the following areas of criminal activity:

- illegal trade of endangered animals;
- illegal trade of endangered species and breads of plants;
- environmental criminal activity. 25

**Parallels and differences**

As mentioned above in the previous two chapters, criminal-law liability in the section of environment arises fully from the criminal law in force that regulates also the offences against environment. In interpretation of the particular facts of the offences against environment, beside the usual principles of general criminal law both substantive and procedural also main principles of environmental law are applied.

As regards the organized criminality, it is also regulated by the Criminal Act while three cases of offences directly concern also the offences against environment (however only the concept of organized group as a generally aggravating circumstance, respectively the circumstance subjecting the usage of higher penal rate in case of some offences) and indirectly in other cases (participation, complicity, criminal conspiracy), however only under the conditions stipulated by law. The existing regulation of criminal conspiracy is applicable in practice to neither environmental protection nor protection of other public interests (general criminality) due to the complicated solution of the definition. When recodifying the Criminal Act, it shall be modified in the course of international obligations of the Czech Republic.

The position of criminal law in the legal order is significant as regards its functions. Originally, mainly the repressive function was concerned, however, today it is not considered as a preventive function any more. It complies also with the principles in environmental law, especially with the prevention principle. Unlike the principles of environmental law, the criminal law does not still emphasize the restoration, reparation function very much

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25 Compare Annex nr.4 Notification of MoFA nr.108 / 2002 Coll.m.s.
that is usually more important in the field of environment than the repressive one. Let us mention at least the polluter pays principle or principle of originator’s liability, restitutio in integrum principle etc. They have more priority in environment. In the field of organized criminality, the public authorities shall be concerned especially with repression, however in the field of organized criminality in the section of environment, prevention shall be emphasized.

3.5. SANCTIONS IN THE FIELD OF ORGANIZED ENVIRONMENTAL CRIME

Introduction to the sanction system

An integral part of the formulation of the Criminal Act is the establishment of penalties. Punishment in criminal law has several meanings:

- A perpetrator of a crime should be punished. By this, it serves also as an element of individual prevention. Punishment represents personal detriment for the perpetrator.

- Punishment is dissuasive, as its bearing on the perpetrator, discourages other members of society from committing crime.

- The sentence together with the crime committed become an object of the public denouncement.

- The sentence protects the community from further Criminal Activity committed by the perpetrator.

- The sentence, in particular stops the perpetrator from continuing the action.

The purpose of the punishment is defined in Article 23 of the Criminal Act.

Penalization is a tool for implementation of state force whilst the constitutional principle “state force can only be exercised within the limits and on the basis of the law” must be respected. Bills set basic requirements for punishing a perpetrator in criminal law. These requirements must be implemented at a constitutional level because punishment is the deprivation of liberty, and is only possible if legislation allows it. Several principles are also contained in the constitution.

Punishment pursuant to the Criminal Act is stated in Article 27 as follows:

- imprisonment,

- community labor,

26 Art 7, 8, 39, 40 document on human rights and freedoms.
- loss of honorary title and distinction,
- loss of military rank,
- prohibition of activity,
- forfeit of property,
- fines,
- forfeit of items,
- expulsion,
- prohibition of residence.

It is always possible to issue a prison sentence, which is in this case universal, whilst its length and other characteristics are further differentiated according to the threat to society of the crime.

Several penalties can be given for criminal proceedings against the environment e.g. cumulatively if the conditions of the Criminal Act are fulfilled, imprisonment and several material penalties (forfeit of property, forfeit of items, fines). In addition, it is possible to impose several penalties on the basis of general provisions on the imposition of penalties; these are not specified for individual offences from other areas of the Criminal Act.
Table 47: Overview of possible punishments for selected environmental crimes pursuant to valid Czech criminal law

<table>
<thead>
<tr>
<th>Section</th>
<th>Imprisonment</th>
<th>Fine</th>
<th>forfeit of items</th>
<th>prohibition of activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>178a</td>
<td>(1) up to 2 years</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) from 6 months to 5 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181a</td>
<td>(1) up to 3 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) from 1 to 5 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) from 2 to 8 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181b</td>
<td>(1) up to 6 months</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) up to 2 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(3) from 6 months to 5 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181c</td>
<td>(1) up to 2 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) up to 3 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181e</td>
<td>(1) up to 2 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) up to 2 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(3) up to 3 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(4) from 6 months to 5 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>181f</td>
<td>(1) up to 3 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(2) up to 3 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(3) from 6 months to 5 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>(4) from 2 to 8 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>181g</td>
<td>Upto 1 year</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>181h</td>
<td>Up to 1 year</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>186</td>
<td>(1) from 1 to 5 years</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
Should future introduction of the criminal duty of legal persons (in a specific group of cases where e.g. environmental crime would have a considerable place) be considered, other types of penalties could also be proposed. Taking a wide view on the given problem it would be possible to impose sanctions of warning or discipline and fines or compulsory expiration together, e.g. suspension of activities of legal persons, duty to rehabilitation into the original state or prohibition of certain activities. Other possible sanctions could have a declaratory character: denunciatory judgment without punishment, removal of fiscal relief and support, publication of judgment including posing sanctions or change of management.

The sanctions to be considered can be separated into material, personal, punishment of particular person and moral with probable economic consequences.

Sanctions and criminal punishment of legal persons in Czech legislation is at present only a subject of *de lege ferenda* discussion.

**Imposition of the relevant individual penalties**

As previously mentioned in the above summary, the relevant punishments in cases of environmental crime are: imprisonment, fines, forfeit of items and prohibition of activity. Penalties that are listed in separate sections of the Criminal Act can be imposed either individually or together. In addition to the penalties stated in separate sections other penalties listed in Article 27 of the Criminal Act can be imposed. For their imposition the conditions in Article 39 must be fulfilled and the following sections of the Criminal Act where imposition and the implementation of individual penalties are adjusted.

Imprisonment A maximum sentence of either 15 years or the time included in separate parts of the Criminal Act. Special rules to be applied on a perpetrator who committed an offence on behalf of a criminal conspiracy. It can relate to a perpetrator who either commits a deliberate offence as a member of a criminal conspiracy or wittingly commits an offence with a member of a criminal conspiracy, or aids a criminal conspiracy (Article 43 of the Criminal Act is relevant only in the case that the circumstances or the perpetrator increases his level of danger to society).
In the case that the perpetrator commits a crime on behalf of a criminal conspiracy, the more severe punishment of imprisonment (the mentioned punishment is included in separate sections of the Criminal Act) is increased by a third and the court imposes imprisonment in the upper half of the imposed sentence of imprisonment (refer to article 44 of the Criminal Act).

Fines of between 2 000 CZK and 5 Millions CZK can be imposed in cases where the perpetrator willingly commits a crime to obtain material gain, or in cases where this penalty is included in separate sections of the Criminal Act, or it is imposed in the case where an offence would carry a prison sentence of up to 3 years, and according to the nature of the committed crime and the possibility of rehabilitation a prison sentence is not imposed at the same time.

The severity of the fine is considered by the court based on the personal and material conditions of the perpetrator, whilst fines are not imposed if it is clear that they would not be recoverable. In addition the court sets an alternative penalty of imprisonments in cases where a fine would not be recovered in the given time limit.

Forfeit of items can be imposed by the court if the items were either used or intended to be used in committing the crime or which the perpetrator obtained from the committing the crime either directly or as a reward, or which the perpetrator obtained even partially by the item obtained by committing a crime. In each case the item must belong to the perpetrator.

Prohibition of activity can be imposed for a period of between 1 to 10 years in cases where a perpetrator committed a crime in relation to this activity. The imposition of this penalty prohibits the perpetrator from performing the activity abused in committing the crime e.g. that allowed him to commit the crime. The sense of this penalty is to prevent the perpetrator from committing further offences and the penalty is also a disciplinary tool. The sentenced person cannot practice certain employment, occupation or function or an activity that requires a specific permit or which performance is adjusted by a specific regulation, whilst it must always relate to a concrete activity that was misused during the crime.

In the framework of principles for imposing a penalty the Criminal Act states that the court takes account of the level of danger of the offence to society, the possibility of rehabilitating the perpetrator and his standard of living.

When setting the punishment mitigating and aggravating circumstances are also taken into consideration. These are considered to be the circumstances related to the crime e.g. its perpetrator, and individualizes the committing of Criminal Activity. For the issue of organized Criminal Activity Article 34 letter g) of the Criminal Act is of relevance where it is stated like aggravating circumstances committing an offence as the organizer, as the member of a criminal conspiracy or group.

Criminal conspiracy can relate to any offence under the Criminal Act. Practically any sentence can be imposed in accordance with regulations stipulated in Sections 27 and 28 of the Criminal Act. Theoretically it can be in accordance with Section 27:
- imprisonment with or without suspension,
- community work,
- loss of honorary degrees and awards,
- loss of military ranks,
- ban on activities,
- forfeiture of property,
- statutory penalty,
- forfeiture of objects,
- ch) banishment,
- prohibition to reside.

In case the Criminal Act imposes to one offence in the special part a number of sentences, each of these sentences can be imposed separately or also a number of them at the same time. Beside the sentence, which is stipulated by this Law in its special part to an offence (in case of offence under Section 163a – Participation in criminal conspiracy - the offender can be sentenced to imprisonment in the term from two to ten years or forfeiture of property), it is possible to impose also other sentences, stated in Section 27. Banishment and prohibition to reside can be imposed separately, even though this Law does not stipulate such sentence in the special part. It is not possible to impose a statutory penalty together with forfeiture of property.

Beside the paragraph concerning criminal conspiracy it is necessary to mention, that the Czech Criminal Act includes expressions accomplice, which covers mutual acting of at least two persons (Section 9) and participant, where forms of participation are organizer, abettor and assistant (Section 10), but it shall in all cases be a person different from the person of offender, or accomplice and moreover in accordance with the accessory principle of participation of their criminal liability this person appears at the moment of a committed offence or its attempt. These are more frequent and in the practice of the Czech criminal law aged cases (since 1961), applied commonly in the scope of general criminality. They can be applied with almost any offence. However they miss (despite existence of the above-mentioned organizer) signs of organized structures, as is in cases of criminal conspiracy. Actually any sentence, which is stated by the respective facts of the offence, can be imposed. Theoretically it can be:

- imprisonment with or without suspension,
- community work,
- loss of honorary degrees and awards,
- loss of military ranks,
- ban on activities,
- forfeiture of property,
- statutory penalty,
- forfeiture of objects,
- banishment,
- prohibition to reside.

It is important to point out that the present existence of the above-mentioned five signs (1. partnership of more persons, 2. internal organizational structure, 3. assignment of roles, 4. division of activities, 5. activities focused on continuous commitment of intentional criminal activities) distinguishes criminal conspiracy from accomplices or participants in offences, inclusive organized group, which have to include some of these signs, in particular signs 2, 3 and 5.

Expression organized group does not have a legal definition in the Czech Criminal Act. It serves in accordance with the Czech Criminal Act only as generally aggravating circumstance, respectively circumstance subjecting the usage of a higher penal rate in case of some offences (Section 34). This does not relate to an institution of an organized criminality, as in cases of criminal conspiracy. It usually does not have stable organized structure, it is formed ad hoc for a one-time action, it is not focused on continuous commitment of intentional criminal activities. In the sphere of environmental protection only offences under Section 178a paragraph 2 letter d) – Poaching, Section 181f paragraph 3 letter b) and paragraph 4 letter b) - Unlawful disposal of protected and feral creatures and wild-growing plants and Section 186 paragraph 3 letter c) - Illegal production and possession of radioactive materials and extremely dangerous substances, explicitly take into account the expression organized group – usually expressed in legislation as: “...the person who commits such an act as a member of an organized group ...” – as a generally aggravating circumstance, respectively subjecting usage of a higher penal rate..

_Evaluation of the penal system of criminal law in relation to environmental crime_

It follows from the table that the basic penalties for committing offences against the environment are imprisonment, fines and prohibition of activity.

While being a universal penalty, a prison sentence is not always the best solution. It is necessary to substitute it with an alternative not related to the deprivation of liberty. New
penalties should require activity from the perpetrator not to represent just passive receipt of the penalty. The solution could be an expansion of the possible forms of community labor and both an expansion in the conditions for its use and content (work for the environment).

Issuing fines is an appropriate legal action for environmental crime; nevertheless it is necessary to rank among the sanctions the duty to restore to the original state, if possible. Rehabilitation must precede other sanctions and must be considered a priority. This does not eliminate the accumulation of other penalties that will be needed to avoid the idea that it is possible to fearlessly damage the environment as it is enough to return everything to its original state and there is no further penalty for the perpetrator. Another solution could contradict the principles of prevention and even the purpose of criminal law.

In the case of the introduction of criminal liability for legal persons the scale of possible penalties is increased by further very effective provisions e.g. compulsory liquidation of companies, compulsory administration, compulsory change of management and others included above.

A particularly important element of the entire concept of the penalty of perpetrators of environmental crime would be the involvement of the public, or the ‘influence of public opinion’ in cases of damage to the environment. The penalty must communicate the danger of crime to other members of society. The effect of prevention is even more important due to the fact the environmental crime exceeds the character of the local hazard and its content and irreversibility requires consistent repressive reaction including heavy public condemnation.

In particular, in case of punishment of legal persons it would be appropriate to introduce the element of making the sentence public which itself, i.e. without any other penalties, would probably bring negative economic consequences.

The sanctioning practise (official statistics concerning the number of criminal investigations, convicted persons, sanctions imposed)

Apart from the offences under Criminal Act, environmental crime can also take the form of administrative delict. Such delicts can also be very serious and fall within the scope of the EU-definition of organised environmental crime. Responsibility for prosecution of these delicts is carried by the Czech Environmental Inspection, Regional Offices and Designated Local Authorities.

Table 48: Cases ascertained and sanctioned by the Czech Environmental Inspection from 1993 to 2000

31 1993 – 2000 annual reports of the Czech Environmental Inspection
Organised crime in the sphere of environment in a few Candidate Countries

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Air pollution</td>
<td>322</td>
<td>330</td>
<td>698</td>
<td>828</td>
<td>894</td>
<td>832</td>
<td>519</td>
<td>629</td>
</tr>
<tr>
<td>Water</td>
<td>850</td>
<td>1 089</td>
<td>1 183</td>
<td>988</td>
<td>871</td>
<td>826</td>
<td>703</td>
<td>748</td>
</tr>
<tr>
<td>Waste</td>
<td>357</td>
<td>492</td>
<td>682</td>
<td>586</td>
<td>620</td>
<td>471</td>
<td>578</td>
<td>678</td>
</tr>
<tr>
<td>Nature protection</td>
<td>100</td>
<td>169</td>
<td>213</td>
<td>234</td>
<td>252</td>
<td>405</td>
<td>445</td>
<td>430</td>
</tr>
<tr>
<td>Forest</td>
<td>341</td>
<td>519</td>
<td>733</td>
<td>465</td>
<td>464</td>
<td>350</td>
<td>309</td>
<td>314</td>
</tr>
<tr>
<td>Total</td>
<td>1 970</td>
<td>2 599</td>
<td>3 509</td>
<td>3 101</td>
<td>3 101</td>
<td>2 884</td>
<td>2 554</td>
<td>2 799</td>
</tr>
</tbody>
</table>

Cases which do reach the seriousness of a crime in the sense of Act No. 140/1961 Coll., Criminal Act, are classified as crimes under the Criminal Act. Please note that Section 181a or Section 181b were fundamentally amended and new provisions of Section 181c, Section 181d, Section 181e, Section 181f, Section 181g and Section 181h were added with effect on 1st July 2002.

**Overview of provisions of the Criminal Act after amendment:**

- **Section 181a** - Endangering and damaging of the environment (intentional)
- **Section 181b** - Endangering and damaging of the environment (negligent)
- **Section 181c** - Damaging of the forest by logging
- **Section 181d** - General provisions
- **Section 181e** - Dealing with hazardous waste
- **Section 181f** - Unauthorized dealing with species of protected wild fauna and flora (intentional)
- **Section 181g** - Unauthorized handling of species of protected and wild plants and animals (handling of specimens in general)
- **Section 181h** - Unauthorized handling of species of protected and wild plants and animals (negligent removing of specimens from their natural environment)

Cases falling under the Criminal Act are prosecuted by the Czech Police:
Table 49: Cases under Section 181a or Section 181b ascertained by the Police from 1993 to 2001

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Endangering the environment pursuant to Section 181a (intentional)</td>
<td>11</td>
<td>5</td>
<td>10</td>
<td>13</td>
<td>4</td>
<td>14</td>
<td>44</td>
<td>84</td>
<td>67</td>
</tr>
<tr>
<td>Clear-up rate</td>
<td>46%</td>
<td>40%</td>
<td>60%</td>
<td>92%</td>
<td>100%</td>
<td>71%</td>
<td>89%</td>
<td>90%</td>
<td>88%</td>
</tr>
<tr>
<td>Endangering the environment pursuant to Section 181b (negligent)</td>
<td>27</td>
<td>22</td>
<td>21</td>
<td>18</td>
<td>21</td>
<td>24</td>
<td>20</td>
<td>26</td>
<td>27</td>
</tr>
<tr>
<td>Clear-up rate</td>
<td>63%</td>
<td>55%</td>
<td>57%</td>
<td>72%</td>
<td>71%</td>
<td>71%</td>
<td>70%</td>
<td>58%</td>
<td>81%</td>
</tr>
<tr>
<td>Total</td>
<td>38</td>
<td>27</td>
<td>31</td>
<td>31</td>
<td>25</td>
<td>38</td>
<td>64</td>
<td>110</td>
<td>94</td>
</tr>
<tr>
<td>Clear-up rate</td>
<td>58%</td>
<td>52%</td>
<td>58%</td>
<td>81%</td>
<td>76%</td>
<td>71%</td>
<td>83%</td>
<td>88%</td>
<td>85%</td>
</tr>
</tbody>
</table>

Provided the Police investigation is successful, the cases are passed on to courts for further prosecution.

Cases which have led to a final judgment in court:

(legal basis of the judgment, i.e. the relevant provision of the Criminal Act, is indicated in overheads)
### Section 178a – Poaching

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
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</thead>
<tbody>
<tr>
<td>Criminal Acts in Total:</td>
<td>21</td>
<td>298</td>
<td>409</td>
<td>310</td>
</tr>
<tr>
<td>Convicted:</td>
<td>0</td>
<td>262</td>
<td>352</td>
<td>272</td>
</tr>
<tr>
<td>Acquitted:</td>
<td>0</td>
<td>3</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Proceedings discontinued:</td>
<td>14</td>
<td>3</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Amnesty awarded:</td>
<td>13</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

### Section 181a – Endangering of the environment (intentional)

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
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<tbody>
<tr>
<td>Criminal Acts in Total:</td>
<td>0</td>
<td>9</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
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<td>6</td>
<td>10</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Proceedings discontinued:</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Amnesty awarded</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### Section 181b – Endangering of the environment (negligent)

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
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<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
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<td>Criminal Acts in Total:</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Convicted:</td>
<td>1</td>
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<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Acquitted:</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>
Section 181c, Section 181d, Section 181e, Section 181f, Section 181g and Section 181h – no data available as these provisions came into force on 1st July 2002

Section 186 – Illicit production and possession of radioactive material or highly hazardous substance

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Convicted:</td>
<td>6</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Acquitted:</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Proceedings discontinued:</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Amnesty awarded</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
4. INFORMATION ON THE NATIONAL LEGAL INSTRUMENTS TO CONTROL ORGANISED ENVIRONMENTAL CRIME IN ESTONIA

4.1. ENVIRONMENTAL LAW

The significance of environmental law in the context of the overall legal system (a brief overview)

Environmental law is a legal discipline and a separate branch of law at the touching point of public law and private law. The historical development of environmental law suggests that the discipline of law in its archaic form originates from private law, namely from law of adjoining properties, the institute of property law. Later, regulation concerning pollution control caused a sharp turn toward public law. Regulation in public law is mainly expressed in direct regulation, i.e. restrictions, prohibitions and obligations, and it is realised with the direct intermediation of the state. Assessment of the situation in our existing legal order shows that public law regulation dominates by 90–95%\(^1\).

Because most environmental litigation disputes with governmental agencies, environmental law is heavily interwined with administrative law (regulation of administrative proceedings, administrative torts or forms of administrative acts). Environmental law has also a close relation to financial law (fees, taxes) criminal law (offences and criminal proceedings) and civil law (ownership, compensation for damages).

In Estonia the environmental law is not codified and the regulation is found in a large number of acts of Parliament, decrees of Government and regulations of ministries. The principles of Estonia’s environmental policy are included in a number of legislative acts on nature management, nature conservation, etc.: Act on Nature Conservation, Forest Act, Act on Protected Natural Objects, Act on the Protection of Marine and Freshwater Coasts, Shores and Banks, Act on Pollution Charges, Water Act, Earth’s Crust Act, Act on Packaging, Planning Act and Building Act, Act on Hunting, Fishing Act, Land Amelioration Act, Act on Sustainable Development, Health Protection Act, etc.

Environmental law has several characteristic features in comparison with some other, more traditional legal disciplines. In addition to having very complex and closely interrelated components, environmental law is dynamic and constantly evolving. This aspect requires that environmental regulations be flexible, but at the same time the legal framework of environmental law must look to the long term and be based on a systematic legal approach. The latter could be achieved by elaboration of the basic principles of this legal discipline accepted by the international community and their adoption into the body of national environmental law.\(^2\)

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In 1989, the Supreme Council of Estonia adopted the Policy on Nature Conservation and Sustainable Use of Natural Resources which provided an assessment of the state of the environment. The policy also formulated policy goals and identified environmental problems and possible ways of achieving the goals under socio-economic conditions based on state ownership. Though the regaining of independence in 1991 did not alter the environmental goals, it changed the conditions for achieving these goals. Instead of an economic system planned and controlled by the state, Estonia has moved towards a liberal free market economy. Privatisation of state owned land and technical assets is successfully being carried out.

Today, environmental requirements are taken into consideration when establishing new enterprises. The use of natural resources as well as environmental protection are regulated by administrative means. Application of resource and pollution charges has provided a solid basis for integrating the principles of environmental protection into economic activities. Large investments financed from the national budget, by different enterprises, local municipalities and various funds, have been made to address the environmental problems; foreign assistance has also been significant. The applied measures have contributed to the improvement of the situation.

**Constitutional aspects concerning the protection of environment. Identification of the leading principles in the field of environmental policy.**

The Constitution of the Republic of Estonia\(^3\) from 1992 provides the legal bases for the system of laws and regulations for nature protection. Section 5 of the Constitution states that natural resources are national riches which shall be used economically. From this paragraph arises obligation for the state to educe legal regime to assure economical use of environment suitable for public interests. This obligation specifies state task fixed in preamble of The Constitution - *is a pledge to present and future generations for their social progress and welfare*.

Section 53 further requires that “Everyone has a duty to preserve the human and natural environment and to compensate for damage caused to the environment by him or her”. Human and natural environments protection aim is to ensure reasonable living conditions for people and necessary natural resources. This paragraph protects natural environment, not social. Obligation to preserve the human and natural environment is a large-scale requirement and comprises all kind of human activity. State is justified to enact regulations to concretise this abstract requirement.

Several requirements and principles in the field of environment protection arise from international law. Estonia has concluded many international conventions and agreements, among others the Charter on Fundamental Rights and Freedoms. The article 3 of the Constitution states that generally recognised principles and rules of international law are

\(^3\) RT 1992, 26, 349

**BFU**
Organised crime in the sphere of environment in a few Candidate Countries

an inseparable part of the Estonian legal system. Estonian Constitution stipulates that in case the international agreement, which is ratified by the Riigikogu, contains a different regulation from national law, the international agreement prevails. Article 123 prohibits state to enter into international treaties which are in conflict with the Constitution.

The Constitution does not list among basic rights, the right to a clean environment and to environmental information. However, those rights have been stipulated in the Charter on Fundamental Rights and Freedoms, which is, as mentioned above, also a part of the Estonian constitutional order.

From the environmental protection perspective, it must be pointed out that section 32 of the Constitution states that restrictions on property rights and land use regimes can be imposed only by law, that is, an Act of the Riigikogu and consequently, not by government regulation or by the regulation of local governments and only within its terms and only under observation of basic rights and freedoms.

The environmental policy of the Republic of Estonia is implemented through executive action programs following the elaboration of environmental strategy trends. Thus, development trends elaborated and directed by the Government and accepted by the public, which take into account the needs of the future generations without endangering the main requirements of the present generation, are followed. This means also that the environmental limitations have to be considered in economic activities.

Estonia adopted its first National Environmental Strategy (NES) in 1997. The NES specifies the trends and priority goals of environmental management and protection in a new political and economic situation and sets the main short-term and long-term tasks to be achieved by 2000 and 2010 respectively.

The Strategy is mainly based on internationally accepted principles and takes into account international environmental agreements and the 1995 EU White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union. The Strategy takes into account historical traditions of Estonia and the current socio-economic situation.

The NES proceeds from the main traditional goal of environmental protection which is to provide people with a healthy environment and natural resources necessary to promote economic development without causing significant damage to nature, to preserve diversity of landscapes and biodiversity while taking into account the level of economic development.

The main principles of the Estonian environmental policy which are provided in the NES, are as follows:

4 Riigikogu is the parliament of Estonia.
5 www.envir.ee
- to encourage economic development in environmentally sustainable direction, whereby the objective is to meet the needs of the present generation without compromising the interests of future generations.

- to anticipate and prevent environmental damage by addressing the causes at the earliest possible stage.

- to exercise caution in environmental decision-making: approval of planned activities where environmental impacts are not entirely clear should be avoided;

- to integrate environmental requirements into the development strategies of other sectors and to consider these while using and protecting each individual environmental media and natural resource. In addition, the interests of the natural environment as an integral system should also be taken into account;

- to include environmental requirements in environmental legislation as well as in other socio-economic legislation in a manner which avoids contradictions between the various requirements;

- to regard the environment as the common wealth and concern of the population. The interests of the environment have to stand higher than party politics, current economic problems, business and propaganda interests. In order to achieve the objectives of environmental protection and sustainable use of natural resources a social consensus between all groups of society must be reached;

- to meet environmental requirements in the economic sector by applying the 'polluter/consumer pays' principle. Every user and polluter has to be fully responsible for their activities. Enterprises have to ensure that their activities meet environmental requirements. The value of natural resources used, all costs related to environmental protection and environmental damage incurred throughout the life cycle of a product (production, distribution, use, and final disposal) should be reflected in the product's price;

- to use the best available technology which ensures sustainable use of natural resources, reduces the burden upon the environment and does not entail excessive costs on the further development of the Estonian economy;

- to cooperate with other countries in solving global and regional environmental problems and to restrain transboundary environmental effects;

- to apply environmental protection measures at the political and/or administrative level that ensures the best possible results. Proceeding from the principle of shared responsibility, the state, local municipalities, enterprises and inhabitants have to cooperate in solving environmental problems within their sphere of influence;

- to promote traditional nature conservation and nature management as well as public awareness concerning natural values.

In determining what combination of environmental protection measures constitutes the best environmental practice, particular consideration should be given to the principle of precaution, the ecological risk associated with the product (taking into account its life
cycle), the time limits for implementation and the social and economic implications. The term “best available technology” is considered to mean the latest stage of development of technology or methods of operation, which are most suitable for limiting or eliminating discharges.

Both, the principle of precaution and the “polluter pays” principle are closely linked with enforcement and remedial measures, especially with civil liability. If nature protection regulations are violated, the law determines appropriate enforcement actions and remedies. Procedures include civil actions, administrative remedies and criminal prosecution.

The aim of civil liability is concerned not only with implementation of the “polluter pays” principle but also with the identification of civil liability risks by industry to prevent environmental harm. A strict liability scheme can encourage polluting enterprises to find ways to minimise or eliminate the pollution they create. The producer has a strong incentive to take every possible step, even steps beyond those required by law, to ensure that no pollution occurs.

Strict liability is imposed in the case of listed hazardous activities and defendants under this liability standard are liable unless they can prove that all required pollution control measures were adopted to avoid damage. In contrast to fault-based liability, a strict liability scheme imposes an obligation to compensate for harm resulting from actions which do not necessarily constitute a breach of law or duty of care.

**Development, principles and techniques of environmental legislation.**

Since 1990, Estonia has been engaged in formulating new legislation to manage its environment. The new laws introduced in mid-nineties were rather general, laying down the main principles but lacking implementing regulations.

Estonian environmental legislation is based on the *Sustainable Development Act*\(^6\) of 1995 which is a “framework” piece of legislation. The *Sustainable Development Act* establishes a national strategy of principles for sustainable development. According to the Act, the purpose of sustainable development is to guarantee an environment which meets human needs as well as provides the necessary resources for economic development without causing significant damage to the environment while maintaining natural diversity. The freedoms to use property and to be engaged in enterprise are restricted based on the need to protect nature as the common property of mankind and to preserve the national wealth.


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\(^6\) *RT II 1995, 31, 384.*
By summer of 1999 the Commission bilateral screening process, involving 31 negotiated chapters, had been completed. The chapter on environment was completed in June 2001 and it tackled problematic issues such as Estonia’s modest environmental administrative capabilities, the energy sector, and the oil-shale industry. Estonia has been given transition periods, the time spans for the transition vary, the longest extending to 2013.

Once the decision was made to join the European Union, Estonia was obliged to adjust to EU legislation and introduce new environmental laws in fields not previously covered (such as that of genetically modified organisms) and amend those laws that were introduced in the mid-nineties but were not fully compliant with EU statutes.

The Environmental Monitoring Act adopted in 1999 adapted Estonian legislation to conform to the numerous EU directives in the field, in particular the Directive on information. It provides a definitive legal framework for monitoring and includes provisions regarding sampling and analytical work such as laboratory certification etc.

The Environmental Impact Assessment and Auditing Act was adopted in 2000 and entered into force in January 2001. In compliance with EU Directive 85/337/EEC it provides for strategic environmental assessment of all plans and programmes at all levels – municipal, regional and national, both public and private.

Other pieces of legislation with important implications for environmental management like the Integrated Pollution Prevention and Control Act, Chemicals Act and Radiation Act and Public Health Act (adopted in 1995) have been amended and modernised.

Among other important acts new Ambient Air Protection Act, the Law on Fishing, the Forest Act etc. have been adopted. The Water Act from 1994 was updated to comply with EU directives on water. All of the present waste legislation was developed during the last decade. In keeping the legislation up to date, the rapidly evolving EU waste legislation has been taken into account. However for instance the Waste Act (adopted in 1998) and the Packaging Act of 1995 are already out of date and the new relevant acts are in the process of being enforced.

During last decade Estonia has ratified a number of international environmental conventions which directly or indirectly proclaim the above-mentioned principles of environmental law. Estonia being involved in these international instruments indicates that Estonia intends to be bound by these principles. In this connection, the Convention on the Protection of the Marine Environment of the Baltic Sea of 1992 (the “Helsinki Convention”) can be considered as a point of departure. EU approximation process trigger the ratification of other conventions as some of them are part of Environmental Acquis.

Estonia has been also active in conclusion bilateral agreements with other European countries, for instance an agreement with Russia on the environment (1996) and with Hungary on biodiversity protection (2000) etc. have been signed.

Estonia’s environmental law is a complex and dynamic field of law. All the same, environmental problems in Estonia are very varied. There are industrial regions with
serious environmental problems, territories with sensitive environments, but also areas in which the environmental situation is satisfactory or even good. Partly as a result of this, there is a real need for flexible, but at the same time far-sighted solutions and the elements of a system for environmental law. The above-mentioned leads to the necessity to take account of the following facts – that:

1. Environmental legislation is often modified and updated;

2. The integration of international environmental standards into national law is presently under way;

3. Environmental legislation frequently overlaps (i.e. the same activities or environmental problems may be regulated by more than one law or regulation);

4. New and serious environmental problems may require creative and flexible legal solutions.\(^7\)

Estonia has assumed the necessity to achieve approximation of its legislation with the environmental law of the European Union. The entire environmental regulation of the EU consists of more than 250 different pieces of legislation consisting of regulations, directives, decisions and recommendations. In addition to the quantity of legislation, another problem is that this body of law is constantly being updated and revised to adapt to technological changes and to address new environmental risks.\(^8\)

In addition to continuous amendment, another problem is the existence of conflicting regulations and policies within Estonia's environmental laws. Environmental legislation has often been enacted in response to an urgent problem in a particular environmental sector and, therefore, Estonian environmental law is divided amongst many different pieces of legislation. The different laws overlap at times and also contain gaps, leaving some aspects unregulated. Estonia has to develop its administrative ability to control the fulfilment of all requirements that have been enforced.

For example, Estonia has the excise duty on alcoholic and non-alcoholic beverage packaging\(^9\). Excise duty is imposed on packaging filled in Estonia or imported or re-imported into Estonia. A tax payer will get excise duty exemption on packaging of which not less than 60 per cent is recovered. For the exemption it has to receive from the Ministry of the Environment a packaging recovery certificate. Packaging Excise Duty act section 9 par 3 stipulates that prior to the issue of a certificate, during the period of validity thereof and after the expiry thereof, officials authorised by the Minister of the Environment and environmental supervision agencies have the right, within one month as of submission of the report on the recovery of packaging, to inspect the relevant places of

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\(^9\) Packaging Excise Duty Act was enforced at 1 March 1997.
business and documents of the user of the packaging and third parties connected with the recovery of the packaging. In reality there is only one official in the Ministry of the Environment who just formally controls documents prior issuing the certificate. The law should clearly prescribe clearly and in detail the obligation of relevant officials to control the fulfilment of recovery demand. It could avoid the situation where only papers are circulated in order to get the tax exemption.

Fifty years of development under conditions of unbalanced economic relations in a closed society has resulted in underdeveloped machinery and technology and irrational use of natural resources. As a result, conflict situations between the use and protection of the environment developed in a number of regions of Estonia and formed the preconditions for environmental crisis. Significant environmental stress was also caused by past pollution associated with the activities of the former Soviet army. Elimination of past pollution will take decades.

To summarise what has been said above, it is likely that through the balanced planning and execution of the approximation of our legal system with that of the European Community, Estonia will be able to achieve two goals at the same time. The first of these is to adopt the EC acquis, which is based on the long-term experience of EU Member States, and the second is to create a national system of environmental law which corresponds to both the particularities of our natural environment and the readiness of Estonian society to protect the environment in the context of sustainable development.

**Relationship between environmental law in general and environmental criminal law.**

Since 07 May 1992 until 01 Sept 2002 the Criminal Code\textsuperscript{10} was in force in Estonia. The Criminal Code of 1992 was a revised and amended version of the Criminal Code of the Estonian SSR and it included elements of the former Soviet criminal law and of modern European criminal law. All the former provisions directly supporting and protecting the Soviet totalitarian regime, e.g. liability for anti-Soviet propaganda, had been eliminated from the Criminal Code. At the same time, several elements of Soviet criminal law had been retained, e.g. forms of guilt according to psychological condition.

A special part of the Criminal Code from 1992 was divided into 13 chapters. None of them was aimed at special environmental protection. There were a number of offences applicable also in cases of endangerment of environment, including illegal logging, intentional damaging or destruction of forest, trees or shrubs, violation of requirements for protection and use of wild fauna etc.

As the old system needed to be changed the penal law reform was proceeded in Estonia. The reform was completed to a large extent by adoption of the Penal Code\textsuperscript{11} on 6 June

\textsuperscript{10} RT I 1999, 38, 48.
\textsuperscript{11} RT I 2002, 44, 284.
The Penal Code came into force on 01 Sept. 2002. The new Penal Code defines offence as an unlawful and wrongful act consisting of necessary elements. Such legal definition was introduced to the Code because, during the penal law reform, the definition of offence by means of four elements which is typical of the Soviet (and today’s Russian) criminal law was abandoned and the three-level neo-classical and finalistic concept of offence was adopted.

In accordance with the structure of offence specified in section 2 (2) of the Penal Code, Chapter 2 “Offence” of the General Part of the Code falls into: Division 1 “Necessary elements of offence”, Division 2 “Unlawfulness” and Division 3 “Guilt”. Thus, the punishability of an act (i.e. whether an act qualifies as an offence) must be established in a definite order as prescribed by the Code. abandoned the four-element structure of offence known in the Soviet criminal law. The finalist treatment of offence is substantially different from the Soviet approach, introducing several new concepts to the Estonian penal law and redefining former concepts.

The introduction of a new concept of offence constitutes one of the most substantial changes in the Estonian substantive penal law. Another important modification in Penal Code is that the legal person can be also charged with a crime. That is very important amendment as before according to Criminal Code only natural persons were subjects to criminal liability.

Estonian law distinguishes the criminal offences and misdemeanours. Section 3 of the Penal Code stipulates that a criminal offence is an offence which is provided for in Penal Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons, a pecuniary punishment or compulsory dissolution. A misdemeanour is an offence which is provided for in the Penal Code or another Act and the principal punishment prescribed for which is a fine or detention. In this legal report only criminal offences will be analysed.

The Penal Code special part consists of 24 chapters, among which there is also a separate chapter regarding offences against environment. Chapter 20 of the Penal Code regards the offences against environment. Those offences can be divided as regards the objects in danger\(^\text{12}\):

\text{a)} damaging of flora (Sections 353 to 356);
\text{b)} damaging of protected natural objects (sections 357 to 358);
\text{c)} damaging of landscape (sections 359 to 360, 369 to 370);
\text{d)} damaging of wild fauna (section 361);
\text{e)} violation of requirements for utilisation of natural products (section 362);
\text{f)} crimes of environment pollution (sections 363 to 368).

\(^{12}\) Karistusseadustik. Kommenteeritud väljaanne. J. Sootak, P. Pikamäe page 603
Summarising the abovementioned we can say that Estonian criminal law does not have an independent sector of environmental criminal law. Environmental criminal liability arises fully from the Penal Code that regulates among other offences against environment. As regards the interpretation of the facts of offences against environment, besides the common principles of the general criminal law both substantive and procedural, also the main principles of environmental law are applied. It specially concerns the polluter-pays-principle, prevention principle, precautionary principle, restoration principle and principle of originators liability.

4.2. ORGANISED CRIME

The domestic definition of organised crime

Estonian criminal law makes difference between a group and a criminal organisation.

The Penal Code does not provide the term of a group. Section 21 of the Penal Code stipulates that: “If at least two persons agree to commit an offence jointly, each of them shall be held liable as a principal offender (joint principal offenders). An offence is deemed to be a joint offence also if an act committed by several persons jointly and in agreement comprises the necessary elements of an offence.”

The Penal uses the concepts of offender which is a general term for principal offender (Section 21) and accomplice (Section 22) and which are forms of joint acting when committing an offence. Accomplice is a general term which covers the special terms abettor and aider (Section 22). The Criminal Code of 1992 used also the term of organiser, but the term has been left out from the Penal Code.

Penal Code paragraph 255 gives us the legal definition of criminal organisation:

A permanent organisation consisting of three or more persons who share a distribution of tasks and whose activities are directed at the commission of criminal offences in the first degree or at exercising unlawful influence on public authorities.

The membership in the criminal organisation must be intentional (intention direct or indirect), negligence is excluded.

Please note that according to Estonian Penal Code degrees of criminal offences are determined after the punishments that can be imposed for the offence. A criminal offence in the first degree is an offence the maximum punishment prescribed for which in the Penal Code is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution (section 4 paragraph 2).

For comparison, Criminal Code paragraph 196 stipulated that the groups aim and activities had to be directed at the commission of criminal offences in the first or second degree in order to go under the definition of criminal organisation.
The provision on criminal organisation can be applied as an separate crime when a person establishes, participates or supports a criminal organisation. The crimes that have been committed by the members of a criminal organisation are not absorbed by the elements of this offence and have to be qualified in complex. For example if persons commit an offence of illegal logging as members of a criminal organisation, they shall be charged for illegal logging and for being a member of a criminal organisation and the aggregate punishment shall be imposed.

Some remarks on the extension of organized crime in the country

Organized crime has been in substantially imported into Estonia from the former Soviet Union, where this category of crime is not a new phenomenon. The role of the “shadow economy” started to noticeably increase in the 1960-s. The process reached its culmination at the beginning of the 1980-s, when organized crime became the link between the criminal world and official state authorities13.

A new stage in the development of organized crime began during the “perestroika” period in the mid 1980-s. It was then that the strong foundations were laid for what we know today as the “Mafia”. The legalization of private enterprise gave mobsters the chance to put their huge financial resources into legal circulation. “Dirty money” poured unchecked into newly formed co-operatives, companies and banks, blurring the borderlines between legal and illegal activities14.

On the basis of what has taken place during the last few years in Estonia, the following observations can be made about organized crime developments15:

- organized crime is expanding and diversifying, encompassing new and hitherto unexploited fields;

- the organizational capabilities are constantly increasing, ties with international (especially in neighbouring countries) criminal organizations are intensifying;

- organized crime activities are constantly becoming more refined and sophisticated, and harder to solve (financial crime, money laundering, etc.). For instance, to “launder money”, costantly more opportunities are being made for exporting money to tax-free areas via off-shore companies;

- the amount of money moving in organized crime circles is constantly increasing and greater efforts are being made to place this money into legal business enterprises and various real estate acquisitions, not only in Estonia, but also abroad;

13 J. Saar /www.nato.int/acad/fellow/97-99/saar/
14 J. Saar /www.nato.int/acad/fellow/97-99/saar/
- if at first, from the point of view of international organized crime, Estonia was treated primarily as a transit country, then now, as a result of Estonia’s economic development, organized crime circles are evermore making capital investments in Estonia;

- to ensure the continuation of their activities and to potentially increase their profits, organized crime is trying to get involved in the governmental structure, both horizontally and vertically, paying special attention to bribing, or manipulating in other ways, the criminal justice system’s employees.

It can be noted that as a general trend in criminal activity in Estonia, violent crime is being abandoned in favor of property crime, drug related crime and other offences of a more latent nature. For example, there were 7-10 murders committed by organised criminal groups in 2002 and with 4 failed attempted murders it only makes 6% of all murders16.

The total number of crimes has increased in independent Estonia and one can obviously talk about a new general crime level, which will remain at about 40-45 thousand registered crimes per year. At the same time, serious violent crime have constantly decreased since 1994, and hopefully, the rate for this category of crime will, in time, reach the average level for small Western European and Scandinavian states. As a dangerous development, it should be noted that there has been a drastic increase in drug related crimes in Estonia17.

Organized crime in Estonia is a phenomena starting to resemble a strangely unique business enterprise. Rather special measures will have be employed to control activity of this nature. Taking into consideration the fact the European Union is a union of states amongst whom there are very few border controls and checks since the freedom of movement is important, it is essential that Estonia be able to control its organized crime, and guarantee the security of its borders.

Organised crime groups have taken advantage of the growing Estonian economy. Unlike in Russia where most laundered money is sent abroad for good, most laundered money in Estonia returns to the country via ‘off-shore’ tax havens and dubious foreign companies18.

To combat money laundering the foundation of the Bureau of Data on Money Laundering in 1999 was found as one of the structural units of the Police Board. The main task of the Bureau of Data on Money Laundering is the analysis of transactions, which might be linked to money laundering. Taking into account the threat of this crime to national security, the Board of the Security Police is intending to pay more attention to these issues and, if necessary, to assist the police in preventing and detecting money laundering19.

16 www.sisemin.gov.ee
17 J. Saar /www.nato.int/acad/fellow/97-99/ssaar/
18 J. Saar /www.nato.int/acad/fellow/97-99/ssaar/
In Estonia, organised crime has developed in ten years from pick-pockeeting into Western-like sophisticated economic crime. In statistics, economic and financial crimes have increased both in numbers and in terms of profit gained. Organised crime profits are coming from usual propellant commerce and that is only possible because of the corruption (30% of sold propellant is illegal). 30% of alcohol in the market is illegal (that number has decreased from 50%). At the same time, drug-related crimes are on the increase\(^\text{20}\).

As long as the economy is demand-driven, there is a profit-based interest in providing illegal goods and reinvesting the money either into legal or illegal business. This distorts the operation of the legal economy, increases bribery and corruption. In an ethnically divided country undergoing a fundamental transformation like Estonia, it is crucial that the minority does not get labelled as the source of all evil. In this respect, the police reform in Estonia might prove to be problematic in the long term\(^\text{21}\).

**Table 50: Statistics of organised crimes in Estonia from 1993 to 2002**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of registered criminal offences</td>
<td>37143</td>
<td>35713</td>
<td>39546</td>
<td>35390</td>
<td>40958</td>
<td>45721</td>
<td>51539</td>
<td>57799</td>
<td>58497</td>
<td>53293</td>
</tr>
<tr>
<td>Offences committed by group</td>
<td>3131</td>
<td>3237</td>
<td>4116</td>
<td>3891</td>
<td>4346</td>
<td>3878</td>
<td>3962</td>
<td>3857</td>
<td>4279</td>
<td>3287</td>
</tr>
</tbody>
</table>

*Source: Official statistics of the Estonian Police Board*

\(^{20}\) [www.sisemin.gov.ee](http://www.sisemin.gov.ee)

\(^{21}\) Speech of J. Pihl, the General Command of the Security Police Board [www.forumbalticum.ee](http://www.forumbalticum.ee/)
**How extensive is the overlapping between environmental and organized crime? – Theoretical and empirical perspectives**

As we mentioned before the aim of the criminal organisation has to be pointed to committing offences of the first degree. None of the environmental crimes are first degree crime therefore it can be said that if a criminal group has been formulated with the aim to commit only environmental crimes, they can not be qualified as organised group according to section 255. However, the accusation under section 255 can be theoretically possible if it can be proved that the aim of the group was also directed at exercising unlawful influence on public authorities.

As regards criminal group, it can be theoretically applied to any offence as it need not be expressly mentioned in the formulations of facts of the offence. Estonian criminal law takes it as an aggravating circumstance.

As we can see from the statistical data (see chapter 4.5), the environmental crime frequently has been committed by a group. The reason is that certain types of environmental crime can hardly be committed without a well-organised structure of individuals or rather groups with internal hierarchy and structuring. For instance, the illegal wood felling is often committed by group where. The typical case, for example, can be when one person finds suitable forest, the other organises workers, machinery and transportation and there are more members who fell the wood knowing that their act is illegal. With scheme like this the same group can commit offences systematically.

Based on an interview with the deputy police director of the Central Criminal Police, Mr. Märt Palo, it may be concluded that the Central Criminal Police, the main structural unit of the police dealing with organised crime, does not have any examples of cases, which relate to environmental organised crime. Mr Palo stressed that the priorities of fighting against organised crime are mainly related to illegal trade with alcohol and cigarettes, narcotics, prostitution and criminal official misconduct. Within these cases and criminal organisations there are no indications that in their activities environmental crimes can be traced.

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22 First degree offence is the offence for which the maximum punishment prescribed in the Penal Code is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution.

23 Interview with Märt Palo, Deputy Police Director of the Central Criminal Police, 8 May 2003
4.3. **CHRONOLOGICAL LIST INDICATING THE TITLE AND PUBLICATION REFERENCE OF THE RELEVANT TEXT IN FORCE**

All the text regarding environmental crime and organised crime are provided in the following act:

*Karistusseadustik (the Penal Code) published in Riigi Teataja*\(^{24}\) 1 2001, 61, 364; 2002, 86, 504; 44, 284; 56, 350; 64, 390; 82, 480; 105, 612; 2003, 4, 22

**A selection of the most important texts concerning both organised crime and its legislation**

**Section 255 of Penal Code:**

*Criminal organisation*

“(1) Membership in a permanent organisation consisting of three or more persons who share a distribution of tasks and whose activities are directed at the commission of criminal offences in the first degree or at exercising unlawful influence on public authorities is punishable by 3 to 12 years’ imprisonment.

(2) For an offence provided for in this section, a court may impose a fine to the extent of assets as a supplementary punishment pursuant to § 53 of this Code.”

**Section 256 of Penal Code:**

*Formation of criminal organisation*

“(1) Forming or leading of or recruiting members to a criminal organisation is punishable by 5 to 15 years’ imprisonment.

(2) For an offence provided for in this section, a court may impose a fine to the extent of assets as a supplementary punishment pursuant to § 53 of this Code.”

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\(^{24}\) Riigi Teataja (RT) is Estonian National Gazette where all official text of legal acts are published.
A selection of the most important texts concerning both environmental crime and its legislation

a) Endangered species of plants and animals

Criminal liability is regulated by Sections 357, 358 of the Penal Code. There is no complex legal regulation as regards protection of creatures and plants in Estonia, but it is incorporated in a whole number of acts and international agreements, which have been signed and ratified by Estonia, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)\textsuperscript{25} One of the most important act that this section refers to is Law on Protected Natural Objects\textsuperscript{26} from 1994.

b) Illegal handling of waste

This refers to Waste Act\textsuperscript{27} (adopted in 1998) and to Chemicals Act\textsuperscript{28} (adopted in 1998). The Waste Act provides general requirements for prevention of waste generation, for prevention of health and environmental hazards arising from waste generation and for organisation of waste management with the objective to reduce the harmfulness and quantity of waste and liability in the case of violation of the established requirements. However, disposal of some special types of waste is regulated by other legal regulations. The criminal liability arises from Section 367 and 368 of Penal Code.

c) Substances damaging ozone layer

This refers to Ambient Air Protection Act\textsuperscript{29} (adopted in 1998). This Act regulates activities which involve the emission of pollutants into the ambient air, damage to the ozone layer, and appearance of factors which cause climate change. The criminal liability could be derived from section 363, 364 and 365.

d) Radioactive waste

This refers to Radiation Act\textsuperscript{30} adopted on 1997. The criminal liability can be derived from section 411 and 412 of the Penal Code.

\textsuperscript{25} RT II 1993, 27/28, 83.  
\textsuperscript{26} RT 1994, 46, 773  
\textsuperscript{27} RT 1998, 57, 861  
\textsuperscript{28} RT 1998, 47, 697  
\textsuperscript{29} RT 1998, 41/42, 624  
\textsuperscript{30} RT1997, 37/38, 569
e) Illegal logging and illegal trade in wood

The criminal liability for illegal logging is provided in section 356 of the Penal Code. This refers to regulation stipulated in *Act on Forests*\(^31\) adopted in 1998. This Act provides the legal bases for forest survey, forest management planning and forest management, regulates the directing of forestry and organisation of forest management. This act also includes sanctions in the form of administrative torts.

f) Illegal fishing

The criminal liability for illegal fishing is provided in section 361 of Penal Code. This section refers to regulation stipulated in *Fishing Act*\(^32\) from 1995.

The regulation concerning environmental crimes is contained in the Penal Code. Below we quote all facts of the Penal Code which are related to the protection of environment and the scope of the study. The facts of offences under the Penal Code are always blanket norms which refer to special laws on environmental protection.

a) Endangered species of plants and animals

Section 357 Penal Code:

Violation of requirements for protection of protected natural objects

(1) Violation of the requirements for the use or protection of a protected natural object, if significant damage is thereby caused to the protected natural object, is punishable by a pecuniary punishment or up to 5 years’ imprisonment.

(2) The same act, if significant damage is thereby caused to the protected natural object through negligence, is punishable by a pecuniary punishment or up to 3 years’ imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

\(^{31}\) RT 1998, 113/114, 1871

\(^{32}\) RT 1995, 80, 1384
Section 358 Penal Code:

Violation of requirements for protection of protected natural objects through negligence

(1) Violation of the requirements for the use or protection of a protected natural object through negligence, if major damage is thereby caused to the protected natural object, is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

b) Illegal handling of waste

Section 367 of Penal Code:

Violation of requirements for handling dangerous chemicals or waste

(1) Violation of the requirements for handling chemicals or waste dangerous to human health or the environment, if such violation causes a danger to human life or health or to the environment, is punishable by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if a danger to human life or health or to the environment is thereby caused through negligence, is punishable by a pecuniary punishment or up to one year of imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

Section 368 of Penal Code:

Violation of requirements for handling dangerous chemicals or waste through negligence

(1) Violation of the requirements for handling chemicals or waste dangerous to human health or the environment through negligence, if such violation causes a danger to human life or health or to the environment, is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
c) Substances damaging ozone layer

Section 363 of Penal Code:

Acting without natural resource utilisation permit or pollution permit

(1) Acting without a natural resource utilisation permit or pollution permit where such permit is required, or violation of the requirements set forth in the permit, is punishable by a pecuniary punishment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Section 364 of Penal Code:

Polluting environment

(1) Unlawful release of substances, energy or waste into the environment, or causing noise exceeding the established limits, is punishable by a pecuniary punishment.

(2) The same act, if significant damage is thereby caused to the environment, is punishable by a pecuniary punishment or up to 2 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

Section 365 of Penal Code:

Polluting environment through negligence

(1) Unlawful release of substances, energy or waste into the environment through negligence, or unlawful causing of noise exceeding the established limits through negligence, if major damage is thereby caused to the environment, is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
d) Radioactive waste

Section 411 of Penal Code

Unlawful radiation practice

(1) Engagement in radiation practices without a corresponding licence is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Section 412 of Penal Code

Violation of requirements for handling radiation sources

(1) Violation of the requirements for storage, use, transportation or other handling of a radiation source, if such violation causes a danger to the life or health of a large number of people, is punishable by a pecuniary punishment or up to 5 years’ imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment

e) Illegal logging and illegal trade of wood

Section 356 of Penal Code:

Illegal cutting of trees or shrubs

(1) Illegal cutting of trees or shrubs, if significant damage is thereby caused to the environment, is punishable by a pecuniary punishment or up to 3 years’ imprisonment.

(2) An act provided for in subsection (1) of this section, if significant damage is thereby caused to the environment through negligence, is punishable by a pecuniary punishment or up to one year of imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
f) Illegal fishing

Section 361 of Penal Code:

Damaging of wild fauna

(1) Violation of the requirements for hunting, catching or other utilisation of wild game, fish or other wild fauna, if significant damage is thereby caused to the environment, or unlawfully organising the hunting or catching of wild game, fish or other wild fauna, is punishable by a pecuniary punishment or up to 3 years’ imprisonment.

(12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350)

(2) An act provided for in subsection (1) of this section, if significant damage is thereby caused to the environment through negligence, is punishable by a pecuniary punishment or up to one year of imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

Table 51: Crimes that could potentially apply in relation to environment protection pursuant to the Penal Code

<table>
<thead>
<tr>
<th>Chapter 12 Offences Relating to Infectious Diseases</th>
<th>Section 192</th>
<th>Causing threat of spread of infection disease or infectious animal disease</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Section 193</td>
<td>Causing spread of infectious disease or infectious animal disease</td>
</tr>
<tr>
<td>Chapter 13 Offences Against Property</td>
<td>Section 199</td>
<td>Larceny</td>
</tr>
<tr>
<td></td>
<td>Section 202</td>
<td>Acquisition, storage or marketing of property received through commission of criminal offence</td>
</tr>
<tr>
<td></td>
<td>Section 203</td>
<td>Injuring or destruction of thing</td>
</tr>
<tr>
<td></td>
<td>Section 205</td>
<td>Injuring or destruction of thing through negligence</td>
</tr>
<tr>
<td>Chapter 16</td>
<td>Section 264</td>
<td>Cruel treatment of animals</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Chapter 17</td>
<td>Section 289</td>
<td>Misuse of official position</td>
</tr>
<tr>
<td>Chapter 20</td>
<td>Section 353 par. 2</td>
<td>Activities dangerous to flora</td>
</tr>
<tr>
<td></td>
<td>Section 354</td>
<td>Damaging or destruction of trees or shrubs</td>
</tr>
<tr>
<td></td>
<td>Section 355</td>
<td>Damaging or destruction of trees or shrubs through negligence</td>
</tr>
<tr>
<td></td>
<td>Section 356</td>
<td>Illegal cutting of trees or shrubs</td>
</tr>
<tr>
<td></td>
<td>Section 357</td>
<td>Violation of requirements for protection of protected natural objects (intentional endangering)</td>
</tr>
<tr>
<td></td>
<td>Section 358</td>
<td>Violation of requirements for protection of protected natural objects through negligence</td>
</tr>
<tr>
<td></td>
<td>Section 359</td>
<td>Damaging of landscape (intentional endangering)</td>
</tr>
<tr>
<td></td>
<td>Section 360</td>
<td>Damaging of landscape through negligence</td>
</tr>
<tr>
<td></td>
<td>Section 361</td>
<td>Damaging of wild fauna</td>
</tr>
<tr>
<td></td>
<td>Section 363</td>
<td>Acting without natural resource utilisation permit or pollution permit</td>
</tr>
<tr>
<td>Section 364</td>
<td>Polluting environment</td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------</td>
<td></td>
</tr>
<tr>
<td>Section 365</td>
<td>Polluting environment through negligence</td>
<td></td>
</tr>
</tbody>
</table>

**Waste handling**

<table>
<thead>
<tr>
<th>Section 367</th>
<th>Violation of requirements for handling dangerous chemicals or waste</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 368</td>
<td>Violation of requirements for handling dangerous chemicals or waste through negligence</td>
</tr>
</tbody>
</table>

**Causing of flood, paludification or prohibited reduction of amount of water**

<table>
<thead>
<tr>
<th>Section 369</th>
<th>Causing of flood, paludification or prohibited reduction of amount of water</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 370</td>
<td>Causing of flood, paludification or prohibited reduction of amount of water through negligence</td>
</tr>
</tbody>
</table>

**Chapter 21 Economic Offences**

<table>
<thead>
<tr>
<th>Section 391</th>
<th>Illicit traffic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 392</td>
<td>Illicit traffic in prohibited goods or goods requiring a special permit</td>
</tr>
</tbody>
</table>

**Chapter 22. Offences Dangerous to Public**

**Offences Relating to Ionizing Radiation**

<table>
<thead>
<tr>
<th>Section 411</th>
<th>Unlawful radiation practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 412</td>
<td>Violation of requirements for handling radiation sources</td>
</tr>
</tbody>
</table>
A complete list of texts concerning organised environmental crime

There is no text concerning organised environmental crime.

4.4. FRAMEWORK OF THE APPLICABLE LEGISLATION

The key principles of environmental criminal law

Criminal acts against environment damage natural environment surrounding human – land, water, air, plant and animal kingdom. Protecting environment is about avoiding harmful effects to nature and its elements caused by human activity, economical use of environment and preserving natural balance. According to Article 53 of the Constitution everyone has a duty to preserve the human and natural environment and to compensate for damage caused to the environment by him or her. Law shall provide the procedure for compensation.

Within the environmental law, we have the concept of environmental liability which can be divided into environmental liability in delict and liability for environmental loss. Within the environmental liability delict, criminal offences and misdemeanors is distinguished.

Administrative liability can arise from the Penal Code or any other act. Section 3 of the Penal Code states that a misdemeanor is an offence which is provided for in this Code or another Act and the principal punishment prescribed for which is a fine or detention.

A criminal offence is an offence, which is provided for in this Code and the principal punishment prescribed for which in the case of natural persons is a pecuniary punishment or imprisonment and in the case of legal persons, a pecuniary punishment or compulsory dissolution. Thus, environmental criminal liability arises fully from the Penal Code in force that regulates among others the offences against environment.

Section 3 paragraph 5 stipulates that if a person commits an act which comprises the necessary elements of both a misdemeanor and a criminal offence, the person shall be punished only for the criminal offence. If a punishment is not imposed for the criminal offence, the same act may be punished for the misdemeanor.

As regards the interpretation of the facts of offences against environment, besides the common principles of the general criminal law both substantive and procedural, also the main principles of environmental law are applied (environmental law principles are mentioned in Chapter 4.1.).

Criminal law includes the elements of individual and general prevention. This is based on the fact that sentence for the commitment of an offence is a punishment for the offender, but also a deterring example for the entire society as far as level and type of punishment is concerned.
The Constitution includes provision for the criminal liability of citizens and for the administrative justice. Article 23 contains the principle of *nulla poena sine lege* (no one may be convicted of an offence unless such an act is recognised by the law as an criminal act).

Punishability of an act requires intentional fault, unless it is stipulated therein explicitly that negligence is sufficient. The degree of dangerous of the offence for society is determined especially by the meanings of value that was affected by the offence, by the way the offence was carried out and its consequences, circumstances under which the offence was committed, by the offender and degree of fault.

*The key principles of organised crime legislation*

Criminal liability for organised crime arises fully from the Code Penal. The common principles of the general criminal law both substantive and procedural are applied.

The basis of the valid legislation is in the Code Penal, legal definition for criminal organisation is given in Section 255: membership in a permanent organisation consisting of three or more persons who share a distribution of tasks and whose activities are directed at the commission of criminal offences in the first degree or at exercising unlawful influence on public authorities.

According to Estonian criminal law, commission of an offence by group is generally aggravating circumstance or a factor which is a condition for greater punishment for some criminal acts.

Article 21 of the Penal Code states that if at least two persons agree to commit an offence jointly, each of them will be held liable as a principal offender (joint principal offenders). An offence is deemed to be a joint offence also if an act committed by several persons jointly and in agreement comprises the necessary elements of an offence (Section 21 of the Penal Code). The offence will be qualified as a joint offence also in case when the offence is committed by one person but was prepared by assistance of other persons. 33

According to Estonian criminal law theory in order to qualify as a group at least two persons have to act jointly and in agreement and everyone of them has to control the act and everyone of them assumes that to realize the necessary elements of an offence depends on every offender. 34 Only such commission of an offence is deemed to be a joint offence, when persons who commit the crime are deemed to be equal partners. Practically this means that persons are joint offenders only if they are equal to decide whether and how to commit an offence. Abovementioned opinion has been admitted also

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33 The Penal Code. Commented issue. J. Sootak, P. Pikamäe; page 84
34 The Penal Code. Commented issue. J. Sootak, P. Pikamäe page 82
by jurisprudence\textsuperscript{35}. However the Code Penal does not demand that all joint offenders should have joint criminal aim, as did the Criminal Code.

The criminal group usually does not have stable organized structure, it is formed \textit{ad hoc} for a one-time action, it is not focused on continuous commitment of intentional criminal activities. The section 58 of the Penal Code refers to commission of an offence by a group as an aggravating circumstance.

These forms can theoretically be applied to all cases of offences against environment as they are not tied to specific formulation of facts of individual offences under the Penal Code.

\textit{Parallels and differences}

Legislation of environmental and organised crime are not different, both are enacted in Code Penal and key principles are same too – general criminal law principles.

Provisions of joint offenders and accomplices can be theoretically applied in all cases of offences against environment as they are included in the General Part of the Penal Code and they are not tied to formulation of facts of the offence under the Special Part of the Penal Code.

\section*{4.5. SANCTIONS IN THE FIELD OF ORGANISED ENVIRONMENTAL CRIME}

\textit{Introduction to the sanctioning system}

General principles of imposing a punishment for criminal offence are expressly provided in Article 2 of the Penal Code Penal and are as follows:

(1) No one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission of the act.

(2) A person shall be punished for an act if the act comprises the necessary elements of an offence, is unlawful and the person is guilty of the commission of the offence.

(3) No one shall be punished more than once for the same offence, regardless of whether the punishment is imposed in Estonia or in another state.

(4) An act shall not be declared to be an offence by analogy in law.

\textsuperscript{35} RKL 1997, lk 390, RKL 2001, lk 406)
Types and terms of punishment are in Chapter 3 of Code Penal.

Principal punishments that can be imposed on natural persons for criminal offence are following:

- **Pecuniary punishment (Section 44 of Penal Code);**

  The court may impose a pecuniary punishment of 30 to 500 daily rates. The daily rate is calculated on the basis of the average daily income of the convicted offender. The court may reduce the daily rate due to special circumstances, or increase the rate on the basis of the standard of living of the convicted offender.

- **Imprisonment (Section 45 of the Penal Code);**

  For a criminal offence, the court may impose imprisonment for a term of thirty days to twenty years, or life imprisonment. Imprisonment for a term of more than ten years or life imprisonment shall not be imposed on a person who at the time of commission of the criminal offence is less than 18 years of age.

Punishments that can be imposed on legal persons for criminal offence are following:

- **Pecuniary punishment (Section 44 of the Penal code);**

  In case of a legal person, the court may impose a pecuniary punishment of fifty thousand to two hundred and fifty million kroons on the legal person. Please note that Estonian kroons rate is fixed with euro (1 Euro is 15.64 Estonian kroons). A pecuniary punishment may be imposed on a legal person also as a supplementary punishment together with compulsory dissolution.

- **Compulsory dissolution of legal person (Section 46 of the Penal Code).**

  A court may impose the compulsory dissolution on a legal person who has committed a criminal offence if commission of criminal offences has become part of the activities of the legal person.

Supplementary punishments for criminal offences that can be imposed on natural persons are as follows:

- **Occupational ban (Section 49 of Penal Code);**

  A court may deprive a convicted offender of the right to work in a certain position or operate in a certain area of activity for up to three years if the person is convicted of a criminal offence relating to abuse of professional or official status or violation of official duties.
- **Deprivation of driving privileges (Section 50 of Penal Code):**

- **Deprivation of right to hold weapons or ammunition (Section 51 of Penal Code):**

- **Deprivation of hunting or fishing rights (Section 52 of Penal Code):**

  A court may deprive a convicted offender for up to three years of hunting or fishing rights if the person is convicted of a criminal offence relating to violation of hunting or fishing rights.

- **Fine to the extent of assets (Section 53 of the Penal Code):**

  If a court convicts a person of a criminal offence and imposes imprisonment for a term of more than three years or life imprisonment, the court may, in the cases provided by law, impose a supplementary punishment according to which the convicted offender is to pay an amount up to the extent of the total value of all the assets of the convicted offender.

- **Expulsion (Section 54 of the Penal Code):**

  If a court convicts a citizen of a foreign state of a criminal offence in the first degree and imposes imprisonment, the court may impose expulsion with prohibition on entry within ten years as supplementary punishment on the convicted offender. Expulsion shall not be imposed on a convicted citizen of a foreign state who at the time of commission of the criminal offence was less than 18 years of age.

**Table 52: Possible punishments for selected environmental crimes (Penal Code)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Paragraph</th>
<th>Imprisonment</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>354</td>
<td>(1)</td>
<td>Up to 3 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>355</td>
<td>(1)</td>
<td>Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>356</td>
<td>(1)</td>
<td>Up to 3 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td>Sentence 1</td>
<td>Sentence 2</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>357</td>
<td>Violation of requirements for protection of protected natural objects</td>
<td>(1) Up to 5 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) Up to 3 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3)</td>
<td>+</td>
</tr>
<tr>
<td>358</td>
<td>Violation of requirements for protection of protected natural objects through negligence</td>
<td>(1) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td>361</td>
<td>Damaging of wild fauna</td>
<td>(1) Up to 3 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3)</td>
<td>+</td>
</tr>
<tr>
<td>363</td>
<td>Acting without natural resource utilisation permit or pollution permit</td>
<td>(1)</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2)</td>
<td>+</td>
</tr>
<tr>
<td>364</td>
<td>Polluting environment</td>
<td>(1)</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) Up to 2 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3)</td>
<td>+</td>
</tr>
<tr>
<td>365</td>
<td>Polluting environment through negligence</td>
<td>(1) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2)</td>
<td>+</td>
</tr>
<tr>
<td>367</td>
<td>Violation of requirements for handling dangerous chemicals or waste</td>
<td>(1) Up to 3 years</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3)</td>
<td>+</td>
</tr>
<tr>
<td>368</td>
<td>Violation of requirements for handling dangerous chemicals or waste through negligence</td>
<td>(1) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2)</td>
<td>+</td>
</tr>
<tr>
<td>411</td>
<td>Unlawful radiation practice</td>
<td>(1) Up to 1 year</td>
<td>+</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2)</td>
<td>+</td>
</tr>
</tbody>
</table>
According to section 62 of the Penal Code one principal punishment and one or several supplementary punishments may be imposed for one offence.

Punishment shall be based on the guilt of the person. In imposition of a punishment, a court shall take into consideration the mitigating and aggravating circumstances, the type of intent or negligence in the commission of the act, the possibility to influence the offender not to commit offences in the future, and the interests of the protection of public order.

Imprisonment may be imposed only on the condition that the aims of the punishment cannot be achieved by a less onerous punishment. If a section of the Special Part of this Code prescribes, in addition to imprisonment, less onerous punishments, the court in its judgment shall provide the reasons for the imposition of imprisonment.

The Penal Code allows the substitution of the imprisonment by community service. Section 69 article 1 stipulates that the court may substitute the imprisonment of a convicted offender who is sentenced to up to two years of imprisonment by community service. One day of imprisonment corresponds to four hours of community service. The old Criminal Code did not provide the possibility of community work.

**The sanctioning practice (official statistics concerning the number of criminal investigations, convicted persons, sanctions imposed)**

Pre-trial investigation of the criminal offences is conducted by the officials of the Police Board, the Central Criminal Police and police prefectures who have the authority of a preliminary investigator. In the case of violation of the requirements of protection and use of the environment and natural resources officials of environmental supervision agencies i.e Environmental Inspectorate, will apply expedited procedure and conduct investigative activities which allow no postponement – inspection of the scene of the criminal offence, search, seizure, physical examination, interrogation of a suspect, questioning of a victim or witness, taking of comparative samples, and at the request of a preliminary investigator or prosecutor, conduct other investigative activities (Code of Criminal Procedure\(^{36}\) Section 105).

Following statistics has been gathered by the Environmental Inspectorate and Estonian Police Board. There was no detailed statistics of sanctions imposed available. The

\(^{36}\) ENSV ÜT 1961, 1, 4
detailed statistics gathered by the Environmental Inspectorate of criminal investigations regarding all environmental crimes was only available from years 2000 to 2002 as about from this time the Environmental Inspectorate was given the rights to conduct the pre-trial investigation. The statistics of criminal investigations from previous years is from the Police Board.

From the Police Board we could get the information regarding the criminal offences committed by group. However, the statistics provided by the Police Board specifies only illegal logging and forest larceny of all environmental criminal offences.

Table 53: Statistics of environmental criminal investigations in 2000

<table>
<thead>
<tr>
<th>Number of criminal cases</th>
<th>Environmental Inspectorate</th>
<th>Police</th>
<th>Persons convicted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of cases started</td>
<td>Finished cases</td>
<td>Final court decisions</td>
</tr>
<tr>
<td>Forest fire protection</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Illegal logging</td>
<td>118</td>
<td>5</td>
<td>28</td>
</tr>
<tr>
<td>Other protection of forest</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Hunting</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fishing</td>
<td>6</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Altogether</td>
<td>128</td>
<td>7</td>
<td>33</td>
</tr>
</tbody>
</table>

Source: Official statistics of the Environmental Inspectorate

In 2000 there were 6000 environmental offences (including criminal offences) registered by the Environmental Inspectorate. 2208 of those cases concerned using nature without permission and 2172 not applying needed regulations. The environmental Inspectorate started 128 criminal investigations and the Police started 729 investigations. Criminal sentence was imposed on 206 persons.
Table 54: Statistics of environmental criminal investigations in 2001

<table>
<thead>
<tr>
<th>Number of criminal cases</th>
<th>Environmental Inspectorate</th>
<th>Police</th>
<th>Persons convicted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of cases started</td>
<td>Finished cases</td>
<td>Final court decisions</td>
</tr>
<tr>
<td>Waste handling</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Fire protection of forest</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Illegal logging by owner</td>
<td>159</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Illegal logging</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject/privateer</td>
<td>14</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Illegal logging</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>by unknown thief</td>
<td>14</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other protection of forest</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hunting</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other fauna protection</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fishing</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Classical nature protection</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Altogether</td>
<td>203</td>
<td>5</td>
<td>7</td>
</tr>
</tbody>
</table>

Source: Official Statistics of the Environmental Inspectorate

In 2001 there were 7234 environmental offences (including criminal offences) registered by the Environmental Inspectorate. 2331 of those cases concerned using nature without permission and 3342 not applying needed regulations. The environmental Inspectorate started 203 criminal investigations and the Police started 566 investigations. Criminal sentence was imposed on 222 persons.
Statistics of environmental violations in 2002\textsuperscript{37}

In year 2002 there were 7052 environmental violations registered in Environmental Inspectorate. 2264 of those cases concerned using nature without permission and 2917 concerned not applying needed regulations. 891 offences caused damage to environment over 126 millions kroons (8.052.847 euros)\textsuperscript{38}. Inspectors made 516 precepts; 114 times the environment damaging activity was stopped. 4351 persons were fined (total amount 4 187 326 kroons = 267.618 euros). Environment Inspectorate started 192 criminal investigations and 405 criminal investigations materials were handed over to police. Criminal sentence were applied to 112 persons.

When comparing last two year fixed violations, we can see that the number of unlawful acts are almost the same – year 2001 there were 7234 violations. But the damage made to environment has increased from 109 millions (696.351 euros) to 126 millions kroons (8.052.847 euros). That shows clearly that violations are creating more damage.

Year 2002 most violations concerned fishing regulations – 3433 (49\% of all environmental violations). Unlawful wood felling by owners and thieves were registered 837 times (12\% of all environmental violations) and other forest protection violations were 827 (12\%). Relatively many cases concerned illegal storage of waste (648 – 9\%).

Most damage in year 2002 was caused to environment with illegal wood felling (97,3 mil. Kr = 6.218.587 euros), woods fire protection regulations violations (26,7 mil. Kr = 1.706.436 euros), illegal fishing (1,8 mil. Kr = 115.040 euros) and hunting (0,4 mil. Kr = 25 564 euros). 127 096 m\(^3\) wood was illegally felled, 46\% of this amount by forest owners.

Environment inspectors fined 4151 natural persons with over 3 million kroons. 48\% of them had violated fishing regulations (1998 persons, total fines 1 102 605 kroons = 70.469 euros). Persons who violated forest protection acts were fined 707 times (17\% of all fined persons). 417 persons were fined for illegal storage of waste (276 745 kroons = 17.687 euros). 200 legal persons were fined with 1 142 440 kroons (73.015 euros)- violation of waste storage (60 times, 462 680 kroons = 29.570 euros), water protection violations (45 times, 211 500 kroons = 13.517 euros), forest protection violations (31 times, 202 480 kroons = 12.940 euros). Compared to years before 2002 the amount of legal persons fined has increased from 36 to 200.

Environment Inspectorate started 192 criminal investigations. 167 (87\%) of these cases were about illegal food felling. 405 case materials were given over to police to start the criminal investigation. 400 of them (99\%) were related with illegal wood felling and wood stealing.

\textsuperscript{37} The Environmental Inspectorate //www.kki.ee/
\textsuperscript{38} 1 euro = 15,64664 Estonian kroons
Table 55: Statistics of environmental violations (both administrative misdemeanours and criminal offences) of 2002

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of offences</th>
<th>Offender unknown</th>
<th>Resource utilisation without permit</th>
<th>Violation of compulsory regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water protection</td>
<td>368</td>
<td>4</td>
<td>172</td>
<td>192</td>
</tr>
<tr>
<td>Protection of ambient air</td>
<td>170</td>
<td>4</td>
<td>102</td>
<td>64</td>
</tr>
<tr>
<td>Protection from noise and electromagnetic radiation</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Waste handling</td>
<td>648</td>
<td>30</td>
<td>256</td>
<td>362</td>
</tr>
<tr>
<td>Handling of hazardous substances</td>
<td>36</td>
<td></td>
<td>9</td>
<td>27</td>
</tr>
<tr>
<td>Protection of soil</td>
<td>51</td>
<td></td>
<td>32</td>
<td>19</td>
</tr>
<tr>
<td>Forest fire protection</td>
<td>99</td>
<td>61</td>
<td>4</td>
<td>34</td>
</tr>
<tr>
<td>Illegal logging by owner</td>
<td>224</td>
<td></td>
<td>159</td>
<td>65</td>
</tr>
<tr>
<td>Illegal logging subject/privateer</td>
<td>34</td>
<td></td>
<td>23</td>
<td>11</td>
</tr>
<tr>
<td>Illegal logging thief/unknown</td>
<td>579</td>
<td>385</td>
<td>182</td>
<td>12</td>
</tr>
<tr>
<td>Violation of other forest protection</td>
<td>827</td>
<td>1</td>
<td>39</td>
<td>787</td>
</tr>
<tr>
<td>Other protection of flora</td>
<td>2</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Hunting</td>
<td>283</td>
<td>18</td>
<td>55</td>
<td>210</td>
</tr>
<tr>
<td>Protection of fauna</td>
<td>13</td>
<td>5</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Fishing</td>
<td>3433</td>
<td>1350</td>
<td>1090</td>
<td>993</td>
</tr>
<tr>
<td>Building and planning</td>
<td>85</td>
<td>5</td>
<td>52</td>
<td>28</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----</td>
<td>---</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Classical nature protection</td>
<td>108</td>
<td>7</td>
<td>71</td>
<td>30</td>
</tr>
<tr>
<td>Other</td>
<td>83</td>
<td>14</td>
<td>69</td>
<td></td>
</tr>
<tr>
<td>Altogether</td>
<td>7045</td>
<td>1870</td>
<td>2264</td>
<td>2911</td>
</tr>
</tbody>
</table>

Source: Official Statistics of the Environmental Inspectorate

**Table 56: Statistics of environmental criminal offences in 2002**

<table>
<thead>
<tr>
<th>Area</th>
<th>Cases started by the Environmental Inspectorate</th>
<th>Cases started by the police</th>
<th>Convicted persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste handling</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Soil protection</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Forest fire protection</td>
<td>12</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Illegal logging by owner</td>
<td>151</td>
<td>11</td>
<td>36</td>
</tr>
<tr>
<td>Illegal logging subject/privateer</td>
<td>7</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Illegal logging thief/unknown</td>
<td>9</td>
<td>384</td>
<td>65</td>
</tr>
<tr>
<td>Other forest protection</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Hunting</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Fauna protection</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Illegal fishing</td>
<td>6</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Classical nature protection</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Altogether</td>
<td>192</td>
<td>405</td>
<td>112</td>
</tr>
</tbody>
</table>

Source: Official Statistics of the Environmental Inspectorate
Table 57: Comparing environmental violations (offences and misdemeanours) statistics year 2000, 2001 and 2002

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of violations</th>
<th>Prescriptions</th>
<th>Forbidden activity stopped</th>
<th>Persons fined</th>
<th>Fines sum</th>
<th>Criminal investigations started</th>
<th>Investigation started by police</th>
<th>Cases when damage made to environment</th>
<th>Environment damaged (mil.kr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>600</td>
<td>682</td>
<td>89</td>
<td>3031</td>
<td>198300</td>
<td>128</td>
<td>729</td>
<td>1469</td>
<td>118525</td>
</tr>
<tr>
<td>2001</td>
<td>7234</td>
<td>757</td>
<td>65</td>
<td>4326</td>
<td>3137123</td>
<td>203</td>
<td>566</td>
<td>1043</td>
<td>109,3</td>
</tr>
<tr>
<td>2002</td>
<td>7052</td>
<td>516</td>
<td>114</td>
<td>4351</td>
<td>4187326</td>
<td>192</td>
<td>405</td>
<td>891</td>
<td>126,7</td>
</tr>
</tbody>
</table>

One of the major problems regarding environmental crimes is illegal logging and wood larceny. According to Estonian criminal law the illegal wood felling can be absorbed by a fact of larceny of wood. Estonian jurisprudence has several times emphasised that the illegal wood felling is a mean to commit a wood larceny i.e. if a person who is not the owner of the forest illegally fells the wood in purpose to steal it, the offence will be qualified after Section 199 of the Penal Code that prescribes the elements of larceny. Larceny is more serious crime as illegal wood felling. Therefore is illegal wood felling absorbed by larceny of growing forest and does not need to be qualified separately.

Table 58: Statistics of registered criminal offences of illegal wood felling and forest larceny from 1993 to 2002

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal wood felling</td>
<td>165</td>
<td>123</td>
<td>102</td>
<td>73</td>
<td>205</td>
<td>X</td>
<td>205</td>
<td>206</td>
<td>231</td>
</tr>
<tr>
<td>Illegal wood felling committed by group</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>24</td>
<td>121</td>
<td>12</td>
</tr>
<tr>
<td>Forest larceny</td>
<td>0</td>
<td>455</td>
<td>705</td>
<td>535</td>
<td>699</td>
<td>X</td>
<td>1048</td>
<td>1244</td>
<td>943</td>
</tr>
<tr>
<td>Forest larceny committed by group</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>116</td>
<td>75</td>
<td>107</td>
</tr>
</tbody>
</table>


39 All sums are calculated in Estonian kroons (1 EEK = 15,64664 euros) see //www.kki.ee/
40 Supreme Court decision of 18 Oct 2001 no. 1-1-102-01 //www.nc.ee/
5. INFORMATION ON THE NATIONAL LEGAL INSTRUMENTS TO CONTROL ORGANISED ENVIRONMENTAL CRIME IN HUNGARY

5.1. ENVIRONMENTAL LAW

The significance of environmental law in the context of the overall legal system (brief overview)

Environmental law has traditionally been regarded in Hungary as a specific part of administrative law. Nevertheless it is accepted, that it is related to a wider field. These include legislation on economic incentives for the protection of the environment, rules relating to civil law liability, the law of minor offences as relating to the environment as well as criminal law as a final safeguard in the relevant area. Act No. LIII. of 1995 on the general rules of protecting the environment and its commentary legal scholarship acknowledge that environment protection covers a wide spectrum, including the following topics:

- use of nuclear energy
- mining
- energy production
- forest management
- artificial environment
- fishery
- transportation
- prevention of catastrophes and the elimination of consequences of catastrophes
- regional development
- management relating to wild animals

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2 Section 3. Para. (1).
- water management
- waste management
- dangerous materials
- nature protection
- veterinary matters
- use of pesticides
- protection of monuments

**Constitutional provisions concerning the protection of the environment. Identification of the leading principles in the field of environmental policy**

In the course of the democratic transition, Act. No. XXXI of 1989 carried out a comprehensive modification of the Constitution, providing for a democratic state form under the rule of law. This modification also introduced several fundamental rights into the Constitution, as well as a number of state goals at which the activity of the state should be directed. On this occasion, two provisions on the environment have been added into the Constitution.

In Chapter I of the Constitution on the General Provisions Article 18 stipulates the following:

"The Republic of Hungary recognises and shall implement everyone’s right to a healthy environment".

Besides this, in Chapter XII on Fundamental Rights and Duties Article 70/D. of the Constitution provides for the right to health, and in this context in refers to the protection of the environment. Article 70/D reads as follows:

---

“(1) Everyone living on the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health.

(2) The Republic of Hungary shall implement this right through the organisation of safety at work, health care institutions, medical care, through securing the opportunities for regular physical activity, as well as through the protection of the built and natural environment.”

The Constitutional Court interpreted these provisions as establishing a right to a healthy environment, although such a right is substantially different from other fundamental rights. Such right bears the closest relationship to the right to life. Should the right to a healthy environment not be provided for specifically by the Constitution, the obligations of the state in connection with environmental protection could also be deduced from the right to life, since the right to the environment ensures the physical conditions necessary for the fulfilment of the right to life.

As regards the nature of the rights, Articles 18 and 70/D. above all result in an obligation on the state to establish and operate specific institutions which would ensure the right to a healthy environment. In this respect, the right to a healthy environment is similar to a state goal the fulfilment of which is not justifiable by the Constitutional Court. Nevertheless this right is more then a mere state goal. It is not a subjective right, nor is it comparable with social rights. Albeit it sets a limit for reducing the standard of environment protection already achieved. Should the state decide to reduce this level, it has to show that this step is justified by public interest, as well as necessary and proportionate.

Development, principles and technique of environmental legislation. Relationship between environmental law in general and environmental criminal law

Initial legislation in the field of the environment focused on specific elements of the environment, such as reducing industrial noise or air pollution. This fragmented approach has not changed by the adoption of the first comprehensive Statute on environment protection in 1976 (Act. II of 1976 on the protection of human environment). The regulation was still dominated by specific rules in the different fields, often contained in

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norms of lower rank (Government decrees, decrees of ministers). The intensity of the regulation differed.

The democratic transition first brought about little change. New instruments - such as the obligation to carry out environment impact assessments and the product fee for environment protection - have been introduced, but relevant legislation has remained little transparent. It may be assumed, that this fact contributed to the difficulties of enforcing the relevant norms, which also had repercussions on the effectiveness of criminal prosecution.

The now basic instrument in the field of environment protection, Act No. LIII of 1995 on the general rules of protecting the environment set the relevant legislation on a new basis. Its aim is to provide a coherent framework for the relevant area, whereas specific rules pertaining to the different field listed in Section 3. of the Act are contained in sector legislation. Amongst these, Act. No LI of 1996 on the protection of the nature plays a central role. It has to be remarked, however, that some of the laws foreseen by Act No. LIII of 1995 have not yet been adopted. All the specific laws use Act No. LIII of 1995 as a point of reference and shall be construed according to that law. This follows from Section 3. Para. 1 of the Act, which lists the fields, in which specific legislation shall be issued.

Act No. LIII of 1995 lists the principles applicable in the field of environment protection. These principles are supplemented by legal scholarship with further ones flowing from the acquit of the European Community and from comparative environmental law. These principles first give directions to the legislature while adopting related laws. Further they are yardsticks for the application and enforcement of the law.

Bándi Gyula identifies in his leading monograph the following principles:

- Prevention, precaution and restoration

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7 Bándi, Környezetjog (Fn. 2) 16.
8 Ibid.
9 For that see the chart below.
10 See supra.
11 Bandi (Fn. 2) 98. The most important areas to be regulated by Act of Parliament according to Section 3 Para. 1 of Act No. LIII where the relevant Act has not yet been adopted are traffic and transportation, as well as the energy. Besides that, the Acts on mining and on the arable land were adopted before Act No. LIII of 1995 came into force. It shall also be noted, that Government decrees for the implementation of the respective Acts are often outdated.
12 Bandi (Fn. 2) 97.
13 Bandi (Fn. 2) 21 et. seq.
As regards techniques of environmental legislation legal scholarship identifies three basic options.\textsuperscript{14} The first option is between a sector and an integrated approach. The first deals with the elements of the environment in different sectors, the other strives for an integrated regulation, where the different elements of the environment are dealt with comprehensively. The second option relates to the way the relevant laws are applied. A traditional approach concentrates in this respect on the role of public administration. Another choice is a market oriented approach that prefers the use of economic incentives. A third possibility consist in the introduction of self regulating mechanisms and thereby increase the engagement of the population. The third option relates to acceptable extent of burdening the environment. It is possible to set exact numerical limits, or to provide for a flexible framework depending on the actual development of technical possibilities. It is claimed\textsuperscript{15} that Hungarian legislation combines the different approaches, whereas no clear choice can be identified in any of the above questions.

As regards the relationship between environmental law and environmental criminal law, it is accepted that criminal law is a final means of safeguarding the interests of the environment. Being a repressive system of sanctions, criminal law can only deter subjects from committing highly serious acts and thereby serve the purposes of prevention.\textsuperscript{16} The application of environmental criminal law, however, is not completely dependent on the activity of public administration in the sense that only breaches of administrative law provisions or act of the public administration would constitute a crime. Rather, relevant

\textsuperscript{14} Bandi (Fn. 2) 68 et seq.
\textsuperscript{15} Bandi (Fn. 2) 91 et seq.
provisions of the Criminal Code - Sections 280 and 281 - also penalise conducts, where no such breach occurred but the perpetrator committed certain damaging acts.\textsuperscript{17}

Hungarian law opted for regulating the matter in the Criminal Code (Act No. IV of 1978 on the Criminal Code), instead of including penal provisions in the general statute on environment protection, or in specific norms for the protection of the environment.\textsuperscript{18} It may be qualified as a conservative approach that Title IV on crimes against public health in Chapter XVI of the Criminal Code on crimes against public order of the Criminal Code contain the two most relevant provisions.

Historically, the first two provisions on the criminal law protection of the environment were introduced in 1978 in the Criminal Code.\textsuperscript{19} These provisions contain the crime “Damaging the Environment” (Section 280) and “Damaging the nature” (Section 281). Originally, the establishment of a crime damaging the environment required a result, a substantial pollution, damaging or demolition of objects of the environment protected.\textsuperscript{20} In other words, without a significant degree of pollution etc. being proved, it was not possible to prosecute environmentally detrimental acts. It was however, difficult in practice to define, what can be qualified as significant.\textsuperscript{21} Besides that, there were further uncertainties regarding the judgement and application of this offence. As regards damaging the nature, the original provision only penalised damaging, demolition or illegal collection of the protected objects, thereby excluding, for instance, trafficking with protected species.\textsuperscript{22} It was further not defined, what species shall be regarded as protected for the purposes of said provision.

Act No. LII. of 1996 on the modification of the criminal code carried out a major change in the text of Section 280 Criminal Code, and slightly changed Section 281 Criminal Code, and further introduced new offences. These are Section 264 (Abuse with radioactive material), Section 264/A (Abuse with the operation of nuclear plants), Section 264/B (Abuse with the application of nuclear energy), and Section 281/A (Unlawful deposition of waste dangerous for the environment). the modification in Sections 280 Criminal Code

\textsuperscript{16} Bandi (Fn. 2) 224.
\textsuperscript{17} For the content of these provisions see below.
\textsuperscript{18} Görgényi Ilona, A környezetvédelmi büntetőjog alapproblémái [Basic problems of environmental criminal law], in: Horváth emlékkönyv (1997, Budapest) 21, 22.
\textsuperscript{19} Tilki Katalin, Környezetvédelem és Büntetőjog [Environment protection and criminal law], Kriminológiai Tanulmányok 38 [2001], 314, 318.
\textsuperscript{20} Tilki (Fn. 16) 319.
\textsuperscript{22} Tilki (Fn. 16) 321.
were motivated by the fact that the legislature found insufficient the protection provided by that provision. According to the legislative intent to Act No. LIII of 1996, the previous wording of Section 280 required a specific result, which was in most cases impossible to prove. The newly established provision in Section 280 now penalises also conducts, which only endanger the environment, provided the perpetrator has violated an obligation resulting from a law or from a decision of an administrative organ. The modification of Section 281 Criminal Code consisted this time in the rising of applicable punishments.

Finally, Section 281 Criminal Code was modified by Act. No. LXXXVII of 1998, whereas Section 280 remained unchanged this time. This modification entered into force on 1 March 1999. With this modification the range of protected goods have been substantially extended. Reason for this was – as the legislative intent points out – that Act No. LIII of 1996 on nature protection introduced new notions and extended the protection of the nature.

5.2. ORGANISED CRIME

The domestic definition of organised crime

Firstly, it should be noted that the notion of organised crime in Hungarian law is not in complete harmony with the definition set out in the yearly report on organised crime in the European Union (6204/1/97 (ENFOPOL 35 REV 2) GD H II). According to said report and the contract, the following elements shall be present in order talk about organised crime: (1) Co-operation between more than two persons; (3) For a long or previously unspecified time; (5) Suspicion of the commission of serious offences; (11) Motivated by profit or power. In contrast, Section 137 Point 8 of the Hungarian Criminal Code defining the term "criminal organisation" [bűszervezet] poses more severe requirements, but does not include expressly the criterion cited here under Nr. 11. According to the Criminal Code, criminal organisation is

- a group of three or more persons

- organised for a longer period of time
Besides the notion of criminal organisation, the Criminal Code also contains the notion of criminal association [bűnöszövetség], which has less strict requirements. According to Section 137 Point 7 Criminal Code, criminal association is established if:

- two or more persons

- commit crimes in an organised manner or

- agree to commit crimes in an organised manner, and

- the commission of at least one crime has been tried but

- no criminal organisation has been established.

Accordingly, criminal association falls below the level of organised crime as defined by European Law, nevertheless some elements of its definition are similar to those of European Law.

The notion of organised crime was first introduced in the Criminal Code in 1997 by Act. Nr. LXXII of 1997. § 137 Point 7 of the Criminal Code then defined criminal organisation on the basis of the notion of criminal association. According to that definition, criminal organisation was such a form of criminal association, which was established for continuous conviction of crimes on the basis of the division of labour amongst the members with the purpose of regular profit.

The notion of criminal organisation was first modified by Act. No. LXXXVII of 1998. This Act changed the numbering, placing the relevant definition in § 137. Point 8. The definition was changed to include the following elements:

- criminal organisation is a form of criminal association, which

- is based on division of labour,
- on subordination,
- on personal contacts and
- was established for profit
- through the regular commission of crimes.

The present definition of organised crime was established by Act. No. CXXI. of 2001 and entered into force in April 2002. As the legislative intent to this Act points out, the motive behind the modification was a development in EU Law. The legislative intent refers specifically to the Joint Action adopted by the Council on 21 December 1998 on organised crime. Further, the legislature also considered the UN Convention against transboundary organised crime. In this respect, the modification was mostly part of legal approximation. The legislative intent refers, however, also to the need of effective prosecution of organised crime.

The notion of organised crime is first of relevant because the Criminal Code orders more severe punishments, should a crime be committed in a criminal organisation. Besides this, participation in a criminal organisation is itself a crime.23 (Section 263/C. Criminal Code) It shall be noted that the present rules of such crime were also introduced by Act. No. CXXI. of 2001.

Some remarks on the extension of organised crime in the country

According to the National Security Office criminal organisations operating are Hungary are of Hungarian origin or come from Eastern Europe.24 The National Security Office lists the following areas where organised crime is present:

- operation of restaurants and hotels
- entertainment
- gambling

23 See infra.
24 For the following see http://www.nbh.hu/szervbun.htm.
- real estate speculations

- smuggling of drugs

- smuggling of cigarettes

- smuggling of computers

- prostitution

The commission of organised crime may be characterised as highly conspiracy, applying latest technical device on the basis of a developed infrastructure. It is a general tendency that criminal organisations use a legal enterprise to cover their activities. Mere violence is being replaced to a larger extent by corruption.\(^{25}\) There are signs, that organised crime is seeking contact with employees of the criminal prosecution agencies. It happens that persons charged with an offence are released before the trial. Should they await trial in custody or after conviction sit in prison, they are often allowed to use their cellular phones and receive visitors in violation of relevant laws.\(^{26}\)

Blackmailing and bribe are used to influence criminal prosecution, but also for other purposes, such as:\(^{27}\)

- illegal financial transactions

- illegal eliminating competitors

- acquiring and using official or business secrets

- real estate speculation

- receiving information about ongoing procedures of the authorities

- acquiring official documents, identity cards etc. illegally

- illegal immigration

\(^{25}\) KATONA Géza, Szervezett bűnözés Magyarországon (2000, Budapest, BM Kiadó).

\(^{26}\) Ibid.

\(^{27}\) KERTÉSZ Imre, A szervezett bűnözés terjedelme, Magyar Tudomány 8/2001:909 et seq.
- influencing decisions of the authorities in cases of minor offences

- acquiring official permissions (building etc.) illegally

In spite of the operation of criminal organisations it may well be stated there is no classical “maffia” in Hungary. There are, at the moment, rather smaller groups which do not have significant link to politics and higher ranks of public administration. There is, however the danger that such a development occur.\textsuperscript{28}

\textit{How extensive is the overlapping between environmental and organised crime? – Theoretical empirical perspectives}

Although there is an presumption that environmental crimes are committed in an organised matter,\textsuperscript{29} environmental crimes are not regarded to be at the heart of organised crime. This is clearly a result of the lack of cases of organised environmental crime brought to court. This may also be a result of the very low number of cases involving environmental crimes being prosecuted, not to mention the even lower number of convictions.\textsuperscript{30} Also the Hungarian police is not aware of cases of organised environmental crime.\textsuperscript{31}

It is by the same token that legal scholarship pays no attention to this field. Whereas organised crime is a most debated subject in scholarly writing and there is a growing number publications on environmental crime, there is no such scholarly work on organised environmental crime.

\textsuperscript{28} http://www.nbh.hu/szervbun.htm.
\textsuperscript{29} Tilki (Fn. 2)
\textsuperscript{30} See infra.
\textsuperscript{31} Statement of Zsigmond Szabó, Director, International Law Enforcement Cooperation Centre, Hungarian National Police, 5 September 2003
5.3. CHRONOLOGICAL LIST INDICATING THE TITLE AND PUBLICATION REFERENCE OF THE RELEVANT TEXTS IN FORCE

A selection of the most important texts concerning both organised crime and its legislation

Acts of Parliament:

1972. évi V. törvény a Magyar Köztársaság ügyészségéről (Act No. V/1972 on Public Prosecution)


1994. évi LXXX. törvény az ügyészségi szolgálati viszonyról és az ügyészségi adatkezeléséről (Act. No. LXXX/1994 on service at Public Prosecution and Processing of Data by the Public Prosecution)


2000. évi CXXVI. törvény a Szervezett Bűnözés Elleni Koordinációs Központról (Act No. CXXVI/2000 on the Coordination Centre against Organised Crime)

A selection of the most important texts concerning both environmental crime and its legislation


1996. évi LIII. törvény A természet védelméről (Act No LIII/1996 nature protection)
1996. évi LIV. törvény Az erdőről és az erdő védelméről (Act. No. LIV/1996 on forestry and on protection of the forests)


2001. évi LXXVI. törvény A Nemzetközi Atomenergia Ügynökség keretében a kiégett fűtőelemek kezelésének biztonságáról és a radioaktív hulladékok kezelésének biztonságáról létrehozott közös egyezmény kihirdetéséről (Act. No LXXVI/2001 on promulgating the Joint convention on the safety of spent fuel management and on the safety of radioactive waste management)

Government Decrees

55/1987. (X. 30.) MT rendelet Az emberi környezetre veszélyt jelentő egyes anyagok külföldről történő behozataláról (Gov. Decree No. 55/1987 (X. 30.) on importing certain dangerous materials from abroad)

31/1990. (II. 16.) MT rendelet A sztratoszferikus ózonréteg védelmére szóló, Bécsben 1985. március 22. napján aláírt egyezmény kihirdetéséről

35/1990. (II. 28.) MT rendelet Az ózonréteget lebontó anyagokról szóló, Montreálban 1987. szeptember 16-án aláírt jegyzőkönyv kihirdetéséről


102/1996. (VII. 12.) Korm. rendelet A veszélyes hulladékokról (Gov. Decree No. 102/1996. (VII. 12.) on dangerous wastes)

211/1997. (XI. 26.) Korm. rendelet a környezetvédelmi felügyelőségek, valamint a nemzeti park igazgatóságok feladat- és hatásköréről, továbbá a Környezet- és Természetvédelmi Főfelügyelőségről (Gov. Decree No. 211/1997. (XI. 26.) on the competences and tasks of the environment protection authorites and national park directorates, as well as on the National Environment and Nature Protection Authority)
33/2000. (III. 17.) Korm. rendelet A felszín alatti vizek minőségét érintő tevékenységekkel összefüggő egyes feladatokról (Gov. Decree No. 33/2000 (III. 17.) on certain tasks relating to the quality of underground water)

240/2000. (XII. 23.) Korm. rendelet A települési szennyvíztisztítás szempontjából érzékeny felszíni vizek és vízgyűjtőterületük kijelöléséről (Gov. Decree No. 240/2000. (XII. 23.) on delimiting the surface waters and water supply areas that are sensitive from the perspective of waste water treatment)

20/2001. (II. 14.) Korm. rendelet A környezeti hatásvizsgálatról (Gov. Decree No. 20/2001 (II. 14.) on Environment impact assessment)

21/2001. (II. 14.) Korm. rendelet A levegő védelmével kapcsolatos egyes szabályokról (Gov. Decree No. 21/2001 (II. 14.) on certain tasks relating to the protection of the air)

98/2001. (VI. 15.) Korm. rendelet A veszélyes hulladékkal kapcsolatos tevékenységek végzésének feltételeiről (Gov. Decree No. 98/2001 (VI. 15.) on the preconditions for carrying out activities relating to dangerous wastes)

193/2001. (X. 19.) Korm. rendelet Az egységes környezethasználati engedélyezési eljárás részletes szabályairól (Gov. Decree No. 193/2001 (X. 19.) on the detailed procedural rules of the uniform authorisation procedure for using the environment)


A complete list of texts concerning organised environmental crime

1972. évi V. törvény a Magyar Köztársaság ügyészségéről (Act No. V/1972 on Public Prosecution)


2000. évi CXXVI. törvény a Szervezett Bűnözés Elleni Koordinációs Központról (Act No. CXXVI/2000 on the Coordination Centre against Organised Crime)

**If existing: Description of the link between environmental criminal law and organised crime legislation / If not: Some reflections why this link does not exist in criminal law**

There is, in fact, a link between environmental criminal law and organised crime, but this follows from the fact that environmental criminal law is not an overly developed body of norms. Both the regulation of what is an environmental crime and what is organised crime are contained in the Criminal Code. This is clearly a result of an integrated approach in criminal law, according to which all relevant rules of criminal law liability shall be included in the criminal code.

Procedural rules follow in their approach the substantive law. There is no specific procedure for prosecuting organised environmental crime. Rather, general rules of criminal prosecution apply with the alterations applicable if organised crime is involved.

**5.4. FRAMEWORK OF THE APPLICABLE LEGISLATION**

*The key principles of environmental criminal law*

After a long period in which crimes affecting the environment presupposed a specific result Act LIII of 1996 modified Section 280 and 281 in order to include cases where a significant damage occur. With this modification and with the introduction further provisions for the protection of the environment a variety of possibilities came to existence to prosecute such crimes.

The relevant provisions can all be characterised by the fact that the relevant crime is committed through the violation of specific legal obligations provided for by environmental

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32 See supra.
33 For the problems related to environmental crimes being "material" and immaterial see Görgényi, The protection ... (Fn 21) 195.
legislation, international treaties or decisions of the public administration.\textsuperscript{34} Besides this, however, a damaging act may be \textit{per se} a crime against the environment.

Specific features apply at the question of causality. In several cases damage only becomes evident after a longer period of time, if not generations.\textsuperscript{35}

In general it may be stated that environmental crimes are committed by or on behalf of legal persons. It is therefore of crucial importance that legal persons bear criminal law responsibility. The eminent role of legal persons in environmental crime indicate that such crimes are mostly committed with an economic purpose. This applies especially in the times of democratic and economic transition. Often the perspective of fast enrichment tempt people to disregard the basic long term interest related to the environment. This is why it has been proposed to regulate environmental offences amongst economic crimes\textsuperscript{36}

As regards the purpose of criminal law in the field of the environment, a modification of the general purpose may be detected. Whereas criminal law aims at suppressive-preventive sanctions, the interests of the environment would require the restoration of the original circumstances or at least mitigating the damages.\textsuperscript{37}

Current provisions of the Criminal Code reflect these consideration. The Code contains the following relevant provisions:

Section 280, Damaging the environment

“(1) Whoever damages the environment or any elements of the environment, or acts in breach of his obligations as defined by law or by a decision of an authority in a way which is capable of damaging the environment or any elements of the environment, commits a crime and shall be punished with imprisonment for up to three years.

(2) Whoever pollutes the environment or any elements of the environment or acts in breach of his obligations as defined by law or by a decision of an authority in a way which is capable of significantly polluting the environment or any elements of the environment is punishable according to paragraph (1).
(3) Punishment is imprisonment for up to five years, if the offence defined in Para. (1) of this Section has caused a significant damage to the environment or if it is capable of significantly damaging the environment or one of its elements.

(4) Punishment is imprisonment for two to eight years if the offence has damaged the environment or any elements of the environment to such an extent that the natural or original state of the environment or of the element of the environment cannot restored.

(5) Whoever commits the offence of damaging the environment through recklessness, shall be in the cases mentioned under paragraphs (1) (3) in this Section shall be punished with imprisonment for up to two years, in the case of paragraph (4) of the Section with imprisonment for up to three years.”

Section 281 Damaging the nature

“(1) Whoever

a) illegal acquires, takes abroad, sells or destroys any plant or animal or any offspring of them at any stage of its development under increased protection or falling under the effect of an international treaty,

b) illegal and to a significant extent modifies an area under increased protection

commits a crime and shall be punished with imprisonment for up to three years.

(2) Punishment is imprisonment for up to five years if the damage to the nature causes a massive destruction of the plants or animals defined in paragraph (1) subparagraph a) of this Section or in the case of paragraph (1) subparagraph b) causes irreversible damage to the area or its destruction.

(3) Whoever commits damaging the nature defined in paragraph (2) of the Section through recklessness shall be punished by imprisonment for up to two years.
Section 281/A Illegal depositing of waste dangerous for the environment

“(1) Whoever without permission defined in law or in breach of an obligation defined by law or a final decision of an authority collects, stores, manages, deposits or transports wastes containing materials capable of

a) endangering the life, physical integrity or health of people;

b) polluting water, the air or the soil, or cause lasting changes to them;

c) endangering animals or plants

commits a crime and shall be punished with imprisonment for up to five years.

(2) Whoever deposits without a permission defined by law explosive, flammable or such a waste that contains radioactive material dangerous for human health or for the environment shall be punished according to paragraph (1) of this Section.

(3) Whoever commits the offences defined in paragraphs (1) and (2) of this Section trough recklessness shall be punished with imprisonment for up to two years.”

The key principles of organised crime legislation

The Criminal Code regards organised crime first of all as an aggravating circumstance by the commission of other crimes. Accordingly, Section 98 of the Criminal Code provides for a more severe sanctioning, shall a crime be committed in a criminal organisation. Most importantly, the maximum of imprisonment shall be twice of the applicable amount and deportation may also be ordered.

Besides this, the Criminal Code also penalises the mere participation in a criminal organisation. According to Section 263/C. Para. 1 of the Criminal Code:

“Whoever calls upon, offers, undertakes, agrees with others to commit a crime in a criminal organisation, or intentionally provides the preconditions necessary or promoting this end, or in any other manner supports the activity of a criminal organisation commits a crime and shall be punished with imprisonment for up to five years.”
Paragraph. 2 of the same section, however, reflects the interest of the State to gain information on criminal organisations. In order to achieve this, Para. 2 of Section 263/C. provides:

„Nobody may be punished for participation in a criminal organisation, if he/she reports the crime to the authorities before it has been discovered by the authority, and explores the circumstances of the commission."

The regulation on criminal associations differs from that on criminal organisation in that commission in a criminal association is only an aggravating circumstance.

Parallels and differences

The above being said, it is clear that distinction environmental criminal law and the criminal law norms on organised crime are part of the unitary system of the Criminal Code. Commission in a criminal organisation may be an aggravating circumstance in the case of environmental crimes. In that case, the more severe system of sanctions apply.

5.5. SANCTIONS IN THE FIELD OF ORGANISED ENVIRONMENTAL CRIME

Introduction to the sanction system

No special sanction exists in the field of organised environmental in Hungary. Accordingly, the general rules of criminal liability for involvement in organised crime or participation in an association or group aiming at committing offences.

The Hungarian Criminal Code does not provide one strictly defined penalty for any given offence. Rather, the court has the discretion to choose which penalty it will impose. Penalties are classified as principal and accessory.

According to Section 38 paragraph 1 Criminal Code principal penalties are

1. deprivation of liberty
2. work in the common interest
3. fine as a principal penalty

Section 38 paragraph 2 lists accessory penalties as follows:

1. deprivation of political rights
2. prohibition of a specific occupation
3. prohibition of driving a vehicle
4. prohibition of visiting certain places
5. deportation
6. fine as an accessory penalty

As a general rule an accessory penalty can not be imposed separately but only in addition to a principal penalty. Nevertheless, prohibition of a specific occupation, prohibition of driving a vehicle, prohibition of visiting certain places and deportation may be applied also separately.

Besides the penalties listed above, criminal judges are also entitled to impose a so called criminal measures. These partly replace penalties, partly may be applied together with a penalty.

According to Section 70 paragraph 1 Criminal Code criminal measures are the following:

1. Reprimanding
2. Probation
3. Compulsory medical treatment
4. Compulsory medical treatment of alcoholism
5. Confiscation of certain objects
6. Confiscation of wealth
7. Supervision
8. Measures applicable against legal persons.

Reprimanding, probation and compulsory medical treatment may be applied separately instead of a penalty, while compulsory medical treatment of alcoholism may only be applied together with a penalty. Confiscation of certain objects and confiscation of wealth may both be applied separately or together with a penalty or criminal measure. Finally, supervision of the perpetrator may be applied together with a penalty or a criminal measure.

The relevant provisions of the Criminal Code all force the deprivation of liberty – imprisonment. The criminal judge can, however, to apply less strict penalties or even measures. The most important possibility is to release the perpetrator on probation. A precondition for this that the crime has not been committed intentionally, or that special circumstances prevail and the act may not be punished by more than three years imprisonment. Further, Section 87 paragraph 2 point f) Criminal Coe authorises the judge to apply fine as a principal penalty or work in the common interest, should the crime be originally penalised with imprisonment for up to maximum five years.

Finally, it shall be noted that the relevant Sections of the Criminal Code all provide for imprisonment, but do not stipulate the minimum that shall be imposed. This means that the criminal judge may chose to apply the minimum time of imprisonment - two months according to Section 40 Para. 1 CC - or work in the common interest, or even fine as a principal penalty. This possibility is well reflected in the practice of criminal courts: although they are entitled to impose imprisonment, in most cases they do not opt for this severe penalty, but apply only a fine.

*The sanctioning practice (official statistics concerning the number of criminal investigations, convicted persons, sanctions imposed)*

Although there is a strong presumption that environmental crimes occur in great numbers, most of them does not become known or is not prosecuted. Therefore criminal statistics do not reflect the real situation. It is further significant, that no statistical information is available as regards the organised form of environmental crime. The present study therefore includes official statistics on environmental crimes in general. Finally, the rise in
the number of crimes found seems to be a result of enhanced efforts of the prosecution agencies, and not of the rise in the activity of the perpetrators.

It is also remarkable that the number of crimes that have become known show significant changes in different years in both directions. It cannot be established with sufficient certainty, whether this a result of the difference in the criminal activities or the efforts of the authorities, or it is simply influenced by chance. Finally, the rise in number of damaging the environment is clearly influenced by the fact, that in 1998 the relevant provision of the Criminal Code was modified, extending its scope.

It shall also be pointed out that according to the Regular Report on Hungary’s progress towards accession 2002 reports to the Public Prosecution Office are common forms of action by inspectors of the environmental inspectorate if they detect non-compliance with environmental regulations.\(^{39}\) As the number of reported crimes is quite small in relation to the number of population it might be that the Public Prosecution does not initiate further legal proceedings.

\(^{38}\) Teszár (Fn. 34) 44.
Table 59: Number of environmental crimes became known from 1991 to 2002, as well as number of perpetrators from 1991 to 1999

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<td>19 (6)</td>
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<td>Damaging of the nature (CC § 281)</td>
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<td>33 (21)</td>
<td>22 (18)</td>
<td>48</td>
<td>83</td>
<td>166</td>
</tr>
<tr>
<td>Unlawful deposition of waste dangerous for the environment (CC § 281/A)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10 (10)</td>
<td>22 (13)</td>
<td>26 (20)</td>
<td>29</td>
<td>88</td>
<td>24</td>
</tr>
<tr>
<td>Abuse with radioactive material (CC § 264)</td>
<td>3</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abuse with the operation of a nuclear plant (CC § 264/A)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

40 Source: Office of the Attorney General.
41 On the basis of Tilki (Fn. 19) 325. The number of perpetrators is indicated in (brackets).
Table 60: Number of convictions for damaging the environment and damaging the nature, sanctions imposed\textsuperscript{42}

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of convictions</th>
<th>Imprisonment</th>
<th>Sum of imprisonment</th>
<th>Fine</th>
<th>Additional punishment applied alone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Carried out</td>
<td>Suspended</td>
<td>Carried out</td>
<td>Suspended</td>
</tr>
<tr>
<td>1991</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1992</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1993</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1994</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1995</td>
<td>8</td>
<td>0</td>
<td>1</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>1996</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>1997</td>
<td>21</td>
<td>0</td>
<td>9</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>1998</td>
<td>11</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1999</td>
<td>30</td>
<td>1</td>
<td>6</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Sum</td>
<td>76</td>
<td>2</td>
<td>18</td>
<td>38</td>
<td>2</td>
</tr>
</tbody>
</table>

\textsuperscript{42} Source: Ministry of Justice, as published by Tilki (Fn. 19) 330.
6. INFORMATION ON THE NATIONAL LEGAL INSTRUMENTS TO CONTROL ORGANISED ENVIRONMENTAL CRIME IN LITHUANIA

6.1. ENVIRONMENTAL LAW

The significance of environmental law in the context of the overall legal system (brief overview)

The doctrine of the environmental law is comparatively in the Republic of Lithuania as before the March 11, 1990 there was very little attention paid to the problems of the environment on the whole. Therefore the legal doctrine was not developed. However during the last decade the environmental law has face rapid development.

The environmental legal doctrine recognizes the principle “polluter pays”\(^1\). The essence of the polluter pays principle in Lithuanian legal doctrine means that the person who introduces a pollutant whether of the air, the sea or other water bodies, the soil or to other elements of environment should also be responsible for the removal of that pollution\(^2\). Moreover, the legal doctrine develops towards the direction that the said principle can displace other general principles of law, e.g. right to ownership. This principle has clearly appeared in the legal doctrine of environmental law only after March 11, 1990. This principle is comprehensively of economic nature and it is operating consistently with the laws of the market and also economic in the sense that its application reduces costs to society as a whole. The said principle is not punitive one and it functions along the principle that every illegal polluter has to be punished.

The second principle, which was developed in Lithuanian legal doctrine, is the principle of sustainability\(^3\). This principle holds that development must be capable of being maintained over the long term and that sustainable production should be favored when possible. The said principle is examined in Lithuanian legal doctrine only from the ecological point, avoiding purely economic sense. This principle views the economy in terms of a cycle not of expansion and contraction, as a self contained closed circle of recalculating production and transformation and return to source. The principle of sustainability stipulates that any economic activity must be ecologically sound and must respect the environment.

The third, however arguable, principle, the principle of source, might be discovered in Lithuanian legal doctrine.\(^4\) The source principle means that any form of pollution should be treated as closely as possible to the source. Therefore stack scrubbers at the source must remedy air pollution, filters at the source should remedy water pollution, and autos should be recycled, incinerated, or buried as close to their factory as possible.

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\(^1\) Marcjonas, A., Sudavicius, B., Ekologine teise, Eugrimas, Vilnius, 1996.
\(^2\) Malisauskas, V., Gamtos istekliu naudojimas ir apsauga, Vilnius, 1993.
\(^3\) Marcjonas, A., Sudavicius, B., Ekologine teise, Eugrimas, Vilnius, 1996.
\(^4\) Marcjonas, A., Materialine atsakomybe uz zala padaryta gamtai, Vilnius, 1986.
The fourth principle describe in Lithuanian legal doctrine could be treated as the principle of recycling. The content of the principle is that wherever possible recyclable and biodegradable materials should be used and that law should be interpreted and formulated to favour recycling.

The other principle, which is not recognized, however broadly discussed in Lithuanian legal doctrine is a principle of zero tolerance. Basically a zero tolerance principle means that toxic torts would be taken seriously and that the lives of all persons, wealthy or not, would be protected, by Criminal sanction if necessary. This principle could also be called the principle of Criminal treatment for Criminal acts. Persons whether acting through or for a company or on their own should be criminally responsible for poisoning the environment.

The development of the environmental law

The environmental law of the Republic of Lithuania reflecting modern attitude to the environmental issues has been implemented only after the restoration of the independence in 1990. The legal heritage from soviet period has been modernized adapting it to the new trends in the development of society and legal relations. The major changes were made concerning the reestablishment of the institute of private property. The said regulations were added to the soviet laws. The new legal acts following the western legal traditions and the doctrines mentioned above were drafted from the beginning of 1992. The The Republic of Lithuania Environmental Protection Law5 has been adopted in 1992 and afterward suffered significant changes. The Law on Environmental protection provided the guidelines for the institutional system of environmental protection. According the to the Law the Government of the Republic of Lithuania, the Ministry of Environment, and other authorised public authorities were authorized to carry out the public environmental protection management in the Republic of Lithuania. Since 1996 Lithuania has started the approximation of Lithuanian legislation to EU acquis.

Constitutional provisions concerning the protection of the environment. Identification of the leading principles in the field of environmental policy.

The Constitution of the Republic of Lithuania6 sets constitutional provisions concerning the protection of the environment.

According Article 47 of the Constitution of the Republic of Lithuania land, internal waters, forests, and parks may only belong to the State of the Republic of Lithuania by the right of

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5 Lietuvos Respublikos aplinkos apsaugos įstatymas I-2223 (Žin. 1992, Nr. 5-75);
6 Lietuvos Respublikos Koncepcija (Žin. 1992, Nr. 31-953);
ownership. The right of ownership of entrails of the earth, as well as nationally significant internal waters, forests, parks, roads, and historical, archaeological and cultural facilities exclusively belongs to the Republic of Lithuania. The Republic of Lithuania has the exclusive ownership right to the airspace over its territory, its continental shelf, and the economic zone in the Baltic Sea.

Paragraph 3 of Article 53 of the Constitution of the Republic of Lithuania establishes that the State and each individual must protect the environment from harmful influences.

According Article 54 of the Constitution of the Republic of Lithuania the State concerns itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and supervises 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 Law must prohibit impoverishment of fauna and flora.

**Development, principles and technique of environmental legislation. Relationship between environmental law in general and environmental criminal law**

Please find above the comments concerning the environmental legislation, which is a new branch in the Republic of Lithuania; therefore it has developed from the beginning. The second branch of law – environmental criminal law – does not exist in the Republic of Lithuania. All the issues related to environmental criminal law are solved by two separate branches: criminal law and environmental law.

### 6.2. ORGANISED CRIME

**The domestic definition of organised crime.**

The criminal Code of Republic of Lithuania does not define organized crime and organized groups as separate units. Instead of this the definition of criminal association (article 227-1) can be found.

**Article 227¹ Criminal association:**

Any person who organises an association of three or more people for joint criminal activity in the commission of grave crimes, or participates in its activity – shall be punished by imprisonment for a term from 4 to 10 years.

The same actions when a criminal association possesses a firearm, explosives, or explosive substances – shall be punished by imprisonment for a term from 8 to 15 years or life imprisonment.
The legal definition of the criminal association raises such requirements to criminal unit: three or more participants in the criminal organization with the prior agreement of committing for criminal acts. The prior agreement should consider committing grave crimes that are listed in the article 8-1 of the Criminal Code of the Republic of Lithuania. The notion of grave crime embraces such criminal offences as extortion, smuggling, money laundering, aforethought murder etc. According to the indications established by the Criminal Code of the Republic of Lithuania only collaboration of three or more people and the prior agreement among participant of the criminal unit on committing grave criminal offences are mandatory criteria of the organized criminal group (criminal association). There exist optional criteria beside the legal criteria that are defined in the Criminal Code of the Republic of Lithuania. The optional criteria are used in the studies of criminology and in practice by institutions that are entitled to fight against the organized crime. Such optional criteria as specific task for each participant, using means suitable for intimidation and internal discipline and control are recognized as practical indications for criminal associations, but optional criteria has no influence for criminal liability of the participant of criminal association. Optional criteria can be use as supporting evidence in criminal trial and according to the Supreme Court of the Republic of Lithuania these circumstances serve to distinct the indications of organized criminal groups.

Some remarks on the extension of organised crime in the country.

There is no official information about internal structure of organized criminal organizations. According to researches by individual scientist the structure of organized criminal groups is based on hierarchical backgrounds. The hierarchical structure is not complicated and only some biggest criminal associations have developed it. The most famous organized criminal groups that were exposed by police and other institutions that are entitled to fight against organized crime had one leader and a board of some persons with the rich criminal past and authority over criminal world, every member of the board had his scope of activity to control.

There are some recognized backgrounds of the composition of the organized criminal group. The first background for criminals to join the organized group is “penitentiary friendship”, it means that criminals that have served sentence in the same penitentiary institution form criminal group after they are released from the penitentiary. The second background is youth gangs grow up into organised criminal groups. This background often embraces the situation when experienced criminals with the authority over criminal world and rich criminal past find a youth gangs to become leaders of inexperienced criminals. The third background can be called territorial, because criminals form criminal associations based upon their living place. Criminal organizations based upon ethnic background are very rare, because there is no favourable social backgrounds for such phenomenon. Some time ago there was another very popular background for criminals to

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form a unit: criminal associations were based on the members of sport clubs (boxing, wrestling and other fighting sport branches).

It is very difficult to describe the level of internationalisation of Lithuanian organized criminal groups. Due to geographical situation of the Republic of Lithuania and high custom tariffs smuggling offences are very wide spread among organized criminals. Another wide spread criminal offence is vehicle theft. Cars that were stolen in Western Europe pass the territory of the Republic of Lithuania on their way to Russian Federation and the other countries of Eastern Europe as well a part of stolen vehicle get legalization in Lithuania. Both prior mentioned scopes of criminal activity would be impossible without international relations among organized criminal groups. Lithuanian organized criminal groups avoid operating in foreign countries because of strong competition with local criminal units (Russian, Byelorussia etc). Lithuanian organized criminals have close relations with foreign organized criminals that help both parts in developing their criminal activities. In conclusion, it must be admitted that Lithuanian organized criminal groups are not international by themselves but they have got close international relation and in some cases Lithuanian organized criminals take part in common criminal activities with foreign organized criminal groups. According to annual review by the Ministry of Internal Affairs Lithuanian organized crime has closest relation with organized criminals from Estonia, Russia, Latvia, Belarus, Poland and Germany. The activity of foreign organized groups has influence on criminal situation in Lithuania, especially in biggest cities.

Origin of the members of criminal groups. According to prior mentioned facts it must be stated that ethnic backgrounds have got very little influence on creating organized criminal unit, and most members of the criminal groups are citizens of the Republic of Lithuania. A little bit exclusive situation is in Capital City Vilnius, were the great number of members of organized groups are the citizens of the Republic of Lithuania Russian or polish origin. There almost is no possibility for criminals’ non-Lithuanians to become leaders of organized criminal groups in other parts of republic.

The organized criminal groups are mostly located in the biggest cities: capital city Vilnius, port city Klaipeda, the cradle of Lithuanian organized crime Kaunas, Panevezys etc. Organized criminals from the biggest cities establish control upon the criminal gangs that operate in the provinces. The activities of the gangs differ from their location city: the organized criminals in Klaipeda are mostly involved in smuggling alcohol and drugs, organized groups in Panevezys are notorious for their brutish crimes, organized groups of Kaunas are mostly involved in alcohol smuggling and vehicle theft (the organized group of 30 members engaged in vehicle theft and extortion was disclosed in 1996) etc.

According to the information by the Ministry of Internal Affairs of the Republic of Lithuania there are about 30 powerful organized criminal groups and the estimated total number of

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8 Fisanick, Ch., Csonka, P., Docka, P. Šiuolaikinis nusikalstamumas, Kaunas, 2002.
participants is over 1000. Since 1993 criminal police disclosed over 100 organized criminal groups, including 10, which had relations with international organized crime\textsuperscript{11}.

\textit{Characteristics of Groups Involved in Organised Crime (Summary)}\textsuperscript{12}:

1. Structure of the group: structure differs from group to group, but it is not complicated; no major research has been done in this field;

2. Composition of the group: mostly homogenous, save the capital city Vilnius and port city Klaipeda; there is no criminal group, which is composed solely on the ethnic ground;

3. Cooperation with criminal groups in the same country: Positive, but there is no permanent structure for cooperation and consolidation (cooperation ad hoc);

4. Cooperation with criminal groups in other countries: Positive. Mostly Belarus, the Ukraine, Latvia, Russian Federation, England, Belgium and Germany;

5. Countries of origin of leaders and group members: mostly nationals of Lithuania;

6. Number of organised groups operating in the member State: 13 criminal associations and over 30 other organised criminal groups;

7. Size of organised criminal groups: no data on this issue (number of large groups is decreasing);

8. Estimated total number of participants: 1300-1500\textsuperscript{13}.

\textit{Table 61: Crimes committed by a group of persons that have been investigated by the Police}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>4949</td>
<td>7132</td>
<td>6950</td>
<td>6975</td>
<td>7257</td>
<td>7120</td>
<td>6503</td>
<td>5860</td>
<td>6814</td>
<td>6962</td>
<td>5921</td>
</tr>
</tbody>
</table>

\textit{Source: Centre for Crime Prevention in Lithuania, www.nplc.lt/stat/nus/nus40.htm}

\textsuperscript{11} VRM “1997 Metų Veiklos Ataskaita” – Vilnius, 1998
\textsuperscript{12} VRM “1997 Metų Veiklos Ataskaita” – Vilnius, 1998
\textsuperscript{13} VRM Pažyma Nr. 5/4–206–1996 (Unpublished).
How extensive is the overlapping between environmental and organised crime? – Theoretical empirical perspectives

The criminal groups of the Republic of Lithuania are involved in wide range of criminal activities. At first, smuggling of goods, mostly alcohol and tobacco, but because of high custom rates and interior tax policy goods of everyday use become object of smuggling offence. There were 48 offences of smuggling registered in 1998. There were disclosed 139 offences of smuggling alcoholic drinks and 58 offences of smuggling pure alcohol in 1997 and due to this 549217 litters of alcohol were seizure.\(^{14}\) The second wide spread criminal activity is vehicle theft. This scope of criminal activity can be divided into two parts: transition of stolen in Western Europe vehicle through the territory of the Republic of Lithuania to Eastern Europe (The Federation of Russia especially) and the other part of this activity is vehicle thefts inside the Republic of Lithuania. According to statistics by the Ministry of Internal Affairs of the Republic of Lithuania there were 4601 stolen vehicles in 1998\(^ {15} \). There are three basic ways of behavior with stolen vehicle that criminals provide. The first way is based upon extortion. It means that organized criminals suggest to the owners of stolen property to pay sum of money that depends on the value of stolen vehicle for returning them to legitimate owner. The important fact is that one of the most famous leaders of Lithuanian organized crime H.Daktaras was sentenced in 1998 because of taking part in the mention extortion activity. The second way is based upon smuggling stolen vehicle to Eastern Countries. The third way embraces dividing stolen vehicle into parts and selling these parts as separate vehicle details. The third wide spread criminal activity is extortion (including protection racketeering)\(^ {16} \). Now extortion crime has not such a high level of spreadness and the number of these crimes has decreased (1997– 237 offences, 1998– 194 offences) but still 80 extortion offences were disclosed by Organised Crime Investigation Service. The other criminal activity is smuggling of narcotic drugs and firearms. There were registered 620 crimes that had relation with narcotic drugs and 155 crimes related to gunfire and explosives in 1998. The finds of great amounts of gunfire and explosives by criminal police in the beginning of the year 1999 leads to conclusion that prior mentioned activities are wide spread and dangerous. Very important fact is that Organised Crime Investigation Service disclosed 3 organized criminal groups engaged in illegal narcotic drug business in 1997. The Service of Special Investigations during the first 3 months of activity disclosed two organized groups, whose scope of interest was illegal trade of explosives. Illegal immigration and human traffic are new scopes of activity that organized crime embraced during few last years. In 1996 the Parliament of the Republic of Lithuania (Seimas) promulgated additional article number 82-1 to the Criminal Code of the Republic of Lithuania that provide criminal responsibility for illegal human traffic in/out the territory of the Republic of Lithuania and the aggravating circumstance is if the prior mentioned traffic is committed by organized group. Kidnapping was supposed not to be in the scope were organized criminals had their interests, but in the end of year 1998 Vilnius police disclosed the organized group (over 20 members) that main activity was kidnapping. The other field of

\(^{14}\) www.vrm.lt

\(^{15}\) www.vrm.lt

\(^{16}\) Fisanick, Ch., Csonka, P., Docka, P. Šiuolaikinis nusikalstamumas, Kaunas, 2002.
activity by organized criminals is counterfeiting\textsuperscript{17}. There were registered 1362 criminal offences related to forgery in 1998. The Lithuanian organized criminals are involved in distribution of counterfeited high quality foreign currency. Individual criminals mostly counterfeited Lithuanian currency. According to statistics thefts (16249 thefts registered) make up the dominating majority among registered crimes in 1998\textsuperscript{18}. It would be irrational to state that all the thefts are under control of organized criminals. Certainly a part of thefts (vehicle, jewellery etc) are under control of organized criminal groups. There is no official information about organized criminals drawing in illegal gambling business. Gambling games are illegal in the Republic of Lithuania and gambling on the whole is traditional scope of organized criminals activity and that is why the statement that organized criminals are involved in this illegal activity can not be wrong. Another fact that deserves attention is that Lithuanian organized criminals are not involved in cyber crimes. The low level of computerization in the Republic of Lithuania conditions this situation. There is no official information about money laundering offences in Lithuania. Stable banking system and strict control over bank operations provided by The Bank of Lithuania creates severe situation for money laundering offences\textsuperscript{19}.

Organized criminals operating in the Republic of Lithuania are mainly involved in the following criminal activities (Summary):

<table>
<thead>
<tr>
<th>Criminal Activity</th>
<th>Involvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illicit drugs (production and/or trading)\textsuperscript{20}</td>
<td>Involved</td>
</tr>
<tr>
<td>Fraud against banks or other private enterprises</td>
<td>Involved</td>
</tr>
<tr>
<td>Fraud against public interest/institutions (e.g. VAT-fraud)\textsuperscript{21}</td>
<td>Involved</td>
</tr>
<tr>
<td>Counterfeiting of money</td>
<td>Involved</td>
</tr>
<tr>
<td>Counterfeiting/forgery of documents</td>
<td>Involved</td>
</tr>
<tr>
<td>Counterfeiting of commercial products</td>
<td>Not Involved</td>
</tr>
<tr>
<td>Armed robberies\textsuperscript{22}</td>
<td>No Information</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>No Information</td>
</tr>
<tr>
<td>Extortion\textsuperscript{23}</td>
<td>Involved</td>
</tr>
<tr>
<td>Theft of vehicles and trafficking in stolen vehicles</td>
<td>Involved</td>
</tr>
<tr>
<td>Other forms of theft</td>
<td>Involved</td>
</tr>
</tbody>
</table>

\textsuperscript{17} Report of the Ministry of Justice to the Selected Committee of Experts on Organised Crime (PC-OC), 2000.
\textsuperscript{18} www.vrm.lt
\textsuperscript{20} Growing interest of groups involved in organized crime can be detected.
\textsuperscript{21} Groups involved only in white–collar crimes committed the largest scale crimes in this field.
\textsuperscript{22} Most of the robberies stay undisclosed, thus it is impossible to describe weather they are committed by groups involved in organized crime.
\textsuperscript{23} Decreasing number of extortion crimes especially committed by groups involved in organized crime.
Illegal arms trading (including firearms) & Involved  
Illegal production and/or smuggling of goods & Involved  
Illegal migration & Involved  
Trafficking in human beings for sexual exploitation & Involved  
Prostitution & Involved  
Child pornography & Not Involved  
Environmental crimes & Not Involved  
Illegal gambling schemes & Involved  
Computer (cyber) crimes & No Information  
Money laundering & Involved  

As it is obvious from the data above and the Case Study report the organized criminals are not involved in the environmental crimes. However, The organised crime and the environmental crimes usually do not overlap. Some overlapping might be observed in the marginal areas between organised and environmental criminality. The cases mentioned above illustrated conditional overlapping between organised crime and environmental crime in the schemes of illegal refunding of VAT. However, it would be too far-reaching conclusion to describe the said cases as environmental organised crime. It is obvious that organised criminals are seeking benefits from trading the illegally deforested wood or illegally fished up fish. However, they are also targeting VAT, which compound 18 percent of the value of the good. Organised criminals are involved in large scale VAT refunding operations in the Republic of Lithuania, when different items are used for illegal VAT refunding (textile products etc.). This lead to the conclusion that the environmental items or are only the tools in VAT refunding operations. The other example of overlapping between organised crime and environmental crime could be the activities related to burying or smuggling of dangerous substances. However Lithuanian investigative authorities have no firm evidence concerning participation of organised criminals at such activities. Moreover, the experts form General Prosecutor’s office draw attention that the organised criminals are actually involved in the said activities and this allegation might be supported by the analysis of the element of these crimes, as it was mentioned above.

24 Especially excise goods, i.e. alcohol, oil etc.  
25 Only soft data by law enforcement agencies.  
26 Soft data by law enforcement agencies  
27 Only soft data by law enforcement agencies.
6.3. CHRONOLOGICAL LIST INDICATING THE TITLE AND PUBLICATION REFERENCE OF THE RELEVANT TEXTS IN FORCE

A selection of the most important texts concerning both organised crime and its legislation

1. Lietuvos Respublikos Baudžiamasis kodeksas, 1961 m. birželio 26 d

2. Lietuvos Respublikos organizuoto nusikalstamumo užkardymo įstatymas VIII- 353 (Žin. 1997, Nr. 69-1731)

A selection of the most important texts concerning both environmental crime and its legislation

1. Lietuvos Respublikos aplinkos apsaugos įstatymas I-2223 (Žin. 1992, Nr. 5-75) (The Republic of Lithuania Environmental Protection Law)

2. Lietuvos Respublikos aplinkos monitoringo įstatymas VIII-529 (Žin. 1997, Nr. 112-2824) (The Republic of Lithuania Law on Environmental Monitoring)

3. Lietuvos Respublikos atliekų tvarkymo įstatymas VIII-787 (Law on Waste management)


5. Lietuvos Respublikos vandens įstatymas VIII-474 (Žin. 1997, Nr. 104-2615) (Republic of Lithuania Law on Water)


A complete list of texts concerning organised environmental crime

There is no legal text concerning organised environmental crime.
6.4. FRAMEWORK OF THE APPLICABLE LEGISLATION

The key principles of environmental criminal law

There are no especially designed principles of environmental criminal law. The environmental crimes are investigated and prosecuted under the rules and principles of criminal law.

The key principles of organised crime legislation

There are no special principles of organised crime legislation. The fight against organised crime rests upon the basic principles of the criminal law.

The principle of legality is established in Article 3 para. 1 of the Penal Code. The Article prescribes that “a person can be punished only if the punishability of an act he/she committed was prescribed by laws in force before the time the act was committed.” The Penal Code classifies all criminal acts into two groups: serious crimes and other crimes. Serious crimes are held to be intentional acts bearing increased danger to the public. Article 8¹ of the Penal Code stipulates a comprehensive and final list of serious crimes which includes, for instance, banditry, premeditated murder, rape, taking of hostages, act of terrorism, trafficking of human beings, robbery, money laundering, and etc. In the theory of criminal law the other crimes are classified into three groups: 1) crimes for which a custodial sentence of up to one year or lighter sentence could be imposed, 2) crimes for which a custodial sentence of up to two years could be imposed, and 3) crimes, which are not included in the list of serious crimes, but for which a custodial sentence of more than 2 years could be imposed. The Penal Code prescribes that persons who, by the time they committed a crime had attained the age of 16 years, are considered responsible under the criminal law. Persons who committed a crime being from 14 to 16 years of age are held responsible under the criminal law only for intentional actions, which can cause a railroad carriage catastrophe; murder; intentional bodily injuries; rape; willful or extremely willful hooliganism; robbery of psychotropic or narcotic substances; robbery of a firearm, ammunition, explosives or explosive substances; theft, robbery and intentional property destruction on aggravating circumstances. Article 3 para. 2 of the Penal Code sets that “only such an individual is held responsible and punishable under the criminal law who is guilty of a crime, that is that he/she has intentionally or due to negligence committed an act prescribed by the criminal law.” The principle of strict liability is not recognised by the Lithuanian criminal justice system. Criminal responsibility is strictly individual, although corporate bodies or other persons can suffer restrictions in some cases as a result of the punishment of individuals. For instance, in case of confiscation of property: the property, which was handed over to other persons for management, provided that the property had been acquired as a result of a criminal act, is compulsorily and without compensation seized by the state for ownership. The property presented or otherwise transferred to other natural or legal persons is confiscated if the persons knew, had to predict or could predict that the property they received had been acquired in a criminal way.


Parallels and differences

Please find the comments above.

6.5. SANCTIONS IN THE FIELD OF ORGANISED ENVIRONMENTAL CRIME

Introduction to the sanction system

There is no specific sanctions system applicable in the case of organised crime. The organized criminals face sanctions imposed on the ordinary basis.

The Criminal Code distinguishes between principal and additional punishments. The principal punishments are life imprisonment, imprisonment, correctional work and a fine. The additional punishments are confiscation of property, fine and deprivation of the right to a certain job or to perform certain duties. In addition to punishments, the Criminal Code stipulates coercive measures of medical nature applied for mentally ill persons who have committed dangerous acts. These measures are the submission to a psychiatric hospital under common, strengthened or strict supervision and the submission to guardianship with a medical supervision. Furthermore, the Criminal Code prescribes that a minor who has committed a non-serious crime may be released by the court from criminal responsibility if he/she 1) has committed the first crime; 2) has made redress for damages or agreed with the victim on the compensation for damage; 3) has totally admitted his/her guilt and regrets having committed the crime; and 4) there is a ground to believe that he/she will abide by law and will not reoffend. In this case the court can apply the following compulsory measure of reformatory type.

Capital punishment was abolished by the law of 21 December 1998 when the Constitutional Court of the Republic of Lithuania recognized this punishment ant constitutional.

Life imprisonment is a principal punishment which can be imposed by the court for genocide, banditry, murder on aggravating circumstances, creation of a criminal association on aggravating circumstances, killing of persons protected by international humanitarian law, exiling of civilians of an occupied country, and forbidden war attack. This punishment is not imposed on persons who at the moment of the commission of a crime were before the age of 18. Imprisonment is a principal punishment, which can be imposed by the court in cases prescribed by law from 3 months to 20 years; in case a new crime has been committed when serving the sentence – up to 25 years. If the law prescribes a minimum custodial sentence of 3 years and above for a crime committed, then when imposing this punishment upon a minor before the age of 18, its minimum is
calculated at half the minimum penalty stipulated in the law (for instance, if the law prescribes a minimum sanction of 4 years imprisonment, the court may impose on a minor a minimum custodial sentence of 2 years). The maximum custodial sentence for persons, who at the moment of committing a crime have not reaches the age of 18, cannot exceed 10 years.

Correctional work is a principal punishment that, in cases specified by law, may be imposed by the court for a term from 2 months to 2 years. The essence of this punishment is the obligation of a convicted person to work in his/her employment place and pay from his/her salary to the state budget as set by the court the contributions from 5% to 20%.

The fine is a principal punishment or an additional punishment that may be imposed by the court in instances specified by the law. As a principal punishment the fine can amount to from 100 to 1000 MWU (minimum-wage units, the amount of which is approved by the Government. The present 1 MWU is equal to 125 Litas or about 31 USD), and for crimes committed with a view of getting profit – from 200 to 50000 MWU.

As an additional penalty the fine can be from 10 to 500 MWU, whereas when imposed with respect to minors – from 5 to 200 MWU.

Deprivation of the right to a certain job or to perform certain duties is an additional punishment, which may be imposed by the court in instances specified by the law or on its own discretion for a term from 1 to 5 years.

Confiscation of property is an additional punishment obligatorily imposed by the court for the commission of a crime stipulated by the law. The confiscation of property is a compulsory uncompensated seizure of property, possessed by right of ownership by the accused or of the property passed on the other persons, in case it has been acquired as a result of a criminal act. This punishment may not be applied to minors.

Correctional work can be imposed as a measure for juvenile offenders or as an obligation in suspended sentence.

Compensation orders are not considered as punishments, but as civil responsibility derived from the commission of a crime.

Fine imposed only as a principal punishment when a person avoids paying it himself/herself and there are no possibilities to coerce its payment, may be substituted to deprivation of liberty. Such a substitution is effected by the court, which calculates that one day of imprisonment is equal to the fine of 1 MWU, however, the overall length of a custodial sentence cannot exceed 90 days.

The Criminal Code does not stipulate more possibilities of applying other measures than the principal and additional punishments listed above.

The Criminal Code contains general provisions on sentencing. The Criminal Code prescribes that the court determines the punishment within the scope of the sanction
specified in the relevant article, which provides for criminal responsibility for the crime committed. When determining the punishment, the court, abiding by legal consciousness, takes into consideration the type and dangerousness of the crime committed, personal characteristics of the offender and circumstances of the crime, which mitigate and aggravate the liability. The Criminal Code stipulates a model list of mitigating and a final list of aggravating liability circumstances; prescribes special rules for imposing penalties in case a person has totally admitted his/her guilt, when a person has committed several crimes or when having not completed the sentence, a new crime is committed; provides for the rules of cumulating and substituting penalties; defines the grounds, conditions and procedure for imposing a lighter penalty than that prescribed by the law; stipulates the grounds and procedure of releasing from a sentence.

For commission of one crime a person may be imposed only one principal punishment, whereas when imposing a punishment for several crimes or when a new crime is committed during the service of the sentence – two principal punishments. In addition to a principal punishment, the convicted person can be imposed not more than two additional penalties.

The Criminal Code does not provide for a possibility to impose special penalties or measures for traffic crimes, crimes related to narcotics and firearms, environmental or economic crimes. For commission of these crimes only the punishments stipulated by the Criminal system and the sanction contained in the respective article of the Criminal Code may be imposed.

Article 245 of the Criminal Code establishes liability for the violation of laws on environmental protection. The violation of laws on environmental protection, if previously an administrative sanction has been imposed on the perpetrator for the same violation, or if that caused substantial environmental damage the punishment is imprisonment for the term of up to two years, or correction works for the same term, or a fine.

Article 245-1 of the Criminal Code establishes criminal liability for the pollution of water, soil and atmosphere. The Article establishes that the pollution of water pools and land with the unrefined and un-harmful waste water or with other noxious waste of the industry or utility, or other pollution of the water pools or land, also air pollution with the noxious waste of the industrial manufacture, if these actions caused or could cause harmful consequences for the human health, agriculture or live nature shall be punished by imprisonment for the term of up to one year, or correction works for the same term, or a fine. Same actions, which caused serious consequences, shall be punished by imprisonment for the term of up to five years.

Article 245-2 of the Criminal Code establishes criminal liability for unlawful dumping of substances that are harmful to human health or sea fauna, or of other waste and substances with the aim to deep-six in the sea. The article establishes that unlawful dumping of substances from vessels and other floating objects, airships, platforms or other artificial constructions situated in the sea, that are harmful to human health or sea fauna, or other dumping of waste and substances, which can make damages for the recreation zones or may interfere with legal industries practiced in the sea, with the aim to
Organised crime in the sphere of environment in a few Candidate Countries

deep-six in the sea in territorial seas and territorial waters in the territory of the Republic of Lithuania, as well as unlawful dumping of specified substances and waste from the ships and other floating objects, airships, platforms and other artificial constructions of the Republic of Lithuania situated in the sea, with the aim to deep-six in the sea, shall be punished by imprisonment for the term of up to one year, or correction works for the same term, or a fine.

Article 245-3 of the Criminal Code establishes that the pollution of the sea by the substances that are harmful to human health, or sea fauna, or by other waste and substances. The Article prescribes that the pollution of the territorial sea and territorial waters of the Republic of Lithuania by unlawful dumping the substances from vessels and other floating objects, airships, platforms or other artificial constructions situated in the sea, that are harmful to human health or sea fauna, or mixture, that include the said dangerous substance exceeding the applicable limits, or other waste and substances, that may cause harm for recreation zones or may interfere with other legal activities related to the sea, or failure to engage necessary means, preventing evasion of dangerous substance to water, as well as pollution of the high seas by dumping the specified substances, mixtures and waste from ships or other floating objects, airships, platforms or other artificial constructions situated in the sea of the Republic of Lithuania or failure to engage necessary means, preventing evasion of dangerous substance to water, when it outrages the international treaties of the Republic of Lithuania, shall be punished by imprisonment for the term of up to two years, or correction works for the same term, or a fine. The same actions, if they made substantial damage for human health or sea fauna, recreation zones or other marine activities, shall be punished by imprisonment for the term of up to five years or a fine.

Article 245-4 of the Criminal Code establishes criminal liability for the failure to inform about dumping of substances that are harmful for human health or sea sauna or of other waste and substances into the sea. The said Article prescribes that the officers in charge of vessels and other floating objects, airships, platforms or other artificial constructions situated in the sea, failing to inform neighbouring port administration of the Republic of Lithuania, and in the case when specified substances, mixtures and waste dumping with the aim to deep-six in the sea, - and for institution, which gives permission to dump them, about the situation, that because of the case of emergency it is prepared or already dumped, or they shall inevitable lose substances, in the area of territorial sea or territorial waters of the Republic of Lithuania, that are harmful for human health or sea fauna or mixtures, that contains containing aforementioned substances exceeding the prescribes limits, or other waste and substantives that could cause damage for recreation zones or interfere with other marine activities, as well as responsible officers of ships and other floating objects, airships, platforms or other artificial constructions situated in the sea failing to inform neighbouring port administration of the Republic of Lithuania, and in the cases when dumping of specified substances, mixtures and waste with the aim to deep-six in the sea, - and for institution, which gives permission to dump them, about the situation that because of the case of emergency it is prepared or substances, mixtures and waste are already dumped into high seas, shall be punished by imprisonment for the term of up to one year or a fine.
Article 330 of the Criminal Code establishes criminal liability for illegal hunting. The said Article establishes that hunting of wild animals or birds, which hunting is entirely forbidden, or illegal hunting, which caused substantial harm, or illegal hunting by using vehicles, shall be punished by imprisonment for the term of up to one year or correction works for the term of up to two years, or a fine.

Article 331 of the Criminal Code establishes criminal liability for the illegal fishery and illegal hunting of water animals. The said Article establishes that illegal fishery of valuable species of fish or hunting, purchasing, holding of rare or vanishing water animals, as well as illegal fishery or catching of water animals by using electric power, ultrasound, noxious, explosive supplements, explosive devices and in other ways of purge of water animals, as well as illegal fishery or catching of water animals, that caused substantial harm, shall be punished by imprisonment for the term of up to one year or correction works for the term of up to two years, or a fine.

Article 331 of the Criminal Code establishes criminal liability for illegal production, purchase, holding or realization of fishery equipments. Such activities are subject for the following punishments: correction works for the term of up to one year or a fine.

Article 332 of the Criminal Code establishes criminal liability for the violation of laws on continental shelf of the Republic of Lithuania. The said Article provides that building of equipments or other rigs in the continental shelf of the Republic of Lithuania as well as formation around them margin of safety without necessary permission: unwarranted security of equipments or other rigs in the continental shelf of the Republic of Lithuania, maintenance of constant equipments, that warns about their existing, as well as liquidation of equipments or rigs those exploitation is finally suspended, as well as not proceeding means in margin of safety for securing water animals resources from harm waste, shall be punished by imprisonment for the term of up to one year and a fine. Research, exploration and exploitation of nature resources and prosecution of other works in the continental shelf of the Republic of Lithuania by the foreign citizens, if it is not directly indicated in the treaty between the Republic of Lithuania and concerned state or in the special permission issued by the competent body of the Republic of Lithuania, shall be punished by imprisonment for the term of up to one year and a fine or without a fine, or a fine.

The sanctioning practice (official statistics concerning the number of criminal investigations, convicted persons, sanctions imposed)

The general statistic databases on crimes, which are maintained by the Ministry of the Interior and the Ministry of Justice, do not particular outline environmental crimes. Environmental crimes are one of the few categories which are not indicated in the databases.
Table 62: Lithuanian crime statistics 1992-2002

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<tbody>
<tr>
<td>Crimes registered</td>
<td>55615</td>
<td>60378</td>
<td>58634</td>
<td>60819</td>
<td>68053</td>
<td>75816</td>
<td>78149</td>
<td>77108</td>
<td>82370</td>
<td>79265</td>
<td>72646</td>
</tr>
<tr>
<td>Of which are serious crimes</td>
<td>5972</td>
<td>8210</td>
<td>9348</td>
<td>13214</td>
<td>19962</td>
<td>21210</td>
<td>22112</td>
<td>20999</td>
<td>18282</td>
<td>17989</td>
<td>20673</td>
</tr>
<tr>
<td>Registered crimes investigated by the criminal police</td>
<td>50585</td>
<td>54408</td>
<td>52211</td>
<td>53551</td>
<td>57980</td>
<td>61985</td>
<td>62634</td>
<td>60802</td>
<td>67043</td>
<td>62251</td>
<td>55861</td>
</tr>
<tr>
<td>Serious crimes investigated by the criminal police</td>
<td>5648</td>
<td>6927</td>
<td>8125</td>
<td>12273</td>
<td>18814</td>
<td>20042</td>
<td>20170</td>
<td>19503</td>
<td>16946</td>
<td>16304</td>
<td>19132</td>
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</tbody>
</table>

Source: Centre for Crime Prevention in Lithuania, www.nplc.lt

Table 63: Detection rates according to Lithuanian crime statistics 1992-2002

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</thead>
<tbody>
<tr>
<td>Detected registered crimes investigated by the criminal police</td>
<td>30,1 %</td>
<td>34,0 %</td>
<td>38,0 %</td>
<td>36,4 %</td>
<td>36,5 %</td>
<td>35,8 %</td>
<td>33,9 %</td>
<td>33,7 %</td>
<td>34,0 %</td>
<td>35,3 %</td>
<td>37,4 %</td>
</tr>
<tr>
<td>Detected serious crimes investigated by the criminal police</td>
<td>48,0 %</td>
<td>46,0 %</td>
<td>52,2 %</td>
<td>36,4 %</td>
<td>31,2 %</td>
<td>29,3 %</td>
<td>27,0 %</td>
<td>28,2 %</td>
<td>32,2 %</td>
<td>35,0 %</td>
<td>33,2 %</td>
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</table>

Source: Centre for Crime Prevention in Lithuania, www.nplc.lt
### Table 64: Investigations in registered crimes by the Lithuanian police

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</thead>
<tbody>
<tr>
<td>Investigations in</td>
<td>90,5%</td>
<td>91,0%</td>
<td>89,4%</td>
<td>86,7%</td>
<td>81,4%</td>
<td>87,2%</td>
<td>75,8%</td>
<td>75,0%</td>
<td>78,2%</td>
<td>75,0%</td>
<td>70,7%</td>
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<td>registered crimes in</td>
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<td>serious crimes)</td>
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<tr>
<td>Investigations in</td>
<td>94,6%</td>
<td>84,4%</td>
<td>86,9%</td>
<td>92,9%</td>
<td>94,2%</td>
<td>94,5%</td>
<td>91,2%</td>
<td>92,9%</td>
<td>92,7%</td>
<td>90,6%</td>
<td>92,5%</td>
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<td>registered serious</td>
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<td>crimes in relation to</td>
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Source: Own calculation based on data of Centre for Crime Prevention in Lithuania, www.nplc.lt

The above figures indicate the criminal police does not investigate in all registered crimes. Between 1992 and 2002 the number of registered crimes (excluding serious crimes) which have not been investigated constantly increased from 9 % in 1992 up to 29,3% in 2002. The detection rate remains low, however, an increase can be established over the past few years. In contrast the number of non-investigated serious crimes is much smaller. In 2002 Lithuanian criminal police investigated in 92,5 % of the serious crime cases. In the previous years the number is about the same. This is of interest as from this discrepancy it can be followed that the Lithuanian criminal police puts more efforts in combating serious crimes, while at the same time the number of police officers is constantly declining.29 As environmental crimes are not considered as serious crime the likelihood to prosecute environmental crimes therefore decreases with the raising number of non-investigated crime cases.

This assumption is confirmed by the research findings of the study. The research was based on a case-by-case review of the court files at 51 of 54 district courts and at 4 of 5 county.30 As can be seen from the table below it brought only six cases of environmental crime to light which are related to the environmental provisions of the Lithuanian Criminal Code and resulted in a conviction between 1993 and 2003.

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30 Three district courts and one county court have refused cooperation in the research.
Table 65: Number of convictions for environmental crimes in Lithuania, 1993-2003

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<tr>
<td>Article 231-2 (illegal disposal of radioactive materials)</td>
<td>-</td>
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<td>-</td>
<td>1&lt;sup&gt;31&lt;/sup&gt;</td>
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<td>Article 245 (violation of laws of environmental protection)</td>
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<tr>
<td>Article 245-1 (Pollution of water, soil and atmosphere)</td>
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<td>1&lt;sup&gt;32&lt;/sup&gt;</td>
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<tr>
<td>Article 245-2 (Unlawful dumping of harmful substances)</td>
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<td>Article 245-3 (Pollution of the sea)</td>
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<td>Article 245-4 (failing of information on waste dumping in the sea)</td>
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<td>Article 330 (illegal hunting)</td>
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<td>1&lt;sup&gt;33&lt;/sup&gt;</td>
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<td>1&lt;sup&gt;34&lt;/sup&gt;</td>
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<tr>
<td>Article 331 (illegal fishing)</td>
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<td>1&lt;sup&gt;35&lt;/sup&gt;</td>
<td>1&lt;sup&gt;36&lt;/sup&gt;</td>
</tr>
<tr>
<td>Article 331 (illegal production, purchase, holding or realization of fishery equipment)</td>
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<tr>
<td>Article 332 (violation of laws on continental shelf)</td>
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<sup>31</sup> Siauliai County Court
<sup>32</sup> Klaipeda City District Court
<sup>33</sup> Kaunas City District Court
<sup>34</sup> Panevezys City District Court
<sup>35</sup> Utena Region District Court
<sup>36</sup> Alytus Region District Court
7. INFORMATION ON THE NATIONAL LEGAL INSTRUMENTS TO FIGHT ORGANISED ENVIRONMENTAL CRIME IN POLAND

7.1. ENVIRONMENTAL LAW

The significance of environmental law in the context of the overall legal system (brief overview)

The problem of location of environmental law in the context of the overall legal system has been broadly discussed in Polish legal doctrine. Due to the limitation of the report the below information present only major opinions and the most substantial differences in doctrine concerning given problem.

The Polish conception of the environmental protection is rather broad. Due to Jerzy Sommer's proposal the environmental law in Poland encompasses the following fields of regulation:

- Anti-pollution,
- Nature protection,
- Management of natural resources,
- Procedural matters and organization,
- Product control

The main Parliamentary Acts concerning environmental protection are:

- The Act on the Protection and Management of the Environment (Environmental Protection Act);
- The Act on the Protection of Nature (Nature Protection Act);

Furthermore, the environmental law also includes the following provisions:

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2 Jerzy Sommer, Approximation of EU Environmental law, Country Reports, Poland, www.rec.org/REC/publications/Eulaw/FeeBased/Poland1.html
Legal acts dealing with the protection and management of natural resources such as the Water Law, the Mining Law, the Forestry Law, the Fishing Law, the Hunting law, etc;

Protective provisions such as the Act on Land Use and Development, the Nuclear Energy Law, etc.

The place of the environmental law in the Polish legal system is a subject of discussion. As a result of this discussion three main standpoints are presented:

- Traditional attitude is based on the assumption that the environment law does not constitute a separate division of law;
- The most common standpoint is that the environmental law is still developing separate division of administrative law where criminal and civil law (claims for compensation or prevention) play supportive role. It is unquestionable that the considerable part of the legal measures being used in environmental protection automatically belongs to the administrative law. The most important ones are protective limits, permissions, especially protected areas, fees for the legal use of natural resources and introducing changes into the environment, fines for violations of environment protection requirements and closing down activities carried out after the violation of protective requirements;
- Third opinion is that the environmental law is separate division of law which has not fully came into existence;

For the purposes of the study we have adopted the most common opinion that the environmental law is a separate division of administrative law, which still develops, and criminal and civil law play supportive role thereupon.

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3 Wojciech Radecki, Prawo o ochronie środowiska, Zielona Góra 1992, p.29
4 J. Filipek, Miejsce prawa ochrony naturalnego środowiska człowieka w systemie prawnym PRL, KSP 1983, yearbook XVI, p. 13
5 L. Lüstacz, Kompleksowa ochrona środowiska (w świetle ustawy o ochronie i kształtowaniu środowiska), PiP 1980, z.3, p.37.
Constitutional provisions concerning the protection of the environment. Identification of the leading principles in the field of environmental policy

The Constitution adopted in national referendum on 25 May 1997⁶, being in force since 17 October 1997 deals with the problem of environmental protection in a several articles.

- Safeguard of the natural environment

Chapter I “The Republic” article 5 says: “The Republic of Poland shall safeguard the independence and integrality of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.”

Due to the above-cited article the protection of environment is settled within main aims of the state. The article is based on the fundamental principle of sustainable development. The concept of sustainable development is treated in this provision as a solution of conflicts between the economy and the environment. This concept, as the foundation of environmental policy, has found expression in the declarations of parliament. An effort is being made to resolve the conflicts between economic and social aims and the ecology in such a manner that a balance is found.

- Limitation upon the exercise of constitutional freedoms and rights

In Chapter II “The freedoms, rights and obligations of persons and citizens” article 31 point 3 says: Any limitation upon the exercise of constitutional freedoms and rights may be imposed only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitation shall not violate the essence of freedoms and rights”.

According to this article any constitutional freedom can be limited to protect natural environment. However in practice only commercial freedoms and property rights are subject to those limitations. Any limitations upon the exercise of constitutional freedoms and rights may imposed only by statute and if necessary in a democratic state. Such limitations shall not violate the essence of freedoms and rights.

⁶ Dz.U. 1997, No 78. item.483
• Health protection

In the same Chapter in part “Economic, social and cultural freedoms and rights” article 68 describes right of individual to have his health protected. Article 68 point 4 says: Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment”. In this light protection of environment is considered as one of the tools for health protection.

• The core constitutional provision concerning protection of the environment.

Article 74 is the core constitutional provision concerning protection of the environment:

“1. Public authorities shall pursue policies ensuring the ecological security of current and future generations.

1. Protection of the environment shall be the duty of public authorities

2. Everyone shall have the right to be informed of the quality of the environment and its protection.

3. Public authorities shall support the activities of citizens to protect and improve the quality of the environment”.

In this article duty of government and local governments to protect the environment and duty to ensure the ecological security are defined. The above-mentioned authorities are also responsible for support the activities of citizens to protect and improve the quality of the environment. It is worth to mention that the Constitutional provisions do not include “right to environment” i.e. right to safe and good quality environment. The Constitution guarantees however the right for everyone to be informed of the quality of the environment and its protection.

In the Chapter II subchapter “Obligations” article 86 says, “Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute”.

This article defines the obligation to protect the environment and responsibility for causing environmental degradation. The above article creates criminal and civil liability for causing environmental degradation. However the constitutional provision is not autonomous ground for criminal and civil liability. Criminal and civil liability for causing environmental degradation

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7 J. Ciechanowicz, L. Mering, Ochrona środowiska w Konstytucji RP, Konstytucja Rzeczpospolitej Polskiej z 1997 roku a członkostwo Polski w Unii Europejskiej, Toruń, p.478
degradation in mentioned sphere are defined in other legal acts within Polish legal system\(^8\) (for details see point IV Framework of applicable legislation p. 21).

**Development, principles and technique of environmental legislation. Relationship between environmental law in general and environmental criminal law.**

**Development, principles and technique of environmental legislation**

- Beginning of the transition of environmental legislation

The major changes in environmental legislation have been initiated during political changes in Poland, which have taken place in 1989. The Act on the Protection of Nature was adopted in 1991 (Nature Protection Act)\(^9\) and together with The Act on the Protection and Management of the Environment (act was adopted in January 1980)\(^10\) constituted core provisions regarding protection of environment. The Nature Protection Act existed separately from The Act on the Protection and Management of the Environment. As a consequence the idea of unification of environmental law in one legal act (The Act on the Protection and Management of the Environment could become such “environmental code”) and future codification was quieted.

The Nature Protection Act was structured into following three groups of provisions:

- forms of protection f nature (national parks, nature reserves, landscape parks, areas of landscape protection),

- forms of fauna and flora species protection

- forms of individual protection (natural monuments, documentations units, ecological areas, natural and landscape units).

Further acts adopted by the legislator were consequently contrary in its nature to idea of unification of environmental law i.e. each act provided provision for particular and specialized field of environmental protection. The following acts were adopted therein\(^11\):

- Act of Marine Areas and Marine Administration of Polish Republic dated 21 March 1999 (Ustawa o obszarach morskich Rzeczpospolitej Polskiej i administracji morskiej 21 marca 1991)\(^12\).

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\(^8\) Radecki W., Konstytucyjny obowiązek dbałości o stan środowiska I odpowiedzialność za jego pogorszenie, OŚPiP 2000, no 1, p.12
\(^9\) Dz.U.2001, No 99, pos.1079
\(^10\) Dz.U. No 3, pos.6
\(^11\) Radecki W., Odpowiedzialność Prawna w Ochronie Środowiska, Warszawa 2002, p.32
\(^12\) Dz.U. No 32, pos.131
- The Act of National Inspection of Environmental Protection dated 20 July 1991 (Ustawa o Inspekcji Ochrony Środowiska z 10 lipca 1991)\textsuperscript{13},
- The Mining Law dated 4 February 1994 (Prawo górnicze z 04 lutego 1994)\textsuperscript{14},
- The Construction Law dated 7 July 1994 (Prawo Budowlane z 07 lipca 1994)\textsuperscript{15},
- The Town and Country Planning Act dated 07 July 1994 (Ustawa o zagospodarowaniu przestrzennym z 7 lipca 1994)\textsuperscript{16},
- The Protection of Forest and Agricultural Lands Act dated 03 February 1995 (Ustawa o ochronie gruntów rolnych i leśnych z 3 lutego 1995)\textsuperscript{17},
- The Act on the Prevention of Marine Pollution by Dumping of Wastes and other Matter by ships dated 16 March 1995 (Ustawa o zapobieganiu zanieczyszczenia morza przez statki z 16 marca 1995).\textsuperscript{18}
- The Hunting Law dated 13 October 1995 (Prawo Łowieckie z 13 października 1995)\textsuperscript{19},
- Sea Fishing Act dated 18 January 1996 (Ustawa o rybołówstwie morskim z 18 stycznia 1996)\textsuperscript{20},
- The Law of Waste dated 27 June 1997 (Prawo o odpadach z 27 czerwca 1997)\textsuperscript{21},
- The Animal Protection Law dated 21 August 1997 (Prawo o ochronie zwierząt z 21 sierpnia 1997)\textsuperscript{22}.

- Harmonization of the Polish environmental legislation with European Union Law.

The harmonization of the Polish law with a law of the European Union becomes major challenge for Polish legislator. The fundamental principles of the whole legal system created during the communist regime needed to be restructured in order to harmonize it with the European Union Law and democratic standards. A need for harmonization with European Union law was also present in respect of environmental law. The creation of the institutional system enabling access to information concerning environment, its protection

\textsuperscript{13} Dz.U. No 77, pos.335
\textsuperscript{14} Dz.U. No 27, pos. 96
\textsuperscript{15} Dz.U. No 89, pos.414
\textsuperscript{16} Dz.U. No.89, pos.414
\textsuperscript{17} Dz.U. No. 16, pos.78
\textsuperscript{18} Dz.U. No. 47, pos.234
\textsuperscript{19} Dz.U. No.147, pos.713
\textsuperscript{20} Dz.U. No. 34, pos.145
\textsuperscript{21} Dz.U. No.96, pos.592
\textsuperscript{22} Dz.U. No 111, pos.724
and information concerning evaluation of factors effecting natural environment was a first substantial harmonization step.

The next step was adoption of The Act Altering The Nature Protection Act dated 7 of December 2000, which altered almost all provisions of the former act, added a number of new and overruled few of them.

- The essential changes.

Year 2001 was the cornerstone of harmonization and reconstruction of system of environmental legislation. In January the act of chemical substances and agents was adopted. This act was of particular importance due to the fact that the protection of natural environment against chemical substances has been specified and individualized from the system of environmental protection. The above-mentioned act harmonized Polish law with international standards, which treat protection of natural environment against chemical substances as a separate and specific branch of environmental law. In March the Act of Ozone Depleting Substances was adopted23.

The main changes appeared on 27 April when The Law of Environmental Protection and The Law of Waste were adopted (These acts came into the force on 1 October 2001). The Law of Environmental Protection is a very detailed and extensive act, which consists of 422 articles and is divided into nine titles. The Act among other things defines the natural environment, protection of natural environment, pollution. The Act introduces two principles related to liability for acts against natural environment. The first principle commonly described as a “precaution principle” 24 was defined in article 6.1

1. Who undertakes any activity which may create a threat to a natural environment protection shall be obliged to provide all available means in order to avoid ecological devastation thereupon.

2. Who undertakes any activity which a negative impact on natural environment has been clearly defined shall be oblige to provide in accordance with precaution principle all available protective measures.”

The second principle is commonly described as “polluter pays” principle. The principle is one of the fundaments of the European Union environmental law. The definition of the principle is defined in article 7 of The Law of Environmental Protection. This principle recognizes that the polluter should pay for any environmental damage created, and that the burden of proof in demonstrating that a particular technology, practice or product is safe should lie with the developer, not the general public.

23 Dz.U. No 52, pos.534
24 Wojciech Radecki, odpowiedzialność Prawna w Ochronie Środowiska, Warszawa 2002, p.45
Due to the fact that governing of waste became an urgent problem the Polish legislator recognized also a need for providing the system of an environmental protection with highly specialized tool in respect of waste.

The fundamental principle followed by the legislator was that The Law of Waste should have particularly comprised only of regulations concerning waste. Other issues like conditions for emission of pollutions were transferred to The Law of Environmental Protection

The other supplement acts, like Statute of 6 July 2001 on the maintenance of national character of strategic natural resources of the country (ustawa z 6 lipca 2001 o zachowaniu narodowego charakteru strategicznych zasobów naturalnych)25, Statute of 11 May 2001 on Packaging and Packaging Wastes (ustawa z 11 maja 2001 o opakowaniach i odpadach opakowaniowych26, ustawa z 11 maja 2001) Statute of 11 May 2001 on the duties of contractors concerning the management of some types of wastes and the product and deposit fees (o obowiązkach przedsiębiorców w zakresie gospodarowania niektórymi rodzajami odpadów oraz opłacie produktowej i depozytowej)27, the Water Law of 18 July 2002 (prawo wodne z 18 lipca 2001)28 and the new Sea Fisheries Act adopted in 2001 have shown clearly the determination of legislator to harmonized Polish environmental law with European Union Law.

Relationship between environmental law in general and environmental criminal law

Development of the relationship between environmental law in general and environmental criminal law is determined by the fact that considerable number of illegal behaviors against natural environment have been covered and penalized by provisions of the Criminal Code.

However the most common opinion is that environmental law in general is a separate division of the administrative law it has to be noticed that environmental criminal law plays a significant supportive and a supplementing role for environmental law. Criminal Code has been transformed considerably to penalized behaviors against natural environment. The Criminal Code from 1932 included only one offence, which had been connected with environmental issues (article 270 § 1 CC penalized violation of someone’s right to hunt and fish). Consequently until fifties liability for petty offences played central category of the environmental criminal law while provisions of Criminal Code played only a marginal role thereto. The domination of the law of petty offences last until late eighties. Adoption of The Act on the Protection and Management of the Environment (Environmental Protection Act) in January 1981 is considered as a cornerstone in building relationship between environmental law and environmental law in general and environmental criminal law. The Environmental Protection Act introduced criminal liability for three offences (pollution of

25 Dz.U. No.97, pos.1051
26 Dz.U. No.63, pos.638
27 Dz.U. No 63, pos.639
28 Dz.U. No 115, pos.1229
water, air, ground, negligence as regards devices protecting the environment, violation of provisions concerning protection of rural and forest areas). Also the Act on the Protection of Nature (Nature Protection Act) adopted in 1991, described primary liability for criminal offences. Liability for petty offences was described as a supportive liability thereupon. Systematically Polish legislator has been enlarging the scope of behaviors classifies and penalized in Criminal Code. As a consequence in the new Criminal Code all Chapter XXII “Offences against natural environment” has been dedicated to penalized behaviors against natural environment.

If we look at environmental criminal law sensu largo i.e. as a group of provisions concerning offences and petty offences is should be noticed that considerable part of the legal measures being used in environmental protection automatically belongs to the administrative law, which as it was stated also includes environmental law in general. It that sense part of the environmental criminal law sensu largo might be treated as an environmental law in general.

The common opinion placed environmental criminal law as a supplement and supportive tool for environmental protection law n general. The environmental criminal law was considered as an ultima ratio used only when other legal measures (civil or administrative) have failed. However due to the fact that the attitude towards protection of environment for last decade has changed considerably and the protection of environment has been settled within main aims of the state (article 5 of the Constitution of the Republic of Poland) the supportive role of environmental criminal law towards environmental law in general has essentially increased.

7.2. ORGANIZED CRIME

The (domestic) definition of organized crime

Lack of binding definition of organized crime.

However, after fall of the communist regime in 1989 the expression organized crime become part of legal terminology and commonly used in a public discussions, there is no legal binding definition of organized crime in the Polish legal system.

Although the new Criminal Code does not contain a definition of organized crime, it penalized participation in group formed for the criminal purposes. Article 258 of the Criminal Code provides for criminal liability for persons involved in organized crime or participating in an association or group aiming at committing offences. The criteria used in order to define a criminal organization, are the size of the organization and aspects of its structure. Therefore, the fact of participating in a criminal organization constitutes an offence

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29 Radecki, W., Legal Grounds for Environmental Protection under Polish Criminal Law, 342
itself. It is also to be noted that when offences are committed in the framework of a criminal group it is an aggravating circumstance.

- **Working definition**

The following definition of the organized crime shall be given, based on the Polish Police’s practice of struggling against such crime:

“Criminal union organized for profit-seeking to commit permanently diverse criminal offences, with the assumption of meeting objectives through corruption, blackmail, terror as well as the use of force and arms”

Several features of organized crime can be distinguished:

- Existence of a durable bond between permanently collaborating persons, with the domination of professional criminals;
- Hierarchical organizational structure, characterized by unreserved discipline, with organization’s concern for the safety of participants being a “reward” for obedience;
- Rational and planned implementation of goals, based on specialization and tasks division;
- Adjustment of carried out activity to actual needs of the population (addressing “market” needs);
- Adjustment of methods of activity and measures (technologies) to circumstances and to implemented goals (blackmail, bribery, fraud, etc.);
- Internal conspiracy and external tightening of the organization;
- Assistance provided to the members of the organization, in particular to persons prosecuted or serving the sentence (legal assistance, bail, intimidation of witnesses to the prosecution, protection of the family of the person condemned);
- Aiming at acquiring political influence or economic position;
- Mobility and international character of activity.

On the basis of Polish and international experience the following categories of criminal offences, committed by organized criminal gangs, are distinguished by the Polish Police:

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30 Rau Z., Przestępczość zorganizowana w Polsce i jej zwalczanie, Zakamycze 2002, p.50
31 Rau Z., Przestępczość zorganizowana w Polsce i jej zwalczanie, Zakamycze 2002, p.50
- Drugs production and trafficking;
- Forgery of money;
- Fraud connected with capital market;
- Fraud connected with governmental and international founds;
- Tax offences;
- Money laundering, illegal trade in weapons and radioactive materials,
- Environmental criminality;
- Crimes connected with outskirts of society;
- Illegal gambling;
- Extortion of tribute;
- Offences of corruption.

Due to the fact that a Polish doctrine of criminal law does not provide binding definition of organized crime there are practical problems with identifying structure of criminal groups their leadership and proving the existence of such groups before courts.33

**The extension of organized crime in Poland (some remarks)**

After the economic, social and political events which took place in 1989 Poland appears to be particularly exposed to the operations of organized crime groups which take advantage of the security vacuum in its three eastern neighbors. On one hand Poland is recognized as a transit country for international organized criminal groups, on the other it has become operational and destination country for Polish and international organized groups. Activities of organized crime have been recognized by the Polish aouthorities as the problem of a major concern. Poland faced the increasing number of organized crime groups. The number of organized crime group increased from 377 in 1996 to 641 in 1998. The number of individuals involved in activities of the organized crime groups increased from 47,500 in 1996 to 55,000 in 1998.34

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33 Rau Z., Pragmatyzm w zwalczaniu przestępstwośc, Prokurator 200, no 4, p.32
In 2001 Central Investigation Office investigated 5,281 individuals (4,2001 in 2000) operating in 485 organized criminal groups. From the groups examined 388 had Polish origin, 77 had international character, 11 had Russian origin and 9 ethnic origin.\textsuperscript{35} Investigated groups were involved in crime activity senso stricto (159), offences connected with drug trafficking (134), offences connected with financial sector (129), multi crime activities (63).\textsuperscript{36}

The extension of organized crime in Poland can be characterized by the following factors:

- growth of local criminal groups operating on state borders specializing in providing support for other groups operating inside country and international groups which take advantage of transit character of Poland;
- increasing involvement of Polish criminal groups in thefts of luxurious cars as well as trucks in Western Europe and smuggling them through the Polish customs area to Russia or to the Middle East countries;
- increasing involvement in drug, alcohol and cigarettes trafficking;
- increasing involvement of Russian origin groups in illegal trade in weapons. Russian groups control most of original market leaving control of secondary market to Polish groups;
- increasing number of cases with use of violence (use of explosive materials, robberies, extortion of tribute) e.g. 63 explosion of terror character in 2001 and 141 in 2000\textsuperscript{37}.
- multi criminal activities including money laundering on a big scale and reinvestment of profits in illegal and legal businesses;
- very deep conspiracy, insuring anonymity for the group members. Usual practice is that group member operates far from the place where he lives and groups change the scope and place of its activity every two or three years thereto;
- existence of corruption in public service including Police officers.

The extension of organized crime in Poland is without doubt determined mainly by economical and social factors that began in 1989. The passage to a free market economy, the opening of borders and the lack of laws aimed at coping with the new reality have been determining factors for the development of organized crime for the last decade.

\textsuperscript{35} Ministry of Interior Affairs and Administration Rapport on threats caused by organized and drug crime in Poland in 2001, p. 4, http://www.mswia.gov.pl/index1_s.html
\textsuperscript{36} Ministry of Interior Affairs and Administration Rapport on threats caused by organized and drug crime in Poland in 2001, p. 4, http://www.mswia.gov.pl/index1_s.html
\textsuperscript{37} ibidem p.9
In April 1994 Public Opinion Research Center – CBOS (Centralne Biuro Badanie Opinii Publicznej) asked respondents to choose from the list of eight social factors two which have the biggest impact on criminalization of the Polish society.

The following answers were given:

- unemployment 63%,
- pauperization of the society 44%,
- mild punishment for criminals 34%,
- ill-breading of children 16%,
- arrival of foreigners to Poland 13%,
- disrespect for social behaviors and traditional values 11%,
- brutality in movies and in TV programs 9%,
- disrespect for religious values 6%.

The respondents as determine factors pointed social and economical problems. Unemployment and pauperization of the society were mentioned most commonly as reasons for growing criminalization of the society. Reasons for growing number of crimes belong to the social problems related to big groups of society therein. The common assumption is that criminalization of the society is caused more by macro aspects rather then characters of particular individuals e.g. individual psychological conditions of criminals.

How extensive is the overlapping between environmental and organized crime? – Theoretical and empirical perspectives

- Theoretical perspectives

It is impossible to present exhaustive theoretical perspective to the problem of overlapping between environmental and organized crime in Poland due to the fact that institutions responsible for fighting organized crime i.e. Police, Prosecutor Office, Agency of Internal Security and common court do not collect such statistics and information. Additionally during preparation of the studies no publication concerning environmental organized crime in Poland was found. However environmental criminality has been distinguished by the

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Organised crime in the sphere of environment in a few Candidate Countries

Polish Police\textsuperscript{39} as one of scope of possible activities of organized groups, no common policy of the main investigative organs in respect of environmental organized crime has been developed. As a consequence since 1993, no case in respect of environmental organized crime has been brought before common court in Poland\textsuperscript{40}. According to our research the problem of the overlapping between environmental and organized crime has not been recognized neither by public institutions or professional literature.

- Empirical perspectives

However official statistics may indicate that the problem of environmental organized crime does not exists in Poland the reality seems to be fairly different. Poland is recognized as a transit and country for international organized criminal groups, and became operational and destination country for Polish and international organized groups. Number of cases in respect of illegal commercial trade in endangered species and their products, dumping and storage of waste, including transfrontier shipment of hazardous waste, illegal ozone depleting substances, illegal dumping and shipment of radioactive waste and potentially radioactive material, illegal logging and illegal trade in wood or illegal fishing indicate that organized crime group may be involved in theses activities.\textsuperscript{41} Officials from institutions dedicated for fighting environmental crime confirmed this fact informally.\textsuperscript{42} However as it was mentioned since 1993, no one was charge and sentenced for committing environmental crimes in relation with participation in organized group.

The discrepancy between reality and sentencing practice in courts shows that institutions responsible for preparatory procedure (Police, Prosecutor Office) are not fully aware and prepared for fighting organized environmental crime. In appeal and district prosecutor offices there no special units or persons exclusively appointed for fighting organized environmental crime.

According to Report prepared by the Ministry of Inferior Affairs and Administration “Threats of organized and drug related crimes in Poland in 2001” most of prosecutor’s procedures in 2001 were related to\textsuperscript{43}:

- drug related crimes (135),
- economic crimes including smuggling of goods (93),
- robberies including road robbery (68),

\textsuperscript{39} Nęcki J., Walendziak W., Przestępczość zorganizowana (w;) Polska Policja na drodze do Unii europejskiej, Centrum Europejskie Uniwersytetu Warszawskiego, Warszawa 2000, p.182

\textsuperscript{40} Ministry of Justice, Department of Statistics, Tables 1.1.Adults sentenced by common courts on the basis of an indictment by type of crime.

\textsuperscript{41} See point The sanctioning practice.

\textsuperscript{42} Telephone conversation with Mr Jaroslaw Napierala CITES coordinator in the Custom Office in Biala Podlaska dated 20 March 2003, telephone conversation with Stefan Maciuk from the National Inland Fisheries Guard in Leszno, letter from the Custom Office in Toruń dated 13 March 2003.

\textsuperscript{43} www.mswia.gov.pl
- extortion of tributes (28),
- murders (25),
- organized car thefts (13).

30% of all suspects was charged for participation in organized group (2001 – 986 persons, 2000 – 643 persons.)\(^{44}\) According to the above mentioned report none of the prosecutors’ investigations were related to participation in environmental organized crime.\(^{45}\)

In the said report the environmental organized crime issue was not even mentioned once as possible threat to the legal order which may indicate that institution responsible for fighting organized environmental crime do not consider the problem as considerable one.

### 7.3. CHRONOLOGICAL LIST INDICATING THE TITLE AND PUBLICATION REFERENCES OF THE RELEVANT EXTS IN FORCE

**The most important texts concerning both organized crime and its legislation**

- Kodeks Karny z 6 czerwca 1997r. (Dz. U. Nr 88, poz. 553).

- Kodeks Postępowania Karnego z 6 czerwca 1997 (Dz.U. Nr 97, poz.89 ze zmianami).
  The Criminal Procedure Code dated 6 June 1997 (Dz.U.No 97, item.89 with further alternation) - 673 articles.

- Ustawa z 25 czerwca 1997 o świadku koronnym (Dz.U. Nr 114, poz.738 ze zmianami).

- Ustawa z 6 lipca 2001 o gromadzeniu, przetwarzaniu i przekazywaniu informacji kryminalnej (Dz.U. Nr 110, poz. 1189).
  The Statute of 6 July 2001 on collecting, processing and transmitting of criminal information (Dz.U. No 110, item 1189) – 76 articles .

\(^{44}\) Ibidem.  
\(^{45}\) Ibidem.
- Ustawa z 22 stycznia 1999 o ochronie informacji niejawnych (Dz.U.Nr 11, poz.95).

The Statute of 22 January 1999 on secret data protection (Dz.U. No 11, item 95) – 90 articles and 2 Enclosures.

- Ustawa z 29 sierpnia 1997 Prawo Bankowe (Dz.U z 2002r, Nr 72, poz.665).


List of bilateral agreements concerning organized crime\(^{46}\)


- Umowa między Rządem Rzeczpospolitej Polskiej a Rządem Republiki Federalnej Niemiec o współpracy w zwalczaniu przestępczości zorganizowanej, podpisana w Bonn dnia 6 listopada 1991.


\(^{46}\) Publications are not available


- Porozumienie między ministrem spraw wewnętrznych Rzeczpospolitej Polskiej i ministrem spraw wewnętrznych Republiki Litewskiej o współpracy w zakresie zwalczania przestępczości, podpisane w Warszawie dnia 28 września 1992r.


Porozumienie o współpracy między Ministerstwem Spraw Wewnętrznych Rzeczypospolitej Polskiej a Ministerstwem Spraw Wewnętrznych Republiki Turcji o współpracy w zakresie bezpieczeństwa i porządku publicznego, podpisane w Ankarze dnia 30 stycznia 1993.


Umowa o współpracy między Ministerstwem Spraw Wewnętrznych Rzeczypospolitej Polskiej a Ministerstwem Spraw Wewnętrznych Republik Słowacji, podpisana w Zakopanem dnia 30 czerwca 1993.


Porozumienie o współpracy między Ministerstwem Spraw Wewnętrznych Rzeczypospolitej Polskiej a Ministerstwem Spraw Wewnętrznych Republiki Bułgarii w dziedzinie walki z przestępczością, podpisane w Sofii dnia 22 kwietnia 1993.


Konwencja pomiędzy Polską a Belgią dotycząca wydawania przestępców i pomocy sądowej w sprawach karnych z 1934.

Porozumienie miedzy MSW RP a MSW Republiki Chorwacji o współpracy w zapobieganiu i ujawnianiu przestępstw z dnia 8 listopada 1994.
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Agreement between Ministry of Inferior Affairs (MSW) of the Republic of Poland (RP) and Ministry of Inferior Affairs of the Croatian Republic concerning cooperation in preventing and disclosing crime dated 8 of November 1994

- Umowa miedzy Rządem RP a rządem Republiki Francuskiej o współpracy w dziedzinie spraw wewnętrznych z dnia 22 września 1996.


- Porozumienie miedzy MSW RP a MSW Republiki Łotwy o współpracy w zakresie zwalczania przestępczości z dnia 14 lipca 1994.


- Umowa między Rządem RP a MSW Królestwa Maroka o współpracy w zakresie zwalczania przestępczości, terroryzmu i handlu narkotykami z dnia 26 czerwca 1995.

The Cooperation Agreement between RP and the MSW of the Morocco Kingdom concerning fighting crime, terrorism and drug trafficking signed on 26 June 1995.

- Umowa między Rządem RP a rządem Republiki Słowenii o współpracy w walce z terroryzmem, zorganizowaną przestępczością, nielegalnym handlem środkami odurzającymi z dnia 28 sierpnia 1996.


- Umowa między MSW RP a MSW Republiki Tunezji z dnia 26 września 1994.

The Agreement between MSW of the RP and MSW of the Republic of Tunisia signed on 26 September 1994.

The most important texts concerning both environmental crime and its legislation

- Kodeks Karny z 6 czerwca 1997r. (Dz. U. Nr 88, poz. 553 ze zmianami).

The Criminal Code dated 6 June 1997 (Dz.U. No 88, item. 553 with further alterations) - 326 paragraphs.

- Kodeks Postępowania Karnego z 6 czerwca 1997 (Dz.U. Nr 97, poz.89 ze zmianami).
The Criminal Procedure Code dated 6 June 1997 (Dz.U. No. 97, item.89 with further alternation) – *673 articles.*

- Ustawa z 27 kwietnia 2001 o odpadach (Dz. U. Nr 62, poz. 628).
  
The Law of Waste dated 27 April 2001 (Dz.U. No 62, item 628) – *80 articles and 6 Enclosures.*

- Ustawa z 2 marca 2001 o postępowaniu z substancjami zużywającymi warstwę ozonową (Dz. U. Nr 52, poz. 537)
  
The Law of the proceedings with ozone depleting substances dated 2 March 2002 (Dz. U. No 52, item 537) – *40 articles and 5 Enclosures.*

- Ustawa z 22 czerwca 2001 o organizmach genetycznie zmodyfikowanych (Dz.U. Nr 76, poz.811).
  
The Law of genetically modified organisms (Dz. U. No 76, item 811) – *76 articles.*

- Ustawa z 13 września 1996 o utrzymaniu czystości i porządku w gminach (Dz. U. Nr 132, poz.622).
  
The Act of Maintaining Cleanness and Order in Communities (Dz.U. No 132, item 622) – *14 articles.*

- Ustawa z 18 lipca 2001 Prawo wodne (Dz.U. Nr 115, poz.1229).
  
The Water Law dated 18 July 2001 (Dz.U. No115, item 1229) – *220 articles.*

- Ustawa z 7 czerwca 2001 o zbiorowym zaopatrzeniu w wodę i zbiorowym odprowadzaniu ścieków (Dz.U. Nr 72, poz.747).
  
The Public Water Supply and Refuse Water Utilization Act (Dz.U. No 72, item 747) – *34 articles.*

- Ustawa z 4 lutego 1994 Prawo geologiczne i górnicze (Dz.U. Nr 27, poz. 96 ze zm.).
  
The Mining Law dated 4 February 1994 (Dz.U. No 27, item.96 with further alternations) – *159 articles.*

- Ustawa z 13 października 1995 Prawo Łowieckie (Dz.U. Nr 147, poz. 713 ze zmianami).
  
The Hunting Law dated 13 October 1995 (Dz.U. No 147, item 713 with further alternation) – *64 articles.*

The Inland Fisheries Act dated 18 April 1985 (Dz.U.1999 No 66, item 750 with further alternation) – 30 articles.

- Kodeks wykroczeń z 20 maja 1971 (Dz.U. Nr 71, poz.12 ze zmianami).

Law of Petty Offences dated 20 May 1971 (Dz.U. No71, item 12 with further alteration) – 166 articles.


The Law of Environmental Protection dated 2001 (Dz.U. No 62, item 627) – 80 articles.

- Ustawa z 11 maja 2001 o opakowaniach i odpadach opakowaniowych (Dz.U.Nr 63, poz.638)


- Ustawa z 11 maja 2001 o obowiązkach przedsiębiorców w zakresie gospodarowania niektórymi odpadami oraz o opłacie produktowej i opłacie depozytowej (Dz.U. Nr 63, pos.639).

Statute of 11 May 2001 on the duties of contractors concerning the management of some types of wastes and the product and deposit fees (Dz.U. No 63, item.639) – 46 articles and 4 Enclosures.


The Atomic Law (Dz.U.2001 No 3, item 18) – 139 articles.

- Ustawa z 21 sierpnia 1997 o ochronie zwierząt (Dz.U. Nr 111, poz.724 ze zmianami).

The Animal Protection Act dated 21 August 1997 (Dz.U. No 111, item 724 with further alterations) – 44 articles.

- Ustawa z 20 lipca 1991 o Inspekcji Ochrony Środowiska (Dz.U. Nr 77, poz.335 ze zmianami).

The Law of Inspection of Environmental Protection (Dz.U. No 77, item 335 with further alterations) - 38 articles.
- Ustawa z 6 kwietnia 1990 o Policji (Dz.U. Nr 2, poz. 7 ze zmianami).
The Police Act dated 6 April 1990 (Dz.U. No 2, item 7 with further alterations) – 158 articles.

The Border Guard Act dated 12 October 1990 (Dz.U. No 2, item 171) – 157 articles.

- Ustawa z 9 stycznia 1997 – Kodeks celny (Dz.U. z 2001 Nr 75, poz.802 ze zmianami).


- Ustawa z 14 czerwca 2002 o Agencji Bezpieczeństwa Wewnętrznego oraz Wywiadu (Dz.U. Nr 74, poz. 676).
The Internal Security and Intelligence Agency Act dated 14 June 2002 (Dz.U. No 74, item 676) – 235 articles.

- Ustawa z 6 września 2001 o rybołówstwie morskim (Dz.U. Nr 129, poz. 1441 ze zmianami).
The Sea Fisheries Act (Dz.U. No 129, item 1441 with further alteration) – 90 articles.

- Ustawa z 16 marca 1995 o zapobieganiu zanieczyszczeniu morza przez statki (Dz.U. Nr 47, poz.243 ze zmianami)

Protection of Sea Pollution Act dated 16 March 1995 (Dz.U. No 47, item 243 with further alteration) - 41 articles.

The law of forests dated 28 September 1991 (Dz.U. 2000 No 56, item 679 with further alterations) – 82 articles.
Complete list of texts concerning environmental organized crime

Polish legal system does not include any legal acts exclusively dedicated to environmental organized crime problem.

Description of the link between environmental criminal law and organized crime legislation

a) Material link

In Polish legal system there are no separate regulations concerning organized environmental crime. The regulations concerning control of environmental crime and organized crime are strongly linked and interact simultaneously. Due to the general principle that criminal offences shall be included, in the Criminal Code both offences against natural environment (articles 181 – 188, 290 and 163 par.1) and criminal liability for involvement in organized crime or participation in an association or group aiming at committing offences (article 258) are included in the Criminal Code. This relation was created in August 1998 when the Criminal Code came into force.

Besides the Criminal Code only few legal acts provide criminal liability for offences against the natural environment. The criminal liability for the offences against natural environment beside the Criminal Code is included in: The Animal Protection Act (art.35, 36, 38, 39), The Law of Waste (art. 69), Law of the proceedings with ozone depleting substances (art.36, 37), The hunting Law (art.52, 54), The Water Law (art.189-191) and The Inland Fisheries Act (art.27a). Theses exemptions to the rule that an offence and criminal liability shall be included in the Criminal Code. The above listed provisions play only supportive role to the core provisions from the Criminal Code.

The intention of the legislator was to include all or at least major offences against natural environment in the criminal Code in order to tied them with the whole environonmental protection system and legal tools provided by the Criminal Code.

b) The Crown Witness Act dated 25 June 1997 (for details see point IV.2 (e)).

The Crown Witness Act does not directly apply to crimes against the natural environment however it shall apply to cases where organized crime is involved. Consequently due to the fact that the Crown Witness Act shall apply to organized crime cases (article 258 CC) the environmental organized crime is placed within the scope of the Crown Witness Act regulations.
c) Environmental criminal law as a part of criminal law in general.

Due to the fact that environmental criminal law constitutes part of the criminal law in
general, fundamental principles of criminal law including provisions concerning organized
crime shall apply to environmental criminal law as well.

Strong link between environmental criminal law and organized crime legislation has been
established by the conception of cumulative concurrence of criminal law provisions, which
means that one act (including offences against natural environment) should be treated from
the point of view of all provisions of the Criminal Code. Offences against natural environment
committed by person involved in an association or group aiming at committing offences shall
be treated as a separate offence and the separate ground for a criminal liability (for details
see point The Sanction system).

In cases concerning environmental crimes there are no obstacles to employ some of the
institutions aimed at fighting organized crime. If there is a justified fear of the danger for
life, health, freedom or assets in a considerable size, of a witness or his closest relative,
the court and in preparatory proceeding the prosecutor may pass a decision on keeping in
secrecy personal data of the witness (incognito witness). The incognito witness
regulations are part of both organized crime legislation and environmental crime law.

In 1995 controlled purchases and secretly monitored deliveries were introduced in the
Police Act and the Border Guard Act. The controlled purchases and secretly monitored
deliveries are aimed in generally at fighting organized crime however can apply also in
some circumstances in cases concerning environmental crime (threat to nuclear safety -
art.184 of the CC, causing a common danger - art 163 of the CC, pollution of water, air
and ground – art.182 of the CC, Illegal use of waste and substances – 183). The
controlled purchases and secretly monitored deliveries shall apply only in respect of
offences committed with the intent.

The same general principles from the Criminal Code, the Code of Criminal Procedure
concerning due process, preparatory procedure shall apply to the environmental criminal
law cases and organized crime cases.
7.4. FRAMEWORK OF APPLICABLE LEGISLATION

The key principles of environmental criminal law

a) Environmental criminal law sensu stricto

The key principles of environmental criminal law sensu stricto are included in chapter XXII of the Polish Criminal Code (further: CC) “Offences against natural environment”. Chapter XXII penalizes the most serious acts against natural environment causing a serious damage or danger thereof.

The list of provisions predetermined in Chapter XXII include:

- Destruction of plant or animal life including destruction of plant and animal life in general, destruction of endanger species of plants, destruction of endanger species of animals (Article 181 CC);
- Pollution of water, air or ground with substance or contamination with ionizing radiation in such quantities or form that it could endanger the life or health of many persons or cause destruction to plant and animal life of a considerable dimension (Article 182 CC);
- Illegal use of waste and substances (Article 183 CC);
- Threat to nuclear safety (Article 184 CC);
- Negligence as regards devices protecting the environment (Article 186 CC);
- Destruction of protected areas or specially protected parts of natural environment (Article 187 CC);
- Illegal activities carried on protected areas (Article 188 CC).

Although the Chapter XXII of CC includes substantial provisions, also other supportive provisions in respect of environmental protection are included in the CC:

- Articles 163 – 165 CC - Chapter XX of CC “Offences causing a common danger”;
- Article 225 § 1 CC penalizes acts aimed at disturbance of environmental control;
- Article 290 CC panelizes illegal logging of trees.

In general, the intention of the legislator was to include into the CC all illegal behaviors (offences) against environment causing a serious damage or danger thereof. However some of the criminal provisions remain outside the CC in specific regulations. The most important are as follows:
The Water Act (article 123 – 125);

The Inland Fishing Act (Article 27 a);

The Geological and Mining Law Act (Article 118);

The Hunting Law (Article 52 and 53);

Law on Waste (Article 47, 48 and 69);


Without any doubts the consolidation of the most serious offences against natural environment in one chapter of Criminal Code must be considered as a legislative success. The consolidation considerably improved a fight with offences against natural environment. Having included the offences against natural environment in the Criminal Code the legislator acknowledged the importance of environmental protection and the role of environmental criminal law.

b) Environmental criminal law sensu largo

The criminal environmental law sensu largo includes criminal petty offences. Petty offences against the environment are provided both in the Petty Offences Code and in the other Acts (e.g. the Hunting Law, Law of Waste, Law of Animal Protection, the Inland Fishing Act, etc.). The legislator underlined the dominant position of the Law of Petty Offences and subsidiary role of environmental law sensu stricto (criminal offences only) in the system of the environmental criminal law 47.

c) Environmental criminal law sensu largissimo.

The environmental criminal law sensu largissimo includes regulations concerning liability for criminal, petty and administrative offences. The individualization of environmental law sensu largissimo is very controversial due to the doctrinal disputes concerning role of administrative fines in the criminal law. However this conception should develop affectively in near future in the Polish doctrine of the environmental criminal law due to the fact that liability of legal person for acts against the natural environment may be introduced in the Polish legal system.48

47 Radecki W., Komentarze Karne Becka, Przestępstwa przeciwko środowisku, Warszawa 2001, p52
48 Rejman G., Odpowiedzialność karna osób prawnych, PPK, 19994, No 11
For the purposes of this study, we apply the conception of environmental criminal law sensu stricto if otherwise is expressly stated.

**The key principles of organized crime legislation**

a) General remarks

As organized crime is becoming a growing problem in Poland, increased resources are needed to struggle against it, as well as the growing involvement of prosecution bodies and administration of justice is necessary. To fight effectively organized crime, new institutions are being gradually introduced to the Polish law.

The changes and new institutions in the Criminal Code and the Criminal Proceedings Code came into force as of 1 September 1998. The new Criminal Code introduced changes, which provide better legal instruments in the fight against organized crime.

b) Article 258 of the Criminal Code

Article 258 of the Criminal Code provides for criminal liability for persons involved in organized crime or participating in an association or group aiming at committing offences. The fact of belonging to a criminal organization is in itself an offence (see point the Sanctioning practice).

c) Other regulations from the Criminal Code (further CC)

- obligatory extraordinary aggravation of punishment for the long term offender or offender who commits a criminal offence being involved in organized crime or an association or group aiming at committing offences (article 64 §2 CC in relation with article 65 CC),

- general exclusion of conditional withholding of imposed sentence (article 69 §4 CC). Conditional withholding of imposed sentence only in few clearly defined cases (art.69 CC),

- possibility of imposing imprisonment sentence accompanied with a severe fine for a long term offender or a offender who commits a criminal offence being involved in organized crime or an association or group aiming at committing offences (article 309 CC),

- possibility of imposing a forfeiture of property and profits deriving even indirectly from a criminal activity (article 45 CC),
• extension of periods after which file of the application for anticipatory parole shall be possible (article 78 §2 CC).

d) Extraordinary mitigation of punishment

The new measures involve an extraordinary mitigation of punishment with regard to the perpetrators of crime that agrees to cooperate with investigative authorities and release information concerning persons participating in the crime and related circumstances. In the light of the new regulation, perpetrators are deprived of material benefits directly or indirectly derived from the crime. The property originating from crime is subject to obligatory forfeiture to the State, unless returned to the victim or an authorized party. Extraordinary mitigation of punishment regulations shall also apply to environmental organized crime cases.

e) The crown witness

The Crown Witness Act dated 25 June 1997\textsuperscript{49} is the legal act, which contains procedural regulations solely for the purposes of prosecuting organized crime. The general idea of crown witness is that perpetrator shall not be penalized for the crimes in which he was involved if he gives evidence likely to be material evidence in respect of these crimes. The above regulation and extended principles of extraordinary mitigation of punishments under the new Criminal Code have been designated to weaken the solidarity and efficiency of criminal groups. Primarily the crown witness act of 1997 was aimed to stay in force by 01 September 2001, however this period was extended till 1 September 2006. The Crown Witness Act shall apply in environmental organized crime cases.

f) The Banking Act

The regulations on the protection of confidential bank data are being gradually developed. Under the Banking Act dated 29 August 1997\textsuperscript{50}, implemented on 1 January 1998, information containing confidential banking data can be released to the prosecutor before investigative proceedings in the event of a justified suspicion of money laundering activity. The Banking Act shall apply in environmental organized crime cases.

\textsuperscript{49} Dz.U. No114, pos.738  
\textsuperscript{50} Dz.U. 2002, No.72, pos.665
g) Incognito witness

An institution of “incognito witness” was introduced in 1995\(^{51}\). The idea of this institution is the following: if there is a justified fear of the danger for life, health, freedom or assets in a considerable size, of a witness or his closest relative, the court and in preparatory proceeding the prosecutor may pass a decision on keeping in secrecy personal data of the witness. In this case, such personal data are available only to the court, the prosecutor and - if needed - to the police officer. Incognito witness institution shall apply in environmental organized crime cases.

h) Other regulations

New legislative regulations facilitate the activity of investigative authorities responsible for prosecuting certain types of crime and furnish them with new detection instruments. This in particular applies to controlled purchases\(^{52}\), secretly monitored deliveries, acceptance or handling of material benefits. The Police and the National Border Guard shall imply these institutions in environmental organized crime cases.

The Polish Criminal Code, which does not contain any legal definition of organized crime, provides for an important provision regarding organized crime (art. 258), which establishes a criminal liability of persons involved in organized crime or participating in an association or group aiming at committing offences.

\(^{51}\) Article 184 of the Code of Criminal Procedure, Dz.U.No 97, pos.89

\(^{52}\) Ustawa z 21 lipca 1995 o zmianie ustawy: o Policji, o Urzędzie Ministra Spraw Wewnętrznych, o Urzędzie Ochrony Państwa, o Straży Granicznej, Dz.U. No104, pos.515 with further alterations
Parallels and differences

a) Parallels

- Both environmental criminal law and organized criminal legislation belongs to the Criminal Law.
- The core provisions of environmental criminal law and organized criminal legislation are included in the Criminal Code. The new Criminal Code, which came into force in 1998, introduced Chapter XXII dedicated to crimes against the natural environment.
- The Polish Criminal Code accepts the conception of cumulative concurrence of criminal law provisions, which means that one act is treated from the point of view of all provisions of the Criminal Code. Offence (including offences against natural environment) committed by person involved in an association or group aiming at committing offences shall be treated as a separate offence and the separate ground for a criminal liability. As the result of that the member of the organized group shall be liable for two criminal offences i.e. participation in organized group (article 258 §1 CC) and for the environmental crime. In such case the cumulative concurrence of criminal liability shall apply. The penalty shall range between the maximum penalty imposed for the single offence and a sum of penalties for both offences thereupon.
- However the participation in the organized group is an offence itself organized group’s members are focused on committing crimes (including environmental crimes) determined by pursuit of profits. Therefore the organized crime legislation is structured in a way to supplement environmental criminal law.

b) Differences

- The organized crime legislation is suited in the way to protect the national security and public order against organized group of criminals since the environmental criminal law prescribes liability of individuals committed offences individually.
7.5. SANCTIONS IN THE FIELD OF ORGANIZED CRIME IN THE SPHERE OF THE ENVIRONMENT

Introduction to the sanction system

Do to the fact that no special sanctions in the field of organized crime in the sphere of the environment exist in Poland the general rules of liability for violations of the environmental law shall apply concurrently with criminal liability for involvement in organized crime or participation in an association or group aiming at committing offences. The core provisions concerning environmental criminal law are included in the Criminal Code. The other provisions outside (e.g. article 69 of The Law of Waste or article 53 of the Hunting Law) the Criminal Code shall constitute exceptions from the rule that criminal offences shall be penalized by the Criminal Code regulations. The opposite situation takes place in law of misdemeanors: the core provisions concerning environmental criminal law are included outside the Misdemeanor Code and regulations from the Misdemeanor Code have subsidiary character.

Criminal liability - Criminal Code

The Polish Criminal Code does not provide one strictly defined penalty for any given offence. Rather, the court has the discretion to choose which penalty it will impose. Penalties are classified as principal and accessory. As a general rule an accessory (i.e. deprivation of public rights, the prohibition of occupying specific posts, following specific occupation or engaging in specific activities, the forfeiture of objects, the publication of the sentence in a special way for public information) penalty shall not be imposed separately but in addition to a principal penalty.

Principal penalties include: a fine, limitation of liberty, deprivation of liberty, 25 years deprivation of liberty and life imprisonment.

Article 258 of the Criminal Code provides for criminal liability for persons involved in organized crime or participating in an association or group aiming at committing offences. The fact of belonging to a criminal organization constitutes an offence itself. Any person who participates in an association or a group aiming at committing offences shall be punished with imprisonment up to three years (article 258 §1 CC). If the group or association has armed character the person shall be punished with imprisonment for a time between three months and five years (article 258 §2 CC). Any person who intents to established such group or association or leads such group or association shall be punished with imprisonment for a time between 6 months and 8 years (article 258 §3 CC).

Article 258 CC is divided into one principal type (§1) and two qualified (severe) types (§2 and §3). The principal type shall be penalized with 1 month up to 3 years imprisonment. Therein in practice a fine or deprivation of liberty shall be imposed alternatively.
Armed character of the association or group mentioned in the article 258 §2 CC raises qualified type of the criminal liability thereto. The penalization of 3 months up to 5 years imprisonment shall be imposed thereupon. As far as qualified type of criminal liability defined in article 258 §2 CC is concerned a fine or deprivation of liberty may be imposed.

Third type of criminal offence (article 258 §3) shall be defined as qualified type by the fact that a person intents to establish a group or association defined in article 258 §2 CC or leads such group or association. The penalization of 6 months up to 8 years imprisonment shall be imposed thereupon. Additional the sanctioning practice concerning long-term offender shall apply obligatory for a criminal engaged in organized crime group.

The Polish Criminal Code accepts the conception of cumulative concurrence of criminal law provisions, which means that one act is treated from the point of view of all provisions of the Offence (including offences against natural environment) committed by person involved in an association or group aiming at committing offences shall be treated as a separate offence and the separate ground for a criminal liability.

**Example**

Anyone acting as a member of organized crime group or association and commits environmental crime (e.g. illegal import of hazardous waste – article 183 CC) shall be liable and punished for committing two criminal offences i.e. engagement in organized crime group or association (article 258 CC) and illegal import of hazardous waste (article 183 CC). As the result of that cumulative penalty shall be imposed.

**Cumulative concurrence of misdemeanor and criminal offence**

If the criminal act exhaust simultaneously characteristics of a criminal offence and a misdemeanor offence and penalty prescribed for those misdemeanor or criminal offence had been imposed such penalties shall not be executed. A court in a sentence imposed for a criminal offence shall include the penalties, which had been executed.

**Principles of Polish criminal law**

The main principles of Polish criminal law including petty offences law are as follows:

- an act rise criminal liability only if prescribed by the law;
- only natural person is a subject to criminal liability. Polish criminal law does not recognize the responsibility of legal persons. In cases where the environmental law is violated by legal persons the criminal liability can be only impose on the management...
board members or proxies representing legal person. However due to the fact that many legal persons violate environmental law there are some plans to include criminal liability of legal persons in the criminal Code thereupon;

- criminal liability appears only if acts or omissions are caused by fault;

Criminal Code in the Chapter XXII (Offences against natural environment") provides the following system of sanctions:

a) exclusively a fine or punishment of limitation of liberty (only for offences committed without intent) for:

- damages caused by devastation of plant or animal life in general (Article 181 par.5 CC)
- negligence as regards devices protecting the environment (art.186 par.3 CC),
- serious damages caused by devastation of protected areas or specially protected parts of natural environment (art.187 par.2 CC).

b) a fine, punishment of limitation of liberty or punishment with imprisonment for the time up to two years (offences committed with or without intent) for:

- damages caused by intent devastation of plant or animal life on specially protected areas (art.181 par.2 CC),
- serious damages caused by intent devastation of endangered species (art. 181 par.3 CC),
- unintentional serious pollution in plan or animal life (art.181 par.4 CC),
- intentional serious polluting (art.182 par.2 CC),
- unintentional violation of regulations concerning waste management (art.183 par.4 CC),
- unintentional violation of regulations concerning management of nuclear materials (art.184 par.3 CC),
- intentional negligence as regards devices protecting environment (art.186 par.1 CC),

- intentional exploitation of facilities without appropriate devices protecting environment (art.186 par.2 CC),

- damages of protected areas or specially protected parts of natural environment caused by intentional wrongful behaviors (art.187 par.1 CC),

- illegal constructions works or economic activity on special protect areas (art.188 CC).

c) punishment with imprisonment for the time between three months and five years (only for offences committed with intent):

- intentional serious pollution of plant or animal life (art.181 par. 1 CC),

- intentional serious pollution (art.. 182 par.1 CC),

- intentional illegal import of hazardous waste (art.183 par.2 and 3 CC),

- intentional serious violation of regulations concerning nuclear material management (art.184 par.1 and 2 CC).

d) punishment with imprisonment for the time between 6 months and 8 years for the offences described in articles 182 CC – 184 CC (pollution of water, air and ground, threat to nuclear safety, illegal use of waste) committed with intent. Where the offences described in articles 182 CC – 184 CC cause great destruction in fauna or flora the perpetrator shall be punished with imprisonment for the time between 6 months and 8 years (article 185 par1 CC);

e) punishment with imprisonment for the time between 2 years and 12 years for the offences committed with intent described in articed 182 – 184 CC, which lead to person’s death or serious harm.

The following accessory penalties can be imposed on perpetrators of offences against natural environment:

- the prohibition of occupying specific posts, following specific occupation (art.41 par.1 CC);

- the prohibition of engaging in specific activities (art.41 par.2 CC);
- the forfeiture of objects originating from the offence or used for criminal purposes (art. 44 CC);
- the obligation to provide compensation for damages caused by criminal activity (art. 46 par 1 CC);
- the forfeiture of profits originating from the criminal activity;
- a fine ("nawiązka") (art. 47 par. 2 CC).

Other sanctions from the Criminal Code

- Article 163 paragraph 1 of the CC (Causing a common danger)

Any person who causes a common danger to human life or health or to property of considerable dimensions by: (...) eruption of energy including nuclear energy, diffusion of poisonous, blister and radioactive substances shall be guilty of an offence and sentenced for a term between 6 months and 10 years imprisonment (depending whether he acts with or without intent and the consequences of the act).

- Article 290 of the CC (Illegal logging of trees)

Any person responsible for illegal logging of trees shall be punished with imprisonment for the time between 3 months and 5 years. Courts shall give a compulsory decision concerning compensation exceeding three times value of stolen trees.
Criminal liability - other legal acts

- Law on the Waste

Any person responsible for illegal exporting hazardous waste abroad shall be punished with imprisonment for the time between 3 months and 5 years (article 69). This regulation fills up the gap from article 183 paragraph 2 of the CC, which penalized only illegal import of hazardous waste with imprisonment of the time between 3 months and 5 years.

- Law of the proceedings with ozone depleting substances

Illegal commercial trade in ozone depleting substances is a subject of penalization with a fine, limitation of liberty or imprisonment for the time up to 2 years (article 36).

Who illegally produces ozone depleting substances or trades with this substances (including import and export) or illegally uses such substances in a production work shall be penalized according to the sanction practice defined in the Law of the proceedings with ozone depleting substances i.e. limitation or depravation of liberty, a fine.

- The Inland Fishing Act

Illegal fishing is a subject of penalization with a fine, limitation of liberty or imprisonment for the time up to 2 years. If the court delivers a sentence concerning imprisonment, a decision concerning compensation for the harmed party and the forfeiture of objects originating from the offence or used for criminal purposes is obligatory (article 27).

- The law of animal protection

This act penalizes the following behaviors:

- illegal killing of animals, inhuman and degrading treatment of animals with the imprisonment for the time up to 2 years or limitation of the liberty (article 35),

- keeping or breading animals (including predators and venomous) potentially dangerous for human and animal life outside zoological gardens or appropriate research units. This offence shall be penalized with a fine, limitation of liberty or imprisonment up to 1 year.
Other comments

a) Criminal liability of legal persons

Polish law does not provide for criminal liability of legal persons. The absence of criminal responsibility of legal persons has necessitated the creation of three institutions regarded as quasi penal in the Polish environmental law:

- Monetary fines for the violation of protective requirements imposed on legal persons by Regional Inspectors of Environmental Protection and local government bodies.
- Closing down activities endangering the environment by Regional Inspectors of Environmental Protection
- Monetary fines imposed on ship owners by the sea administration agencies in cases such as the illegal exploitation of the Polish marine areas or the pollution of seawater under Polish jurisdiction.

b) A relationship between Article 181 of CC and CITES Convention (Destruction of plant or animal life including destruction of plant and animal life in general, destruction of endanger species of plants, destruction of endanger species of animals)

Polish law does not provide a criminal liability for illegal keeping, trading (including export and import) endangered species or their products listed in CITES Convention which Poland became a part. The situation changed in February 2002. The article 26 and article 31 point 1 of the Animal Protection Act\(^{54}\), which penalized the above acts with up to one year imprisonment, limitation of liberty or fine have been deleted. According to art.26 and 31 illegal commercial trades in endangered species and their products constituted a criminal offence. At the moment the regulations concerning illegal commercial trade in endangered species and their products are included in the Nature Protection Act\(^{55}\). According to this provisions illegal commercial trade in endangered species and their products constitutes only petty offence, which is penalized with limitation of liberty or a fine.

In case of misdemeanors concerning illegal commercial trade in endangered species and their products the following sanction practice shall apply:

- forfeiture of apparatus used for committing a misdemeanor and profits originating from the illegal activity;

\(^{54}\) Dz.U.1997, No.111,item 724

\(^{55}\) Dz.U.1999, No.99, item 1079
- obligatory restitution, if not possible obligatory fine amounted up to fivefold average gross salary on an account of the appropriate Provincional Environmental Protection and Water Management Fund thereupon,

- forfeiture of seized species and their products or return of the seized species or their products to the export country on owner expanses.

Endangered species and their products, which had been seized, shall be allocated in the appropriate institution (most often zoological garden) according to province authority’s request. If the seized species originated from regions with different from Polish climate the Minister of Environment shall appoint the appropriate institution.

Considering the above information we can conclude that the Polish legal order is contrary to the CITES Convention regulations (even the Convention has been implemented into the Polish legal system). By ratifying the CITES Convention Poland has accepted that criminal sanctions shall be impose on anyone who trades or keeps endangered species listed in the Convention. The above described sanctions from the Nature Protection Act do not comply with CITES Conventions requirements due to the fact that the Act does not provide exhaustive criminal sanctions (limitation of liberty and/or a fine). As far as article 181 CC is concern legal doctrine acknowledges that the article shall not be treated as an effective legal remedy in the meaning of CITES Convention and compatible with the CITES Convention legal tool thereupon.56

**The sanctioning practice**

The following tables include statistics of an ascertained crimes against natural environment provided by the Headquarter of the Police57. The Police statistics are related to ascertained crimes i.e. events, which after the completion of preparatory proceedings was confirmed as a crime.58 In connection with the Criminal Code, crime is a felony or misdemeanor prosecuted upon by public accusation or private accusation by a public prosecutor, moreover every revenue related misdemeanor, the character of which was confirmed as a crime as a result of preparatory proceedings. The courts statistics include information concerning resolved cases i.e. cases in regard to which a sentence has been issued or the proceedings conditionally discontinued.

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57 An ascertained crime is an event, which after the competition of preparatory proceedings was confirmed as a crime
58 Statistical Yearbook 2002, Chapter VI Justice, p.61
**Police statistics concerning the Criminal Code**\(^{59}\)

a) Statistics of offences described in the article 163 § 1 of the CC (causing a common danger) reported by the Police\(^{60}\).

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b) Statistics of offences described in the article 181 of the CC (Destruction of plant or animal life) reported by the Police \(^{61}\).

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c) Statistics of offences described in the article 182 of the CC (Pollution of water, air or ground) reported by the Police\(^{62}\).

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<td>27</td>
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</tbody>
</table>

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\(^{59}\) Please note that points (b) to (i) include data since 1998 i.e. year, in which the new Criminal Code introducing those criminal offences came into force.

\(^{60}\) Latter received from the Police Headquarter No PS-247/176/2003 dated 10 February 2003 and www.kgp.gov.pl

\(^{61}\) Ibidem

\(^{62}\) Ibidem
d) Statistics of offences described in the article 183 of the CC (Illegal use of waste and substances) reported by the Police\(^{63}\).

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e) Statistics of offences described in the article 184 of the CC (Threat to nuclear safety) reported by the Police\(^{64}\).

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</tbody>
</table>

f) Statistics of offences described in the article 185 of the CC (qualified type of crimes described in art.182 §1, 183 § 1 or 3, 184§ 1 or 2 ) reported by the Police\(^{65}\).

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</table>

\(^{63}\) Ibidem  
\(^{64}\) Ibidem  
\(^{65}\) Ibidem
g) Statistics of offences described in the article 186 of the CC (Negligence as regards devices protecting the environment) reported by the Police\textsuperscript{66}.

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h) Statistics of offences described in the article 187 of the CC (Destruction of protected areas or specially protected parts of natural environment) reported by the Police\textsuperscript{67}.

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<td>14</td>
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</table>

i) Statistics of offences described in the article 188 of the CC (Illegal activities carried on protected areas) reported by the Police\textsuperscript{68}.

<table>
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<td>16</td>
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<td>36</td>
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</tbody>
</table>

\textsuperscript{66} Ibidem
\textsuperscript{67} Ibidem
\textsuperscript{68} Ibidem
j) Statistics of offences described in the article 290 of the CC ( Illegal logging of trees) reported by the Police$^{69}$.

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<thead>
<tr>
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<td>2074</td>
<td>2234</td>
<td>1938</td>
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</tbody>
</table>

The amount of illegally lodged timer is estimated on 34 356 cubic meters per year. Damages in 2001 amounted to 4 442 218 PLN i.e. 1.100.000 EURO, the value amounted to approximately 600.000 EURO has been regained. The most intensive illegal logging was observed in Radom, Wrocław and Łódź regions. The National Forest Guards conducted 7.848 investigations in 2001, 7380 cases were closed.$^{70}$

**Police statistics concerning other legal acts**

a) The Animal Protection Act$^{71}$

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<thead>
<tr>
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<td>78</td>
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<td>538</td>
<td>633</td>
<td>818</td>
<td>850</td>
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$^{69}$ Ibidem

$^{70}$ http://www.lasypanstwowe.gov.pl/gospodarka/dzialy/ochrona/ochrona_zskodn.htm

$^{71}$ Latter received from the Police Headquarter No PS-247/176/2003 dated 10 February 2003 and www.kgp.gov.pl
b) The Law of the Waste\textsuperscript{72}

<table>
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\textit{Ministry of Justice statistics concerning the Criminal Code – 2001 year\textsuperscript{73}}

<table>
<thead>
<tr>
<th>Articles</th>
<th>Total number of cases</th>
<th>Total number of sentences passed</th>
<th>Autonomous fine</th>
<th>Limitation of liberty</th>
<th>Depravation of liberty</th>
<th>Conditionally discontinued proceedings</th>
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<td>6</td>
<td>15</td>
</tr>
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\textsuperscript{72} Ibidem
\textsuperscript{73} Ministry of Justice, Department of Statistics, Table 1.1. Adults sentenced by common courts on the basis of an indictment by the type of crime.
**Ministry of Justice statistics concerning the Criminal Code – 2000**

<table>
<thead>
<tr>
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<th>Autonomous fine</th>
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**Ministry of Justice statistics concerning the Criminal Code - 1999**

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<th>Total number of sentences passed</th>
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74 Ibidem.
75 Ibidem
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Ministry of Justice statistics concerning the Criminal Code – 1998 (from 01 September to 31 December).  

76 Ibidem. 01 September – the date on which the Criminal Code came into force
Ministry of Justice statistics concerning other legal acts.

a) The Inland Fisheries Act (art.27)\textsuperscript{77}

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of cases</th>
<th>Total number of sentences passed</th>
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<th>Deprivation of liberty</th>
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<td>427</td>
<td>322</td>
<td>376</td>
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<td>2000</td>
<td>1198</td>
<td>965</td>
<td>460</td>
<td>271</td>
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</table>

\textsuperscript{77} Ibidem.
b) The Environmental Protection Act (art. 106 – 109)\textsuperscript{78}

<table>
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<th>Year</th>
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</table>

\textsuperscript{78} Ibidem.

c) The Nature Protection Act (art. 54-57)\textsuperscript{79}

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of cases</th>
<th>Total number of sentences passed</th>
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</tbody>
</table>

\textsuperscript{79} Ibidem
Further remarks

a) Environmental investigations\textsuperscript{80}

In the first period of 1996 more than 200 investigations concerning environmental crimes were discontinued due to the fact that perpetrators had not been found, lack of evidence or no act could not be defined as a criminal offence.

In 1997 the environmental crimes were reported most often by the following institutions (the same structure appears in almost every year):

- the National Forests Holding (124),
- natural persons (104),
- Environmental Protection Inspection (77),
- Police (62),
- self-governing bodies (35),
- hunting units

Zbigniew Akmieński in 1997 vice-director of Environmental Protection Inspection declared that however cooperation between Police, procurator offices and Environmental Protection Inspection became much more effective (comparing to previous years)\textsuperscript{81}. Environmental Protection Inspection was not informed by the Police or prosecutor offices about results of the investigations launched on Environmental Protection Inspection request. He also underlined that investigations concerning environmental crimes are too often discontinued due to “law social harm”.

There were no environmental investigations concerning organized crime (article 258 CC).

b) Organized crime (article 258 CC)\textsuperscript{82}

Due to the fact that the Crown Witness Act came into force on 1 January 1998 the fight with organized crime became much more effective. In 1997 only 67 individuals were imprisoned for engagement in organized crime since in 2003 the number has increased up to 1721. The statistics did not report any environmental organized crime cases.

\textsuperscript{80} A. Łukasiewicz, Ekologiczne przestępstwa za często umarzane, Rzeczpospolita z 05.02.1997

\textsuperscript{81} Ibidem

\textsuperscript{82} S. Wikariak, Sposób na gangi, Rzeczpospolita dated 30.05.2003
8. NATIONAL BODIES RESPONSIBLE FOR TACKLING ORGANISED ENVIRONMENTAL CRIME

8.1. Method and Framework

In order to procure information on the actors, contact details, organisation, finances and the working methods involved in fighting organised environmental crime in the Czech Republic, Estonia, Hungary, Lithuania and Poland the following information sources were used:

- Direct contact with national administrations;
- Data base research;
- Library research;
- Internet research;
- Contacting specialised non-official institutes (i.e. universities, law offices).

Initially, a broad base of information is created on the actors, via Internet, literature and other forms of publications. These sources contain a multitude of references to the relevant institutions.

The protagonists in charge were researched for all five countries. After contacting the responsible Public Prosecutor, the police and customs administrations and the other players/actors, with the objective of obtaining additional information and of making appointments for personal interviews, these on-site meetings were set up. There was also some very intense contact per telephone, mail and e-mail.

Information on the organisation’s structure with organisation chart, the areas of responsibility, the working methods, international cooperation, cooperation with other national institutions and with NGOs, and on finances was elicited per questionnaire (Annex II). There was also room for suggestions on the improvement of the fight against organised environmental crime.

In the Czech Republic, Estonia, Hungary, Lithuania and Poland the responsibility for the control of organised environmental crime lies with the police, customs and the Public Prosecutor. As the investigative authority, police takes on a central role, whereas the Public Prosecutor mainly functions as the prosecuting council. A sole responsibility of one administration does not exist in any of the counties researched. The organisation and the competences are determined by the organisation of the respective country.
Against the background of the research the following problems have to be highlighted:

- **Lack of detailed information, particularly on working and investigation methods**

  A deeper insight concerning organisation of the national enforcement bodies and in particular in working and investigation methods was not possible. Except from the Czech Republic where public authorities were willing to provide comprehensive information, most of the contacted authorities refused co-operation or provided only few general information. Above all the Hungarian authorities did not react on requests. Frequently public authorities promised an answer which was never received by the researchers.

  It has to be mentioned that the research lead to the conclusions that sometimes the public authorities are not aware about their own organisational issues. Researchers were often forwarded to an alleged person in charge who turned out to be the wrong one. Internal reorganisation of administrative and enforcement structures due to the democratic transition of the former socialist countries are explanations.

  There are no in-depth studies on organisation and working methods of enforcement bodies from other sources. Only a few scientific analyses do exist, which are mostly dealing with general issues of administrative organisation in the Candidate Countries. There is also few and general public information available on the websites of the enforcement and other governmental bodies.

- **Low willingness to co-operate**

  From the research it can be concluded that the willingness of public authorities to disclose information is low. In none of the countries of the study police, customs, public prosecutors or other governmental bodies were from the beginning willed to support the study with information.

  Public authorities often declared that they are not in a position to provide information due to confidentiality. Another reference was made to the point that they are not allowed to disclose information to private institutions. Especially police, customs and prosecutors reacted like this.
8.2. CZECH REPUBLIC

Overview

Although there is no specialised enforcement structure regarding organised environmental crime there are a number of agency tackling this problem.

With respect to environmental crime in general it has to be highlighted that in all Police districts and regions one or two police officers are responsible for environmental crime within the departments of economic crime. The Department of Organized Crime Detection, which is embedded in the Criminal Police and Investigation Service of the Police headquarters, is responsible for organised environmental crime. Within the Customs the Departments for Customs Supervision and Investigation are responsible for environmental crime with the Customs’ area of activity. Prosecution lies with the sole responsibility of the Public Prosecution service. There are no specialised departments for organised crime or environmental crime.

The Czech Environmental Inspectorate is a specialised supervisory body of the state administration. Although the agency plays an important role for tackling environmental offences in a wide number of areas, it is the most experienced body regarding CITES enforcement. In addition to the Inspectorate the Agency for Nature Conservation and Landscape Protection serves as CITES scientific authority. The State Office for Nuclear Safety plays an important role regarding illegal trafficking and shipment of radioactive waste and nuclear materials.

Figure 15: Enforcement structure in the Czech Republic

Source: Own description
**Police**¹²³⁴⁵

The Police of the Czech Republic is responsible for detection and investigation of crimes. The Police keeps records and statistics on criminality and is also involved in physical protection of nuclear material when transported.

**Organisation**

The Police is subject to the Ministry of Interior. The Police is made up of the Police Headquarters, units with nation-wide jurisdiction and units with locally determined jurisdiction (Administrations of Regions and Administration of the Capital City Prague, District Headquarters, Municipal Headquarters of Brno, Ostrava and Plzeň and Metropolitan and District Headquarters of Prague). There are following organisational units established within the Police: services of patrolling police, criminal police, traffic police, administrative services department, protection police, corruption and serious economic crime unit, foreign and border police, task force, railroad police and air police.

The Police’s activity is directed by the Police Headquarters lead by the Police President. The Police President is the head of all police officers except of those who serve directly at the Ministry or in the departments of investigation. The Police President is appointed and dismissed by the Minister with the consent of the Government. The above-mentioned units are managed by directors. The departments of investigation are directed by the Minister who is also responsible for the appointment of the investigators.

Within the competence of the Police Czech Republic the Police Headquarters – Criminal Police and Investigation Service (hereinafter referred to as CPIS) is the guarantor for detection, documentation and prevention of environmental crime. Within CPIS Department of economic crime – Workgroup of protection of intellectual property and traffic deals with matters of protection of the environment.

Upon the Conception on fight against environmental crime, worked out by the Ministry of Interior, one respectively two policemen responsible for investigating environmental crime were appointed within Departments of economic crime in all Districts and Regions of the Czech Republic⁶.

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¹ The Act of ČNR No. 283/1991 Coll., on the Police of the Czech Republic
² Act No. 141/1961 Coll. on criminal procedure
³ Interview with Capt. Ing. Miroslav Soukup and Vratislav Hanl, Workgroup of protection of intellectual property and traffic, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (7.05. 2003)
⁴ Interview with Jaroslav Hruška, Department of Organized Crime Detection, Criminal Police and Investigation Service, Police Czech Republic (14.04. 2003)
⁵ An Interview with LTc Petr Bárt, the Chief of the Workgroup of protection of intellectual property and traffic, Department of economic crime, Criminal Police and Investigation Service, Police Headquarters (10.04. 2003)
⁶ Please note that there are 80 police Districts and 7 police Regions in the Czech Republic. These police Districts and police Regions are based on the old administrative units of the Czech Republic and they copy the Districts and Regions of the Courts and Offices of the State Attorney. The new administrative units (since 1.1.2003) do not respect the frontiers of the old units. At present, there are 13 Regions and more than 200 “Districts” (i.e. areas administered by Local Designated Authorities).
These policemen are regularly educated in environmental issues through trainings, seminars, and lectures held by the Police Headquarters. A very good co-operation has been developed between the Police Headquarters and the Law Faculty of Charles University in Prague, Department of Environmental Law. Trainings and courses led by specialists from the Department of Environmental Law are held at the Faculty. Moreover the Faculty enabled two policemen to study environmental law within postgraduate studies and another 20 policemen shall pass through the same programme in the future. It is also assumed to extend instruction of environmental law at Police schools.

However according to off record statements, although these policemen-specialists had been appointed for the purpose to handle environmental criminality, in practice they are not enabled to fully dedicate themselves to these matters. The system of evaluation of work is based upon the number of investigated cases and environmental criminality is a highly latent one, therefore requiring time demanding searching, monitoring and analysing the situation before some case is detected and investigated. Therefore to meet the requirements (that is the number of investigated cases) the policemen have to deal with other, more common kinds of crimes with the result of lacking the time for monitoring, analysing and searching for environmental crimes. Their work suffers also from limited resources and technical support, as there is no budget determined for environmental criminality, unlike other branches (e.g. drugs criminality, economic criminality). And detained money and means proceeding from criminal activities are not determined for the use for needs of the Police. In status quo the system within the Police is that the Police deals mainly with cases of illegal trade in endangered species and illegal logging. To develop another unit of the environment, namely wastes, proper conditions and resources (personnel, financial as well as technical) would be necessary.

Besides this basic structure there is a special department of CPIS with nationwide jurisdiction that is responsible for combating organized crime – the Department of Organized Crime Detection, which should also deal with organised environmental crime. There is no special division or workgroup that would deal with environmental crime.

Until today there has been no case solved by this Department although organized and sometimes highly organized groups carry out criminal activities here, namely in connection with illegal trade in endangered species and in matters of hazardous waste and dangerous substances. The situation is the more serious that besides environmental crime they are also often involved in other criminal activities (e.g. drugs or weapons trafficking).

Generally, solving cases of organised crime requires specific instruments and methods of fight and mainly time. Policemen-specialists operating at district respectively regional levels do not dispose of these means. Therefore it would be suitable to establish within this Department a special workgroup of 5 to 8 properly educated people specialising themselves in CITES matters. Co-operation with district and regional units must be a matter of course.
As for illegal disposal of hazardous waste and highly dangerous substances it was
assumed that a specialised workplace would be established that would focus on issues of
illegal handling highly dangerous substances (hazardous waste and other toxic materials).
However until today no steps have been undertaken to realise this suggested measure.
Only marginally are these issues dealt by the Division of weapons, explosives and fissile
materials of the Department of Organized Crime Detection. A special section of fissile
materials was established which is concerning with illegal production and possession of
radioactive materials, illegal transport of radioactive materials, thefts, loss and finding of
radioactive materials, extraordinary events in connection with radioactive materials and
sources of ionising radiation sources.

Working methods

Working methods and modes of operating used by the Police follow from the Act No.
Republic and internal regulations.

The policeman is bound by instructions of the prosecutor. In criminal proceedings the
prosecutor gives instructions to the competent department or to individual policeman
according to matter character. In other matters of exercising services within the Police the
policeman is bound by instructions of his superiors.

The Police keeps at its disposal three basic types of instruments for its activities:

- Intelligence means and device
- Supporting intelligence means and device
- Means for detention of persons and seizure of property

The Police is entitled to use the intelligence means and device in the proceedings of
intentional crimes. The intelligence means and device are as following:

- sham transfer of a thing;
- surveillance of persons and things;
- use of agent.

The policeman is entitled to use following supporting intelligence means and device to
prevent crimes and in connection with criminal proceedings:

- false identity documents
- conspiratorial means
- alarm device
- special financial means
- use of informant

Under the conditions set by the Criminal Procedure Act the Police is also entitled to use following means of investigation of crimes: co-operation with confidants, interceptions and records of phone calls, opening, seizure and swap of mails, searches.

During detection and investigation of environmental crimes the Police uses namely agents and confidants, hidden cameras, interception, sham purchase and sale or other way of transfer of a thing.

The Police Headquarters worked out also a “Methodology for investigation of crimes committed on forests”. This Methodology had been distributed also to basic departments of all units of the Police and to the Foreign Police.

“The aim of drafting this methodical tool is to make the police authorities of the Police of the Czech Republic acquainted with issues of environmental criminality which is happening in connection with illegal logging in forests and mainly with matters of detection, documentation and penalising of this kind of criminality.” The Methodology includes sections dealing with forests generally, history and the current state of law in the area of forest management in the Czech Republic, development of criminal activity in forest management in the Czech Republic since 1995, legal rules, legal qualification and legal responsibility for environmental damage. Part on investigation of crimes committed on forests follows.

The Police also co-operate with various organizations and institutions when detecting and investigating cases of environmental criminality, such as: district and regional offices – departments of environment, Ministry of Agriculture, Central Commission for Animal Protection, Institute for Ecopolicy, National Institute for Public Health, NGOs e.g. Movement DUHA, Animal Protection Trust.

The co-operation lies namely in providing police authorities with expert consultations, reports, professional assistance and of course within the Criminal Procedure Code.

A special agreement was concluded between the Police Headquarters and the Czech Environmental Inspectorate on 24th March 2003 to deepen their co-operation for purposes of “preventig illegal conducts against environment as well as during investigation of criminal acts, offences and administrative delits”.

BfU
The Parties to the Agreement have agreed upon the following:7

- they shall exchange information necessary for discovery and explanation of illegal conducts against the environment;

- they shall exchange information and experience connected with the fight against new forms of illegal activities in the environment;

- they shall exchange information and experience from the field of international co-operation in fight against offences in environment, namely information concerning illegal logging, illegal dealing with hazardous wastes and illegal trade in protected animals and plants;

- in cases of suspicion of criminal offence in environment CIZP shall submit criminal information containing expert opinions necessary to their explanation, without delay;

- they shall co-operate in the field of education, e.g. to exchange instructors-specialist and organize common trainings with emphasis on practical skills.

- the co-operation shall be carried out also at regional level between the Regional Inspectorates of CIZP and the relevant departments of the Police Czech Republic

**Funding**

As there is no special budget determined for financing environmental crime issues financing is provided by general budget of the Police.

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7 General Agreement on co-operation between the Police of the Czech Republic and the Czech Environmental Inspectorate, concluded on 24th March 2003.
Contacts

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**Customs administration**

The Customs Administration exercises control over all goods crossing the state border. In co-operation with other institutions the customs authorities detect illegal trans-boundary movement and search for the goods evaded customs control. As following from the relevant legislation the customs authorities carry out customs supervision over the following items:

- endangered plants and animals
- waste and hazardous waste
- radioactive materials
- ozone depleting substances and products containing them
- dangerous substances

**Organization**

The Customs administration is a system of customs bodies made up of the Ministry of Finance – General Directorate of Customs, 8 Customs Directorates and Customs Offices. The General Directorate of Customs carries out Ministry’s assignments in customs matters. The Directorate has 10 departments. The Department of Customs Supervision and the Department of Investigation are involved in tackling environmental crime. These departments are also at each of the 8 Customs Directorates. There is no special unit responsible exclusively for (organised) environmental crime.

The Departments of Customs Supervision are responsible for methodical support and co-ordination in areas of customs supervision, customs procedure, prohibitions and regulations of imports and exports etc. Customs offices carry out the customs supervision itself.

The Departments of Investigation intervene when a breach of law is detected. Except of dealing with customs offences only this units of the Customs Administration are entitled to conduct criminal investigation of crimes committed in connection with import or export. They have the same position and competence as the Police.

Searching and investigation is conducted by the General Directorate of Customs in cases where violation of legal provisions is of wider extent or of more serious character. Otherwise it is in the competence of the customs directorates.

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8 Interview with Mr. Jiří Trousil, Deputy Director of Investigation Division, 2003-03-13
9 The Customs Act No 13/1993 Coll.
**Working methods**

Except of general working methods used by the customs authorities in all cases of imports and exports, the relevant legal regulations set up special procedures for export/import of endangered species, waste, ozone depleting substances, radioactive materials and dangerous substances. These procedures are very similar and inhere in manual checks of the consignments and freight documents. In cases of violation of legal regulations or in doubts (whether the goods respond to data in documents or whether it is going about CITES species, the goods falls within the definition of waste etc.) the customs authority can detain the goods and ask the relevant institutions for professional help (the Czech Environmental Inspection, the State Office for Nuclear Safety).

The Customs Authorities dispose with x-ray scanners and dosimetric counters for detection of radioactive materials (see part on the State Office for Nuclear Safety). The officers are also provided with a special book of pictures and description of endangered species for purposes of controls of consignments of animals and plants. Detained plants and animals are placed in rescue centres.

Investigative techniques deployed in cases of suspected crime are the initiation of the investigation in case of suspicion, use of agents, electronic instruments, interceptions and records of phone calls, opening seizure and swap of mail, controls unwarranted by specific events and suspicions/random controls, hidden cameras, surveillance of financial transactions, sham transfer of a thing, false identity documents, alarm device, special financial means, use of informant, co-operation with confident.

A special agreement was concluded between the Ministry of Finance-General Directory of Customs and the Ministry of the Environment on co-operation in control of import, export and transit of protected and endangered species of wild fauna and flora. Except of obligations of the parties the Agreement sets up according to which Act (CITES Act or Customs Act) shall be carried on when a consignment detained.

According to the Deputy Director of the Department of Investigation the customs officers mostly deal with such cases like imports and exports without valid permissions, failing to prove the origin and except of classic smuggling there are also lots of cases of ignorance of law, rather then organized criminality in the illegal trade of endangered species. Most of these cases were dealt as infringements or administrative torts because there had not been any clear criterion, which would have distinguished between these minor offences and crimes. Since July 2002 new provisions of § 181f-181h on endangered species are in force making clear when the conduct falls within the category of crimes and reflecting also organised crime.

Also as for the illegal shipment of waste it is difficult to talk about organised criminality. There are lots of cases when individuals from neighbouring states take out their home waste and as for the more serious cases of illegal shipment of waste where organized criminality could be supposed it is all about information that the individual shipment could be carried out illegally. There is also critical situation in shortage of persons conducting search and investigation.
Funding

The Customs Administration is funded from the budget of the Ministry of Finance.

Contacts

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**Prosecutors**

Prosecuting Attorney’s Office competences are:

- PAO brings actions in criminal proceedings
- Fulfils tasks resulting from the rules of criminal procedure such as:
  - To review prosecutions started by the police
  - To preparation cases for court
- To advising the police on possible prosecutions
- To work with and co-operate with other state bodies to improve effectiveness and efficiency of the criminal justice system
- To provide for the legal and administrative support services to deliver the following:
  - Guidance to police prosecutors on application of the Act N.283/1993 Coll.
  - Participates in crime prevention
  - Gives help to victims of crime

**Organization**

The system of PAO copies the system of courts. It means that it is formed by 4 levels of offices comprising the Supreme, High, Regional and District PAOs. Superior PAOs are entitled to intervene in the things that inferior PAOs are dealing with in the way and the scope given to it by the law.

The areas of competence of all the PAOs cover with the areas of court jurisdiction. PAO is competent to represent state in the court unless law stipulates something different.

As part of the Supreme PAO, there is a division called “Kolegium”. It operates in the sphere of the protection of classified information. It has five members appointed by the Minister of Justice for two years. They are independent and can not be relocated during their office. They are not bound by the orders of the Attorney General either.

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1 www.cps.gov.uk
11 § 6-12i zákona 283/1993 Sb., o státním zastupitelství
Prosecuting Attorneys (PA) is in charge of matters entrusted to the competence of the PAO only. No other bodies or persons are entitled to interfere with PAO competence. Prosecuting Attorneys act in pre-trial proceedings and then in criminal and in some cases in civil procedure.

Structure of Chief Prosecuting Attorneys:

Chief Prosecuting Attorneys head the PAOs. They have the authority to set the internal rules of the PAO they are head of. They can also divide the agenda of PAOs among the Prosecuting Attorneys.

Attorney General is proposed by the Minister of Justice and appointed by the Government. Minister of Justice can propose to discharge him from the office and it is the Government again which discharges him. Deputies to the Attorney General are appointed by the Minister of Justice out of persons proposed by the Attorney General.

The Minister of Justice out of persons proposed by the Attorney General appoints high Prosecuting Attorneys.

The Minister of Justice from persons proposed by the High Prosecuting Attorneys appoints regional Prosecuting Attorneys, in whose district he should be appointed.

District Prosecuting Attorneys are the Minister of Justice from persons proposed by the Regional Prosecuting Attorneys.

Each Chief Prosecuting Attorney proposes its deputies to the Minister of Justice, who appoints them.

Minister of Justice can discharge High, Regional and District Prosecuting Attorneys in some cases. Especially when they break duties resulting from the execution of the office. He can also discharge them when the Attorney General proposes it. Prosecuting Attorney and his deputy can resign from his office through a written notice to the person who appointed them.

Working methods

PAO does not have any specialised departments allocated to organized crime and environmental issues. Cases are allocated according to the regional competence of the PAO.

In practice the police carry out the initial investigation. Once the police prepared a prosecution file and transferred it to the PAO, a Prosecuting Attorney will consider whether there is a sufficient evidence to provide a realistic prospect of conviction, whether
it is in the public interest to proceed and - if so – prepares and submits the case to the court.\textsuperscript{12} PAO itself is completely independent of the police. It examines the police evidence. Ministries and other state bodies, local self-government bodies, professional self-governance bodies, courts, legal entities and natural persons are obliged to lend files and documents to PAO if it requires so. The structure of PAOs is based on the principle of superiority and subordination and this is important for investigation methods. Superior PAO can give instructions to subordinate PAO and if it refuses to do so, the superior one can withdraw a case from the subordinate and investigate the case himself.

During an investigation process, some important relations arise between courts, investigators, police investigators and Prosecuting Attorneys. These subjects have rights and duties to each other in criminal procedure.

We can divide relations and rights that Prosecuting Attorneys have towards the court and police investigators between those in preliminary proceedings and those in criminal proceedings.

\textit{Preliminary proceedings}

1) Relations with police investigators and investigators:

- PA supervises the execution of police action, once it came to the conclusion that there are some deficiencies in police investigation, PA can demand to have them corrected

- PA checks and demands information about investigation

- PA can participate in all actions performed by the police and investigators

- In some cases PA can investigate on his own

- Can have the accused commissioned for interrogation

- Withdraws a case from the police or the police investigator

Some actions require his prior approval, such as detention of a suspect, appointment of counsel in some cases, attachment of a bank account, personal body search of a suspect

2.) Relations with courts in preliminary proceedings, PA files a motion with the court:

- For taking the suspect into custody

\textsuperscript{12} \url{www.cps.gov.uk}
- For appointing of counsel in some cases
- For arresting the suspect
- For pertaining to house
- For issuing a search warrant for pertaining to house
- For detaining and opening of mails and despatches
- For tapping of telephone-calls\textsuperscript{13}

There are also other subjects such as banks or post offices which are obliged to provide collaboration to the PA in preliminary proceedings.

3.) Criminal proceedings

- When the criminal procedure begins, the PA has the following tasks:
- Represents the indictment in the trial, expresses his views
- During the hearing he files motions with the court, expresses his opinions on other party’s motions, interviews witnesses
- Works out closing arguments and justifies them

After the judgement PA considers whether there is a sufficient reason to file an application for remedial measure and potentially he represents the indictment in the remedial trial

\textbf{Funding}

PAO is fully funded from the state budget as part of the Ministry of Justice.

\textsuperscript{13} Spr 940/94 Pokyn obecné povahy č. 9/1994 nejvyššího státního zástupce
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**Czech Environmental Inspectorate (CIZP)**

The Czech Environmental Inspectorate [hereinafter referred to as CIZP] is a specialist supervisory body of the state administration in the area of environment. It enforces and surveys legal regulations and decisions of administrative bodies in five different areas: ambient air protection, water protection, waste management, nature protection and forest protection. CIZP was established in 1991 by the act of CNR No. 282/1991 Coll., on the Czech Environmental Inspectorate and its competence in forest protection on the basis of existing individual inspection structures (technical inspection of the protection of water and air). CZIP is an individual budget organisation subject to the Ministry of Environment.

**Organization**

CIZP is an institution with nation-wide jurisdiction. The administrative structure of CIZP corresponds to its subject-matter jurisdiction and local jurisdiction. According to the subject-matter jurisdiction, CIZP is divided into five units (air protection, water protection, waste management, protection of the nature, forest protection), a service unit and secretariats, though the competence of CIZP has been enlarged by other fields: Earth ozone layer protection, supervision of the management of chemicals, accident prevention, GMOs and packaging. Locally, CIZP is divided into the Headquarters with seat in Prague and 10 regional inspectorates: Prague, České Budějovice, Plzeň, Ústí nad Labem, Liberec, Hradec Králové, Havířskův Brod, Brno, Olomouc, Ostrava.

CIZP presently employs about 600 people, most of them as inspectors of regional inspectorates and the Headquarters.

The Headquarters ensures co-ordination of the activity of regional directorate, methodical leadership of specialist units of inspection, collecting, processing and analysing data as well as technical-economical support of inspection work. The Headquarters represents the CIZP in relation to the public and ensures and co-ordinates foreign contacts and activities of CIZP. The Headquarters is split into five specialist departments, Department of Economy and human resources, Technical support office, Department of information technology and general agendas. There is a separate executive unit of the Headquarters with functions as a specialised measuring group subject to the Department of Air Protection. The director appointed by the Minister of Environment presides the CIZP. Organizationally, CIZP is subject to the Deputy of the Minister of Environment for legislation and state administration.

Regional inspectorates of CIZP are created on the regional principle and their jurisdiction usually matches the territories of former Districts (this applies to the sector of air

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14 Interview with Ing. Tomáš Mařík, Chief of the Department of Nature and Landscape Protection, CIZP, 2003-03-10
15 Information provided by the Headquarters CIZP
16 www.cizp.cz
17 CIZP Annual Report 2001
protection, waste management and forest protection). Nature protection units exercise their jurisdiction in large specially protected areas (protected landscape areas, national parks) across District borders. Jurisdiction of water protection units is determined according to drainage areas. Each of the regional inspectorates are divided into five specialized divisions and the department of the chief inspector.
Figure 16: Organization of the Czech Environmental Inspectorate
Working methods

The main working methods of the CIZP are to make checks, investigations and revisions at locations. There are three types of this activity:

- Preventive actions (issuing approvals, authorisations, emission limits)
- Punitive (imposing fines, shutting down installations or restricting activities)
- Remedial (imposing remedial action for eliminating shortages and their causes)
- Violation of current legislation is dealt within administrative procedures by CIZP. There are following types of procedures:
  - Punitive (fines)
  - Remedial (remedial action, withdrawal)

CIZP can also submit report to the Police in the case of suspicion of the commission of a crime. CIZP is not allowed to initiate and conduct criminal investigation.

CIZP is also involved in solving accidents and their prevention. CIZP levies fees in the area of air and water protection, issues approvals for locations of constructions, approves technologies and issues certificates for an authorised emission and immission measurement.

CIZP develops expert opinions, positions and statements for state institutions or other organisations. It co-operates with all the environmental state organisations (Customs Head Office – mainly dealing with CITES and GMO issues, Czech Commerce Inspection, district authorities, Police of the CR, regional authorities, fire brigades, Occupational Safety Inspection, Public Health Office, State Plant Office, and judicial bodies etc) and in particular with the Ministry of Environment. On an international level, CIZP co-operates with other institutions and states in the area of environmental law enforcement, e.g. within the network of IMPEL, co-operation with the Slovak Environmental Inspectorate). Settling public complaints and petitions represents a significant element of communication with public, which helps CIZP to draw attention to law violation, which could remain unnoticed. Information service is another type of public service provided by CIZP.
Table 66: Total number of inspections according to different media 1993-2002

![Graph showing the total number of inspections by media from 1993 to 2001.](image)

Table 67: Development of number of sanctions and remedial decisions according to particular environmental sectors between 1993-2001

![Graph showing the development of sanctions and remedial decisions by year from 1993 to 2001.](image)

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18 CIZP Annual Report 2001
19 Ibid.
**Table 68: CIZP competence**

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<th>CIZP COMPETENCE</th>
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<td>Limitation or shutting down of an installation or activity</td>
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<td>Approvals (of installations and their locations, sources, fuels and raw materials, technologies etc.)</td>
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<td>Responding to complaints, claims and other announcements</td>
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Source: CIZP Annual Report 2001
CITES

CIZP is the main and principal control body with nation-wide jurisdiction through the country. It operates a non-stop emergency service, which is intended mainly to provide professional assistance to the Customs authorities at border crossing points. Coordination of the work between the Customs officers and the nature protection authorities is the subject of an official agreement between the Ministry of Environment and the General Headquarters of Customs, on co-operation in control of import, export and transit of protected and endangered species of wild fauna and flora, concluded in October 1998. An Inter-sectoral Working Group for CITES has been established on the basis of this agreement.\(^\text{20}\) In January 2003 a new CIZP office was opened to intensify and improve controls at the Ruzyne Airport that will soon become the only entrance into EU by air. Inspectors of the department of nature protection of the regional inspectorate Prague maintains a non-stop service there so that they can intervene in cases of violation of CITES agreement without delay.\(^\text{21}\)

Second CIZP performs on-site inspections at markets, shops, breeds and zoos in order to detect specimens of uncertain or suspicious origin.\(^\text{22}\)

CIZP also organizes training workshops on a regular basis for its inspectors. These workshops are also attended by representatives from the Customs and Police.\(^\text{23}\)

Although CIZP has the widest experience in CITES related matters enforcement carried out by CIZP faces a problem that the wildlife inspectors are standard civil servants with very limited powers. According to statements during conducted interviews CIZP does have information on businessmen and smugglers operating here in the Czech Republic. But CIZP must have disposed with similar competences and instruments like the Police to be able to fight against these offenders efficiently.\(^\text{24}\) Moreover the co-operation with the Police is hindered by the fact that only in July 2002 the crime of unauthorized dealing with species of protected wild fauna and flora was established (see § 181f,g, h of the Criminal Act). Although the Police Headquarters is responsible for CITES related matters their work is still rather methodological than investigative and within the present organisational structure, as it was set up, organized forms of CITES crimes cannot be efficiently dealt with (see part on the Police).

Also CIZP must be provided with adequate personnel, material as well as financial resources to be able to carry out all its obligations. Only 25 CITES inspectors have to

\(^{20}\) Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
\(^{21}\) Press Conference at the Ruzyne Airport, report by Eva Rolečková, Gazetteer of CIZP (see http://www.cizp.cz/Tiskovka.htm
\(^{22}\) Interview with Mgr. Pavla Říhová, inspector of Regional Inspectorate Prague, Division of Nature Protection, CIZP (24.3. 2002)
\(^{23}\) Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)
\(^{24}\) An Interview with Mgr. Pavla Říhová, inspector of Regional Inspectorate Prague, Division of Nature Protection, CIZP (24.3. 2002)
cover the whole territory of the Czech Republic\textsuperscript{25}. Insufficient technical – analytical support of the inspectors restrains efficiency of their work. There is a serious need any analytical department would exist, which would gather, process and evaluate all information that CIZP, Customs and Police gain in the course of their investigation activities, and which would administer an overall database of all relevant data connected with (potential) cases of illegal trade in endangered species. This database should serve to all bodies involved in tackling illegal trade in endangered species.\textsuperscript{26}

As for the international co-operation, CIZP closely co-operates on the international level as a member of the subgroup for species protection established by the General Secretariat of Interpol.\textsuperscript{27}

\textit{Waste and hazardous waste} \textsuperscript{28,29}

CIZP does not follow the situation on illegal trade in wastes and hazardous wastes nor it has ever followed the criteria for organised crime. However CIZP (Department of Waste Management) does solve cases of violation of legal regulations and administrative decisions concerning disposal of waste, hazardous waste and chemical substances that CIZP finds out during its inspection activity.

Such cases are dealt within administrative procedures and the most serious ones can be sanctioned with a penalty up to 10 000 000 CZK. CIZP can also submit a report of the commission of a crime to the Police. The most frequent infringements detected are: waste disposal in facilities where such disposal is prohibited or is not permitted; waste disposal without approval or in contradiction with approval of relevant authority; the producer of waste does not secure the waste from unwanted devaluation, theft or escape; the producer does not keep records on wastes and manners of disposal; failure to comply with technological procedures and work order. The number of solved cases of illegal disposal of waste has been increasing. In 1993 it was about 400 cases, in 1994 about 500 and in 2001 more than thousand cases.

Within its competence CIZP controls how legal persons, natural persons entitled to business and municipalities comply with regulations and decisions of the Ministry of Environment and other administrative bodies in the area of waste management through checks, investigations, revisions and inspections. CIZP carries out inspections on the site of the waste origin as well as at premises of waste producers and waste recipients. CIZP performs checks of imports, exports and transits of waste and if asked for, it provides the

\textsuperscript{25}Press Conference at the Ružyně Airport, report by Eva Rolečková, Gazetteer of CIZP (see http://www.cizp.cz/Tiskovka.htm (22.3. 2003)

\textsuperscript{26}Focus on EU Enlargement and Wildlife Trade: Review of CITES Implementation in Candidate Countries; Karin Berkhodt, a TRAFFIC Europe report (2002)

\textsuperscript{27}An Interview with RNDr. Jan Kučera, Division of International Agreements on Nature Protection, Department of Nature Protection, Ministry of Environment (7.4. 2003)

\textsuperscript{28}An Interview with Mgr. Jan Svoboda and Ing. Ivana Svobodová, Department of Waste Management, Regional Inspectorate Prague, CIZP (1.4. 2003)

\textsuperscript{29}Information provided by the Headquarters of CIZP
Customs with professional assistance – CIZP determines whether the consignment falls within the category of waste, ensures or performs analysis of waste etc. CIZP is entitled to control relevant documentation and monitors and keeps surveys of dumping sites.

Also in the area of waste management CIZP does not have enough personnel and material resources. However the more unsatisfactory the situation is as the number of controlled or potentially controlled subjects is taken into consideration (e.g. within the Prague Regional Inspectorate 8 inspectors fall on approximately 600 000 potentially controlled subjects). Inspectors are also very limited in their powers when carrying out controls because they have to fully rely upon the co-operation from the side of the controlled subject, which can be enforced only by imposing the penalty. However due to difficulties with the enforcement of penalties the final coercive effect of this instrument is limited.

**Forests**

Unauthorised devastating felling is dealt within the competence of the CIZP’s Department of Forest Protection. The forest protection unit is the original constitutive unit of CIZP as CIZP was set up by the Act No 282/1991 Coll. On the CIZP and its competence in protection of forests, as a body of state administration. The Act determined CIZP’s competence in the area of forest protection.

CIZP, the Department of Forest Protection, is interested in all aspects of the protection of forests, which means that also illegal logging is dealt by CIZP.

CIZP carries out both planned and random actions aimed at checks of the state of forests and at controls of the forest owners whether they observe legal provisions concerning forest protection and management. CIZP investigates complaints and inducements submitted by the public. CIZP co-operates with other bodies of the state administration of forest in matters of illegal logging, namely with regional as well as district authorities. CIZP provides them with expert assessments and opinions, carries out joint inspections etc. In cases of detected illegal logging CIZP initiates administrative procedure and can impose a fine up to 1 mill. CZK and measures to remove and improve consequences incurred.

Co-operation with the Police is necessary as the offenders try to avoid the delivery of CIZP’s decisions. Also as more cases of criminal rather than administrative offences can be observed, CIZP increases the number of submitted criminal information and co-operates with the Police during investigation by providing it with the opinion on the estimation of ecological damage on forests worked out on the basis of the method of Prof. Viskot. However this method has no legal basis and is not used in all cases of illegal

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30 Interview with Ing. Jaroslav Šura, Chief of the Forest Protection Department, Regional Inspectorate Prague, CIZP (31.3. 2003)

31 Information provided by the Headquarters CIZP
logging (though some prosecutors and judges apply the method in practice) with result that only the price of illegally felled timber is taken into consideration during setting out the terms of punishment.

Although CIZP keeps some records and statistical data on illegal logging it has not made any overall survey of illegal logging until last year when illegal logging in the Czech Republic was monitored and following a task for 2003 was set up to evaluate and analyse consequences of illegal logging.

Also in the area of forest protection the number of inspectors are not adequate to the scale of CIZP’s obligations and competence it was entrusted with.

Funding

No information available.

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The State Office for Nuclear Safety\textsuperscript{32,33,34}

The State Office for Nuclear Safety (hereinafter referred to as SONS) is a central administrative body of state supervision on nuclear safety, radiation protection in the Czech Republic. It is an independent body without any legal relationship to any Ministry or other institution. The Chairman of SONS is appointed by the resolution of Government.

SONS carries out its activity within the legal framework set by the Atomic Act No. 18/1997 Coll. SONS is competent to issue statutory instruments. SUJB’s decisions and other administrative acts can be reviewed only by courts.

Following activities fall within SUJB’s competence:

The SUJB

- shall carry out State supervision of nuclear safety, nuclear items, physical protection, radiation protection and emergency preparedness and shall inspect the adherence to the fulfilment of the obligations arising out of the Atomic Act;

- shall monitor non-proliferation of nuclear weapons and carry out state supervision of nuclear items and physical protection of nuclear materials and nuclear installations

- shall issue permissions for radioactive waste disposal and for shipment of nuclear materials and radionuclide radiators

- shall maintain a State system of accounting for and control of nuclear materials and a national system for registration of licensees, registrants, imported and exported selected items, ionising radiation sources,

- shall decide on assurance of handling nuclear items, ionising radiation sources or radioactive wastes having been treated inconsistently with rules of law, or where the detrimental condition is not being removed;

- shall provide information to municipalities and Regional Authorities concerning radioactive waste management within their territory of administration; and provides the public and the Czech government with information on results of SUJB’s activities

- shall ensure international co-operation within its sphere of competency and, in particular, shall be an intermediary of technical co-operation with the International Atomic Energy Agency, and within its sphere of competency shall communicate information to the European Commission or, if applicable, to other bodies of the European Union;

\textsuperscript{32} Interview with Ing. Zdeněk Prouza, CSc., Deputy Head of Radiation Protection Section, SUJB (18.3.2003)
\textsuperscript{33} SUJB Annual Report 2000, SUJB, Prague
\textsuperscript{34} SUJB Annual Report 2001, SUJB, Prague
Organization

SUJB has the following organizational structure:

- Nuclear Safety Section including:
  - Department of Nuclear Installation Assessment
  - Department of Inspection
  - Department of Nuclear Materials

Radiation Protection Section including:

- Department of Radiation Sources
- Department of Regulation of Exposure
- Department of Radiation Protection of Nuclear Fuel Cycle
- Division for Radiation Protection Assessment

Section of Management and Technical Support including:

- Office Bureau
- Department of Finance and Administration
- Department of International Co-operation
- Office for Control of the Prohibition of Chemical and Biological Weapons

In the SUJB organization structure detached Regional Centers (hereinafter referred to as RC) in Prague, Plzeň, České Budějovice, Ústí nad Labem, Hradec Králové, Brno Ostrava and two on-site Divisions at the nuclear power plant of Dukovany and nuclear power plant of Temelin are working. SUJB had 193 employees in 2002.

SUJB maintains direction of the National Radiation Protection Institute (NRPI), an institution fully funded from the State Budget, and the National Nuclear, Chemical and Biological Protection Institute (NNCBPI), an institution receiving contribution from the State Budget.

Investigation of illegal trafficking and shipment of radioactive waste and potentially radioactive material falls within the competence of the Radiation Protection Section and the Department of Nuclear Materials.
The Radiation Protection Section is also responsible for licensing and state supervision over handling and management of ionizing radiation sources including radioactive waste.

Department of Nuclear Materials intervenes in cases of illicit trafficking in nuclear materials.

Figure 17: Organizational chart of the Czech State Office for Nuclear Safety


**Working methods**

As SUJB carries out state supervision, control, licensing in all matters concerning ionizing radiation sources; its working methods include preventive actions (e.g. determining conditions, requirements, limits, levels, issuing permissions, licenses, approvals, keeping registers, maintaining inspections etc.), sanctioning actions (imposing penalties up to 100 mil. CZK, restricting and withdrawing permissions, licenses, approvals) and corrective actions (imposing corrective measures).
All activities in relation to ionizing radiation sources (production, distribution, management, shipment, disposal, decommissioning, etc.) are subject to SUJB’s permission. In the case of carrying out such activities without valid permission SUJB can impose penalties up to 100 millions CZK.

SUJB issued in 2002 a Recommendation on procedure of radioactive material seizure for the purpose of control over imports, exports or distribution of ionizing radiation sources. The Recommendation is mainly intended for customs officers, fire fighters, policemen and SUJB who handle secondary raw materials and municipal waste.

Briefly, the procedure is as follows:

The control of the transported cargo by measuring devices is carried-out at relevant checkpoints (e.g. scrap yards, incinerator entry, border crossing points, etc.). The examination can be performed automatically by a stationary detection system (hereinafter referred to as SDS) or manually by a portable dosimeter. Each point where SDS is installed should be provided with a suitable portable dosimeter for dose rate counting. The checkpoint should be equipped with a telephone set or the other communication device.

Customs officers should be also provided with so-called radiation pagers that alert if ionizing radiation is present. The pagers are also able to localize a source including course dose rate counting. It is recommended that the workers who perform the dosimetric control should be provided with the personal operative dosimeters.

If the counting system at a checkpoint (i.e. SDS or another dosimetric devices) signals a higher dose rate, it is necessary to confirm that this readout is correct (e.g. by verifying with the other portable, operative, or personal dosimetric counter). If the increase is confirmed the vehicle is detained and the customs office (or the other authority on the basis of the contract) will perform the detailed counting with the appropriate dosimetric counter. If the detailed counting finds a point on the vehicle surface with significantly higher dose rate (i.e. the value significantly exceeds the average natural background), the vehicle is detained. The local RC SUJB shall be immediately informed and the RC SUJB inspector who is charged with the investigation of the event will decide on the next steps. At the same time, the event should be notified to the Czech Police.

According to Ing. Zdeněk Prouza, the Radiation Protection Deputy, only the minority of the events relates to the illegal import, export or distribution (either intentional or unintentional). Majority of events is related to either handling (i.e. collection, sorting and transportation) the secondary (metal) raw material or the use of the machines and equipment that are produced from the contaminated metal materials.

35 Seizure means that radioactive material has been revealed or her is a suspicion on radioactive material occurrence during goods transport through a monitoring point where dose equivalent rate is monitored (e.g. board crossings, entries to metallurgical plants, incinerators, scrap yards, etc.)

36 Radiation Protection Recommendation: Procedure for radioactive material seizure, SUJB, Prague, 2002
As for the radioactive waste there is only one subject authorised to ensure activities in relation to radioactive waste disposal in the Czech Republic. The Radioactive Waste Depository Authority is a state organization. The individual activities carried out by the Authority are liable to SUJB’s permission. No case of illicit trafficking of radioactive waste has been recorded so far.

SUJB maintains also co-ordination role in prevention and combating illicit trafficking in nuclear materials in the Czech Republic. 37

Since 1995 the Czech Republic participates in IAEA Illicit Trafficking Database Programme. SUJB represents the governmental "point of contact" with regard to the Convention on the Physical Protection of Nuclear Material and the Illicit Trafficking Database programme. SUJB also plays a crucial role in establishing the co-operation of different national authorities involved in this matter.

Prevention of illicit trafficking:

The prevention of illicit trafficking in nuclear material is realised by improvements in the State system of accounting for and control of nuclear material (SSAC). The Atomic Law defines basic provisions for accounting for and control of nuclear material and export/import of nuclear material. The Czech Republic is a Member State of the IAEA. All nuclear materials is under “full-scope safeguards”, in accordance with the agreement in INFCIRC/541. A very effective SSAC support gas been established through extensive IAEA inspections as well as national control by SUJB inspectors.

Prevention of illicit trafficking in nuclear material can also be established very effectively by strengthening the State System of physical protection of nuclear material. At nuclear installations in the Czech Republic the provisions to ensure the physical protection of nuclear material are very strictly followed by using technical alarm systems.

Combating illicit trafficking

Combating illicit trafficking in nuclear material is ensured through extensive co-operation of the State authorities focusing on investigation of illegal activities concerning illicit trafficking in nuclear material from other countries into or through the territory of the Czech Republic. This also includes provisions to disclose the possibility of illegal dealing in nuclear material at the national level. The police of the Czech Republic and the Security Information Service play a principal role in this matter. SUJB has an important role in the co-ordination of the activities performed in this field.

37 L. Barták, J. Sedláček: Overview of the Activities on Preventing and Combating Illicit Trafficking in Nuclear Materials in the Czech Republic; Meeting on Combating Illicit Trafficking of Nuclear Materials, November 9-10 2000, ITU, Karlsruhe, Germany
A standing working group of experts has been established at SUJB, with representatives of SUJB, the Ministry of the Interior of the Czech Republic, the police of the Czech Republic, the Ministry of Foreign Affairs of the Czech Republic and the Directorate of Customs. SUJB has been appointed as a contact point to the Convention and also as a contact point to the illicit trafficking database.

Research and Development Programmes

SUJB also supports R&D programmes on the development of analytical methods suitable for precise and forensic analysis of nuclear material of unknown origin. The Central Analytical Laboratory of NRI, carries out these programmes in close co-operation with the European Commission Point Research Centre, the Institute for Transuranium Elements (Karlsruhe, Germany) under the project PHARE/CZ/PH5.01/95. This laboratory also takes part in activities of the Nuclear Smuggling International Technical Working Group.

The NRI is the only laboratory in the Czech Republic, which provides, on the request of SUJB and the police destructive analysis of nuclear material for safeguards and illicit trafficking purposes.

SUJB has also supported the development of procedures and manuals for the police and customs on how to handle seized samples.

Reporting scheme

In the case of illicit trafficking in nuclear material, the police and/or the customs inform SUJB. The seized samples are transferred the Central Analytical Laboratory of the NRI for analysis. The NRI transmits the results to SUJB, and SUJB informs the police.

SUJB report data on illicit trafficking incidents to the IAEA illicit trafficking database office.
Funding

SUJB’s activities are fully funded from the State Budget. Budgetary expenses of SUJB including NRPI and NNCBPI for 2001 were 288 378 thousands CZK.

Total sectoral expenses (in thousands CZK):

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Agency for Nature Conservation and Landscape Protection of the Czech Republic

Although the Agency is not directly involved in tackling environmental crime due to its position of the CITES scientific authority and its activities that the Agency carries out in this field, it is suitable to mention it in this study.

The Agency is a technical organisation of the Ministry of the Environment of the Czech Republic. It carries out methodical, documentation, informative, educational, scientific and consultant activities in the field of nature and landscape care. It provides technical support to the state administration through the entire spectrum of nature conservation and landscape protection on the whole territory of the Czech Republic.

Organization

The Agency has a head-office and specialised departments in Prague, specialised departments within detached office in Brno and Centres in Prague, České Budějovice, Plzeň, Ústí nad Labem, Pardubice, Havlíčkův Brod, Brno, Olomouc and Ostrava and administrations of the 12 accessible caves.

The Agency is a structure component of the state. The Director of the Agency is appointed by the Minister of the Environment.

Working methods

Upon the resolution of the Minister of Environment the basic purpose of the Agency is to secure information system of nature protection and to ensure specialised care for nature and landscape in the Czech Republic.

The Agency has a function of the scientific authority as regards to implementation of the CITES Agreement in the Czech Republic. Agency’s competence follows from the Decree of the Ministry of the Environment implementing some of the provisions of the Act No. 16/1997 S.B., on conditions for importing and exporting endangered species of wild fauna and flora and other measures for protection of these species and on amendment of Czech National Council Act No. 114/1992 S.B., on protection of nature and the landscape, in the wording of later regulations

The Agency carries out mainly following activities in CITES related matters:

38 www.nature.cz
- in co-operation with the state administrative authorities collects and evaluates information on illegal trade in endangered species of fauna and flora and prepares recommendations on means for combating such illegal trade

- collects professional information on endangered species of fauna and flora

- co-operates with the scientific authorities of member countries of the International Convention 1) and other organisations of global nature protection

- issues professional standpoints or carries out other tasks in co-operation with the Ministry and provides further professional assistance on the basis of a request from state administrative authorities

- on the basis of a request from the relevant state administrative authority, issues an opinion on registration of specimens

- issues an opinion on export and import of a specimen

- assess whether the import or export of a specimen does not endanger the survival of an endangered species

The biggest volume of work is represented with assessments whether the intended export or import of CITES specimens does not endanger the survival of an endangered species, which is connected with proving the origin of the specimen. Because information provided by the owner of the specimen are registered by the officer without being properly verified, the Agency examines information on origin and breed. Blood tests-analysis of DNA are often required by the Agency.

**Funding**

The Agency is funded from the budget of the Ministry of the Environment.
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Ministry of the interior\textsuperscript{39,40,41}

Ministry of the Interior is the central body of state administration for internal affairs, namely for public order and other matters of public order and security within. The Ministry ensures communication networks for the Police of the Czech Republic, units of joint rescue service and local authorities of state administration. The Ministry ensures co-operation within the international organisation Interpol.

Organization

The issue of organised crime falls within the competence of the Security Policy Department of the Ministry of the Interior. The Security Policy Department consists of the following units:

- Analyses and Strategies Unit
- Specific Operations Section
- Section of the Security-Administrative Work
- Organisation and Co-ordination Unit

Working methods

The Analysis and Strategies Unit has a significant role in combating organized crime as among its key activities belong:

- gathering and analysing information from the area of public order and security with special focus on fighting corruption and organised crime, environmental crime, Act on the Police of the Czech Republic;
- designing strategic documents and other materials including regular reports on the state of security in the Czech Republic;
- analysing the risk factors which pose danger to the stability of internal security in the Czech Republic, participates n the preparation of government materials aimed at

\textsuperscript{39}An interview with Jan Souček, Deputy Director, the Security Policy Department, Ministry of the Interior (15.04. 2003)
\textsuperscript{40}Security Policy Department, Ministry of the Interior: Strategy for the Fight Against Environmental Crime – Analysis and Proposed Measures, updated version (May 2002)
\textsuperscript{41}http://www.mvcr.cz
dealing with criminogenic factors, prepares proposals for adopting measures in the area of security policy of the Czech Republic within the Ministry of the Interior and the Police of the Czech Republic;

- ensuring co-ordination in securing international co-operation and international contacts concerning public order and security.

Upon the governmental resolution No. 1044 the Updated Strategy for Combating Organised Crime was approved on 23rd October, in which the Minister of the Interior in joint effort with the Minister of Justice, the Deputy Prime Minister and Minister of Finance and the Minister of the Environment was assigned a task to “create a comprehensive strategy for combating organised criminal activities directed against the environment”. The Security Policy Department worked out the material “Strategy for the Fight Against Environmental Crime” the Annex of which is the Analysis of environmental crime and proposed measures.

This strategic material analyses the legal regulation, organisational and institutional framework of the fight against environmental crime. The strategy for fighting environmental crime is based upon a complex analysis of the situation in this area that was made by a special interdepartmental workgroup. The analysis of the situation in the area of environmental crime is resulting from particular findings of police and inspection work.

The material also proposes a package of countermeasures in the areas of organisation, legislation, prevention and education. It stipulates basic tasks for the individual units and departments in the competency of the Ministry of the Interior.

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8.3. ESTONIA

Overview

There is no special enforcement institution/agency/body for organised environmental crime, as such crime categorisation has not required establishment of a specific separate agency. Thus the issue should rather be analysed in the framework of environmental crimes and their relation to organised crime in a wider sense.

Prosecution lies in the responsibility of the prosecutors. On the investigation level the main agencies responsible to take action against offences to environment are the:

- Environmental Inspectorate - state agency under direct supervision of Ministry of Environment liable for implementing measures provided by the law in all areas of environmental protection.

- Regional Environmental Departments - responsible for environmental monitoring and control on the municipality and county level.

- Estonian Police - responsible for investigation, in environmental crime sphere participates mainly if act against environment can be classified as a criminal offence. Police is supervised by the Ministry of the Interior.

- Customs - state agency under Ministry of Finance liable for implementation of import and export regulations and investigations in cases of customs regulations' violations.
Figure 18: Enforcement structure in Estonia

Source: Own description
Police

Organisation

The functions and jurisdiction of the Police and its structural units is defined in the Police Act (enforced March 1, 1991, includes several amendments).

The Estonian Police has four national units: the Central Criminal Police, the Personal Protection Service, the Forensic Service Centre and the Police School. There are seventeen territorial police units called Police Prefectures, each serving one county or town. A police prefecture is a local agency of the Police Board with the authority to exercise executive power. The county prefectures shall guarantee public order and internal security, prevent, combat and detect criminal offences and administrative offences, conduct pre-trial investigation of criminal matters, conduct proceedings in the matter of administrative offences and perform other duties assigned to the police by an Act or legislation. The local police chiefs are called prefects42.

The Central Criminal Police prevents, combats and detects criminal offences, which cover the whole state or several countries, are of serious nature, draw special public attention or have serious consequences, this includes serious crimes against persons, crimes causing great material damage to the state, crimes related to money laundering, crimes needing comprehensive international co-operation and organised crime and drug offences. The Central Criminal Police also conducts and leads police operations for apprehensive criminals who are, to prior information, armed and may resist arrest43.

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42 Estonian Police, www.pol.ee
43 Interview with Mr Märt Palo, Deputy Police Director of the Central Criminal Police, May 8, 2003
Working methods

In offences where during the preliminary investigations it has been identified that that the offence carries characteristics of criminal offence, the further pre-trial investigation is automatically handed over to the Police (prefectures, Central Criminal Police) via the Prosecutor’s Office. However, based on the interview with Mr Palo, deputy police director of the Central Criminal Police, there are no cases where the Environmental Inspectorate has handed over cases of environmental crime directly to the Central Criminal Case based on the identification or organised crime within the process of preliminary investigation.44

In Estonia in general, the share of environmental crimes in the overall crime statistics is relatively small and thus usually no separate specialists are required. According to the Police procedure in cases of environmental crime, the Prosecutor’s Office appoints a specific Police

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44 Interview with Mr Märt Palo, Deputy Police Director of the Central Criminal Police, 8 May 2003
Prefecture to conduct pre-court investigations. The prosecutor does not have the right to appoint one specific police investigator or inspector - that decision is made in the prefecture internally.  

Among all working methods, the most valuable for the Police, when conducting pre-court investigations of environmental crime, are all means of gathering sufficient information about the cases. For this purpose:

- interrogations of witnesses, the accused, the victims
- surveillance methods such as
- telephone wire-tappings
- positioning
- secret co-operation
- secret observations and pursuits
- use of undercover agents
- comparisons (of confiscated natural products, sales locations, fishing or hunting grounds, use of transport, use of telephone and other means of communication)

are among the most important means and methods. The following analysis will be based on the gathered information. Further, more detailed information about working methods was not acquired, as interviewed officials made reference to the classified nature of such information.  

The Police Board and County Police Prefectures have introduced information telephone lines, which, unfortunately, do not find much use. The reasons can be found among the national mentality (i.e. based on the historical background of the nation, people are not sufficiently open to society and do not feel morally responsible) and character of crimes.  

The main problems the Police Prefectures are facing in cases of environmental crime can be identified as follows:

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45 Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)
46 Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)
47 As regulated by Public Information Act, passed 15 November 2000 (RT I 2000, 92, 597; RT I 2002, 63, 387; RT I 2002, 61, 375)
48 Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)
49 Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003); Interview with Mr Märt Palo, Deputy Police Director of the Central Criminal Police, May 8, 2003
- The share of environmental crime in the overall crime statistics is relatively small, though it changes by regions;

- Nation’s attitude and awareness of the effects of environmental crime are not sufficiently supported and is overwhelmed by people’s concern of other, more noticeable spheres of crime, such as thefts of personal property, acts of violence, sales and abuse of narcotics, prostitution etc.

- People’s expectations from the Police are related to more wide-spread spheres of crime, visible police work (Police mobile units’ presence in public spaces, fast arrival of Police officials on crime location etc);

- Lack of resources – both human and financial.

Main co-operation partner of the Police in cases of environmental crime is the Environmental Inspectorate\(^50\), which after the preliminary investigation and identification of criminal character of the cases hands the case over to the Police. The information handed over includes specific information regarding the case – place, time of commitment of crime, person(s) involved, gathered evidence.

However, there is lack of co-operation in specific training, mainly for 2 reasons\(^51\):

- The character of Police investigations in cases of environmental crime does not differ substantially from any other case of investigation (thefts of personal property) and trainings regarding tactical preparation is organised by the Police internally; and

- The number of people dealing with environmental crime in the Police is so small, the environmental crimes’ share in the overall criminal activities is fairly small, that it is usually irrational to allocate resources for special trainings. Also, the co-operation between environmental inspectors and police investigators is sufficiently close.

**Funding**

The Estonian Police Board is financed directly from the annual state budget. The budget allocated for year 2003 is 938,368,600 EEK (59,972,454€).

\(^{50}\) Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)

\(^{51}\) as listed by Mr Arved Ant. Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)
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The Central Criminal Police

Figure 20: Organisation of the Central Criminal Police

Source: Own description

Working methods

According to the Statute of the Central Criminal Police\textsuperscript{52} the scope of the tasks of the Central Criminal Police (CCP) covers prevention, combat and detection of crimes, pre-trial investigations in cases as stipulated in this Statute, gathering and distributing operative information regarding offences, to ensure public safety and safeguard internal security. The CP co-ordinates combat against organised crime, economic offences and drug offences within the state. CCP prevents, combats and hears matters of criminal offences, which:

\textsuperscript{52} Statute of the Central Criminal Police, unofficial translation: \url{http://lex.andmevara.ee/estlex/} search: keskkriminaalpolitsei põhimäärus
- have been committed by criminal organisations or in relation to them;
- are of extreme danger or of public’s special attention or are of particularly serious consequences;
- have caused substantial material damage to the State or local government;
- are related to money laundering;
- require large-scale international co-operation;
- are large-scale drug crimes;
- are special by number of crime committing persons or crime episodes;
- have been committed in manner of extreme danger.

CCP also performs surveillance, including special and exceptional surveillance activities to prevent, combat and identification of crimes. Further it organises and co-ordinates co-operation within International Criminal Police Organisation Interpol, European Police Office (Europol) and police officers residing in other countries. In order to perform its tasks the CCP is allowed to send notifications to police prefectures regarding preparations of and commitments of crimes. It also can make suggestions of forming investigation and operative groups to the National Police Commissioner and heads of police prefectures. Police prefectures have to provide the CCP with information and materials necessary for the fulfilment of its tasks. Specific surveillance tasks can be delegated to other police institutions.53

The main working methods are stipulated in several Acts, mainly Code of Criminal Procedure. The details are classified and for internal professional use only. The work is usually done by investigator appointed to the case or in some instances where larger operations are required, investigative groups (or surveillance groups) can be formed54.

According to the Code of Criminal Proceedings the main working methods for pre-trial investigation are listed as follows55:

- reception of minutes of voluntary confessions, petitions and notices (§91-92);
- questioning and interrogation of suspects (§108), the accused (§125-127), witnesses (§132-134) and victims (§135);

53 Statute of the Central Criminal Police, unofficial translation: http://lex.andmevara.ee/estlex/ search: keskkriminaalpolitsei põhimäärus
54 Interview with Mr Märt Palo, Deputy Police Director of the Central Criminal Police, May 8, 2003
55 http://www.legaltext.ee/et/andmebaas/ search: Kriminaalmenetluse koodeks, available both in Estonian and English
- detention of suspects (§108);
- surveillance (§101; also Surveillance Act);
- confrontations (§136);
- presentation for identification (§137-138);
- search, seizure and seizure of property (§138-148), including confiscation of objects and documents, correspondence, property;
- inspection and physical examination (§149-150)
- comparison of testimony and circumstances (§153')
- carry out investigative experiments (§154);
- take comparative examples (§155).

However, it must be noted, that the Central Criminal Police cannot bring out any examples of investigations of environmental organised crime, nor has in any other cases of organised crime identified possible additional charges of environmental crime\(^\text{56}\).

**Funding**

The Central Criminal Police is funded directly from the annual state budget forming a part of the budget of the Estonian Police Board.

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\(^{56}\) Interview with Mr Märt Palo, Deputy Police Director of the Central Criminal Police, May 8, 2003
Customs

Organisation

Estonian Customs Board is an executive state authority institution, operating in the field of government of the Ministry of Finance of the Republic of Estonia, which effects customs policy of the Republic of Estonia and is the direct administrator of customs arrangement. Operational area of the Customs Board is the customs territory of the Republic of Estonia, i.e. the territory, which is under the jurisdiction of the Republic of Estonia, comprising the land territory, territorial waters and air space. Customs Board is guided in its activity by the laws of the Republic of Estonia, regulations of the Parliament (Riigikogu) and other legal acts. Customs Board is performing given tasks in co-operation with ministries, administrations, local authority agencies and other concerned institutions. Customs Board co-operates with Customs Authorities of other countries.57

Figure 21: Organisation of the Estonian customs

Source: Own description based on Estonian Customs, www.customs.ee

57 Estonian Customs, www.customs.ee
Working methods

Information about the working methods of the customs is considered internal occupational information and is thus not distributed to other parties. Mainly the cases are identified based on false documentation, X-ray scanning.

In matters regarding violations of customs rules, the customs authorities have the right to conduct both surveillance and pre-trial investigations. These responsibilities are performed by the Investigation Department set up in February 2002. The main responsibilities of the Department include the prevention and detection of and combat against illicit trade in narcotic drugs, cigarettes, alcohol, fuel and other goods as well as the pre-trial investigation of such offences, and organisation of surveillance operations. An important part of the work involves addressing foreign assistance requests in criminal matters and several other operations related to criminal procedure of other countries.

Regarding import and export of endangered species, illegally cut timber, waste and (potentially) radioactive substances, the Customs often lack the information about the validity and correctness of documents. It has been discussed, that representatives of Environmental Inspectorate should be present in customs terminals to assist in verification of documents and conduct on-site inspections.

Currently, the Customs officials must contact the Environmental Inspectorate only in case of suspicions, who then in turn carry out inspection by on-the-spot check and verify the validity of documents.

In 2003, the concept of investigation was developed; a well functioning and technically advanced investigation and surveillance service was built up for the detection of offences (illicit trafficking of goods; fraud involving excise duty, value added tax or export duty; narcotic offences) and for the successful investigation of criminal cases. In more general terms, this means fight against international organised crime.

Funding

The Board is financed from the state budget. The Board has its own budget, bank accounts and the stamp with its name and the image of the small national coats of arms on it. The annual budget for 2002 was 207,733,900 EEK (13,276,785€).
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**Prosecutors**

**Organisation**

The Prosecutor’s Office consists of two levels. The Prosecutor’s Office consists of the State Prosecutor’s Office as the superior prosecutor’s office and of 16 county and city prosecutor’s offices. Thus in every major Estonian centre there is a structural unit of the prosecutor’s office. Organisation and functioning of prosecution is regulated by the Prosecution Act and by the Code of Criminal Procedure.

The Prosecutor General, who is nominated to office for five years, heads the Prosecutor’s Office. The senior prosecutor of the county or of the city, who is also nominated into office for five years, heads the county or city prosecutor’s office. The prosecutors of the State Prosecutor’s Office represent public prosecution in the Supreme Court and in district courts and perform other tasks laid on them by the law. County and city prosecutors execute supervision over legality of the pre-trial procedure of criminal cases and represent public prosecution in county and city courts.

The total number of state prosecutors, including the Prosecutor General (currently amounting to 25) and the number of county and city prosecutors (167) is provided by the Prosecutor’s Act and is regulated by Minister of Justice Regulation.62

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62 Estonian Ministry of Justice, www.just.ee
The Prosecutor’s office in general does not specify the spheres of crime in cases of prosecution, however, in areas where illegal cuttings are more wide-spread, prosecutors specialising in prosecution of cases of environmental crime could be identified:

- Mrs Marju Persidskaja; Tartu Prosecutor’s Office;
- Mrs Küllike Kask; Pärnu Prosecutor’s Office;
- Ly Tartu; Pärnu Prosecutor’s Office

Working methods

The prosecutors work in close co-operation with the Police prefectures, Kapo (Defence Police), Keskkriminalpolitsei (Central Criminal Police), Environmental Inspectorate and Regional Environmental Departments in the pre-trial investigations. For example – if during the preliminary investigations by the Regional Environmental Departments or Environmental Inspectorate an offence is identified as a criminal offence, the case materials are given to the Prosecutor’s Office, which then in turn, appoints officers of local Police Prefecture or Central Criminal Police depending on the character of the offence.

Current practice development indicates that the Prosecutor assigned to the case will be responsible for the pre-trial investigation process as a whole; his/her controlling role over pre-trial investigators will increase. In cases of environmental crime this means that the Prosecutor will have sole right to decide and choose the investigative body, i.e. the Police or the Environmental Inspectorate.

Financing

The Prosecutor’s Office is funded directly from the annual state budget under the cost item of Ministry of Justice administrative authority. The annual budget for year 2003 of the Prosecutor’s Office is 77,673,600 EEK (4,964,229€). The total sum is divided by the regional and civil/criminal departments.

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63 Information from Ms Maris Ilves, adviser, European Union Law and Foreign Relations Division, Legislative Methodology Department, Ministry of Justice (e-mail from April 7, 2003).
64 It must be noted, that Regional Environmental Departments do not have independent right to conduct secondary pre-trial investigations. Their role is to identify the character of environmental crime occurred and forward the information to the Environmental Inspectorate.
65 Interview with Mr. Veljo Kütt, Environmental Inspectorate, April 29, 2003; Interview with Mr Arved Ant, Chief Superintendent, Crime Department, Tartu Police Prefecture (May 29, 2003)
66 Interview with Mr Toomas Liidja, Chief Investigator, Environmental Department, Environmental Inspectorate (06/06/2003)
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Organised crime in the sphere of environment in a few Candidate Countries

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Ministry of Environment

Organisation

Besides its responsibilities in the field of law and policy making the Ministry of Environment also participates in the monitoring and controlling of environment as several departments, such as Department of Fish Resources, Department of Water, Department of Waste, Department of Environmental Management and Technology have the responsibility to perform control of the applications for special permits and issue permits. This task is often fulfilled in co-operation with Regional Environmental Departments. This practice is somewhat different from other European Countries where legislation, permit issuing and (secondary) control and monitoring are delegated to separate, ideally independent institutions. This is mainly caused by the lack of resources allocated to these actions and lack of specialists to perform these tasks.

In the framework of CITES, the Ministry of Environment is appointed the national Management authority in Estonia. Under the Department of Nature Conservation of the Ministry of Environment one CITES-co-ordinate specialist, Ms. Kadri Alasi, is employed. The functions of the Ministry is the general co-ordination of CITES issues in Estonia – control, consulting and communication with implementing institutions (Customs, Environmental Inspectorate, the Police, Veterinary and Food Board), issuing CITES permits, public communication and reporting to the CITES secretariat.

Working methods. Description of work-methods, co-operation with other organisations.

Ministry’s different departments, such as fisheries’, waste, nature conservation, forest departments, gather information relevant to their sphere of work from institutions in the jurisdiction of the Ministry. The information, including statistics, is gathered from county environmental departments, whose responsibility is issuing permits (forest, fishing etc. permits) and perform control over the implementation and use of these permits. For example in fisheries’ department, data from fishing diary, landing declarations and first buy are compared, and if the submitted statistics are not reliable, this information is sent to Environmental Inspectorate for further investigation of submission of false information and possible violation of laws and regulations. If violations and/or reporting of false information are identified, the punishment (in cases of misdemeanours) or institution of criminal proceeding (in cases of criminal offences) is delegated to the Environmental Inspectorate.

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67 www.envir.ee/eng/structure.html
68 An interview with Mr Aare Sirendi, Environmental Inspectorate (10/02/2003, Environmental Inspectorate Main Office), and Mr. Ain Soome, Fishery Resources Department, Ministry of Environment (Telephone interview 01/04/2003).
69 Information from Mr. Ain Soome, Fishery Resources Department, Ministry of Environment, April 1, 2003 (filled questionnaire, telephone interview)
Also, in cases of insinuations of violation of relevant regulations from the general public received by the Ministry and its departments, the information is then forwarded to the Environmental Inspectorate for checking and investigation.

The Ministry is also responsible for organising and conducting internal trainings and trainings in co-operation with other institutions, such as the Police, the Environmental Inspectorate, environmental consultant firms as stipulated in the Statutes of respective departments of the Ministry.

Regarding the functions of the Ministry of Environment under CITES, the following information is based on the interview with Ms. Kadri Alasi, specialist of the Department of Nature Conservation, national contact person of CITES. The distribution of functions between different state institutions is based on the principle that control on border (import, export, transit), state internal control and co-ordination, information distribution and legislative control must be ensured.

Ministry’s co-ordination function guarantees information exchange between representatives of relevant authorities, an e-mail list has been established. An official system, including all relevant documentation – legislation, cases etc - does not exist, as there has not been an urgent large-scale need for it. On the implementation level, the Ministry fulfills the task of providing sufficient information for CITES implementation and control. As an example – the customs confiscated imported handbags made of reptile skin. The customs requested price evaluation for the confiscated goods. The ministry was contacted. Then the Ministry contacted national managing authorities of possible countries of origin to specify the estimated market price of the handbags.

On the scope of international CITES co-operation the Ministry is fulfilling reporting and national development task. Estonia’s experience has been relatively scanty and big problems have not been encountered. Representative of Ministry has participated at international CITES conferences, annual reports to CITES Secretariat include overview of yearly development in relevant legislation, data on issued CITES permits and identified violations. Estonia has been indicated in the CITES list of countries, in which legislative framework for CITES implementation is insufficient but this was the result of delay with the annual legislation development report. The error was corrected and information about Estonia’s legislative development was inserted into the database. As current development of CITES implementation the Draft Nature Protection Code has been prepared and is expected to be passed and enforced by the end of year 2003. The new Code sets national frames for CITES implementation.

Closest co-operation on international scale exists between Estonia, Latvia, Finland, Sweden and Denmark. Co-operation with Latvia bases on the similarity of problems and status of CITES implementation. Denmark has assisted Estonia via a co-operation project

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70 Interview with Ms Kadri Alasi, national contact person of CITES, specialist of Department of Nature Conservation, Ministry of Environment (20/06/2003)
"Implementation of CITES in Estonia and Latvia", organised by DANCEE (Danish Co-operation for Environment in Eastern Europe). The 2-year project’s budget was about 766,900€ and included four themes:

- analysis of legislation resulting in suggestions for future development in legislative regulation;

- trainings for implementing authorities (customs, Environmental Inspectorate, Veterinary and Food Board, Ministry of Environment);

- development of labelling system. With the project’s funding microchip readers and microchips for animals and for customs species’ identification programme/database were purchased. The database has been updated once from the project funding, future updating will depend on customs’ own financial possibilities;

- raising public awareness of CITES. Leaflets, poster and information leaflets for passengers at the airport have been printed, itinerant exhibition (currently at the Tallinn airport) introducing the CITES Convention, information and examples of the use of endangered species, requirements for transport of endangered species and their products, photos and materials about Estonian endangered species falling under CITES.

The co-operation with the Danish colleagues has continued after the end of the project, the Danish experts have shared their experience on Danish CITES cases via the e-mailing list.

The main focus of the everyday international co-operation with CITES national managing authorities of Scandinavian countries (mainly Sweden, Finland and Denmark) is on hunting tourism from these countries to Estonia. Permits are issued to huntsmen of these countries who have come to Estonia to hunt and relevant information is then forwarded to the national managing authorities.

On national scale in Estonia, the Ministry has closest co-operation with the Environmental Inspectorate (as the internal national control and regulation authority), customs (as international and border control institution). The Ministry has been invited to participate at and hold seminars introducing CITES. For example at Public Service Academy the CITES training has been included in the curriculum of customs and border guard students, the lectures have been held by the representatives of the Ministry; the Police Board has invited representatives of the Ministry to seminars to hold lectures on CITES and its implementation. In co-operation with the Environmental Inspectorate inspection raids have been planned to zoo shops to control the permits for selling parrots. This activity has been postponed as solution for relocate the parrots after confiscation has not been found. In co-operation with Mrs Tiina Troshkin from the Environmental Inspectorate a manual has been composed for CITES implementation.
Financing

Ministry of Environment is funded from State Budget. The annual budget for the Ministry of Environment for 2003 totals 597,608,400 EEK (38,193,992 €). This sum does not include sums allocated to executive offices subjected to the Ministry. Within the Ministry’s annual budget, no sums allocated directly to fighting against organised crime in the sphere of environment can be identified. The operating expenses of the Ministry, including expenses allocated to law initiations and supervision of executive offices subjected to the Ministry is 145,218,400 EEK (9,281,111 €) for 2003. The Ministry also receives funding from international foreign aid, which is allocated to the improvement of environmental conditions to be implemented by local governments (total sum for 2003 is about 418 m EEK).

The Ministry’s annual budget for CITES implementation and co-ordination is 130,000 EEK (8,310€) in 2003. This includes the membership fee of CITES, expert fees for scientific advisers (in cases of identification of species, suggestions for CITES amendments from Estonia, advising on supporting amendments), participation costs for international seminars, translations.

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Environmental Inspectorate

Organisation

Environmental Inspectorate (hereinafter Inspectorate) is a government agency under the Ministry of Environment area of government. The Inspectorate presents returns of its actions to the Minister of Environment which supervises and co-ordinates the Inspectorate’s operation and performs supervisory control over it as set by the law.

The Inspectorate is responsible for the organisation and implementation of the supervision over natural environment, use and protection of natural resources and it accords the enforcement by the State in the limits and as provided by the law.71

The functions and jurisdiction of the Environmental Inspectorate has been defined in the Environmental Supervision Act (entered into force July 7, 2001). It acts as a secondary and independent body of monitoring and control and does not participate in the environmental permits’ issuing process (as opposed to Regional Environmental Departments).

The Inspectorate is the primary investigative body in proceedings of misdemeanours, but it also acts as the primary pre-trial investigative institution in cases of environmental crimes. The Inspectorate can initiate pre-trial investigations in cases, which can be identified as acts of environmental crime. The results of the investigations are then forwarded to the Prosecutor’s Office and the prosecutor can then re-consign the Inspectorate to conduct secondary investigations.

The structure of Environmental Inspectorate consists of departments, regional departments and offices\(^{72}\).

The Inspection consists of the following departments:

1) General department, with sub-departments or bureaus are: accounting, office, administrative bureau and bureau of infotechnology. The accounting bureau organises the planning, execution of budget and accounting activities. The office organises the records’ management and preservation of documents. The administrative bureau organises the keeping of account of, maintenance and repair of state property transferred into the property of the Inspectorate. The bureau of infotechnology organises the infotechnological service and development of the Inspectorate.

2) Legal department, which guarantees the legal service of the Inspectorate, and in cases necessary, represents the Inspectorate in court, analyses the efficiency of legal acts and exercises internal control.

3) Environmental department, which organises the supervision in the spheres of water, air, forest, hunting, fishing, mineral resources, protection of natural features, wastes and radiation, consults regional departments in these environmental areas, exercises control in its jurisdiction and as regulated by legal acts over its regional departments, it also organises surveillance and models the extent of environmental pollution.

The inspection has the following regional departments and bureaus of regional departments:

- Harjumaa department with Harju county as region of action;
- Järvamaa department with Järva and Rapla counties as regions of action and Rapla bureau with Rapla county as region of action;
- Läänemaa department with Lääne, Hiiu and Saare counties as regions of action and Hiiumaa bureau with Hiiu county as region of action and Saaremaa bureau with Saare county as region of action;
- Pärnumaa department with Pärnu and Viljandi counties as regions of action and Viljandi bureau with Viljandi county as region of action;
- Tartumaa department with Tartu and Jõgeva counties as regions of action and Jõgeva bureau with Jõgeva county as region of action;
- Virumaa department with Lääne- and Ida-Viru counties as regions of action and Lääne-Viru bureau with Lääne-Viru county as region of action;
- Võrumaa department with Võru, Põlva and Valga counties as regions of action and Põlva bureau with Põlva county as region of action and Valga bureau with Valga county as region of action.

**Working methods**

In its sphere of operation the Inspectorate fulfils the following responsibilities\(^\text{73}\):

- exercises state environmental supervision as provided by law;

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\(^{73}\) [www.kki.ee](http://www.kki.ee), *Keskkonnainspektsiooni Põhimäärus (KKMm RTL 2002, 46, 635)*, unofficial translation
- organises environmental protection guarding;

- inspects harbours, port points, ship repair enterprises, ships and other floating vessels and floating on-water platforms and other civil engineering works;

- exercises supervision over Estonian fishing vessels in waters out of Estonian jurisdiction and organises seconding observers Estonian fishing vessels in zone of the Northwest Atlantic Fisheries Organisation (NAFO) and processes information receivable from the observers;

- identifies sources of pollution and participates in the remedy of the effects of environmentally hazardous accidents in co-operation with other state agencies and local governments;

- in cases where fish resources are endangered, makes suggestions to lay down reductions or suspensions of fishing to the Minister of Environment; also makes suggestions for revoking special fishing permits;

- develops co-operation with other states in the field supervision over use and protection of natural environment and resources in the limits of its authority;

- resolves issues related to memorandums and petitions concerning offences against use and protection of natural environment and resources unless it has not been delegated by law to other institutions;

- informs public about the problems relating to offences against use and protection of natural environment and resources;

- makes suggestions for the improvement and development of legislation in its scope of activities, participates in drafting and approval process of draft legislation;

- participates in drafting national programmes, development plans and financial plans for monitoring of use and protection of natural environment and resources; participates in drafting national development plans in other spheres in issues of its field of activities;

- calculates pollution charge, gives consent to calculation of pollution charge by the polluter, verifies to pollution charge calculations by the polluter, enters into agreements as provided by law and collects pollution charges, if the pollutants have been led into water from a floating vessel or oil terminal or in all other cases where according to the Pollution Charge Act (RT I 1999, 24, 361; 54, 583; 95, 843; 2001, 102, 667) higher pollution charges are provided and which have been identified during the supervisory operations.
- participates in resolving environmental monitoring and protection emergency situations in the area of government of the Ministry of Environment, and in advising public to raise public awareness on responding to an emergency;

- organises trainings of environmental monitoring;

- fulfils other tasks as provided by legislation

The implementation of environmental control and monitoring is distributed between 7 regional departments of Environmental Inspectorate. The geographical coverage of these 7 departments does not follow the administrative division of Estonia but rather derives from natural and geographical peculiarities of regions. Provisions for the departments' work are set by Minister of Environment Regulations.

The environmental inspectors have a wide scope of rights to perform their duties – they are allowed to wear and use weapons during their controlling inspections to protect themselves or other persons, also use other special equipment, such as hand-cuffs to take the offender into police custody or other official premises. The environmental inspectors may also use service dogs to allocate hidden natural products or equipment, which can be used as evidence for the procurement. However, in practice these measures are not often used – the Inspectorate does not have any dogs and need to use or demonstrate weapons is usually more psychological rather than actual need to defend. The Inspectorate often requests Police representation on location to arrest or confiscate evidence. The inspectors’ authority to identify (i.e. request documents of personal identification) and impede use of vehicles is limited and in such cases Police assistance is required.

As preventive measures, but also as background information in pre-trial investigations, the Inspectorate mainly uses check-up of information (both statistical and personal), validation analysis of received reports and gathers information from under-cover agents.

In the process of identifying and evaluating environmental damage gathering information, inspections, observations and general communication are used. Here, co-operation with the County Environmental Departments is often used. In addition, quantitative and qualitative measurements on location are used and samples for expert analyses and assessment may be requested from the Estonian Environmental Research Centre may be requested.

One of the valuable working methods of the Inspectorate is the introduction of guarding telephone 1313, which was introduced in 2001. This phone number is free of charge, available 24 hours a day, 7 days a week for notifying any information regarding environmental pollution or pollution threat, illegal cutting of forest, illegal fishing or other illegal use of environment, dead or injured wild animals, illegal dumping of waste, large number of dead wild birds or animals, cruel treatment of animals, other violation of environmental legislation.

74 Interview with Mr Mait Tint, Senior Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
or activities that may possibly be violation of environment. The direct line is in intensive use but misleading calls often violate the purposes – there have been instances where offenders themselves have called on the direct line to call the inspectors on wrong locations. This has enabled to engage the inspectors so as to allow the offenders act freely. The calls are treated as emergency as much as the Inspectorate’s local human resources allow to act immediately, this usually means not more than 48-hours’ reaction time.

As mentioned before, these provide good basis for evaluating the environmental damage and for proceedings environmental compensations, but lack in quality for criminal proceedings. The conflict lies in the fact that the co-operation between the Police, the Prosecutor’s Office and the Inspectorate has not been very successful in pre-trial proceedings of environmental crimes. In many cases criminal charges are dropped due to lack in quality of pre-trial investigations. The Police lack environmental competence whereas the Inspectorate mainly focuses on environmental issues (estimation of occurred environmental damage).

The Inspectorate and its regional departments work in close co-operation with the Police and are mainly dependent on direct contacts rather than official agreements. In cases where environmental violations are identified and are classified as criminal assaults during the initial investigations, the Inspectorate or its regional departments will forward all relevant documentation to the regional Police Prefecture to initiate criminal proceedings. The documents then will be presented to the court or Prosecutor’s Office.

As the new Minister of Environment came to office in April 2003, several meetings with the Minister of Internal Affairs have been conducted to discuss the development of efficient co-operation between different state institutions (mainly the Police and the Environmental Inspectorate as the primary pre-trial investigative bodies) to fight against environmental crime and improve the quality of pre-trial investigations for prosecuting.

Unofficially, the employees of the Inspectorate indicated that in several cases the Inspectorate has asked police officers to assist them in investigations to provide the Prosecutor’s Office with better-prepared documents. This approach has been unofficial but has provided experience to improve the quality of the official co-operation between the institutions.

The investigations of environmental crimes have been lacking from the economic aspect, i.e. in many cases environmental crimes are driven by the wish to gain financial profit (or savings). It has been discussed that the scope of co-operation between different state institutions should be used. The quality and results of pre-trial investigations in cases of environmental crime can be improved by gaining more information about the financial and economic background of the accused. For example, in the main sphere of environmental

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75 Interview with Mr. Mait Tint, Senior Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
76 Interview with Mr Toomas Liidja, Chief Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
77 Interview with Mr. Veljo Kütt, Environmental Inspectorate, April 29, 2003
78 Interview with Mait Tint, Senior Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
crime, which can be described as organised in the economic sense, is illegal woodcutting and trade, information about the financial status and any discriminating information in the possession of other state institutions would improve the quality of pre-trial investigations.\textsuperscript{79} This improvement and development is mainly dependent on the state’s political good will. This is also one of the reasons, why in cases, where environmental damage is difficult to be measured (such as misuse ozone depleting substances), investigations are not often initiated as there are no specific methodologies and instructions and environmental damage is difficult to prove\textsuperscript{80}.

The co-operation bases on case-by-case approach, i.e. there are no specific documents stating the distribution of responsibilities, exchange of information and other means of co-operation. Preparation of such official agreement would require very detailed and thorough presentation of distribution of tasks and currently this is considered too complicated and time-consuming.\textsuperscript{81} The need of co-operation is usually identified by the regional inspectors, concerted with the director of the regional office of the Inspectorate and if necessary formal requests for co-operation are then addressed to relevant institutions.\textsuperscript{82}

The inspectors are relatively independent in their investigations. As their activities lack both financial and human resources, the inspector has to be a specialist in different sectors of environment – the division is mainly “nature” (i.e. forest, fishing, hunting, nature protection etc) and “environment” (waste, contamination, mining etc). The inspections do not base on specific fixed methodology. One of the documents currently used is the “Recommendation of European Parliament and European Council providing for Minimum Criteria for Environmental Inspections in the Member States”(2001/331/EC). The development of such methodology is the task of the Environmental Department of the Inspectorate and is currently in process.\textsuperscript{83}

The inspectors have usually environmental/nature educational background and are provided with additional training, mainly in legislation, pre-trial investigation procedures. Majority of trainings are conducted internally. Co-operation with Tartu University, State Prosecutor’s Office have provided training possibilities. However, training possibilities are limited by financial aspects. According to the interviewed representatives of the Inspectorate this contributes to the lack of criminal investigative skills and is why Police assistance is required in pre-trial investigations in cases of environmental crime. Though, according to legislation, the Inspectorate has the right to conduct pre-trial investigations of environmental crime independently.

The interest of other authorities in training possibilities provided by the Inspectorate is limited as the theme is fairly specific.\textsuperscript{84} The Inspectorate has provided trainings to the Estonian

\textsuperscript{79} Interview with Mr Toomas Liidja, Chief Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
\textsuperscript{82} Interview with Mait Tint, Senior Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
\textsuperscript{83} Interview with Mr Toomas Liidja, Chief Inspector, Environmental Department, Environmental Inspectorate (06/06/2003)
\textsuperscript{84} Ibid.
Rescue Board, environmental officers of municipality governments, but also to the cadets of Public Service Academy.

On international level the participation in Baltic Environmental Forum should be highlighted. Co-operation with other Baltic Sea States has concerned for example inspections of oil tankers, preparations are being made to improve international co-operation in the Baltic Sea region in the sphere of chemicals. 85

**Funding**

Inspectorate’s costs will be covered from the State Budget. The Inspectorate’s annual budget for 2003 is 41,324,000 EEK (2,641,085€). The Inspectorate’s revenue comes from fines (as punishment for misdemeanours), environmental license fees and other state fees related to the tasks of Environmental Inspectorate. From annual budget of 2003, 1mEEK is allocated to purchasing new surveillance equipment.

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The department also has offices in Valga and Põlva.
Regional Environmental Departments

Organisation

The regional environmental departments are subordinated to the Ministry of Environment. The task of the 15 departments can be described generally as implementation of environmental policy in the counties. They implement national environmental programmes, e.g. nature protection, forest and fishery programmes. Issuing of permits and exercising primary control over their use is also among their responsibilities as information gathering and reporting to the Ministry. In the field of forestry they review forestry notices, perform expert analyses on forest protection and manage restitution. Among their responsibilities is also the development of the counties’ waste management plans as well as drafting of programmes for fishery protection.86

Figure 24: Organisation of Estonian Environmental Departments

Source: Own description

86 Estonian Ministry of Environment, www.evir.ee
Working methods

The 15 county environmental departments work in close co-operation with Environmental Inspectorate and its regional departments, the Environmental Inspectorate may exercise control over the county environmental departments and conduct independent control, testing and measurements and monitoring. The system allows objectivity and decreases the possibilities for misuse of official position, i.e. corruption.

As compared to the Environmental Inspectorate, the environmental departments' work methods may be generalised as “desk studies”, i.e. they gather information and identify violations mainly based on reports (as usually one of the responsibilities of special permit holders). The gathered information is then submitted to the Estonian Environment Information Centre. The responsibilities of the Departments are technological rather than legal. They carry out analysis of special permits’ implementation but rely largely on presented statistical information.

In cases where act of environmental crime can lead to criminal punishment, the county environmental departments forward the case to Environmental Inspectorate which then works in co-operation with the regional police prefecture to conduct the relevant investigation and prepare the case to be taken to court. Environmental Departments do not have independent right to represent the state in court or carry our criminal pre-trial investigations.

A special database of special permits and related reporting is used as intranet, the information is forwarded to the Environmental Inspectorate for inspections and in cases of violations, environmental damage charge is enforced. Unfortunately, the intranet is one-sided; the Departments cannot access the results of the inspections, nor have online access to information about violations.

Funding

The 15 county environmental departments are funded directly from the annual budget of the Ministry of Environment; no separate sum can be brought out.

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87 Interview with Mr. Veljo Kütt, Environmental Inspectorate, April 29, 2003
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8.4. HUNGARY

General overview

Due to the fact that no special enforcement agencies/bodies exist in Hungary either for organised environmental crime or environmental crime in general, the display of the law enforcement structure on the following page contains enforcement agencies/bodies in charge of criminal prosecution in general. If not otherwise stated, the named enforcement agencies/bodies handle environmental cases amongst other crimes. On the other hand, special agencies deal with organised crime, and as such, at least theoretically with organised environmental crime. Accordingly, the following discussion displays both criminal prosecution agencies in general as well as the offices that deal with organised crime. Besides that, top-level administration is also displayed, as well as the agencies of public administration supervising different areas related to environment protection. These agencies play a role to the extent that they report cases for criminal prosecution. For the purposes of the study such agencies will be called in general the level of investigation.

It shall be noted, that in the prosecution system, a comprehensive structural reform was implemented during 2001 to address the fight against new forms of crime, in particular organised crime, economic and environmental crime, and corruption. The core elements of this reform were the establishment of a Central Investigation Office at the Budapest Metropolitan Public Prosecution Office, with nation-wide competence to investigate cases of national importance, and an increase of staff.88

Figure 25: Enforcement structure in Hungary

Source: Own description
**Police**

The Hungarian police is a centralised body due to the Hungarian centralised state. The organisational structure of the police is characterised by strong military structures similar to paramilitary organisations.  

At the top of the police organisation is the High Commissioner of the national police. Subsequent to this headquarter are 20 county polices with local subordinated local polices and a "Department for Investigations" which is comparable with the US FBI. There is also an "Office against Organised Crime" integrated in these structures.

*Figure 26: Organisation of the Hungarian Police*

![Organisation of the Hungarian Police](source.png)

*Source: Own description based on Hungarian National Police Office, www.web.b-m.hu*

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Working methods

The role of the police in investigation generally covers all sectors of environmental crime. Probably as a result of the low number of cases involving environmental crime that become known, that no special division has been established within the police to investigate such cases. This, of course, may have repercussions on the number of cases explored, which in turn helps to maintain the status quo in organisational matters.

The police has concluded a formal co-operation agreement with the Chief Environmental Inspectorate.\(^91\) There is no further information available how the agreement works in practice.

Funding

In 2003 the above units of the National Police were accorded the following sums in the State budget.

<table>
<thead>
<tr>
<th>Office of the National Police</th>
<th>Yearly spending:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the High Commissioner of the National Police</td>
<td>HUF 20 612.5 million</td>
</tr>
<tr>
<td>Bács Kiskun County Office of the National Police</td>
<td>HUF 5 479.7 million</td>
</tr>
<tr>
<td>Komárom-Esztergom County Office of the National Police</td>
<td>HUF 3 044.4 million</td>
</tr>
<tr>
<td>Baranya County Office of the National Police</td>
<td>HUF 4 235.5 million</td>
</tr>
<tr>
<td>Nógrád County Office of the National Police</td>
<td>HUF 2 592.2 million</td>
</tr>
<tr>
<td>Békés County Office of the National Police</td>
<td>HUF 3 761.9 million</td>
</tr>
<tr>
<td>Pest County Office of the National Police</td>
<td>HUF 8 283.3 million</td>
</tr>
<tr>
<td>Borsod-Abaúj-Zemplén County Office of the National Police</td>
<td>HUF 6 933.1 million</td>
</tr>
<tr>
<td>Somogy County Office of the National Police</td>
<td>HUF 4 223.7 million</td>
</tr>
<tr>
<td>Budapest Office of the National Police</td>
<td>HUF 28 700.5 million</td>
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<tr>
<td>Szabolcs-Szatmár-Bereg County Office of the National Police</td>
<td>HUF 5 012.9 million</td>
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<td>Csongrád County Office of the National Police</td>
<td>HUF 4 051.6 million</td>
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<td>Tolna County Office of the National Police</td>
<td>HUF 3 005.8 million</td>
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<tr>
<td>Fejér County Office of the National Police</td>
<td>HUF 4 265.1 million</td>
</tr>
<tr>
<td>Vas County Office of the National Police</td>
<td>HUF 2 944.3 million</td>
</tr>
</tbody>
</table>

Organised crime in the sphere of environment in a few Candidate Countries

Győr-Moson-Sopron County Office of the National Police
Yearly spending: HUF 3 891,8 million

Veszprém County Office of the National Police
Yearly spending: HUF 3 813,8 million

Hajdu-Bihar County Office of the National Police
Yearly spending: HUF 5 022,8 million

Zala County Office of the National Police
Yearly spending: HUF 3 086,4 million

Heves County Office of the National Police
Yearly spending: HUF 2 920,4 million

Jász-Nagykun-Szolnok County Office of the National Police
Yearly spending: HUF 3 973,6 million

Co-ordination Centre against Organised Crime

The Centre was established by Act No. CXXVI. with the task of collecting analysing and distributing information from different prosecution and other agencies. The Centre, however, is not taking an active part in the actual prosecution of the relevant crimes. Rather, it provides information that promote the work of the prosecution agencies.

Organisation of the Co-ordination Centre against Organised Crime\(^2\)

The Centre functions as a separate institution under the Minister of the Interior. It is directed by a Director General, appointed by the Prime Minister upon a joint nomination by the Minister of the Interior, the Minister of Finance, the Minister of Defence as well as of the Minister without portfolio responsible for civil intelligence services. The Director General of the Centre is assisted and may be fully represented by a Deputy Director General, appointed by the Minister of the Interior. The staff of the centre is recruited from amongst the civil servants and officials of the agencies with which the Centre co-operates.

Working methods

The activity of the Centre is focused on gathering, analysing and distributing information.\(^3\) Accordingly, it first of all collects information on relevant crimes from the co-operating agencies. Co-operating agencies are, inter alia, the Office of the High Commissioner of the National Police, the Hungarian Customs and Finance Guard and the national intelligence agencies.\(^4\) Agencies dealing with environment or nature protection are, however, not

\(^4\) § 10 (1) ct. No. CXXVI. of 2000.
qualified as co-operating agencies, since these are not taking part in the actual prosecution of crimes. Besides this activity, the Centre also supervises, whether a simultaneous gathering and processing of data takes place, and informs the affected organs. The Centre is entitled to provide the co-operating agencies with information. In turn, these agencies are obliged to furnish the Centre with all relevant information. The Centre is also entitled to propose specific measures in the course of the investigation. The relevant crimes include participation in a criminal organisation, as well as all crimes that have been committed in a criminal organisation to be penalised with imprisonment for five years or more.  

**Contact addresses**

Co-ordination Centre against Organised Crime  
1011 Budapest, Kerepesi út 47/A-B  
Tel: 00-36-1-433-9701  
Fax: 00-36-1-433-9756

**Contact addresses Police**

**Office of the High Commissioner of the National Police**  
Teve utca, 4-6  
Budapest  
H-1139  
P. O. Box Address: P.O. Box 314/15  
Budapest  
H-1903  
Telephone: (+ 36 1) 443 5500; 443 5578  
e-mail: police@bm.gov.hu

**Office against Organised Crime**  
Teve utca, 4-6  
Budapest  
H-1139  
P. O. Box Address: P.O. Box 314/15  
Budapest  
H-1903  
Telephone: (+ 36 1) 443 5500; 443 5578  
e-mail: police@bm.gov.hu

**Bács Kiskun County Office of the National Police**  
6001 Kecskemét Pf.: 302  
Tel.: 06-76/484-684  
Telefax : 06-76/484-684/30-65 m.  
E-mail : sajto.bacsrmrfk@axelero.hu  
bacsrmrfk@bm.gov.hu

**Komárom-Esztergom County Office of the National Police**  
Address : 2801 Tatabánya, V. Komáromi út 2.  
Postal address : 2801 Tatabánya Pf.: 131  
Tel.: 06-34/517-777  
E-mail : komarommrfk@bm.gov.hu

**Baranya County Office of the National Police**  
7622 Pécs, Vargha Damján utca 1.  
Postal address : 7601 Pécs Pf.: 237  
Tel.: 06/72-311-666; 06/72-504-400  
E-mail : sarkozif@westel900.net

**Nógrád County Office of the National Police**  
Address : 3100 Salgótarján, Rákóczi út 40  
Postal address : 3100 Salgótarján Pf.: 130  
Tel.: 06-32/411-255  
Telefax : 06-32/411-255  
E-mail : nogradmrfk@bm.gov.hu

---

Békés County Office of the National Police
5600 Békéscsaba, Bartók Béla u 1-3.sz.
Postal address: 5601 Békéscsaba Pf.: 124
Tel.: 66/523-700
Telefax: 66/444-314
E-mail: bekesmrfk@hu.inter.net

Borsod-Abaúj-Zemplén County Office of the National Police
3532 Miskolc, Zsolcai kapu 32
Postal address: 3501 Miskolc Pf.: 161
Tel.: 06-46/514-500 ügyelet: 06-46/514-506
E-mail: borsodmrfk@bm.gov.hu

Budapest Office of the National Police
Address: 1139 Budapest, Teve utca 4.-6.
Postal address: 1557 Budapest Pf.: 1.
Tel.: 443-5000
Telefax: 443-5378
Web: www.police.hu
E-mail: brfk@bm.gov.hu

Csongrád County Office of the National Police
Address: 6722 Szeged, Kossuth Lajos sugárút 22-24.
Postal address: 6701 Szeged Pf.: 411
Tel.: 06-62/562-400
Telefax: 06-62/562-400
E-mail: csongradmrfk@bm.gov.hu

Fejér County Office of the National Police
Address: 8000 Székesfehérvár, Deák Ferenc u. 2
Postal address: 8002 Székesfehérvár Pf.: 63
Tel.: 06-22/503-910 zöldszám: 06-80/200-607
Telefax: 06-22/541-600
E-mail: sajtószolgálat: agi64@yahoo.com

Győr-Moson-Sopron County Office of the National Police
Address: 9024 Győr, Szent Imre u. 2-4
Postal address: 9002 Győr Pf.: 302
Tel.: 06-96/520-000
Telefax: 06-96/436-301
E-mail: gyormrfk@bm.gov.hu

Pest County Office of the National Police
Address: 1139 Budapest, Teve u. 4-6
Postal address: 1557 Budapest Pf.: 20.
Tel.: 06-1/443-5800
Telefax: 06-1/443-5100
E-mail: pestmrfk@bm.gov.hu

Somogy County Office of the National Police
Address: 7400 Kaposvár, Szent Imre u. 14/C
Postal address: 7400 Kaposvár Pf.: 121.
Tel.: 06-82/502-700/2704 ZÖLD SZÁM: 06-80/200-676
Telefax: 06-82/502-700
E-mail: somogymrfk@bm.gov.hu

Szabolcs-Szatmár-Bereg County Office of the National Police
Address: 4400 Nyíregyháza, Bujtos u. 2
Postal address: 4401 Nyíregyháza Pf.: 66
Tel.: 06-42/524-600
E-mail: szabolcsmrfk@bm.gov.hu

Tolna County Office of the National Police
Address: 7100 Szekszárd, Mészáros L. utca 19-21.
Postal address: 7101 Szekszárd Pf.: 86
Tel.: 06-74/501-100 Zöldszám: 06-80/200-178
Telefax: 06-74/501-145
E-mail: tolnamrfk@bm.gov.hu

Vas County Office of the National Police
Address: 9700 Szombathely, Petőfi Sándor u. 1/c.
Postal address: 9701 Szombathely Pf.: 179.
Tel.: 06-94/521-011
Telefax: 06-94/314-499
E-mail: vasmrfk@bm.gov.hu

Veszprém County Office of the National Police
Address: 8200 Veszprém, Bajcsy-Zsilinszky Endre u. 2.
Postal address: 8201 Veszprém Pf.: 80
Tel.: 06-88/428-022 Zöld szám: 06-80/949-149
Telefax: 06-88/428-022 (11-34)
E-mail: veszpremmrfk@bm.gov.hu
Hajdu-Bihar County Office of the National Police
Address: 4024 Debrecen, Kossuth u. 20.
Postal address: Debrecen Pf.: 35
Tel.: 06-52/516-400
Telefax: 06-52/516-401
E-mail: hajdumrfk@bm.gov.hu

Zala County Office of the National Police
Address: 8901 Zalaegerszeg, Balatoni út 4.
Postal address: 8901 Zalaegerszeg Pf.: 72
Tel.: 06-92/504-300 06-92/311-510 Zöldszám: 06-80-200-492
Telefax: 06-92/504-368
E-mail: zmrfk@mail.orfk.b-m.hu

Heves County Office of the National Police
Address: 3301 Eger, Eszterházy tér 2
Postal address: 3301 Eger, Pf.: 112.
Tel.: 06-36/522-100
Telefax: 06-36/522-142
E-mail: hevesmrfk@bm.gov.hu

Jász-Nagykun-Szolnok County Office of the National Police
Address: 5000 Szolnok, Baross utca 39.
Postal address: 5002 Szolnok Pf.: 97
Tel.: 06-56/501-600
Telefax: 06-56/501-645
E-mail: szolnokmrfk@bm.gov.hu
**Customs**

The Customs and Finance Guard performs duties of execution within the scope of customs administration. The customs administration is a part of financial administration. The customs administration is controlled and supervised by the Minister of Finance. The opening of new frontier stations and closing of existing frontier stations, and the definition of the type of traffic to be handled by particular frontier stations shall be a responsibility of the Government.

In international customs matters related to trade, the Minister of Foreign affairs shall proceed in agreement with the minister of finance, while in other international customs matters the Minister of Finance shall proceed in agreement with the Minister of Foreign affairs.

The customs organisation shall

- perform customs control of goods and passengers crossing the state border and levying and collecting customs duties and other public dues;
- carry out law enforcement duties related foreign persons as defined in a separate law;
- perform - in defined field - examination of products, produces and goods for the purposes of classification related to taxation, quality and other requirements defined in separate legal regulations, whether directly or indirectly, or the control of such examination's performance;
- perform examination, correction, registration, summarizing and processing of and providing the data and information disclosed in customs documents for the purposes of customs and statistics;
- control the trade of products and technologies subject to international control, as defined in separate legal regulations;
- carry out control and posterior control defined in the Customs Code and control required to judge various customs preferences which are subject to certain conditions;
- perform control and taxation duties defined in the Excise Act and in its implementing decrees;
- perform prevention and surveillance and investigation of financial crimes under its competence as defined in the Criminal Procedure Code and other relevant legal regulations, as well as other urgent investigative operations in connection with criminal acts detected by surveillance performed under authorisation granted by law or international co-operation commitment, including securing the scene and gathering evidence and notifying the investigation authority with jurisdiction;
- perform the prevention, detection and judgement of financial misdemeanour offences (customs and foreign exchange, tax and excise) defined in legal regulations;

- carry out safeguarding and escorting of specific assets;

- control the traffic of precious metals and hallmarks;

- operate road border crossing points, including the upkeep, maintenance, and improvement of such;

- handle professional customs duties arising by virtue of working relationships with foreign customs administrations and international customs organs pursuant to authorisation by the Minister of Finance or international conventions.

- perform all of the tasks associated with providing binding information, in particular issuing and withdrawing such information, examining documents attached to the applications, carrying out on-site inspections and controlling manufacturing operations and production activities.

Organs of the customs organization:

- Customs organs with authoritative jurisdiction:
  
  - Basic level (local) organs: customs office, investigation office, contravention office, Customs Goods Warehouse,

  - Intermediate level organs: regional administrative organs, Central Airport Directorate, Central Law Enforcement Directorate, Central Control Directorate, Central Patrol Unit, Administrative Management and IT Centre, Customs Laboratory,

  - High-level organ: Directorate General and the Commissioner.

- Customs organs without authoritative jurisdiction shall mean the organs established to supply technical and material assets to the various customs organs, provide financial and economic services and basic and advanced training to staff officers, and organise health care, social and cultural services
Financing

The Hungarian Customs and Finance Guard was accorded a sum of HUF 38 348,2 million in the 2003 State budget. Within that, the Directorate General of the HC&FC received HUF 7 162,4 million, the regional directorates HUF 31 158,4 million.

Contact addresses

**DIRECTORATE GENERAL OF THE HC&FG**
Phone number: 456-9500
Address: 1095 Budapest, Mester u. 7.
Postal Address: 1450 Budapest, Pf. 109
Phone number: 470-4119, 470-4121, 470-4122
Fax: 470-4120
Address: 1143 Budapest XIV., Hungária krt. 112-114.
E-mail Address: vam.info@vpop.hu

**SOUTHERN-PLAIN REGIONAL DIRECTORATE SZEGED**
Central Phone number:(62)567-400
Fax number:(62)567-498
Address: 6724 Szeged,Csemegiu.4.
Postal Address: 6701 Szeged, Pf. 449.

**CENTRAL-TRANS DANUBIAN REGIONAL DIRECTORATE SZÉKESFEHÉRVÁR**
Central Phone number: (22) 514-450
Fax number: (22) 514-497
Address: Székesfehérvár, Prohászka O. u. 42.
Postal Address: 8002 Székesfehérvár Pf.: 192.
### SOUTHERN-TRANS-DANUBIAN REGIONAL DIRECTORATE Pécs
- **Central Phone number:** 06-72/233-155, 06-72/212-881, 06-72/233-699, 06-72/211-317
- **Fax number:** 06-72/522-035, 221-102
- **Address:** 7621 Pécs, Munkácsy M. u. 6.
- **Postal Address:** 7601 Pécs, Pf.: 247.

### CENTRAL HUNGARIAN REGIONAL DIRECTORATE Budapest
- **Central Phone number:** 470-4100; 267-1445; 267-1446; 267-1447
- **Fax number:** 470-4253
- **Address:** 1143 Budapest, Hungária krt. 112-114.
- **Postal Address:** 1581 Budapest, Pf.: 29.

### NORTHERN-PLAIN REGIONAL DIRECTORATE Debrecen
- **Central Phone number:** (52) 518-900, 518-902
- **Fax number:** (52) 410-417, 348-278
- **Address:** 4025 Debrecen, Hatvan u. 45.
- **Postal Address:** 4001 Debrecen, Pf.: 56.

### WESTERN-TRANS-DANUBIAN REGIONAL DIRECTORATE Szombathely és Győr
- **Central Phone number:** (94) 500-960
- **Fax number:** (94) 310-481
- **Address:** 9700 Szombathely, Hunyadi u. 47.
- **Postal Address:** 9701 Szombathely, Pf.: 32.
- **E-mail:** vpmp-vas@mail.matav.hu
- **Central Phone number:** (96) 313-820, 318 - 522 , 318-413 , 327-397
- **Fax number:** (96) 311-164
- **Address:** 9002 Győr, Eszperantó u. 38.
- **Postal Address:** 9002 Győr, Pf.: 304
Prosecutors

State Attorneys have in general many old activities, several of which relate to the protection of the environment. Most importantly, criminal charges are raised before the criminal courts by the state attorneys. Besides that, state attorneys may take up cases already in the phase of the investigation. In such cases state attorneys are responsible for establishing the facts and collecting evidence – an activity usually carried out by the police. Further, state attorneys supervise the investigative activity of the police. Finally, state attorneys may file civil law suits before the courts in order to claim damages caused by individuals to the environment.96

The structure of the state attorneys offices follow the court system: state attorney are located at the criminal courts. Accordingly, state attorneys operate at local courts, and at county courts. The Office of the Attorney General represents cases before the Supreme Court. From the crimes falling into the sphere of this study only participation in a criminal organisation belongs to the power of county courts and therefore of the state attorneys operating at the county level. Other relevant crimes belong prime facie to the power of state attorney operating on the local level. Only in second instance will county courts and therefore state attorneys at the county level play a role. This fact is relevant from the perspective, that the offices of the state attorneys at county level all have a state attorney designated to deal with environmental crime.

Figure 28: Organisation of the Prosecutors

Source: Own description

Financing of the offices of the state attorneys

State attorneys are accorded in 2003 a total of HUF 18 981,6 million in the State budget.

Contact addresses

Office of the Attorney General
1055 Budapest, Markó u. 16.
1372 Budapest, Pf.: 438.
T.: 269-2600-2615-ig

OFFICE OF THE GYŐR-MOSON-SOPRON COUNTY ATTORNEY
9021 Győr, Szent István u. 6.
9002 Győr, Pf.: 9.
T.: (96) 318-731
T./Fax: (96) 313-153

CENTRAL PROSECUTION OFFICE OF THE ATTORNEYS
1066 Budapest, Zichy u. 14.
1368 Budapest, Pf.: 251
T./Fax: 354-2810

GYŐR-MOSON-SOPRON COUNTY PROSECUTION OFFICE OF THE ATTORNEYS
9021 Győr, Árpád u. 58.
9002 Győr, Pf.: 306.
T.: (96) 328-958
Fax: (96) 329-282

OFFICE OF THE BUDAPEST ATTORNEY
1054 Budapest, Akadémia u. 13.
1881 Budapest, Pf.: 13.
T.: 302-2575

OFFICE OF THE HAJDÚ-BIHAR COUNTY ATTORNEY
4025 Debrecen, Széchenyi u. 9.
4001 Debrecen, Pf.: 60.
T.: (52) 412-415, 525-211, 414-820
Fax: (52) 316-772

BUDAPEST PROSECUTION OFFICE OF THE ATTORNEYS
1056 Budapest, Belgrád rkp. 5.
1251 Budapest, Pf.: 9.
T./Fax: 266-5730, Fax: 266-5088

HAJDÚ-BIHAR COUNTY PROSECUTION OFFICE OF THE ATTORNEYS
4029 Debrecen, Attila tér 3.
4002 Debrecen, Pf.: 95.
T.: (52) 525-810, 525-820
T./Fax: (52) 525-816

OFFICE OF THE BARANYA COUNTY ATTORNEY
7623 Pécs, Jókai u. 26.
7601 Pécs, Pf.: 35.
T.: (72) 518-930
Fax: (72) 518-935

BARANYA COUNTY PROSECUTION OFFICE OF THE ATTORNEYS
7623 Pécs, Jókai u. 26.
7601 Pécs, Pf.: 35.

OFFICE OF THE HEVES COUNTY ATTORNEY
3300 Eger, Barkóczy út 1.
3301 Eger, Pf.: 121.
T./Fax: (36) 310-115

HEVES COUNTY PROSECUTION OFFICE OF THE ATTORNEYS
3300 Eger, Barkóczy út 1.
3301 Eger, Pf.: 121.
<table>
<thead>
<tr>
<th>County Name</th>
<th>Office Address</th>
<th>Phone Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bacs-Kiskun County</td>
<td>6000 Kecskemét, Rákóczi út 7</td>
<td>(76) 519-519/394 m.</td>
</tr>
<tr>
<td></td>
<td>6001 Kecskemét, Pf.: 13.</td>
<td>(76) 485-658</td>
</tr>
<tr>
<td></td>
<td>T.: (76) 519-519</td>
<td>T./Fax: (76) 481-153</td>
</tr>
<tr>
<td></td>
<td>Fax: (72) 518-943</td>
<td></td>
</tr>
<tr>
<td>Jász-Nagykun-Szolnok County</td>
<td>5000 Szolnok, Kossuth u. 1.</td>
<td>(56) 422-932</td>
</tr>
<tr>
<td></td>
<td>5001 Szolnok, Pf.: 101.</td>
<td>(56) 372-010</td>
</tr>
<tr>
<td></td>
<td>T.: (36) 413-964</td>
<td>T./Fax: (36) 413-964</td>
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<tr>
<td>Békés County</td>
<td>5700 Gyula, Városház u. 6-8.</td>
<td>(66) 463-733</td>
</tr>
<tr>
<td></td>
<td>5701 Gyula, Pf.: 50.</td>
<td>(66) 463-839</td>
</tr>
<tr>
<td></td>
<td>T.: (66) 463-733</td>
<td>T./Fax: (66) 463-839</td>
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</tr>
<tr>
<td>Komárom-Esztergom County</td>
<td>2800 Tatabánya, Népház u. 6.</td>
<td>(34) 323-577, 323-378</td>
</tr>
<tr>
<td></td>
<td>2803 Tatabánya, Pf.: 302.</td>
<td>(34) 323-216</td>
</tr>
<tr>
<td></td>
<td>T.: (34) 323-577, 323-362</td>
<td></td>
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<tr>
<td></td>
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<td>Fax: (34) 323-216</td>
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</tr>
<tr>
<td>Borsod-Abaúj-Zemplén County</td>
<td>3525 Miskolc, Dózsa György út 5-7.</td>
<td>(46) 342-887</td>
</tr>
<tr>
<td></td>
<td>3501 Miskolc, Pf.: 550.</td>
<td>(46) 342-900</td>
</tr>
<tr>
<td></td>
<td>T.: (46) 342-887</td>
<td>T./Fax: (46) 342-900</td>
</tr>
<tr>
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</tr>
<tr>
<td>Nógrád County</td>
<td>3100 Salgótarján, Május 1. u. 43.</td>
<td>(32) 420-425</td>
</tr>
<tr>
<td></td>
<td>3101 Salgótarján, Pf.: 117.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>T.: (32) 420-425</td>
<td>T./Fax: (32) 420-425</td>
</tr>
<tr>
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<tr>
<td>Csongrád County</td>
<td>6720 Szeged, Széchenyi tér 4.</td>
<td>(31) 370-211</td>
</tr>
<tr>
<td></td>
<td>6701 Szeged, Pf.: 432</td>
<td>(31) 370-210</td>
</tr>
<tr>
<td></td>
<td>T.: (35) 300-211, 300-230, 301-236</td>
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<tr>
<td></td>
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<td>Fax: (35) 300-225</td>
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<tr>
<td>Pest County</td>
<td>1378 Budapest, Vörösmarty u. 34/A.</td>
<td>(31) 370-211</td>
</tr>
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</tbody>
</table>
OFFICE OF THE ZALA COUNTY ATTORNEY
8900 Zalaegerszeg, Jókai u. 2.
8901 Zalaegerszeg, Pf.: 89.
T.: (92) 315-655
FAX: (92) 312-767

Zala County Prosecution Office of the
Attorneys
8900 Zalaegerszeg, Jókai u. 2.
8901 Zalaegerszeg, Pf.: 89.
T.: (92) 315-652
Fax: (92) 315-655
Others

Other state organs do not formally take part in the criminal investigation or prosecution of environmental crime, but do initiate such procedures in their respective field of competence. It shall be noted that permitting and enforcement are not separated in Hungary; all licensing authorities have the responsibility of checking and enforcing their own prescriptions. The primary method of compliance checking is site visits, but self-monitoring is growing in importance. Inspections usually cover only one environmental medium. However, there have been some new initiatives to introduce multi-sectoral integrated inspections, sometimes carried out jointly with other authorities. The Ministry of Environment and Water Management and the National Environmental Inspectorate are urging the Regional Environmental Inspectorates to include integrated inspection of bigger environment polluters in their annual work plans. As regards enforcement, an inspector can, in case of non-compliance, impose a penalty or an enforcement notice to remedy, change a process, decrease production or as a last resort shut down. Enforcement notices, administrative fines, personal fines, and reports to the Public Prosecution Offices are common forms of action.\textsuperscript{97}

Department for International Agreements (CITES Offices)

The following section lists these organs together with their contact information. As first, Department for International Agreements (CITES Offices), Nature Protection Office of the Ministry of Environment Protection is dealt with. This organ has probably the most experience in the relevant field, since Hungary has been a member of CITES for more than a decade.

Working methods

The Office continuously supervises the relevant field. Should it become necessary, the Office initiates criminal investigation of the case. It is a newly developed technique, that the office surveys drug smuggling. Experience shows that illegal traffic with protected species is connected to that activity. The Office co-operates with the state attorneys' offices and with the National Customs and Finance Guard. This co-operation is, however, mostly informal and has no specific legal basis. In 1997, however, the Office concluded an agreement with the National Customs and Finance Guard, on the basis of which the Office provides training for the employees of the latter institution.\textsuperscript{98} Such training will help to enhance the effectiveness of border control with regard to protected species.

\textsuperscript{98} Magyar Hírlap, 30 August 2000.
Financing

The Office and the Department for international agreements is part of the budget of the Ministry of Environment Protection. No specific data is available about the yearly expenses and incomes. In 2003 the Ministry was accorded a total of HUF 5 304,5 million in the State budget.

Contact addresses

Department for International Agreements (CITES Offices), Nature Protection Office of the Ministry of Environment Protection
H-1121 Budapest, Költö u. 21./23.
Hungary
Tel.: 36-1-395-2605/155
Email: rodics@mail2.ktm
Web site: www.ktm.hu

Forestry Office of the Ministry of Agriculture
1055 Budapest
Kossuth Lajos tér 11
Tel.: (1) 301-4000
Fax: (1) 3014678
mail: baratossy@posta.fvm.hu

Hungarian Energy Office
Magyar Energia Hivatal
1081 Budapest,
Köztársaság tér 7.
Hungary
Tel: (+36-1) 459-7777
Fax: (+36-1) 459-7766
National Inspectorate for Environment and Nature Conservation

The National Inspectorate for Environment and Nature Conservation functions as supreme environmental inspection authority and is subordinated to the Ministry of Environment. It is the central organ responsible for implementing national environmental policy and coordinating the work of twelve Regional Environment Inspectorates, as well as nine National Park Directorates. The Regional Environmental Inspectorates are responsible for permitting, monitoring and enforcement of the national environmental policy. For policy implementation in the field of nature protection the National Park Directorates are in charge. Further they are supervision authorities for municipal authorities regarding environmental issues.

Figure 29: Organisation of the National Inspectorate for Environment and Nature Conservation

Source: Own description

Working methods

Permitting, monitoring and enforcement of the national environmental policy lies mainly with the Regional Environmental Inspectorates, except in the field of nature protection. The Regional Environmental Inspectorates issue permits for the following:

100 European Commission: Administrative Capacity for Implementation and Enforcement of EU Environmental Policy in the 13 Candidate Countries, 2001, p. 51
101 Pieper, Verena/Schmidt, Rami/Thode, Peggy/Wollny, Heinrich: Die Umweltpolitik in den Transformationsstaaten Mittelosteuropas, Humboldt-Universität zu Berlin, 2000, p. 30
- sewage discharges;
- emissions to the atmosphere from industry;
- hazardous waste activities;
- permitting of import of non-hazardous waste;
- permitting of activities having significant impact on the environment on the basis of environmental impact assessment.102

Around 1400 people work in the 12 Regional Environmental Inspectorates, of those around 350 are responsible for inspection and permitting. The frequency of inspection varies as in some cases the frequency is established in law, whereas in other cases it is at the discretion of the authority. Typical frequencies are:

- emissions to air: annually;
- waste water discharges: two times per year;
- noise emissions: in case of problem;
- hazardous waste: once every three years.103

Methods of inspection depend on the environmental medium and the inspector. Some inspections assess the technology and available documents to check on information supplied by self-monitoring (e.g. for hazardous waste). Samples may be taken for analysis on a regular basis (e.g. waste water) or emissions monitoring may be assessed on site. There are no simple "walk through" undertaken by inspectors, nor are there inspections at the response to public complaints. Surprise visits can be made by inspectors.104

An inspector can in case of non-compliance impose a penalty or an enforcement notice to remedy, change a process, decrease production or as a last resort shut down. Enforcement notices, administrative fines, personal fines, and reports to the Public Prosecution Offices are common forms of action.105

Although the situation seems to have increased106, other sources report that there is an deficit in implementation due to a lack of financial and personnel resources and effective

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102 European Commission: Administrative Capacity for Implementation and Enforcement of EU Environmental Policy in the 13 Candidate Countries, 2001, p. 127
103 Ibid., p. 222-223
104 Ibid., p. 223
106 Ibid.
control mechanisms. The lack of financial resources resulted e.g. in accomplishing environmental impact assessments by inspectors, although the companies are bound by law to do this by their own. Thus the Regional Environmental Inspectorates are contractors of private companies which may result in conflicts of interests.  

Further there are reports on problems of execution due to an unclear division of responsibilities.

In order to strengthen co-operation with other state institutions the National Inspectorate for Environment and Nature Conservation has concluded formal co-operation agreements with the police, the consumer protection service, the Mining Office, the National Public Health Service and the water management authorities. Further efforts are needed to enhance inter-institutional co-operation in environment matters.

**Contact address**

National Inspectorate for Environment and Nature Conservation  
Fő utca 44-50  
1011 Budapest,  
Postal address: 1384 Budapest, Pf. 756.  
Tel. 00-36-1-457-3300

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107 Pieper, Verena/Schmidt, Rami/Thode, Peggy/Wollny, Heinrich: Die Umweltpolitik in den Transformationsstaaten Mittelosteuropas, Humboldt-Universität zu Berlin, 2000, p. 30
108 Ibid., p. 33
8.5. LITHUANIA

General overview

The Republic of Lithuania is facing threats of the organised crime since the restoration of the independence in 1990. The institutional system has been inherited for Soviet occupation period. The Republic of Lithuania has performed a number of reforms, which lead to strengthening of administrative capacities in the fight with crimes on the whole and organised crime. There are no special institutions for the fight with the environmental organised crime. Even the institutions, whose target is fighting with organised crimes, publicly declare that they do not deal with organised environmental crime\(^\text{110}\).

The general scheme of the national bodies responsible for tackling environmental organised crime could be as it is provided within the chart bellow:

\[ Figure\ 30: \textit{Enforcement\ structures\ in\ Lithuania} \]

\[ Source: \textit{Own\ description} \]

\(--\)

\(\text{\textsuperscript{110}}\ \text{Letter\ No.\ 5.10-993 by\ the\ Vilnius\ County\ Prosecutors\ Office,\ Department\ for\ the\ fight\ with\ Organised\ Crime\ and\ Corruption,\ 6\textsuperscript{th}\ May\ 2003.}\)


**Police**

**Organisation**\(^{111}\)

The police system consists of:

- The Police Department at the Ministry of the Interior of the Republic of Lithuania;
- Territorial police bodies;
- Police professional training institutions;
- Specialised police bodies.

Territorial police bodies are police commissariats, which carry out the functions, attributed to them by legal acts, in the established territory. Police professional training institutions shall be police professional training divisions, established by the Police Commissioner General, which ensure constant professional improvement of police officers. Specialised police bodies shall be police divisions established on a non-territorial principle, which carry out certain (special) police functions assigned to them by legal acts. As there are no specialized police bodies for fighting organized environmental crimes the territorial police bodies shall be the ones who is mainly fighting with such crimes. Territorial police bodies implements their activities at local and district level.

The Police Department is the central body of the police system in Lithuania and it's main function is to assist the Police Commissioner General to form a strategy of police activities and control its implementation, as well as to organise and implement the management of police bodies. One of the bodies is Organized Crime Investigation Service of Lithuanian Criminal Police bureau, which is fighting against organized crime. However it's competency is to fight against organized crime but not exclusively with organized environmental crime.

\(^{111}\) Lietuvos Respublikos policijos veiklos įstatymas VIII-2048 (Žin. 2000, Nr. 90-2777)
**Working methods**

The police officer have the right and obligation to work in the following manner:

Having reasonable suspicion that an administrative violation of law or a criminal act has been carried out, to check documents of the person who is related to it, documents of the means of transport, freight documents and to seize them temporarily, until the adoption of a decision;

In the manner prescribed by the law, to detain and bring offenders to official premises of the police or other law-enforcement institutions for the purpose of establishing their identity, drawing up records, statements and reports, and examining the persons and their possessions;

While in pursuit of criminal suspects or absconding criminals, or in an attempt to prevent a criminal act from being carried out, to enter, at any time of day, residential or non-residential premises, territories of natural and legal persons, as well as to halt and enter any means of transportation. If such actions are met with resistance, police officers shall
have the right to use force to open the premises or means of transportation in question. A police officer shall also be granted this right in the event of a natural calamity or catastrophe. The Prosecutor’s Office shall be notified within 24 hours of such actions;

To use, in cases provided for in Chapter 4 of this Law, firearms, physical and other kind of coercion;

When going to the scene of an incident, pursuing criminals, or transporting people in need of urgent medical aid, to health care institutions or in other urgent cases, to use, without intervention and without charge, all means of transportation belonging to natural and legal persons, with the exception of means of transportation belonging to diplomatic or consular missions. In case of official exigency, the police officer shall have priority in the acquisition of tickets for all means of transportation; when all tickets are sold out they shall have the right to board all means of transportation. Upon request of the owner of the means of transportation, the police must, in the manner prescribed by the Minister of the Interior, compensate for the damages inflicted on him;

To use, in cases of official emergency, communication facilities owned by natural or legal persons without charge. Upon request of the owner of communication facilities, the police must, in the manner prescribed by the Minister of the Interior, compensate for the damages inflicted on him;

- To temporarily restrict access to a particular territory or premises, to halt on-going works, to restrict or suspend traffic in the event that nature is endangered, public order, security of the individual or the State is being threatened;

- To check a person driving the means of transportation, when suspecting that the said person is under the influence of alcohol, narcotics, psychotropic or other toxic substances or affected by medicaments, not to allow such person, as well as the person who does not have the right to drive or who due to his health condition creates danger to traffic safety, to drive the means of transportation;

- To prohibit to exploit means of transportation the construction or technical state of which does not correspond to valid road traffic rules, norms or standards;

- To seize, in the procedure established by the law, firearms, ammunition, explosives, narcotics, and other objects and substances subject to license if the said object or substance is being kept or used in violation of rules;

- In the manner and cases prescribed by laws and other legal acts, to demand and to free of charge get from State and private institutions information necessary for the implementation of police tasks;

When ensuring the implementation of police tasks and without violating the inviolability of individual’s private life guaranteed by the law, to take photographs, to make audio or video recordings.
While preventing criminal acts policeman shall have the right to act in such ways:

- To visit people who are put on the police prevention register in the manner prescribed by laws and other legal acts at their homes or to summon them to police quarters for preventive discussions, as well as to summon to police quarters and to officially caution other persons for their inadmissible behaviour which is in conflict with public interests;

- To enter, at any time of day, residential premises of convicted persons when this is related to the enforcement of a decision adopted by the court or carrying-out of assigned obligation, as well as to summon and bring such persons to police quarters, and to supervise their complying with laws and restrictions imposed by the court;

- While monitoring compliance with the pass system at the State border, requirements of legal acts regulating immigration, to enter residential premises from 6 a.m. to 10 p.m., to request personal documents;

- To take photographs and make audio and video recordings of persons under administrative arrest or who are on the police register in the manner prescribed by laws and other legal acts, as well as to fingerprint the said persons and take other samples for comparative investigation or identification;

- To take to health care institutions for compulsory testing law offenders intoxicated with alcohol, narcotic, psychotropic or toxic substances, and in order to prevent the spread of venereal and other infectious diseases, persons attributed to the group of increased risk persons who are put on the medical institution or police prevention registers;

- To bring from public places or dens to a health care institution a person intoxicated with alcohol, narcotic, psychotropic or other dangerous substances, or substances severely acting on the mind, if he is unable to move or is liable to harm themselves or the people around them.

While investigating a criminal act or possessing information that such an act is being planned, is carried out or has been carried out, the police officer shall, in the manner and on the basis established by legal acts, have the right:

- To inspect economic and commercial as well as financial or other activities of enterprises, agencies and organisations of all types, the state of protection of material valuables and goods, the legality of their acquisition, production, utilisation, and sale, and the premises of production, administration, and other spheres, including sealed premises;

- To inspect vehicles entering or leaving the territory of enterprises, agencies, and organisations, as well as the freight and goods carried by means of transportation belonging to natural or legal persons;
- To order and carry out inventory, auditing, check measurements and other inspections; to examine, review and seize documents concerning book keeping, personnel, inspections and audits, other documents, as well as samples of raw materials, products, and goods, other items; to demand that book keeping be in order;

- To obtain information and explanatory statements concerning criminal acts or violations from managers, officers, and persons who are materially responsible and others;

- To inspect means of transportation, individuals and their personal luggage at check posts of all kinds;

- To enter the premises of enterprises, agencies, and organisations of all types during working hours; during non-working hours, to enter the said premises with an administrative representative, a representative of the owner, or the owner of the enterprise, agency, or organisation;

- Within his competence, to perform operational activities, investigate criminal cases, to draw up criminalistic databases (files and compilations) and carry out other activities provided for by laws and other legal acts.

### Funding

<table>
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<tr>
<th>Year</th>
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<td>111118313</td>
</tr>
</tbody>
</table>

Only general numbers showing police budget are available publicly.

**Contact addresses**

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112 See annex 1. Information source – [http://www.policija.lt](http://www.policija.lt)
**Customs**\textsuperscript{113}

**Organisation**

The custom system consists of:

- The Custom Department at the Ministry of Finance of the Republic of Lithuania;
- Territorial customs and posts of customs;
- Other custom offices.

The Customs Department implements within its competence the policy in the fields of foreign trade regulation and the measures for the protection of internal market; it ensures the enforcement of customs laws and other legal acts related with import, export and transit; organises and controls the application of the customs tariff, collection of customs duties and other taxes and charges in set time, also the application of economic and administrative sanctions provided for by the laws; controls the application of import, export and transit prohibitions and restrictions; organises and carries out the prevention of the violations of legal acts which the Customs are responsible for enforcing; develops and supervises the integrated customs information system, customs computer data transmission and communication network; ensures the compliance with the obligations assumed by the international agreements of the Republic of Lithuania in customs matters.

- Custom criminal service by implementing its tasks and functions has the right:

  - within its competence to revise how laws of the Republic of Lithuania, Government decisions, orders of Ministry of Finance and Department of Customs are executed for which implementation the Custom criminal service is responsible, also to demand to eliminate causes, that give possibility to violate them;

  - by stated order to purvey proposals for Department of Customs and other institutions and receive information from them on how to apply laws and other legal acts for which implementation the Custom criminal service is responsible;

  - to receive information, conclusions, documents of performed researches, other data form divisions of Department of Customs, territorial custom bodies, other custom institutions and persons that is coherent with the activity of the Custom criminal service;

\textsuperscript{113} Lietuvos Respublikos tarnybos Lietuvos Respublikos muitiėje statuto patvirtinimo ir įgyvendinimo įstatymas VIII-1986 (Žin. 2000, Nr. 94-2917)
- by the order established by laws and other legal acts to exercise the customs inspection, to have a look and collect the documents of accounting records, transportation of goods, acquisition, to obtain materials of inspections and revisions, samples of goods;

- to apply methods and means of operative activity by the order established by the Law on Operative Activity and other legal acts;

- to perform interrogation in criminal cases on smuggling and other crimes, that are coherent to the activity of customs by the order established by Criminal Procedure Code and other laws.;

- within its competence to order territorial custom bodies, other custom institutions to exercise preventive and other means, to take part in conjoint operations.

The Lithuanian Customs is an institution of state control which belongs to the operational activity system and exercises special powers, and to which a particularly great responsibility for the economic protection of the state border falls.

The main tasks of the Customs are:

- To ensure collection of import and export duties and taxes, combating the violations of customs laws;

- To prevent illicit traffic in prohibited and restricted goods;

- To collect and process foreign trade statistics.

In performing its tasks, the Customs of the Republic of Lithuania observes the rule of law and respects the rights and freedom of individuals, applies national customs legislation correctly and consistently, implements international agreements and conventions. The Customs seeks to create favourable conditions for legitimate foreign trade and speedy movement of flows of travellers and goods.

Following the Customs Code of the Republic of Lithuania, the Customs performs the following main functions:

- Organises, controls the collection of import and export duties and taxes, application of import, export and transit prohibitions and restrictions, makes proposals on how to apply the economic and administrative measures regulating import, export and transit;

- Handles the Combined Customs Tariff and Foreign Trade Statistics Nomenclature of the Republic of Lithuania, collects and processes import, export and transit statistics and provides them to the appropriate state institutions pursuant to the set procedure;

- Provides persons with information on application of laws and other legal acts which the Customs is responsible for enforcing;
- Organises and performs the prevention, disclosing and investigation of customs offences;

- Takes measures for establishing the facts of smuggling;

- Institutes criminal proceedings, inquiries in the criminal proceedings on smuggling;

Ensures the compliance with the obligations in customs matters undertaken in the international agreements of the Republic of Lithuania, participates in the preparation of these draft agreements, etc.

**Working methods and co-operation with other organisations**

In order to ensure the protection of national borders and implement the right policy of customs activity customs can act in such ways:

1. In accordance with the established order provide suggestions and receives information and explanations from Customs Department under the Ministry of Finance on how to apply laws and other legal acts, for which implementation customs are responsible.

2. Under the assignment of Customs Department to revise how government institutions and other economy subjects exercise laws and other legal acts for which implementation customs are responsible.

3. To provide mandatory orders to eliminate the violations of laws and other legal acts, and suggest Customs Department to restrict activities of economy entities, that made these violations.

4. In accordance with established order to inspect commercial, financial activities of economy entities, that are relative with custom procedures exercised by these entities.

5. To recover debt to custom and relative fines from the bank accounts of the debtor.

6. Other.

Direct co-operation and exchange of information takes place with the officials of the State Border Guard Service, Criminal Police, Transport Police, Special Investigation Service, State Security Department. The Agreements on exchange of operative information were signed with the units of SIS, Ministry of the Interior.

In co-operation with the Organised Crimes Investigating Service, the officials of Anti-smuggling Service participated while performing searches in Utena region; heroine was found with the help of a drug detector dog.
The Customs officials while participating in the joint raid with the officials from Kybartai pike of Pagėgiai Team of State Border Guard Service detained 335 thou. pcs. of cigarettes (for the value of 17 thou. Litas), a criminal case was raised with respect to smuggling.

In the course of the joint operation with the Operational Activity Division of the State Border Guard Service, more than 100 litres of alcoholic beverages, almost 67 thou. pcs. of cigarettes (total value over 7 thou. Litas) were detained in Sudargas road post of Marijampolė regional Customs office, a report on administrative law violations was made out.

The Customs officials together with the officials from the Drug Control Division of Kaunas Organised Crime Investigation Division and team „Aras“ participated in the operation in the course of which 32 persons related with drug trafficking were found and detained, a criminal case was raised.

With the help of the important information possessed and in co-operation with the Tax Police Department, a case was established when a cargo minibus had crossed Lazdijai road post of Alytus regional Customs office by going from Poland to Lithuania with the goods for accomplishing the Customs procedures of which no documents had been presented.

The Customs officials participated together with the Tax Police Department in the raid by checking goods imported from UAE. Together with the officials from the Money Laundering Prevention Division of Tax Police Department, they checked the activity of the off-shore companies related with the Customs warehouses belonging to the cargo posts of Vilnius regional Customs offices.

The Tax Police Department and State Tax Inspection provided replies on the results of investigations of 30 enterprises: 53 372 Lt of taxes and interest were assessed additionally, 270 Lt of penalties were imposed.

With a view to improving the collection of additional taxes and co-operation with other state control institutions, the joint controls of the activity of business entities have been started to be organised since 2001 together with the officials of the State Tax Inspection.

In December – May, both institutions accomplished 39 checks of economic and commercial activity of business entities in the course of which 3,936 mil. Lt of import taxes were assessed.

The greatest part of additional taxes were assessed upon checking the business entities suggested by the Customs to be investigated referring to risk analysis: the violations were found in 16 business entities selected of 22, and 3,367 mil. Lt of import taxes were assessed additionally.

Direct co-operation took place with the officials of Anti-smuggling Divisions of Kurzemes (Liepoja) and Jelgava Customs offices of the Republic of Latvia. Constant exchange of
information on transportation of different cargoes took place with the Customs services of foreign states. The meetings with the enforcement officials of other states took place. Information about the detention of cigarettes was transferred to the World Customs Organisation.

The officials of Violations Prevention and Investigation Services improved their qualification and professional skills by participating actively in different training courses and events in the country and abroad. In 2001, the Lithuanian Customs officials participated in the events organised in Poland, Russia, Finland and France for the purposes of combating organised crime, training courses in Latvia and Denmark on synthetic narcotics issues, in Belgium on the issues of protection of ports and intellectual property, chemical precursors, money laundering and other financial crimes, management of container terminals, in Netherlands on the issues of investigation of fraud crimes, etc.

The officials from the Anti-smuggling Division accomplished 208 investigations related with the requests for assistance from the Customs services of foreign countries. Investigation and Inquiry Division accomplished 42 assignments of foreign countries, 390 requests and assignments by other institutions were answered and accomplished. On the initiative of the Customs Intelligence Division and according to the requests of other national and foreign enforcement institutions, 125 investigations of the activities of Lithuanian enterprises, 73 investigations with respect to the transportation of goods and violations on clearing Customs procedures, 16 investigations with respect to tendencies of import/export of goods in the Customs posts, 2 investigations with respect to stolen cargoes and over 30 other investigations were accomplished.

On suspicion concerning the authenticity of the documents of goods presented for Customs valuation purposes on their importation into Lithuania, 30 requests were made to the Central Customs Administrations of foreign states. 10 replies were received, 4 of them confirmed the fact of falsification of the documents.

On control of accomplishment of the Customs procedures, 278 requests to render assistance were made to the Customs administrations of foreign states and 442 similar requests were received from foreign states in 2001.

**International relations**

The Law approximation action plan and Acquis implementation action plan of the 2001 National programme for the adoption of the Acquis (NPAA), plans for the state I and II of Access implementing institutions development, reports on the approximation of the legal acts of the Republic of Lithuania, for the enforcement of which the Customs is responsible, with the legal acts of the European Union (TAIX database is constantly updated), quarterly reports about the NPAA implementation (LAAP and AIAP, Liesis (Lithuanian EU integration information system) database is updated) were prepared and presented to the European Committee, the 2001-2003 project of the accession to the EU
programme (NPAA) was prepared, the descriptive part of 2002 and 2003 was updated, the LAAP and AIAP plans for 2002 were prepared.

On May 10-12, 2002, the additional material about the Customs Union Negotiation position was delivered additionally.

On 28 November, the Director of the Customs Department participated in the meeting of the Heads of Customs offices of EU member states and associated states organised by DG TAXUD. The most important issues related with the EU integration were discussed during this meeting. In particular, the necessity to make the Customs information systems compatible with the EU information systems was stressed. In the meeting of the senior Euro-negotiators, which took place in Brussels the same day and where the Lithuanian Customs` delegation participated, the negotiation chapter “Customs Union” was closed.

On developing co-operation with the administrations of foreign states, a significant number of intergovernmental and interdepartmental agreements were prepared or were under preparation for signature in 2001.

On 30 March 2001, the interdepartmental Memorandum on Co-operation Combating Illegal Circulation of Narcotic Substances was signed between the Customs services of Lithuania and Russia.

On 4 April 2001, the interdepartmental Memorandum on Co-operation between the Customs services of Lithuania and Kazakstan was signed.

On 18 June 2001, the meeting was organised in Medininkai with the authorities of the State Customs Committee of Byelorussia, where the interdepartmental Memorandum on the implementation of the Agreement between the Government of the Republic of Lithuanian and the Government of the Republic of Byelorussia on co-operation in combating the violations of Customs laws, signed on 12 April 1996, was signed.

The interdepartmental Agreement with Byelorussia on procedure for acceptance-transfer of certain goods, vehicles by which they are transported and goods` accompanying documents was signed, the intergovernmental Agreements with Moldova and Hungary were in the final state of negotiations, the authorisations to negotiate and initial the intergovernmental Agreements with the Republic of France and the Kingdom of Belgium were received, the documents for receiving the authorisations to negotiate and initial the intergovernmental Agreement with the Republic of Azerbaijan were prepared.

The intergovernmental Agreements with Turkey and Kazakhstan were ratified.

The text of the intergovernmental Agreement was negotiated with the expert from Moldova Customs who visited Vilnius.
Financing

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<td>123004000</td>
</tr>
</tbody>
</table>

Contact addresses

Customs office | Information Custodian
--- | ---
The Customs Department under the Ministry of Finance of the Republic of Lithuania | On working hours in Lithuanian and Russian languages tel.(8-5)2613027, in English language tel.(8-5)617258. On holidays eve working hours are shorter by one hour.
24 hours tel.(8-5)2616960, fax.(8-5)2624478; 24 hours telephone line (8-5)2124977 is available for the anonymous announcements regarding planned or already made customs offence, smuggling of forbidden for transportation or other goods, illegitimate actions of customs officials, carriers, importers or exporters and regarding inappropriate acts of the officials
Vilnius Customs office tel.(8-5)2356223 | In Vilnius tel.(8-22)2356255, fax.(8-22)2356240; in Svencionys tel.(8-217)51260; in Salcininkai tel.(8-250)51464
Kaunas Customs office tel.(8-37)304270, (8-37)304290, (8-37)304291, tel.(8-37)304294, (8-37)304292 |  

114 Information source – [http://www.cust.lt](http://www.cust.lt)
Organised crime in the sphere of environment in a few Candidate Countries

Klaipeda Customs office tel. (8-46)390000, tel. (8-46)390080, (8-46)410265, fax. (8-46)390019

Siauliai Customs office tel. (8-41)540185 tel. (8-41)540041

Panevezys Customs office tel. (8-45)596791
In Panevezys tel. (8-45)596811, fax. (8-45)596733; in Rokiskis tel. (8-458)71044, fax. (8-458)71138

Customs Training Centre tel. (370 2)701771, fax. (370 2)697263

Customs Criminal Service tel. (370 2)2748001, (8-698)05914

Customs Laboratory tel. (370 2)2375649, fax. (370 2)2375653

Customs Information Systems Centre tel. (370 2)2362343, fax. (370 2)2362336, e-mail rasa@cust.lt
National Border Service

Organization

The State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter - Service) is a State institution, the purpose whereof is to implement guarding of the State border and control over crossing thereof, and in times of war, to defend the State as an integral part of its armed forces. The Service is under the administration of the Ministry of the Interior. The Ministry of the Interior implements the policy of State border guarding and controls it.

- The functions of the Service are to:
  - Protect the State border on land, at sea, in the Couronian Sea, and frontier inland waters;
  - Exercise control over persons and means of transport crossing the State border;
  - Enforce regulations of the frontier and, as far as this lies within the scope of its competence, regulations of border crossing point;
  - Participate in the implementation of State control over migration processes;
  - Participate in ensuring public order and perform the enforcement functions established by laws, in the frontier zone;
  - In times of war defend the State as an integral part of the armed forces;
  - The Service shall also perform other functions assigned to it by legal acts.

Working methods

In implementing border control over people and means of transport, the NBS has the right and obligation to:

- Verify documents of persons and means of transport, marking them as required;
- Verify information relevant to people and means of transport crossing the State border in the specified records and data bases and other sources of information;

115 Lietuvos Respublikos valstybės sienos apsaugos tarnybos įstatymas VIII-1996 (Žin. 2000, Nr. 92-2848)
- Inquire the destination and reason for travel of arriving foreigners, verify whether arriving foreigners have sufficient means of subsistence for the duration of their stay in the Republic of Lithuania and whether they meet other requirements of the laws and other legal acts of the Republic of Lithuania with respect to entry into the Republic of Lithuania;

- Issue visas or other permits to cross the State border to foreigners in accordance with the procedure established by laws and other legal acts;

- Check means of transport for hidden passengers;

- Perform radiation check of people and means of transport crossing the State border, and also of the freight being hauled;

- Detain people and means of transport crossing the State border illegally;

- Detain, until an appropriate decision can be taken, people who are bringing in or taking out firearms, ammunition, explosives, and (or) explosive, narcotic, psychotropic, dangerous and (or) hazardous substances without permit;

- Apply means of administrative responsibility to people for violations of the regulations of the frontier and (or) rules of border crossing point operation on the basis of and according to the procedure established by laws.

- In implementing control of people and means of transport, the Service shall employ technical, and in detaining of people, other special means.

In enforcing regulations of the frontier, the NBS can act in such ways:

- Control adherence by the citizens of the Republic of Lithuania and foreigners to the procedure of travelling to and staying in the frontier zone;

- Prevent hauling of freight (goods, valuable and other articles) by contraband means in places other than border crossing points;

- Control adherence by natural or legal people and enterprises not having the rights of legal people to the established procedure of production, economic or other activity in the frontier zone with a view to ensuring safety of the State border;

- Control adherence by ships to the established procedure of departures to the territorial sea, internal sea waters and frontier waters and sailing and staying therein;

- Participate in controlling the use of natural resources in the frontier zone, with a view to enforcing the regulation of the State border;

- Participate in the implementation of search and rescue operations at sea, in the Couronian Sea and in frontier internal waters.
In disclosing foreigners who have crossed the State border illegally, the NBS may employ the means and methods of operative activities.

In establishing the identity of foreigners who have crossed the State border illegally, the NBS may employ all of the necessary sources of information, including those located abroad.

**Funding**

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<td>2000</td>
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</table>

116 The NBS began their activity as a separate institution in the year 2000.
Contact addresses

Direction
Chief
Algimantas Songaila
271 93 03
Chief deputy – head of headquarters
Vaclovas Zabarauskas
271 93 01
Chief deputy
Zenonas Zymančius
271 93 02
Chief deputy
Rustamas Liubajevas
271 93 87

Group of information analysis – Official NBS information agent
Generalspecialist
Giedrius Mišutis
271 93 08
Upperspecialist
Rokas Pukinskas
271 93 08
Specialist(office-girl-referent)
Aušra Juzefovičiūtė
271 93 03
Prosecutors

Organisation\textsuperscript{117}

The Law on the Prosecution Agency establishes that all the prosecutors of the Republic of Lithuania and other officials of prosecuting agencies form a unified and centralised prosecution system, which consists of:

- The Office of the Prosecutor General under the Supreme Court of Lithuania;
- Regional prosecution agencies under regional courts;
- District prosecution agencies under district courts.

Officers of the Office of the Prosecutor General exercise in the entire territory of the Republic of Lithuania their power. Officers of regional and district prosecution agencies fulfil their powers in the area assigned to them and corresponding to the area of the respective court.

The Office of the Prosecutor General consists of departments, boards, divisions and groups, which are headed by chief prosecutors. The Office of the Prosecutor General heads the territorial prosecution agencies and supervises their activities. The regional and district prosecution agencies are headed by chief regional and district prosecutors. Chief regional prosecutors supervise the activities of district prosecution agencies.

Working methods

The activities of all the prosecution agencies are headed and supervised as well as the interior structure of prosecution agencies is established by the Prosecutor General, who, on the recommendation of the Law Enforcement Committee of the Parliament, for the term of 7 years is appointed and removed from office by the Parliament.

Deputies of the Prosecutor General are appointed and removed from office by the Parliament on the recommendation of the Prosecutor General. The other prosecutors and officers of the prosecution agencies are appointed and removed from office by the Prosecutor General. Prosecution agencies perform the following functions:

- Initiate and conduct criminal prosecution;
- Conduct and control pre-trial investigation;
- Pursue a public charge in a court;

\textsuperscript{117} Lietuvos Respublikos prokuratūros įstatymas I-599 (Žin. 1994, Nr. 81-1514; Žin. 2003 Nr. 42-1919)
- Control the execution of a sentence;
- Co-ordinate the activities of the pre-trial investigation agencies directed against crime;
- Defend the interests of the State and the violated rights of persons in a court.

The Law on the Prosecution Agency and Code of Criminal Procedure prescribes that a prosecutor controls the lawfulness of instituting criminal proceedings and compliance with law in pre-trial investigation. A prosecutor must annul each unlawful or unjustified decision of investigative institutions or officers; to appeal against each illegal or unlawful sentences; to pursue charges in a first instance court and take part in case hearings in an appellate court and cassation court.

A prosecutor is entitled to conduct pre-trial investigation or specific pre-trial investigation actions himself; to challenge pre-trial investigation officers from investigating the case; to issue mandatory instructions as to the case investigation to officers of pre-trial investigation.

The Law on the Prosecution Agency establishes that the prosecution agency is an independent component of the judiciary. The Prosecutor General is reporting only to the Parliament. The prosecutor in administration of his/her functions is independent and obeys only law. The procedural actions of a prosecutor in a criminal case can be revoked or varied by a higher prosecutor or court only. The actions are appealed against to a higher prosecutor or court.

The Prosecutor General is vested with the right to issue mandatory directives to prosecution agencies and pre-trial investigation institutions regarding general prosecution policy.

The prosecutor, who controls investigation of the case, is vested with the right to issue obligatory directives as to the investigation of a concrete case to the investigator.

The Criminal Code and the Code of Criminal Procedure specify that an investigator or prosecutor, on a judge's authorisation, could close a criminal case in two instances. Firstly, when a person who is a member of an organized criminal group, participated in crimes committed by that group, but he/she admitted his/her participation in such criminal acts and furnished law enforcement institutions with a valuable information, on the basis of which the activities of the organized criminal group have been prevented or its members have been subjected to criminal prosecution. Criminal proceedings are not in this way terminated with respect to the organizer of the group or a person who has participated in committing an intentional murder, or a person, who has already been subject to such termination of the case.  

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118 Lietuvos Respublikos Baudžiamojo proceso kodeksas.
Secondly, when a person who has committed certain crimes against property or economic crimes admitted that he had committed the crime and voluntarily compensated the damage inflicted upon the state, natural or legal person and has reconciled with the victim. Such termination of the case is not applied to a person with a previous conviction and a person who has been already subject to such a termination of the case.

It must be mentioned that prosecution agencies have no specialised divisions for fighting organized or environmental crime.

**Funding** (The Office of the Prosecutor General under the Supreme Court of Lithuania)

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**Contact addresses**

General Prosecutors Office
Simonas Minkevicius
Tel.: +370266 24 21
Fax: +370266 24 08
**Ministry of environment and subordinate institutions**

**Organisation**

Institutions guiding environment and coordinating its protection that are relevant to the topic of the Project are as follows:

1) Ministry of Environment of the Republic of Lithuania;

2) Nature Protection Department of the Ministry of Environment;

3) Law Department of the Ministry of Environment;

4) National service of Protected Territories at the Ministry of Environment;

5) State Environment Protection Inspectorate at the Ministry of Environment and regional environmental protection departments.

6) Environmental protection agencies at the Ministry of Environment.
Functions and mission

The Ministry of Environment is the main managing authority of the Government of the Republic of Lithuania which forms the country’s state policy of environmental protection, forestry, utilization of natural resources, geology and hydrometeorology, territorial planning, construction, provision of residents with housing, utilities and housing, as well as coordinates its implementation.
Having assessed the data of environmental observations, taken into consideration the conclusions of scientific institutions and the public opinion and following the existing strategic documents and preparing the legal bases, the goals in general of the Ministry of Environment and its subordinate institutions are as follows:

1. To implement the principle of sustainable development;

2. To set preconditions for rational utilization, protection and restoration of natural resources;

3. To ensure provision of information about the state of environment and its forecasts to the public;

4. To create conditions for the development of construction business and the provision of residents with housing;

5. To ensure a proper environmental quality, taking into account the norms and standards of the European Union.

The main functions of the Ministry of Environmental in carrying out environmental protection management and national regulation of use of natural resources are as follows:

1) Organise and co-ordinate implementation of the national strategies in the field of environmental protection and use of natural resources, prepare long-term and special purpose national programmes of environmental protection and use of natural resources, provide the order of their implementation and control the course of their execution;

2) Organise and co-ordinate the preparation of environmental protection schemes of national importance and other environmental protection measures, and prepare these schemes and measures, provide the mechanism of their implementation (application), and control the course of their execution (application);

3) Prepare draft laws, draft decrees of the Government of the Republic of Lithuania and other legal acts on the issues of environmental protection and use of natural resources, organise preparation of the general, special and detailed territorial planning documents on environmental protection issues, within its competence co-ordinate draft legal acts of the ministries, other government institutions, regional, local authority and other institutions regulating economic and other activities which are likely to have an effect on the environment and territorial planning documentation in order to comply with the environmental protection laws and other legal acts;

4) Within its competence prepare and approve the norms, rates, standards and rules of environmental protection and use of natural resources;
5) Within its competence define the limits and conditions for the use of natural resources, order for issuing of permits, regulate and control registration of natural resources, organise compilation and managing of the state cadastres and registers attributed to the competence of the Ministry;

6) Submit to the Government of the Republic of Lithuania the projects for establishment of state-owned strict reserves, other reserves, national parks, natural monuments and other protected areas of natural character;

7) Regulate and control the activities within the protected areas, organise the management of the national nature reserves, compile and elaborate the Red Book, organise and perform the works relating to the preservation and augmentation of rare plants and those facing extinction, mushrooms and animals, regulate the import and export of hunting and fishing trophies and the keeping of animals in captivity;

8) Determine and control the norms and procedure for reporting the emission of pollutants (and radioactive substances), define the procedure for issuing the permits for emission of pollutants (and radioactive substances);

9) Define the order for production, import, transit, export, use, storage, disposal, treatment, utilisation and reporting of dangerous chemicals and wastes, radioactive substances and potential biological pollution sources as well as norms of radiation safety;

10) Define the order according to which evaluations are made as to whether the production complies with the requirements of environmental protection, organise the said work;

11) Prepare and approve methods for estimating the costs of damage caused to the environment;

12) Organise and co-ordinate integrated environmental monitoring, develop and continuously update the computerised information system of environmental protection and use of natural resources, use this information;

13) Within its competence organise and co-ordinate scientific research works related to environmental protection and natural resources and their use;

14) In accordance with the established procedure, set up the national fund for nature conservation and dispose of its funds;

15) In accordance with the established procedure and within its competence, maintain relations with the respective institutions of foreign countries and international organisations, prepare drafts of international agreements, sign these international agreements, organise their implementation and, on the instructions of the
Government or Prime Minister of the Republic of Lithuania, represent the Republic of Lithuania in foreign countries or with international organisations;

16) Inform the public on the state of the environment and co-ordinate ecological education, take care of the training of environmental specialists, carry out performance evaluation and licensing work;

17) Carry out the state control of environmental protection and use of natural resources, define the procedure for execution of the state control of environmental protection and use of natural resources;

18) Submit proposals on the formation and development of an economic system of environmental protection and use of natural resources, take part in determining the policy of custom duties for imported and exported natural resources;

19) Organise the implementation and control of other environmental protection measures.

Nature Protection Department forms and implements renaturalisation policy and strategy of biodiversity, including protection of ecosystems, use, restoration and protection of natural resources and the underground, as well as restoration of damaged land.

Prepares draft of laws, decrees of the Government and other legal acts on protection of biological diversity, maintenance of stability of ecosystems, rational use, restoration and protection of wildlife and the underground resources.

Prepares an action plan for conservation of protected species and populations, organises preparation of regulation for habitat protection and management.

Compiles and updates the Lithuanian Red Book, organizes activities on conservation of rare and endangered fauna, flora, fungi species and communities.

Establishes an order for use and restoration of wildlife resources, limits and conditions, order of issuing permits. Organises renaturalisation of damaged ecosystems, preparation of programmes and projects on land recultivation.

Organises use of abandoned agricultural land and free land of the State Land Fund, abandoned quarries and peat-land for afforestation and plantation of valuable plant species.

Organises and co-ordinates applied scientific research works.

Organises the implementation of international conventions and agreements on biodiversity protection, including protection of ecosystems.
Within its competence manages and consults regional environmental protection departments, institutions subordinated to the Ministry and institutions designated to its regulation sphere.

Law Department of the Ministry of Environment of Lithuania prepares and participates in preparation of draft laws, decrees of the Government of Lithuania, other legal acts on issues of environmental management and legal regulation, and other drafts on environmental legal regulation using computerised technology and other legal information systems, systemizes legal documentation basing on revisions and amendments of laws and other legal acts.

Participates in approximation of Lithuanian legal acts with the requirements of European Union and in accordance with the established order submits information on approximation of legal acts.

Co-ordinates draft orders of the Minister, agreements, other legal documents, controls implementation of the orders of the Minister and other assignments of the management of the Ministry.

Within its competence examines letters and claims from the state institutions, legal and natural persons, draft of legal acts, submits comments and suggestions.

In accordance with the established order organises and carries out control of legal performance of institutions subordinated to the Ministry and designated to the regulation sphere of the Ministry, participates in general and other inspections, analyses and summarises performance of legal departments of institutions and organisations subordinated to the Ministry, submits proposals on improvement of legal performance.

In accordance with the established order represents the Ministry in courts, other countries and foreign institutions, participates in seminars, conferences and other meetings.

State Environment Protection Inspectorate organises, co-ordinates and controls activities of the state environmental protection control institutions and inspectors in the field of enforcement of environmental protection. Also:

1. Organises and performs operative, applied and complex check-up on the activities of the state environmental protection control institutions and inspectors, analyses problems and submits conclusions and proposals on improvements of such activity to the Ministry of Environment.

2. Organises accumulation of information and reports on results of activities of the state environmental protection control, systemises and analyses these results, submits information to the Ministry.

3. Analyses co-operation of the state environmental protection institutions and inspectors with the county, municipal and other authority institutions on the state
environmental protection control issues and submits proposals on improvement of this activity.

4. Co-operates with other state authority institutions and organisations of foreign countries in the field of the state environmental protection control.

The activity of all officials - state environmental protection inspectors of the institutions subordinate to the Ministry in the field of the state control of environmental protection and the utilization of natural resources is coordinated and controlled by the State Environmental Protection Inspectorate.

In 2000 in carrying out the state control of the utilization, restoration and protection of land, underground, surface and underground water, ambient air, flora, fauna and natural resources, in total 15 778 cases of violations were disclosed, including 1 424 - landscape, 68 - land and underground, 2 167 - surface and underground water, 3 784 - ambient air, 1 142 - waste; the utilization and restoration of natural resources: 913 - flora, 5 493 - fauna. Fines in the amount of 2.21 million Litas were imposed, claims in the amount of 2.64 million Litas were filed and 2.72 million Litas was recovered.

In 2000 the State Environmental Protection Inspectorate recorded 62 exceptional cases, during which pollutants were emitted into the environment or the damage was done to nature.

As it was mentioned State Environmental Protection Inspectorate and 8 Regional Environmental Protection Departments carry out the state control of environmental protection: Alytus, Kaunas, Klaipeda, Marijampole, Panevezys, Siauliai, Utena, Vilnius. Each Department:

- administrates subordinated Environmental Protection Agencies of the cities and regions as well as controls their performance;
- ensures healthy and clean environment, rational use of natural resources in the region;
- protects landscape, ecosystems, natural objects and biodiversity characteristic to the region;
- controls economic entities and natural persons if they comply with the requirements of environmental protection and use of natural resources;
- in accordance with the established order issue permits for use of natural resources, organises enforcement of environmental requirements defined in the permits;
- issues special conditions for preparation of territorial planning documents and design of objects;
- in accordance with the established order co-ordinates projects on territorial planning, as well as enterprises and other entities having impact on state of environment and natural resources, and constructions in the region;

- controls the accuracy of calculation of tax payment of legal and natural persons on environmental pollution and applies sanctions defined in the laws;

- analyses state of the environment in the region, enforce requirements to improve the environment and submit proposals on regulation of use of natural resources and improvement of environmental protection measures;

- following the assignment of the Minister control the implementation of international environmental protection agreements in the region;

- cooperates with the public on implementation of environmental protection goals, inform the public about changes in the status of the environment, and take part in environmental education activities.

National service of Protected Territories at the Ministry of Environment forms a strategy of protected areas, prepares draft of legal acts on protected areas, organises preparation of protected areas planning documents.

Forms a system of protected areas and co-ordinates management of protected areas, manages the Protected Areas Register.

Controls and co-ordinates scientific, nature protection, culture heritage protection and management, architecture-urban development, publication-information activities of administrations of national and regional parks and administrations of strict nature reserves.

**Methodology**

Legal background. Laws and other legal acts are being prepared, revised and amended. Legal regulation is related to implementation of the Association Agreement according to which Lithuania has made a commitment to approximate its laws and other legal acts with legal requirements of European Union.

Economic and financial instruments. A system of economic instruments (environmental pollution tax, and tax for use of state natural resources, etc.) is being developed and improved. In order to implement defined tasks, the Ministry of Environment develops programs from the state budget and other financial sources, participates in preparation of the public investment programme.
Territorial planning, design. Landscape management process and procedure is being regulated in order to define conditions on land use priorities, environmental protection, monument protection, to form infrastructure system of land, water, forests, living areas, production, set rights of activities of legal and natural persons in the territory. General, special and detailed planning, procedures are being regulated.

Regulation of constructions. Establishes the order of investigation, construction, reconstruction, repair, commissioning, and use of buildings, regulates relations between legal and natural persons taking part in the construction process.

Environmental impact assessment. Regulates definition of process, order, and procedures on environmental impact assessment of proposed activity.

State control. Establishes an implementation order of state control on environmental protection, use of natural resources, territorial planning and construction, performs the state control.

International co-operation. Co-operates with foreign state institutions and international organisations, organises implementation of international conventions and agreements, concrete projects.

Public information and education. Provides information to public on environment, prepares and publishes informative publications, implements projects on public education, organises seminars, conferences.

**Financing**

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Contact address\textsuperscript{120}

Contact Information of the Ministry of Environment  
4/9 A. Jakšto  
LT-2600 Vilnius  
Tel.: City code +370 5,  
Fax: 2663663,  
e-mail. kanceliarija@aplinkuma.lt  
Representative for information (+370 5) 2663661.  
Emergency ecological situations hotline (+370 5) 2732995

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ANNEX 2

FORESTS DEPARTMENT. A.Juozapavicius str. 9, LT-2600 Vilnius. City code +370 5, Fax 2722029

Valdas Vaičiūnas Director 2725868 valdas.v@gamta.lt

Forestry Development Division

Donatas Dudutis Head 2728289 donatas@gamta.lt

Forest Management and Forest Resources Division

Sigitas Mozgeris Head 2232517 sigis@gamta.lt

Private Forests Division

Nerijus Kupstaitis Head 2722775 nerijusk@gamta.lt

Forestry Division

Stanislovas Žebrauskas Head 2723257 zita@gamta.lt

LEGAL AND PERSONNEL DEPARTMENT

Robertas Klovas Director 2663595 r.klovas@aplinkuma.lt

Control Division

Rolandas Masilevičius Head 2663596 r.masilevicius@aplinkuma.lt

Legal Division

Irena Sabaliūtė Head 2663603 i.sabaliute@aplinkuma.lt

Personnel Division

Krizantas Head 2663599 k.liaudanskis@aplinkum
Liaudanskis

NATURE PROTECTION DEPARTMENT

Laimutis Budrys  Director  2663546  l.budrys@aplinkuma.lt

Biological Diversity Division

Selemonas Paltanavičius  Head  2663547  s.paltanavicius@aplinkuma.lt

Genetically Modified Organisms Division

Darius Lygis  Head  2663562  d.lygis@aplinkuma.lt

Nature Resources Division

Vilmantas Greiciūnas  Head  2663555  v.greiciunas@aplinkuma.lt

Protected Areas Strategy Division

Algirdas Klimavičius  Head  2663565  a.klimavicius@aplinkuma.lt

AGENCIES

Environmental Protection Agency: A.Juozapavicius str. 9, LT-2600 Vilnius. Tel. code +370 5, fax 2723202

Director  Liutauras Stokus  2723202  liutauras.stokus@nt.gmta.lt

ISPA Implementation Agency: A.Juozapavicius str. 9, LT-2600 Vilnius. Tel. code +370 5, fax 2722563

Director  Kastytis Tuminas  2727810  tuminas@ispa.lt

DEPARTAMENTS

Bfu
Environmental Protection Departments

ALYTUS REGIONAL EPD: Kauno str. 69, LT-4580 Alytus. Tel. code +370 315, fax 56732

Director Ceslovas Merzvinskas 56730

KAUNAS REGIONAL EPD: Rotuse square 12, LT-3000 Kaunas. Tel. code +370 37, fax 320854.

Director Antanas Petrauskas 337508

KLAIPEDA REGIONAL EPD: Birute str. 16, LT-5802 Klaipeda. Tel. code +370 46, fax 380903.

Director Kestutis Siliauskas 314547

MARIJAMPOLE REGIONAL EPD: S.Darius and S.Girenas str.4, LT-4520 Marijampole. Tel. code +370 343, fax 91955.

Director Vytautas Jaskevicius 91953

PANEVEZYS REGIONAL EPD: A.Jakstas str.12, LT-5300 Panevezys. Tel. code +370 45, fax 581441

Director Valdemaras Jakstas 581401

SIAULIAI REGIONAL EPD: M.K.Ciurlionis str. 3. LT-5400 Siauliai. Tel. code +370 41, fax 503705

Director Rimantas Krankalis 524143

UTENA REGIONAL EPD: Metalo str.11, LT-4910 Utena. Tel. code +370 389, fax 69662.

Director Ricardas 69106
Vygantas

VILNIUS REGIONAL EPD: A. Juozapavicius str. 9, LT-2600 Vilnius. Tel. code +370 5, fax 2728389

Director: Petras Sakalauskas 2728536 vilnius@nt.gamta.lt

INSPECTORATES

Forest Seed and Seedling Quality Inspectorate: Miskininku str. 2, Vaisvydavos k. Samylu sen., LT-4312 Kauno r. Tel. code +370 37, fax 383073

Director: Kestutis Cesnavicius 383072 k.cesnav@takas.lt

State Environmental Protection Inspectorate: A. Juozapaviciaus str. 9, LT-2005 Vilnius. Tel. code +370 5, fax 2722766

Head: Arturas Daubaras 2756872 vaai@nt.gamta.lt

State Territorial Planning and Construction Inspectorate: A. Juozapavicius str. 9, LT-2600 Vilnius. Tel. code +370 5, fax 2723620

Head: Grazina Lygnugariene 27227480 vtpsi@nt.gamta.lt

PROSECUTORS OFFICE

1. Lietuvos Respublikos General Prosecutors Office;

A. Smetonos g. 4, Vilnius, LT-2709; +370 5 662305

Officers: 22

2. Kaunas County Prosecutors Office;

Laisvės a. 32, Kaunas, LT-3000; +370 37 201010

Officers: 4

3. Panevėžys County Prosecutors Office;
Organised crime in the sphere of environment in a few Candidate Countries

Respublikos g. 54, Panevėžys, LT-5300; +370 45 460616

Officers: 4

4. Šiauliai County Prosecutors Office;
Dvaro g. 90, Šiauliai, LT-5400; +370 41 598353

Officers: 4

5. Kaunas District Prosecutors Office;
Laisvės al. 40, Kaunas, LT-3000; +370 37 320948

Officers: 3

6. Klaipėda region County Prosecutors Office;
Vilties g. 12, Klaipėda, LT-5800; +370 46 466000

Officers: 3

7. Klaipėda City District Prosecutors Office;
Vilties g. 12, Klaipėda, LT-5800; +370 46 410078

Officers: 3

8. Panevėžys City District Prosecutors Office;
Respublikos g. 23, Panevėžys, LT-5300; +370 45 464363

Officers: 3

9. Vilnius County Prosecutors Office;
Rinktinės g. 9, Vilnius, LT-2660; +370 5 662500

Officers: 3

10. Vilnius City District Prosecutors Office;
Rinktinės g. 7, Vilnius, LT-2600; +370 5 2734536

Officers: 3

11. Kaunas Region District Prosecutors Office;
Miško g. 21, Kaunas, LT-3000; +370 37 323616
Officers: 2

12. Kėdainiai Region District Prosecutors Office;
Didžioji g. 64, Kėdainiai, LT-5030; +370 347 52744
Officers: 2

13. Klaipėda Region District Prosecutors Office;
Klaipėdos g. 1, Gargždai, LT-5840; +370 46 452373
Officers: 2

14. Kretinga Region District Prosecutors Office;
J.K. Chodkevičiaus g. 10, Kretinga, LT-5700; +370 445 51373
Officers: 2

15. Lazdijai Region District Prosecutors Office;
Vilniaus g. 19, Lazdijai, LT-4560; +370 318 51373
Officers: 2

17. Marijampolė Region District Prosecutors Office;
Kęstučio g. 1, Marijampolė, LT-4520; +370 343 51623
Officers: 2

18. Mažeikių Region District Prosecutors Office;
Laižuvos g. 16, Mažeikiai, LT-5500; +370 443 25673
Officers: 2

19. Plungė Region District Prosecutors Office;
Vytauto g. 2, Plungė, LT-5640; +370 448 72037
Officers: 2

20. Radviliškis Region District Prosecutors Office;
S. Dariaus ir S. Girėno g. 20, Radviliškis, LT-5120; +370 422 51373

Officers: 2

21. Šiauliai City District Prosecutors Office;
Aušros al. 25a, Šiauliai, 5412; +370 41 523615

Officers: 2

22. Šiauliai Region District Prosecutors Office;
Aušros al. 29a, Šiauliai, LT-5419; +370 41 523631

Officers: 2

23. Tauragė Region District Prosecutors Office;
Vytauto g. 55, Tauragė, LT-5900; +370 446 61302

Officers: 2

24. Telšiai Region District Prosecutors Office;
Iždinės g. 1, Telšiai, LT-5610; +370 444 53907

Officers: 2

25. Vilkaviškiai Region District Prosecutors Office;
Vilniaus g. 7, Vilkaviškis, LT-4270; +370 342 20173

Officers: 2

26. Akmenė Region District Prosecutors Office;
Vytauto g. 1, Naujoji Akmenė, LT-5464; +370 425 56673

Officers: 1

27. Alytus Region District Prosecutors Office;
Santaikos g. 26, Alytus, LT-4580; +370 315 70600

Officers: 1

28. Anykščiai Region District Prosecutors Office;
S. Daukanto g. 7, Anykščiai, LT-4930; +370 381 59373

Officers: 1

29. Biržai Region District Prosecutors Office;
Vytauto g. 59, Biržai, LT-5280; +370 450 31373
Officers: 1

30. Druskininkai City District Prosecutors Office;
Druskininkų g. 43, Druskininkai, LT-4690; +370 313 52373
Officers: 1

31. Ignalina Region District Prosecutors Office;
Vasario 16-osios g. 11, Ignalina, LT-4740; +370 386 52373
Officers: 1

32. Jonava Region District Prosecutors Office;
Klaipėdos g. 3, Jonava, LT-5000; +370 349 60555
Officers: 1

33. Joniškis Region District Prosecutors Office;
Medžiotojų g. 1, Joniškis, LT-5150; +370 426 51373
Officers: 1

34. Jurbarkas Region District Prosecutors Office;
K.Donelaičio g. 41, Jurbarkas, LT-4430; +370 447 72273
Officers:

35. Kaišiadorys Region District Prosecutors Office;
Bažnyčios g. 3, Kaišiadorys, LT-4230; +370 346 51373
Officers: 1

36. Kelmė Region District Prosecutors Office;
Raseinių g. 7, Kelmė, LT-5470; +370 427 61373

Officers: 1

37. Kupiškis Region District Prosecutors Office;
Gedimino g. 54, Kupiškis, LT-4880; +370 459 35273

Officers: 1

38. Molėtai Region District Prosecutors Office;
S. Neries g. 16, Molėtai, LT-4150; +370 383 51373

Officers: 1

39. Pakruojis Region District Prosecutors Office;
Vienybės a. 1, Pakruojis, LT-5220; +370 421 51373

Officers: 1

40. Palanga City District Prosecutors Office;
Vytauto g. 63, Palanga, LT-5720; +370 460 53729

Officers: 1

41. Pasvalys Region District Prosecutors Office;
Vilniaus g. 7, Pasvalys, LT-5250; +370 451 51373

Officers: 1

42. Prienai Region District Prosecutors Office;
Kauno g. 2, Prienai, LT-4320; +370 319 60003

Officers: 1

43. Raseiniai Region District Prosecutors Office;
V. Kudirkos g. 2, Raseiniai, LT-4400; +370 428 70661

Officers: 1

44. Rokiškis Region District Prosecutors Office;
Respublikos g. 82, Rokiškis, LT-4820; +370 458 51373

Officers: 1

45. Šakiai Region District Prosecutors Office;
Bažnyčios g. 6, Šakiai, LT-4480; +370 345 60204

Officers: 1

46. Šalčininkai Region District Prosecutors Office;
Vilniaus g. 50, Šalčininkai, LT-4090; +370 380 51373

Officers: 1

47. Šilalė Region District Prosecutors Office;
Struikų g. 3, Šilalė, LT-5920; +370 449 74207

Officers: 1

48. Šilutė Region District Prosecutors Office;
Lietuvininkų g. 18, Šilutė, LT-5730; +370 441 78273

Officers: 1

49. Širvintas Region District Prosecutors Office;
Vilniaus g. 39, Širvintos, LT-4100; +370 382 51373

Officers: 1

50. Švenčioniai Region District Prosecutors Office;
Vilniaus g. 26, Švenčionys, LT-4730; +370 387 51373

Officers: 1
8.6. POLAND

General overview

Due to the fact that no special institutions have been create to control organized environment crime in Poland the below charter is structured in a way to present overview of the Polish system of control environmental crime in general. If not otherwise stated the listed institutions do handle environmental cases without differentiating between organized crimes and crimes which do fall into this category.

Figure 33: Enforcement Structure in Poland

Source: Own description
**Police**

**Organisation**

The Polish Police Service operates three main types of forces:

- criminal,
- preventive,
- organizational, logistic, and technical support.

The Chief of the Polish Police Service is the superior of all the police officers. The Chief of the Polish Police Service acts as a body of the national state administration responsible for the protection of the people and the maintenance of public safety and civil order. He reports to the Minister of Internal Affairs and Administration (Ministerrstwo Spraw Wewnętrznych i Administracji). The Chief of the Polish Police Service (Komendant Главny Policji) is appointed and dismissed by the Prime Minister on request of the Minister of Internal Affairs and Administration. The Polish Police Service currently employs 97,581 police officers. 9.2% of all the police officers are women. Poland has on average one police officer per 396 people.\(^{122}\)

There are no specialized units, within the police structure, for combating offences against environment. The task is attributed to the police bodies at local and district level. In Voivodeship Headquarters of Police and Municipal Headquarters of Police environmental crime issues are assigned to Economic Crimes Departments.

**Central Investigation Office (Centralne Biuro Śledcze)**

The special institution of Polish Police responsible for fighting organized crime is the Central Investigation Office. The Central Investigation Office was created in 15 April 2000 by an order of the Chief of the Polish Police with the permission of Minister of Internal Affairs and Administration. The Central Investigation replaced two institutions which had been responsible for fighting organized crime i.e. Office Fighting with Organized Crime and Office Fighting Drug Related Crimes. In 2002 the Central Investigation Office were employing 2100 persons (in 2000 – 1350, in 2001 – 1500)\(^{123}\). The Central Investigation Office is subordinated to the Chief of the Polish Police.

However fighting organized crime in general falls into competency of the Central Investigation Office there is no unit within its organizational structure responsible for fighting environmental organized crime.

\(^{122}\) http://www.kgp.gov.pl/
\(^{123}\) Ibidem.
**Figure 34: Structure of the Polish police**

THE GENERAL HEADQUATERS OF THE POLICE

- Voivodeship Headquarters of Police
  - Metropolitan Police

- Specialist Police Stations (22)

- Powiat Headquarters of Police (263)
  - Municipal Headquarters of Police (65)

- Police stations (1793)
  - The number of police stations is changing as some small police stations are being liquidated and the inter-Gmina station established

- Prevention Squads (22)

- Anti-terrorist Sub-units (14)

- Headquarters
  - Central Investigation Office
  - There are 6 departments:
    - criminal;
    - drug trafficking;
    - economic;
    - analytical;
    - operational technics;
    - protection of witness,

- 16 Regional Offices situated in Voivodeship Headquarters of Police

**Source:** Polish police, www.kgp.gov.pl

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**Working methods**

Polish Police has a key role in preventing, fighting and investigating crime (including environmental crime committed by organized criminal groups) in Poland. Police serves also as a first contact point for reporting suspected environmental crime by individuals and co-operates with the appropriate entities in charge of investigation and/or prosecution. Police has been equipped with a wide catalogue of legal tools prepared for preventing

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124 Based on information from: www.kgp.gov.pl. The Police Act dated 6 April 1990, Dz.U. No 2, pos. 7 with further alterations
crime by the legislator thereupon. Police performs operational, intelligence, investigative, administrative and police activities therein.

Police shall be authorized to the following powers:

- to check identity of a person,
- to detain people in the circumstances prescribed by the law,
- to detain persons hiding from the judicial organs,
- to detain people creating serious threat to someone life, health and/or property,
- to search places and people in the circumstances prescribed by the law,
- to perform personal and luggage checks including checks of load, cargo and freights if there is a justified presumption that a crime had been committed,
- to ask appropriate public institutions, organs of self-government and other appropriate entireties or individuals for the assistance necessary in the course of execution of its powers,

Police force shall also apply modern investigative techniques i.e. controlled purchases, secretly monitored deliveries, acceptance or handling of material benefits when environmental organized crime is involved.

The regulations concerning controlled purchases, secretly monitored deliveries, acceptance or handling of material benefits directly applies only to crime of intentional illegal possession, production and trade with radioactive materials. In respect of other environmental crimes covered by this report the above mentioned investigative techniques shall be implemented indirectly i.e. only if environmental crime is committed with a intent and leads to considerable damage in property or is connected with a tax crime or corruption.

Polish Police force has a right to use information from the National Centre of the Criminal Information (Krajowym Centrum Informacji Kryminalnych) in a course of its proceedings.

Police carries out undercover operational control by all available legal means including: the surveillance and recording of the content of telephone conversations and electronic communications, surveillance of post mail. Main legal tools used by the Police in fighting with organized crime are controlled purchases and secretly monitored deliveries.

The Police forces has been equipped with a new tool, which should enable the Police to fight organized crime even more effective. On 05 January 2003 the National Centre of the Criminal Information (Krajowym Centrum Informacji Kryminalnych, further referred as the Centre) has been officially opened in the Police Headquarter. Information encoded in the
Centre’s data base are available also for other institutions responsible for fighting organized crime like Custom Units, the National Border Guard, prosecutor offices, tax offices, Inland Fisheries National Guard, directors of the national parks. The Centre has been created due to harmonization of the Polish law with European Union standards. The Centre shall become a part of European Union Schengen Information System. Prompt collection of dated and open access to the information by the above mentioned institutions should considerably improve a fight with organized crime including environmental organized crime. The Centre shall collect information concerning individuals already engaged in a criminal activities as well as information concerning potential criminals, information concerning investigations and case pending, information concerning a crime description (place, damages, characteristic of means used for committing a criminal offence. Due the fact that many crimes (including environmental crimes) are committed by foreigners (see point 3.2. some remarks on organized crime in Poland) the Centre shall also collect information concerning foreigners involved in a criminals activities in Poland thereupon. The above listed institutions being authorized to use the Centre’s sources are oblige to notice the Centre about any occurrences which should be encoded in the Centre’s date base. All the information shall be collect in the Centre for 15 years.

The Polish Police force has not improved any special proceedings concerning environmental crime, no special proceeding concerning environmental organized crime have been developed thereupon.

In environmental organized crime cases the Police forces including unit responsible for fighting organized crime i.e. Central Investigation Office (Centralne Biuro Śledcze) shall apply general rules described above.

Due to the fact that no special units have been created in the Police structure it is common practice that for a particular case “environmental ad hoc teams” of one up to three officers are created.

Information concerning details of operational method is not available due the fact that the Protection of Classified Information Act restricts the access to that information.\textsuperscript{125}

\textsuperscript{125} Dated 22 January 1999.
Funding\textsuperscript{126}

<table>
<thead>
<tr>
<th>Years</th>
<th>Funding in PLN</th>
<th>Funding in EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>1.249 000 000</td>
<td>312.250.000</td>
</tr>
<tr>
<td>1994</td>
<td>1.552 000 000</td>
<td>388.000.000</td>
</tr>
<tr>
<td>1995</td>
<td>2.030 000 000</td>
<td>507.500.00</td>
</tr>
<tr>
<td>1996</td>
<td>2.668 000 000</td>
<td>667.000.00</td>
</tr>
<tr>
<td>1997</td>
<td>3.243 000 000</td>
<td>810.750.000</td>
</tr>
<tr>
<td>1998</td>
<td>3.722 000 000</td>
<td>930.500.000</td>
</tr>
<tr>
<td>1999</td>
<td>4.318 000 000</td>
<td>1.079.500.000</td>
</tr>
<tr>
<td>2000</td>
<td>4.739 000 000</td>
<td>1.184.750.000</td>
</tr>
<tr>
<td>2001</td>
<td>5.256 000 000</td>
<td>1.314.000.000</td>
</tr>
</tbody>
</table>

The above table displays a general budget on a wide range of combating crime in general and is not limited to environmental related criminal activities.\textsuperscript{127} The information concerning allocation of budgetary funds are not available.

Contact addresses

The General Headquarters  
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www.bialystok.kwp.gov.pl

\textsuperscript{126} www.kgp.gov.pl  
\textsuperscript{127} Ibidem
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INTERNAL SECURITY AGENCY (Agencja Bezpieczeństwa Wewnętrznego - ABW)

Organisation

The Internal Security Agency (further: ABW) is the Polish special service responsible for the matters of the protection of the state’s internal security and its constitutional order including fighting organized crime. The Headquarters of the ABW, located in Warsaw, is composed of 16 units, among other things, of the following Departments: of Counterintelligence; of Counteracting Corruption, Terrorism and Organized Crime; for the Protection of Classified Information; of Telemetric Security, as well as of 5 Bureaus, for example: Bureau of Record and Archives, Legal Bureau.

The country structure of the ABW is composed of 15 regional branches, placed in the capitals of provinces. The ABW provides appropriate bodies with information that may be vital for the protection of the state’s internal security and its constitutional order and performs the functions of the national security authority. It also has the investigator powers analogous to those of the Police.

However article 5 point 1 of the Internal Security and Intelligence Agency Act dated 24 May 2002 specifies that the Internal Security Agency shall be responsible for identification and prevention of crimes weaken economic foundation of the State, fighting with environmental

128 www.abw.gov.pl
129 Dz.U. z 2002, No 74, pos. 676
organized crime does not belong to the ABW’s competences. In June 2002 the Internal Security Agency replaced Office of State Protection (UOP), which had similar competences and responsibilities. The ABW is included in the report because we cannot exclude that in unforeseen future the official institutional attitude may change and organized environmental crime shall be included in ABW’s competences thereupon.

**Working methods**

Within the scope of the tasks referred to in Article 5 paragraph 1, the ABW officers shall perform: intelligence and investigative activities in order to recognise, prevent and expose crimes and to prosecute their perpetrators, intelligence and analytic – informative activities in order to acquire and process information vital to the protection of state security and its constitutional order.

The ABW shall also perform the tasks commissioned by the court or prosecutor to the extent defined in the Penal Code.

The ABW officers shall perform their activities only within the competence of this Agency and within this competence they are entitled to the prosecutorial powers of the Police, resulting from the Penal Code.

The officers of the ABW, while performing the activities shall have the power to:

- order a particular behaviour,
- check identity documents in order to ascertain the identity of persons,
- detain people in the course and in the cases defined in the regulations of the Penal Code,
- search people and premises in the course and in the cases defined in the regulations of the Penal Code,
- make body or baggage search and also check the cargo of land, air, and water transport vehicles in case of justified suspicion that a punishable wrong act has been committed,
- observe and record, with the use of technical devices, the vision and accompanying sound of events that take place in public places.

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130 e-mail dated 21 February 2003, from Magdalena Kluczyńska – ABW Spokesperson.
131 Dz.U.02, No 74, pos.676
- demand necessary help from state institutions, government administration organs, organs of local authorities and entrepreneurs in the sector of public utilities; the above mentioned institutions, organs and entrepreneurs are obliged, within the scope of their activity, to grant this help gratuitously, in accordance with the current legal regulations,

- ask entrepreneurs, organisational units and social institutions other than the referred to in above point for the necessary help and also, in emergency cases, to ask any person to give immediate assistance, in accordance with the current legal regulations.

The person who is detained, searched or whose premises have been searched on the basis of the Internal Security and Intelligence Agency Act, shall have the rights provided for by the Penal Code. The detention of a person may be applied only when other measures have proved to be aimless and ineffective. The detained person, if it is justified, must immediately undergo medical treatment or must be given the first aid. The person shall have the right to lodge a complaint with the court or the prosecutor respectively against the way of carrying out the activities referred to in the Internal Security and Intelligence Agency Act.

**Funding**

As a general rule the activity of the ABW, shall be financed from the budget of the state. The ABW may accumulate, at a separate bank account, special resources originating from tasks and undertakings performed in cooperation with special services of other countries. The costs of performing the Agency’s tasks, to which, because of its concealment, cannot be applied the regulations on public financing, book-keeping and public orders – shall be incurred from the operational fund set up for this purpose. The Head of the Agency, within his competence, shall define by means of orders detailed rules, which are a state secret, of setting up and managing the operational fund referred above. The Prime Minister, by means of order, shall define the detailed rules of setting up and spending these special financial resources, specifying the rules of planning these resources, their origin and the way of clearing accounts with the state budget, with regard to the regulations on classified information protection.

According to State Budget Act for 2003 the Internal Security Agency’s founding shall amounted to 365.175.000 PLN i.e. 91.293.750 EUR.\(^{133}\)

\(^{133}\) Ustawa Budżetowa 2003 Dz.U.02 no.235, poz.1981
Contact addresses

Due to protective measures only spokesman contact addresses are available

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e-mail: poczta@abw.gov.pl

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tel. +48 89 5273131

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Regional Branch in Zielona Góra
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Tomasz Paszkiewicz
tel. +48684516580
Organised environmental crime in some Candidate Countries

Customs (Służby Celne)

Organisation

From the date of April 30, 2002, the office of the President of the Central Board of Customs, a central governmental authority, was abolished. This abolition occurred as the result of the enforcement of the Act from March 01, 2002 regarding the changes in the organization and functions of the central governmental authorities and their subordinate units, and regarding the changes of certain regulations (O. J. No 25, item 253).

As a result of the changes the Custom service has been placed within structure of the Ministry of Finance. Minister of Finance supervises and controls custom service.

The Head of the Custom Service directly supervises and control work of custom service. The customs responsibilities in Ministry of Finance has been taken up by five departments. The Custom Service has been structured hierarchically into 17 Customs Chambers, 67 Custom Offices and 266 Customs Branches and Posts. The customs administration maintained a level of employment in the year 1999 of 14,500 staff. Custom Service plays crucial role for enforcing CITES in Poland. In each Chamber, Office, Branch and Post the position of CITES coordinator has been established. The Structure of CITES coordinators follows the general hierarchical structure of the custom service.

134 www.clo.gov.pl
Figure 35: Structure of the Polish Customs

```
HEAD OF THE CUSTOM SERVICE

Custom service
Organizational Department
Custom Policy
Customs Audit
Excise Tax Department
Departement of Games of Chance and Betting

17 Customs Chambers:
Department of Operational Control;
CITES coordinators

67 Customs Offices
CITES coordinators

266 Customs Branches and Posts
CITES coordinators
```

Source: Polish Customs

**Working methods**

This paragraph deals generally with working of Custom Service and thus covers environmental crime issues falling into the competency of Customs due to export – import activities. Custom Service performs check on import – export consignments basically by checking freight documentation as well as manual examination. Methods employed for safeguarding of the territory of Poland against export and import of goods, the trade which is subject to restrictions for the reason of the protection of life and health of people, protection of plants, animals and natural environment are as described below.

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In respect of natural environment Custom Service acts against an entry of hazardous substances and micro-organisms, in respect of world fauna and flora acts against illegal predatory circulation of endangered species.

The Custom Service while performing the activities to ascertain legality of imported and exported goods and proceeding thereto shall imply operational and intelligence undertakings.

The operational and intelligence undertakings shall be implied if the circumstances proved that national interests and property has been threaten and shall include: either open or classified observing, collecting, checking and processing of information concerning international trade in goods.

The Custom Service while performing operational undertakings shall be able to use information collected by other institutions entitled to undertake operational actions i.e. Police, The National Border Guard or the Internal Security Agency. The Customs officers while performing operational actions may use informal paid informers. For that purposes the operational fund has been established. Finantial means for informal informators are taken from that fund therein. The Custom officers may use direct compulsion means against individuals who act contrary to their clear orders.

Risk analysis has been introduced in Customs Offices with the support of a newly created database, the effect of which, on the one hand supports the effectiveness of the work of staff – increase in the detection of customs offences, and on the other hand reduces the waiting time for customs clearance for credible importers.

The below table displays the structure of the equipment for customs examination possessed by the Custom Administration in 2001.\textsuperscript{136}

\begin{center}
\begin{tabular}{|l|c|c|c|}
\hline
\textbf{Equipment} & \textbf{Number of items} & \textbf{Number of items per 1 office (on average)} & \textbf{Requested of items} \\
\hline
endoscopes\textsuperscript{137} & 127 & 7,5 & 62 \\
mini-labs & 273 & 16,1 & 61 \\
X-ray equipment & 53 & 3,1 & 60 \\
Specialist mirrors\textsuperscript{138} & 549 & 32,3 & 91 \\
\hline
\end{tabular}
\end{center}

\textsuperscript{136} \url{www.clo.gov.pl}

\textsuperscript{137} Optical instruments for examining (visualizing) the interior of baggage or cargo.

\textsuperscript{138} Mirrors with magnifying glasses on a special extension arm, enabling to visualize areas difficult to access, e.g. chassis.
<table>
<thead>
<tr>
<th>Radiometric frames(^{139})</th>
<th>89</th>
<th>5,2</th>
<th>13</th>
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<tbody>
<tr>
<td>lab scales</td>
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<td>10,4</td>
<td>44</td>
</tr>
<tr>
<td>platform scales</td>
<td>154</td>
<td>9,1</td>
<td>28</td>
</tr>
<tr>
<td>telephones</td>
<td>1 909</td>
<td>136,4</td>
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<tr>
<td>mobile phones</td>
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<td>34,3</td>
<td>58</td>
</tr>
<tr>
<td>fax machines</td>
<td>773</td>
<td>45,5</td>
<td>99</td>
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<tr>
<td>telex machines</td>
<td>16</td>
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<td>2</td>
</tr>
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<td>Portable radio-telephones</td>
<td>877</td>
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<tr>
<td>Car radio-telephones</td>
<td>223</td>
<td>13,1</td>
<td>20</td>
</tr>
<tr>
<td>stationary radio-telephones</td>
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<tr>
<td>photocopiers</td>
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<tr>
<td>computer stations</td>
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<td>344,3</td>
<td>1 292</td>
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<tr>
<td>passenger cars</td>
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<tr>
<td>off-road vehicles</td>
<td>14</td>
<td>0,8</td>
<td>15</td>
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<tr>
<td>lorries</td>
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<td>7</td>
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<tr>
<td>mini-buses</td>
<td>40</td>
<td>2,4</td>
<td>11</td>
</tr>
<tr>
<td>Unloading equipment</td>
<td>68</td>
<td>4,0</td>
<td>15</td>
</tr>
<tr>
<td>dogs</td>
<td>52</td>
<td>3,1</td>
<td>23</td>
</tr>
</tbody>
</table>

**CITES Coordinators within Custom service structure**

The below information and statistical data concerning performing powers vested by the Custom Code and CITES Convention concerning fighting with illegal trade in endangered species and their products cover only last 5 years i.e. from 1998 due to the fact that CITES coordinators have been appointed in all custom chambers, offices, branches and posts in 1998. However CITES Convention became part of Polish legal system in 1991 within first 7 years the regulation of Convention were not executed at all. Situation have changed in 1998 when CITES coordinators were appointed. The structure of CITES coordinators follows the general hierarchical structure of the custom service. CITES

\(^{139}\) Devices used for detecting radioactive consignments.
coordinators cooperate with Department of Operational Control while executing their
powers. However Department of Operational Control operates on Custom Chamber level
it supervises the operational action undertaken by custom offices, custom branches and
posts

CITES coordinators supervise the work of custom service in respect of CITES Convention
issues. Customs services apply in their work general methods and equipment described
above and also special methods developed through enforcement of CITES Convention.
The violation of the CITES’s provision constitutes under Polish law petty offence and is
not materially related with article 181 CC provision (see Part 3.2 point V. Sanctions in the
field of organized crime in the sphere of the environment).

The procedure concerning violations of CITES Convention regulations\textsuperscript{140}

If violations of CITES Conventions occur, endangered species and/or their products are
seized by CITES coordinators or other custom officers. CITES coordinator prepares
seizure report thereupon and sent the report to the Ministry of Finance (the Minister of
Finance supervises work of Custom Services). The Ministry of Finance acknowledges the
Ministry of Environment thereof and finally the Ministry of Environment acknowledges
Secretariat of the Convention in Lozano of seizure being made.

Due to ambiguous regulations it was not clear whether Police or Custom Service shall be
in the right to conduct proceedings concerning violations of the CITES Convention’s
regulations. The practice has developed the following modus operandi: if custom service
identifies violation of the CITES Convention, CITES Coordinator informs Police, which
continues further proceeding thereupon. Due to the fact that endangered species or their
products can not be subject of a trade, CITES coordinator applies on the Treasury behalf
to a court for forfeiture of seized species and/or their products thereupon.

According to developed practice once forfeiture of seized species and/or their products for
the Treasury is being pronounced the species and/or their products are devolved to
appropriate institutions like zoological gardens, muses, research institutes.

Custom Offices have developed fruitful and effective cooperation with other institutions
involved in protection of endangered species and observance of CITES Convention’s
regulations i.e. Police, nature conservator, the National Border Guard, inspectors from
Inspection of Environmental Protection and research institutes. In order to raise
awareness of CITES issue within institutions applying the Convention’s provisions
systematic trainings are organized. During the trainings specialists from different fields
present most effective means and tools necessary for fighting with illegal trade in
endangered species and their products.\textsuperscript{141}

\textsuperscript{140}Information from Custom Chamber in Gdynia (later dated 24 February 2003), telephone interview with CITES inspector in
Custom Chamber in Gdynia Mr. Andrzej Świstowski

\textsuperscript{141}Information from Custom Chamber in Gdynia (later dated 24 February 2003), telephone interview with CITES inspector in
Custom Chamber in Gdynia Mr. Andrzej Świstowski
Funding

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<sup>142</sup> Ustawa Budżetowa na 1994 Dz.U.94. No.52, pos.209
<sup>143</sup> Ustawa Bużetowa na 1995 Dz.U.95. No. 27, pos.141
<sup>144</sup> Ustawa Budżetowa na 1996 Dz.U.96. No. 19, pos.87
<sup>145</sup> Ustawa Budżetowa na 1997 Dz.U.97. No. 19, pos.106
<sup>146</sup> Ustawa Budżetowa na 1998 Dz.U.98. No. 28, pos.156
<sup>147</sup> Ustawa Budżetowa na 1999 Dz.U.99. No. 17, pos.154
<sup>148</sup> Ustawa Budżetowa na 2000 Dz.U.00. No. 7, pos.85
<sup>149</sup> Ustawa Budżetowa na 2001 Dz.U.01. No. 21, pos.246
<sup>150</sup> Ustawa Budżetowa na 2002 Dz.U.02. No. 30, pos.275
<sup>151</sup> Ustawa Budżetowa 2003 Dz.U.02 no.235, pos.1981
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**Public Prosecutor (Prokuratura)**

**Organisation**\(^{152}\)

The Public Prosecutor’s Office as the national focal point for combating crime plays also a very important role in fighting organized crime. The investigative and prosecuting powers in criminal cases concerning offences against environment have been conferred on the Police and the Public Prosecutor’s Office.

The Public Prosecutor’s Office is hierarchically structured and comprises the National Prosecutor’s Office, appeal offices (10 units), circuit offices (41 units) and district offices (323 units). In appeal offices the Departments II are responsible for fighting organized crime. In two appeal offices (Białystok, Rzeszów) Department II has not been specified. In circuit offices Departments VI are responsible for fighting organized crimes. In eleven circuit offices Department VI has not been specified. Within Departments II and VI no particular unities responsible for fighting with environmental organized crime have been assigned.

The tasks, functions, operations principles of the Public Prosecutor’s Office as well as the duties, rights and guarantees applicable to prosecutors are defined in the Law on the Prosecuting Authority. According to this act, the Public Prosecutor’s Office supervises the preparatory proceedings in criminal cases, represents the state in court, supervises the enforcement of judgments in criminal cases, supervises the enforcement of decision concerning pre-trial detention and supervises its legality and ensures coordination of the investigative activities of other state authorities entitled to conduct investigative tasks.

Within Public Prosecutor’s Office structure the Office For Fighting Organized Crime plays a key role in fighting organized crime, including environmental organized crime.

Main goals of the Office For Fighting Organized Crime are as follows:

- collection and analysis of information and materials concerning organized crime;
- prognosis concerning development of organized crime;
- coordination of activities of Public Prosecutor’s Office and other public institutions involved in fighting organized crime;
- coordination of cooperation with international organizations, foreign police services and enforcement of the strategies against organized crime;
- involvement in preparatory proceedings;

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- administration of the electronic information system supporting fighting organized crime.

Within the Public Prosecutor’s Office the following structure has been established in order to fight organized crime:

**Figure 36: The national prosecutors office for fighting organised crime**

**THE NATIONAL PROSECUTOR’S OFFICE**

**OFFICE FOR FIGHTING ORGANIZED CRIMES (OFOC) CONSISTS OF:**

- Group responsible for fighting organized crime;
- Group responsible for supervising operational activities
- Group responsible for international cooperation in the sphere of fighting organized crime
- Group responsible for information and analysis.

Departments II in appeal offices are subject of OFOC’s supervision

Departments VI in district offices are subject of OFOC’s supervision

**Working methods**

Due to the fact that there are no special units within structure of the Public Prosecutor Office responsible for fighting environmental organized crime, no special methods concerning such cases has been developed. The general working methods apply in respect of environmental cases crimes as well. If the cases are being considered as organized crime case (including environmental cases) the exclusive responsible for

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running such case is assigned to either Department VI of circuit offices or Department II of appeal offices.

The public procurators, while performing the activities against organized crime shall execute their statuary powers by:

- undertaking or supervising preparatory proceeding in criminal cases and acting before common courts as a public prosecutor,
- filing writs in criminal and civil cases and participating in legal proceedings,
- undertaking all available measures necessary to homogenous and proper application of the law during judicial and administration proceedings,
- observing the execution of decisions concerning limitation and depravation of liberty,
- undertaking researches concerning criminality and fighting with criminality,
- participating in habeas corpus proceedings,
- coordinate the cooperation of state institution in the field of fighting crime,
- cooperation with state institution in the field of fighting crime,
- cooperation with a Director of the National Centre of Criminal Information in accordance with the current legal regulations

The below description of the detailed working methods is based on provisions of the Criminal Proceedings Code which regulates the role of public prosecutors. The following information is the detailed description of the general information provided above.

As a general rule the public prosecutors conduct the preparatory proceedings.

Having received notice of an offence, the public prosecutor authorised to conduct the preparatory proceedings shall be obligated to issue immediately, an order on instituting or the refusal to institute an investigation or inquiry.

Within the limits necessary to secure evidence of the offence against loss, distortion or destruction, the public prosecutors in cases not amenable to delay, may always carry out the necessary inquiries. This can be done even before the issuance of the order on the institution of the investigation or inquiry and they can in particular inspect, if necessary, with the participation of experts, conduct searches and effect the other action with respect to the suspect, and undertake all other necessary actions, including taking blood and excretory samples for tests.

In cases not amenable to delay, and particularly if a delay might result in the effacing traces or evidence of an offence, a person suspected of committing the offence may be
examined as a suspect prior to the issuance of an order on the presenting charges, if there are grounds for the issuance of such an order. The examination shall begin by informing the suspect of the contents of charge.

Objects, which may serve as evidence, or be subject to seizure in order to secure penalties regarding property, penal measures involving property or claims to redress damage, should be surrendered when so required by the court or the public prosecutor (seizure of objects).

Offices, institutions and entities operating in post and telecommunications fields, customs houses, and transportation institutions and companies, shall be obligated to surrender to the court or the public prosecutor upon demand included in their order, any correspondence or transmissions significant to the pending proceedings. Only the court and a public prosecutor shall be entitled to inspect them or to order their inspection.

A search may be made of premises and other places in order to detect or detain a person or to ensure his compulsory appearance, as well locate objects which might serve as evidence in criminal proceedings, if there is good reason to suppose that the suspected person or the objects sought are to be located there (searches). A search may be conducted by the state prosecutor or with warrant issued by the court or state prosecutor, by the Police, and, also in cases specified in law, by another agency.

The surveillance and recording of the content of telephone conversations is not allowed in cases of environmental organized crime.

If the accused, with respect to which an order for preliminary detention has been issued, has gone into hiding, the court or the public prosecutor may issue the order for search in the form of a wanted notice.

If there is a justified concern for safety of life, health, freedom or loss of property of considerable dimension regarding the witness or his next of kin, the court, and in the preparatory proceedings - the public prosecutor, may issue an order classifying as secret the personal data of such witness (incognito witness).

In the event that the order referred to incognito witness has been issued, exclusively the court, the public prosecutor, shall know the personal data of the witness and, when necessary, to a police official who conducts the proceedings. Records of testimonies of the witness may be made available to the accused or his defence counsel only in the manner preventing identification of the witness.

The incognito witness shall be examined by the public prosecutor and by the court, which may direct a judge from its composition to do so at a place and in a manner ensuring secrecy as to the identity of incognito witness.

An investigation shall be conducted in case of offences specified in Article 258 § 3 of the Criminal Code i.e. establishing organized crime group. As a general role environmental organised crime cases shall be subject to inquiry unless the public prosecutor decides to
conduct an investigation by reason of the significance or complexity of the case. An investigation should be completed within three months.

In justified cases the period of the investigation may be extended by a public prosecutor superior for a further specified time limit but not exceeding one year. In particularly justifiable cases the Attorney General may extend the period of investigation for a further prescribed period.

In cases where investigation is not mandatory, an inquiry is conducted. An inquiry should be completed within one month. The public prosecutor who supervises the inquiry may extend this period for up to 3 months.

The investigation shall be conducted by the public prosecutor. The Police shall conduct the investigation unless it is being conducted by the public prosecutor. The public prosecutor may delegate to the Police to carry out the investigation or inquiry that he conducts, in whole or to some limited extent, or to discharge the particular investigative actions.

If the data exists at the time of the institution of an investigation or inquiry or is collected during their course, and contains grounds sufficient for suspicion that an act has been committed by a specified person, an order on presenting charges shall be issued and announced without delay to the suspect, who shall then be examined. An order on presenting charges shall specify the identity of the suspect, detailed data on the act imputed to him and the legal classification thereof.

The public prosecutor shall supervise the preparatory proceedings, to the extent that he is not personally conducting the same, and shall also supervise the verification proceedings conducted. The state prosecutor shall be obligated to ensure that the entire proceedings, which he supervises, are conducted correctly and efficiently.

In particular, the public prosecutor may, by virtue of his supervisory function:

- inform himself of the intentions of the person conducting the preparatory proceedings,

- indicate the directions of the proceedings, and issue rulings in this matter,

- request that materials collected in the course of preparatory proceedings be presented to him,

- participate in actions carried out by the person conducting the proceedings, carry them out in person, or personally take over and proceed with the case,

- issue orders, rulings or instructions, and amend and reverse orders and rulings issued by the person conducting the preparatory proceedings.

In the event that an agency other than the state prosecutor does not follow an order, ruling or instruction issued by the state prosecutor supervising the proceedings, on the motion of
the latter, a superior of such an official shall institute official proceedings whose results shall be communicated to the state prosecutor.

Within 14 days of the conclusion of the investigation or inquiry, or receiving an indictment prepared in summary proceedings, the state prosecutor shall file an indictment to the court or shall issue an order on the discontinuance or suspension of the preparatory proceedings, or on a supplementary investigation or inquiry. Courts and state prosecutors' offices shall give judicial assistance when requested by letters issued by the courts and the public prosecutors' offices of foreign states.

The petition for extradition by a foreign State of a person against whom criminal proceedings have been instituted, for extradition in order to conduct judicial proceedings or enforce the imposition of the penalty of deprivation of liberty, for transportation of a prosecuted or sentenced person through the territory of a foreign State, or for or for transmitting from the territory of a foreign State the material evidence or objects acquired by the perpetrator through his offence, shall be filed through the Attorney General by the courts and public prosecutors. In exigent circumstances, the court or the public prosecutor may apply directly to the appropriate agency of the foreign State, requesting that the person whose extradition is to be sought, be put under preliminary detention or arrested.

If an authority of a foreign State request the extradition of a prosecuted person in order to conduct criminal proceedings against him, or to execute a penalty or a preventive measure previously imposed, the state prosecutor shall examine this person and, if necessary, secure the material evidence in this country, whereupon he shall file the case with a Circuit Court having territorial jurisdiction over the case.

**Funding**

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\(^{154}\) Ustawa Budżetowa na 1994 Dz.U.94. No.52, pos.209
\(^{155}\) Ustawa Budżetowa na 1995 Dz.U.95. No. 27, pos.141
\(^{156}\) Ustawa Budżetowa na 1996 Dz.U.96. No. 19, pos.87
\(^{157}\) Ustawa Budżetowa na 1997 Dz.U.97. No. 19, pos.106
\(^{158}\) Ustawa Budżetowa na 1998 Dz.U.98. No. 28, pos.155
Organised environmental crime in some Candidate Countries

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<td>227,440,750</td>
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162 Ustawa Budżetowa na 2002 Dz.U.02. No. 30, pos. 275
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ul. Polna 13
60-535 Poznań
tel. +48 61 858-16-00, +48 61 847-25-94
Departament VI

Prokuratura Okręgowa w Szczecinie
ul. Stoisława 6
70-952 Szczecin
tel. +48 91 448-93-23, +48 91 433-63-11
Departament VI

Prokuratura Okręgowa w Zielonej Górze
ul. Partyzantów 42
65-950 Zielona Góra
Prokuratura Apelacyjna w Rzeszowie
ul. Piłsudskiego 28
tel. +48 17 8580200,
There is no separate Departament for fighting organized crime

Prokuratura Okręgowa w Krośnie
ul. Czajkowskiego 51
38-400 Krosno
tel. +48 13 420-21-52, +48 13 420-21-52
ext. 333

Prokuratura Okręgowa w Przemyślu
ul. Waygarta 8
37-700 Przemyśl
tel. +48 16 678-97-77, +48 16 678-85-21
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Prokuratura Okręgowa w Rzeszowie
pl. Śreniawitów 3
35-959 Rzeszów
tel. +48 17 875-62-00, +48 17 852-40-10
Departament VI

Prokuratura Apelacyjna we Wrocławiu
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50-044 Wrocław
tel. +48 71 372-42-08, +48 71 372-44-68
Departament II

Prokuratura Okręgowa w Jeleniej Górze
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58-500 Jelenia Góra
tel. +48 75 642-84-00, +48 75 642-84-34
Departament VI

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59-220 Legnica
tel. +48 76 852-51-05, +48 76 852-44-53
Department VI

Prokuratura Okręgowa w Tarnobrzegu
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39-400 Tarnobrzeg
tel. +48 15 823-48-80 822-81-63 ext 261
There is no separate Departament for fighting organized crime

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Departament II

Prokuratura Okręgowa w Ostrołęce
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Departament VI

Prokuratura Okręgowa w Płocku
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Departament VI

Prokuratura Okręgowa w Warszawie
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Departament VI
The National Border Guards (Straż Graniczna)

ORGANIZATION

Central organ of governmental administration in respect of protection of national borders is the Chief of the National Border Guard Service. The Chief of the National Border Guard Service is appointed by the Minister of Internal Affairs and Administration. Regional organs of the National Border Guards are Chiefs of the Border Guard Branches, Chiefs of Observing Points (Strażnica), Border Check Points and Squadrons of Border Guards.

Working methods

Besides protection of the national borders the core tasks of the National Border Guard include also identification, prevention and combating some types of crimes including transfrontier shipment of hazardous waste, chemicals or nuclear and radioactive materials. The National Border Guard within its scope of activity cooperates with national and international institutions realizing protection and preventive tasks.

Similarly to Police force the National Border Guard shall apply modern investigative techniques i.e. controlled purchases, secretly monitored deliveries. Modern investigative techniques shall be applied also when environmental organized crime is involved.

The National Border Guard perform operational, intelligence, administrative, police activities and preparatory proceedings in compliance with the Code of Criminal Proceeding.

The National Border Guard, while performing the activities shall have the power to:

- obtain (including confidential information), collect, verify and process information,

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164 www.sg.gov.pl
- check identity documents in order to ascertain the identity of persons,

- detain people in the course and in the cases defined in the regulations of the Code of Criminal Proceeding and convey them to appropriate Border Guard unit,

- search people, premises and means of transport,

- observe and record, with the use of technical devices, the vision and accompanying sound,

While performing the above activities the National Guard shall have competences granted to Police.

As far as hazardous waste including radioactive waste and potentially radioactive materials are concerned the National Border Guard has a power to stop transport with hazardous waste and sent it back to the country of sender.

If a vessel on inland water or on Polish territorial waters undertake illegal fishing, the National Border Guard shall has a power to:

- make a vessel search and check the cargo,

- detain a vessel, check documents concerning vessel and its cargo, check identity documents of a crew and passengers and detain people suspected for committing a crime,

- force a vessel to enter a harbour if a captain of the vessel does not follow the National Border Guard’s orders.

Since 30 June 2002 the Headquarter of the National Board Guard and Regional Units have been equipped with fast Internet connections. The access to Internet shall enable fast and effective flow of information between different structure units as well as access to Schengen information System (SIS) and electronic databases of Polish public institutions including Police’s databases. The process of providing all units with equipment necessary for communication of classified information has entered final stage. As the result of the above-described investment the National Border Guard shall be equipped with very modern and effective information net.

Besides realization of statutory obligations the National Border Guard shall develop international cooperation with Border Guard services from other countries. Contact points with other Border Guards services shall be open on Polish-Slovak, Polish- Czech and Polish-Ukrainian borders thereupon. More intensive jointly controls with Ukrainian Border Guard are planned. The National Border Guard has undertaken organizational steps to delegate liaison officers to neighbour countries and to equipped air its airplanes with thermo visors.
Funding

The activity of the National Border Guard shall be financed from the budget of the state. Additionally 20 % of the Treasury’s income deriving from seizures made by the National Border Guard shall be spend in order to make the functioning more effective and for financial awards for most effective officers.

<table>
<thead>
<tr>
<th>Years</th>
<th>Funding in PLN</th>
<th>Funding in EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>156.423.100(^{166})</td>
<td>39.105.775</td>
</tr>
<tr>
<td>1995</td>
<td>201.850.000(^{167})</td>
<td>50.462.500</td>
</tr>
<tr>
<td>1996</td>
<td>281.285.000(^{168})</td>
<td>70.321.250</td>
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<tr>
<td>1997</td>
<td>380.968.000(^{169})</td>
<td>95.242.000</td>
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<tr>
<td>1998</td>
<td>430.266.000(^{170})</td>
<td>107.566.500</td>
</tr>
<tr>
<td>1999</td>
<td>514.498.000(^{171})</td>
<td>128.624.500</td>
</tr>
<tr>
<td>2000</td>
<td>544.302.000(^{172})</td>
<td>136.075.500</td>
</tr>
<tr>
<td>2001</td>
<td>667.888.000(^{173})</td>
<td>166.972.000</td>
</tr>
<tr>
<td>2002</td>
<td>660.686.000(^{174})</td>
<td>165.171.500</td>
</tr>
<tr>
<td>2003</td>
<td>762.006.000(^{175})</td>
<td>190.501.500</td>
</tr>
</tbody>
</table>

\(^{166}\) Ustawa Budżetowa na 1994 Dz.U.94. No.52, pos.209
\(^{167}\) Ustawa Budżetowa na 1995 Dz.U.95. No. 27, pos.141
\(^{168}\) Ustawa Budżetowa na 1996 Dz.U.96. No. 19, pos.87
\(^{169}\) Ustawa Budżetowa na 1997 Dz.U.97. No. 19, pos.106
\(^{170}\) Ustawa Budżetowa na 1998 Dz.U.98. No. 28, pos.156
\(^{171}\) Ustawa Budżetowa na 1999 Dz.U.99. No. 17, pos.154
\(^{172}\) Ustawa Budżetowa na 2000 Dz.U.00. No. 7, pos.85
\(^{173}\) Ustawa Budżetowa na 2001 Dz.U.01. No. 21, pos.246
\(^{174}\) Ustawa Budżetowa na 2002 Dz.U.02. No. 30, pos.275
\(^{175}\) Ustawa Budżetowa 2003 Dz.U.02 no.235, poz.1981
Contact addresses

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fax. +48 89 751 27 71

Nadbużański District Unit
ul. Trubakowska 2
Bieszczadzki District Unit
220-100 Chelm
tel. +48 82 562 41 00

Podlaski District Unit
15-382 Białystok
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tel. +48 85 745-69-00 fax. +48 85 748-42-00

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37-700 Przemyśl;
ul. Mickiewicza 34
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fax.+48 16 676-33-38

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ul. Mickiewicza 34
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tel. +48 16 676 39005

Morski District unit
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80-917 Gdańsk
tel. +48 58 343 39

Łużycki Unit
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ul. Wojska Polskiego 2
tel. +48 75 722-40-12 to 17; fax. +48-75
722-45-16

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Poprzeczna 1
tel. +48 68 383-50-27, fax. +48 68 383-64-45

Pomorski Unit
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Regional Department of the Headquarter
of the Nat. Board Guard in Kielce
tel.+48 41 349 29 12

Regional Department of the Headquarter
of the Nat. Board Guard in Toruń
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The Inspection of Environmental Protection (Inspekcja Ochrony Środowiska)

Organization

The General Inspector of Environmental Protection is the central authority of the governmental administration appointed to control the observance of the provisions related to environmental protection and to examine the environmental situation. The main duties of the Inspection of Environmental Protection (further: the Inspection) are as follows:

- to control the observance of the provisions related to environmental protection;
- to participate in proceedings concerning localization of investments;
- to take part in procedures concerning setting motion investments, which may be hazardous to the environment;
- to control exploitation of the installations protecting the environment;
- to co-operate with other control bodies, law enforcement agencies and the criminal justice in the environmental protection area;
- to undertake decisions prohibiting actions against environment.

Within structure of the General Inspector (Inspection and Decision making Unit) there is Department of Transfrontier Shipment of Hazardous Waste. Main task of the Department is a control and coordination of the Inspection’s activities in the sphere of export, import and transit of hazardous waste.

The competences of Department of Transfrontier Shipment of Hazardous Waste shall include in particular:

- registration and conduct administrative proceedings concerning import of waste and hazardous waste defined in the executive legal act,
- registration and conduct administrative proceedings concerning export of hazardous waste and other waste not defined in the executive legal act,
- registration and conduct administrative proceedings concerning transit transport of hazardous waste,
- conduct appeal proceeding concerning the cases mentioned above,

176 www.pios.gov.pl
177 Dziennik Ustaw nr 112/2001 poz.1206,
178 Dziennik Ustaw nr 15/2002 poz.146,
179 Dziennik Ustaw nr 112/2001 poz. 1206
180 Dziennik Ustaw nr 15/2002 poz. 147,
181 Dziennik Ustaw nr 112/2001 poz.1206,
- execution of Basil Convention in part prescribed for the Inspection’s competence,

- cooperation with the foreign institutions and international organizations concerning transfrontier movement of waste,

- cooperation with public control, investigation and judicial organs (including reporting to prosecutor offices) concerning violation of transfrontier movement of waste regulations,

- examination of claims concerning The General Inspector of Environmental Protection’s decisions, preparation of draft responses for the claims, participation in proceedings before The Chief Administrative Court in cases concerning transfrontier movement of waste,

- consultation body for Voivodeship Inspector of Environmental Protection concerning transfrontier movement of waste falling into the Inspection’s competency,

- conduct and participation in controls of international trade in waste,

- participation in opinion process of legal acts concerning transfrontier movement of waste,

- collecting and analyses of data concerning transfrontier movement of waste.
Figure 37: Organizational structure of the Inspection of Environmental Protection

Source: Own description

182 The structure exists since 1998
Working methods\textsuperscript{183}

Control assignments prescribed for the Inspection shall be executed by the General Inspector of Environmental Protection, Voivodeship Inspectors of Environmental Protection and authorized by them the Inspection's employees.

The above mentioned subjects, while performing the activities shall have the power to:

- enter premises used for commercial purposes and means of transport accompanied with environmental specialists and necessary equipment,

- take samples of controlled substances, conduct necessary researches and evaluate compliance with environmental protection regulations,

- evaluate manners in which devices including means of transport are exploited,

- evaluate applied technologies,

- request written or oral explanations, interrogate individuals during control proceeding in order to establish necessary facts,

- ask for presenting all documents and providing all information related with a control,

If necessary Voivodeship Inspector of Environmental Protection shall request appropriate Police commandant for adequate assistance in a control operation. The Police commandant shall be obliged to provide an adequate assistance thereupon. As far as misdemeanours against a natural environment are concerned the Inspection's organs shall have competences of public prosecutor even a proceeding had been initiated by other institution.

Once the Inspection's organs identify that environmental crime had been committed they notify officially institutions responsible for fighting crime. The notification shall be accompanied with collected evidence proving that a crime had been committed.

If necessary the Inspection's organs shall demand help from state institutions, government administrations organs, organs of local authorities including request for information and documents concerning environmental protection.

The Inspection's organs cooperate and exchange information concerning substances in which trade has been prohibited due to environmental issues with the Custom Service and the National Border Guard. The Inspection provide also assistance for the National Board Guard’s control actions.

\textsuperscript{183} The Law of Inspection of Environmental Protection dated 20 July 1991, Dz.U. No 77, pos. 335.
Funding

The activity of the Inspection of Environmental Protection shall be financed from the budget of the state. Additionally 20 % of the Treasury’s income deriving from executed fines imposed by the Inspection of Environmental Protection shall be spend on effective functioning and for financial awards for most effective employees.

The General Inspector of Environmental Protection as well as Voivodeship Inspectors of Environmental Protection shall be entitled to collect financial resources on separate bank accounts due the rules of setting up and spending theses financial resources.

<table>
<thead>
<tr>
<th>Years</th>
<th>Funding in PLN (mln)</th>
<th>Funding in EUR (mln)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>10.728.000 184</td>
<td>2.682.000</td>
</tr>
<tr>
<td>2002</td>
<td>10.534.000 185</td>
<td>2.633.500</td>
</tr>
<tr>
<td>2003</td>
<td>10.139.000 186</td>
<td>2.534.750</td>
</tr>
</tbody>
</table>

184 Ustawa Budżetowa na 2001 Dz.U.01. No. 21, pos.246
185 Ustawa Budżetowa na 2002 Dz.U.02. No. 30, pos.275
Contact addresses

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Waldemar Kulaszka
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www.wroclaw.pios.gov.pl

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Wojciech Zdzisław Krajewski
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www.wios.bydgoszcz.pl

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Leszek Żelazny
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www.wios.lublin.pl

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Zbigniew Lewicki
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e-mail: opole@pios.gov.pl
Voivodeship Inspector of Environmental Protection
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Maria Suchy
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Hanna Grunt
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tel. +48 91 4303725
Jerzy Żygis
e-mail:wios@wios.szczecin.pl
www.wios.szczecin.pl

Organised environmental crime in some Candidate Countries
**The Maritime Administration (Administracja Morska)**

**Organization**

The organs or maritime administration are the Minister of Transport and Maritime Economy and Directors of Maritime Boards acting as regional maritime administration bodies. The Minister of Transport and Maritime Economy supervises directors of Maritime Boards. Directors execute their powers through Maritime Boards.

Inter alia Maritime Boards consists of the maritime inspection. The Maritime Boards are situated in Gdynia, Słupsk and Szczecin. Inspection of Environmental Protection’s organs are included in each of the Maritime Boards' organizational structure.

The following issues concerning combating environmental crime fall into competences of maritime administration: pollution of the sea caused by wrong use of equipment, illegal dumping of waste and other substances in the sea.

**Working methods**

Detection of pollution of maritime environment caused by activities at sea and offenders is performed by the Maritime Inspection, which co-operates with the Border Guard therein. Despite the fact that in the Criminal Code there is a provision concerning criminal sanctions for pollution of water, the observance of legal provisions concerning prevention of the pollution and prosecution of environmental criminality at sea belongs to Directors of Maritime Boards and bodies subordinate to the Minister of Infrastructure on the basis of the Act on Maritime Areas of the Polish Republic and the Maritime Administration and the Code of Administrative Procedures. In practice public prosecutors have never used these provisions in relation to pollution at sea.

Ship owner shall be fined by the Director of Maritime Board for any sea pollution caused by the ship on the Polish territorial sea. The fine shall amount up to 1.000.000 USD. The fine limits (commonly called SDR) are defined by International Monetary Fund.

In case of justified suspicion that punishable pollution of the sea has been caused by a ship, Director of Maritime Board shall be entitled to control such ship.

The Maritime Board in Gdynia has been equipped with a special plane (L-410 "Turbolet") for surveillance flights over Polish marine areas. The plane patrols marine areas being under

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jurisdiction of all Maritime Boards. \(^{189}\) The Inspector of the Inspection of Environmental Protection should be present during control flights.

The maritime inspection, while performing the activities inter alia shall has the power to:

- check documents in order to ascertain the legality of fishing or other activities on the Polish territorial sea,
- search vessels, cargo and undertake any required steps for the effective control,
- request official explanations.

**Responsibility for counter-pollution measures at sea and on land\(^{190}\)**

The Polish contingency organization for combating pollution of the sea by oil and other harmful substances comes within the area of responsibility of the Ministry of Transport and Maritime Economy. The Minister of Transport and Maritime Economy has delegated the contingency functions to the Polish Ship Salvage Company (PSS), acting under direct supervision of the Maritime Administration.

**Organisation**

PSS is responsible for combating oil and chemical pollution of the open sea.

The local authorities are responsible for combating pollution on the beaches.

The Harbour Master is responsible for combating pollution in ports and harbours.

The oil and/or chemical combating action is initiated by the Maritime Board, or by the polluter, or by the operator of the port area in which the oil/chemical pollutants have been found - after giving notice to the respective Maritime Board.

The responsibility mentioned under first point implies that: PSS has established and maintains the necessary 24 hours contingency organization at national level for combating marine pollution.

\(^{189}\) www.umgdy.go.pl

\(^{190}\) www.ums.gov.pl
Working methods

For combating oil/chemical pollution at sea the Polish contingency organization is based upon two different ways of procedure, both approved by the Minister of Transport and Maritime Economy. The first way is to collect oil mechanically. The second way is to use dispersants or other chemical agents. Their use is strongly limited and requires a written permission from the respective Maritime Board, in accordance with HELCOM Recommendation 1/8.

Maritime Rescue Co-ordination Centre (MRCC) acts as "alarm centre" (National Contact Point) and co-ordinates all the combating activities initiated by the Maritime Board. When pollution seems to be very severe, the Director of respective Maritime Board can demand international assistance in combating pollution. The combating operations are performed according to the Provisional National Contingency Plan and the Local Contingency Plans. The final Contingency Plan will be issued to Helsinki Commission next year after coming into force of the new national legislation, and particularly "Order of the Minister of Transport and Maritime Economy dated ... concerning: organization and methods of pollution combating activities at sea and organizations involved in the pollution combating activities.

Table 70: Equipment for spill combating available in Poland\(^{191}\)

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>TOTAL</th>
<th>APPROXIMATE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Purpose Oil Spill Recovery Vessels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Czeslaw II (Świnoujście)</td>
<td>1</td>
<td>157.50 USD/h</td>
</tr>
<tr>
<td>LAMOR system for active oil spill combatting and, capacity 2x200m 3/h; Expandi 4300 oil booms (400 m)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil Combating Depot (Gdynia)</td>
<td>1</td>
<td>after expert evaluation</td>
</tr>
<tr>
<td>Trellboom Sea 350 oil boom (600 m); Sea Pack 80 oil boom (450 m); Sea Skimmer 50, Walosep W2 and Komara 12K skimmers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil Combating Depot (Ustka)</td>
<td>1</td>
<td>after expert evaluation</td>
</tr>
<tr>
<td>Sea Pack 80 oil boom (450 m); Komara 12K skimmer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Organised environmental crime in some Candidate Countries

<table>
<thead>
<tr>
<th>Oil Combatting Depot (Świnoujście)</th>
<th>Trellboom Sea 350 oil boom (720 m); Sea Skimmer 50, Walosep W2 and Komara 12K skimmers</th>
<th>1</th>
<th>after expert evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kapitan Poinc (Gdynia)</td>
<td>LAMOR system for active oil spill combatting, capacity 2x140 m³/h; Expandi 4300 oil boom (800 m)</td>
<td>1</td>
<td>not yet evaluated</td>
</tr>
</tbody>
</table>

**Containment and Recovery Equipment**

<table>
<thead>
<tr>
<th>Booms Expandi 4300</th>
<th>1,600 m</th>
<th>121.87 USD/h/200m</th>
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</thead>
<tbody>
<tr>
<td>Expandi 4300</td>
<td>1,600 m</td>
<td>121.87 USD/h/200m</td>
</tr>
<tr>
<td>Trellboom</td>
<td>1,320 m</td>
<td></td>
</tr>
<tr>
<td>Sea Pack 80</td>
<td>900 m</td>
<td>121.87 USD/h/450 m</td>
</tr>
</tbody>
</table>

**Skimmers with Power Packs**

<table>
<thead>
<tr>
<th>Komara 12K (12 m³/h)</th>
<th>5</th>
<th>536.00 USD/day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sea Skimmer 50 (50 m³/h)</td>
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<td>765.00 USD/day</td>
</tr>
<tr>
<td>Walosep W 2 (50 m³/h)</td>
<td>2</td>
<td></td>
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**Surveillance and Monitoring Aircraft**

<table>
<thead>
<tr>
<th>aircraft Turbolet</th>
<th>1</th>
<th>After expert evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>helicopter Mi 2</td>
<td>1</td>
<td>after expert evaluation</td>
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**Funding**

<table>
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<th>Years</th>
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<th>Funding in EUR 192</th>
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<tr>
<td>1994</td>
<td>62.068.200</td>
<td>15.517.050</td>
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<td>1995</td>
<td>71.239.000</td>
<td>17.809.750</td>
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<td>1996</td>
<td>101.366.000</td>
<td>25.341.500</td>
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192 Ustawa Budżetowa na 1994 Dz.U.94. No.52, pos.209
193 Ustawa Budżetowa na 1995 Dz.U.95. No. 27, pos.141
194 Ustawa Budżetowa na 1996 Dz.U.96. No. 19, pos.87
Contact addresses

Urząd Morski w Gdyni,
ul. Chrzanowskiego 10
tel. +48 58 620 69 11, 620 18 31
fax. +48 58 620 67 43
www.umed.gov.pl

Główny Inspektor Ochrony Środowiska Morskiego
tel.:+48 58 620-58-25; 620-69-11 ext.320 mobile.691766176
Kap. żegl. wlk. Stanisław Łunkiewicz
Urząd Morski w Słupsku,
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76-200 Słupsk
tel. +49 842-84-06, 842-87-02
fax.+49 842-38-34, 842-84-06
e-mail: dyrektor@umsl.gov.pl,
aszczotkowski@umsl.gov.pl

Inspektorat Ochrony Środowiska Morskiego
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Urząd Morski w Szczecinie
Plac Batorego 4
70-207 Szczecin
tel. +48 91 433 95 98
e-mail:sekretariat@ums.gov.pl

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<table>
<thead>
<tr>
<th>Year</th>
<th>Total Revenue</th>
<th>BfU Revenue</th>
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<tr>
<td>1997</td>
<td>177.557.000&lt;sup&gt;195&lt;/sup&gt;</td>
<td>44.389.250</td>
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<tr>
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<td>144.766.000&lt;sup&gt;196&lt;/sup&gt;</td>
<td>36.191.500</td>
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<td>138.409.000&lt;sup&gt;197&lt;/sup&gt;</td>
<td>34.602.250</td>
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<tr>
<td>2000</td>
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<td>40.426.000</td>
</tr>
<tr>
<td>2001</td>
<td>147.604.000&lt;sup&gt;199&lt;/sup&gt;</td>
<td>36.901.000</td>
</tr>
<tr>
<td>2002</td>
<td>133.699.000&lt;sup&gt;200&lt;/sup&gt;</td>
<td>33.424.750</td>
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<td>2003</td>
<td>132.488.000&lt;sup&gt;201&lt;/sup&gt;</td>
<td>33.122.000</td>
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<sup>195</sup> Ustawa Budżetowa na 1997 Dz.U.97. No. 19, pos.106
<sup>196</sup> Ustawa Budżetowa na 1998 Dz. U.98. No. 28, pos.156
<sup>197</sup> Ustawa Budżetowa na 1999 Dz.U.99. No. 17, pos.154
<sup>198</sup> Ustawa Budżetowa na 2000 Dz.U.00. No. 7, pos.85
<sup>199</sup> Ustawa Budżetowa na 2001 Dz.U.01. No. 21, pos.246
<sup>200</sup> Ustawa Budżetowa na 2002 Dz.U.02. No. 30, pos.275
<sup>201</sup> Ustawa Budżetowa 2003 Dz.U.02 no.235, poz.1981
Organised environmental crime in some Candidate Countries

Ministry of Transport and Maritime Economy Department
of Maritime and Inland Waters Administration
4/6 Chalubinskiego Str. 00-928 WARSAW
tel: + 48 22 628 8515, + 48 22 621 5676
telefax: + 48 22 628 8515 / 8300 261 (24 hrs)
**District Inspectors of Sea Fisheries (Okręgowi Inspektorzy Rybołówstwa Morskiego)**

**Organization**

Minister of Agriculture and Rural Development and District Inspectors of Sea Fisheries (further: the Inspectors) are responsible for administration of sea fisheries: District Inspector of Sea Fisheries in Gdynia, District Inspector of Sea Fisheries in Słupsk, District Inspector of Sea Fisheries in Szczecin have been established in order to provide organizational support.

Minister of Agriculture and Rural Development supervise the above District Inspectors of Sea Fisheries. District Inspectors of Sea Fisheries execute their powers through Inspectors of Sea Fisheries (further: Inspectors).

**Working methods**

During their work Inspectors cooperate with Police, the Board Guard Service and organs of the Inspection of Environmental Protection.

The Inspectors, while performing the activities shall have the power to:

- stop and enter a vessel,
- check legality of documents required for sea fisheries,
- check the legality of sea fisheries undertaken by a vessel,
- check fishing nets and caught sea species,
- search vessels, warehouses, factories and other premises used for sea species storage,
- seizure of species and fishing nets if applicable.

In case of justified suspicion that a punishable wrong act has been committed, the Inspectors shall have a power to stop, enter and escort foreign vessel operating on the Polish territorial sea to a Polish harbours.

Any fishing vessel operating on the Polish territorial sea shall be oblige on the Inspectors’ requests to assist them in their control activities including:

- providing all requested information,
- presenting all requested documents,

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202 The Sea Fisheries Act, Dz.U. No 129, pos.1441
- presenting all caught species and fishing equipment,
- making possible for the Inspectors to write comments in ship’s log book,
- making communication equipment available for the Inspectors,

For violations of the regulations concerning sea fisheries the ship owner shall be punished with a fine amounted up to 1.000.000 PLN i.e. 220.000 EURO

### Funding

<table>
<thead>
<tr>
<th>Years</th>
<th>Funding in PLN</th>
<th>Funding in EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>4.111.000&lt;sup&gt;203&lt;/sup&gt;</td>
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<td>3.946.000&lt;sup&gt;204&lt;/sup&gt;</td>
<td>986.500</td>
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<tr>
<td>2003</td>
<td>9.098.000&lt;sup&gt;205&lt;/sup&gt;</td>
<td>2.274.500</td>
</tr>
</tbody>
</table>

### Contact addresses

- **District Inspectors of Sea Fisheries in Szczecin**
  - ul. Stażyńskiego 8
  - 70-506 Szczecin
  - tel.: +48 91 4894062

- **District Inspectors of Sea Fisheries in Gdynia**
  - ul. Śląska 53
  - 81-304 Gdynia
  - tel.: +48 58 6217925
  - fax: +48 58 6200049

- **District Inspectors of Sea Fisheries in Słupsk**
  - ul. Jana Pawła II no 1, room 734
  - 76-200 Słupsk
  - tel.: + 48 59 8423572

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<sup>203</sup> Ustawa Budżetowa na 2001 Dz.U.01. No. 21, poz.246
<sup>204</sup> Ustawa Budżetowa na 2002 Dz.U.02. No. 30, poz.275
<sup>205</sup> Ustawa Budżetowa 2003 Dz.U.02 no.235, poz.1981
The Inland Fisheries National Guard (Państwowa Straż Rybacka)

Organisation

The Inland Fisheries National Guard (further: IFNG) is organizationally separated institution subordinated to the Voivodeship Governor's (Wojewoda) power. Voivodeship’s Commanders (there are 17 Voivodeship’s Commanders) supervise work of IFNG' units in the Voivodeships.

Working methods

The officers of IFNG, while performing the activities shall have the power to:

- check documents required for legal fishing,
- ask documents confirming legal source of caught fishes from individuals or commercial entities trading in fishes or processing fishes,
- check the quantity and type of caught, processed or sold species, as well as control of equipment used for fishing,
- secure abounded fishes as well as equipment used for fishing if identity of the owner can not be ascertain,
- demand for explanations and subordination in case of justified suspicion that a punishable wrong act (including misdemeanour offence) has been committed including:
  - check identity documents in order to ascertain the identity of persons,
  - seizure of fishes and equipment used for fishing (IFNG provide special seizure receipt),
  - search means of transport in order to check the cargo,
  - search people and premises in the course and in the cases defined in the regulations of the Criminal Procedure Code,
  - stop and escort to the nearest Police station individuals suspected of illegal fishing or illegal trade in fishes,
- demand necessary help from state institutions, entrepreneurs and civil institutions and also, in emergency cases, to ask any person to give immediate assistance, in accordance with the current legal regulations concerning Police forces,

- enter warehouses and other premises where fishes are storage including fisher’s farms.

IFNG’s officers, while performing the activities shall have the power to use direct compulsion defined in The Inland Fisheries Act against individuals who make execution of their powers impossible.

IFNG shall cooperate with Police if cases concerning illegal fishing on inland waters as well as illegal trade of freshwater fishes are concerned.

The cooperation shall include:

- dual control and prevention actions,
- necessary assistance in actions undertaken by Police on areas controlled by IFNG,
- exchange of information concerning place and time of control and preventive actions,
- participation in training sessions organized for Police and IFNG.

In practice once perpetrators are caught in action by IFNG, the case is reported and devolved to Police, which conducts further investigation actions.

Due to the fact that IFNG’s work is exclusively dedicated for fighting illegal fishing and illegal trade in fishes, is very often used by Police as valuable and professional source of information and IFNG’s officers are very often called to be witnesses in cases concerning illegal fishing and illegal trade in fishes.

In order to make cooperation smooth and effective IFNG’s Voivodeship’s Commanders together with capital Police Commander prepare framework cooperation plan.

### Funding

<table>
<thead>
<tr>
<th>Years</th>
<th>Funding in PLN</th>
<th>Funding in EUR</th>
</tr>
</thead>
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<tr>
<td>2001</td>
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<td>12.884.000²⁰⁸</td>
<td>3.221.000</td>
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<td>2003</td>
<td>13.454.000²⁰⁹</td>
<td>3.363.500</td>
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</table>

²⁰⁷ [Ustawa Budżetowa na 2001 Dz.U.01. No. 21, poz.246](#)
²⁰⁸ [Ustawa Budżetowa na 2002 Dz.U.02. No. 30, poz.275](#)
Contact addresses

Państwowa Straż Rybacka w Warszawie
Kazimierz Mazurek
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komwoj@psr.waw.pl

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Państwowa Straż Rybacka w Poznaniu
Maciej Piotr
Al. Niepodległości 16/18
tel. +48 61 853 18 71

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ul. Więckowskiego 20
90 722 Łódź
tel. +48 42 636 84 97

Państwowa Straż Rybacka w Olsztynie
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ul. Piłsudskiego 7/9
10 575 Olsztyn
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80 684 Szczecin
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Państwowa Straż Rybacka w Bydgoszczy
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ul. Wyszyńskiego 54
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tel. +48 52 349 72 50

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ul. Jagiełłończyka 8
66 400 Gorzów Wlk.
tel. +48 95 721 53 46

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Pl. Powstanców Warszawy 1
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Państwowa Straż Rybacka w Katowicach
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ul. Jagiełłońska 25
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tel. +48 32 255 41 61

Państwowa Straż Rybacka w Kielcach
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25 516 Kielce
tel. +48 41 342 15 17

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ul. Basztowa 22
31 156 Kraków
tel. +48 12 616 03 18
Państwowa Straż Rybacka w Rzeszowie
Jan Komarzyca
ul. Grunwaldzka 15
35 959 Rzeszów
tel. +48 17 62 68 48

Państwowa Straż Rybacka w Opolu
Andrzej Sadowski
ul. Piastowska 14
tel. +48 77 452 45 27
The National Forests Guard (Straż leśna)

Organization

The National Forests Guard (further: NFG) has been established within this structure of State Forest National Forest Holding (institution exclusively responsible for the management of national forests) in order to prevent and combat illegal logging inter alia. The General Inspector of NFG (manages the work of NFC) is subordinated to the General Director of State Forest National Forest Holding. NFG’s units are located in forestry unit’s structure and subordinated to a forester (manages forestry unit). NFG’s intervention groups are located in regional headquarters of National Forests (regionalne dyrekcje Lasów Państwowych) and subordinated to directors of regional headquarters of National Forests.

The NFG’s officers operate in all 438 forestry units (nadleśnictwo). The NFGs coordinators who are subordinated directly to a forester in each forestry unit supervise the work of NFG’s officers. In practice the NFG follows the State Forest National Forest Holding’s organizational structure. In 1998 approximately 3 NFG’s officers (2,8) were employed in one forestry unit.

The NFG’s officers play main role in the sphere of fighting with illegal logging. Very often their work is supported by foresters and employees subordinated to them.

The main responsibilities of NFG’s officers shall include:

- prevention control of the national forests,
- detection of crimes and misdemeanours concerning illegal logging,
- participation in proceedings concerning misdemeanours cases before special courts (Sądy Grodzkie),
- claim on the behalf of the State Forest National Forest Holding for compensation from defenders who are responsible for illegal logging.

The officers of NFG, while performing the activities cooperate with the following institutions:

- Police and prosecutor offices (obligatory cooperation),
- The National Fire Brigades,
- The Polish Hunting Union,
- National Park’s Guard,

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211 http://www.lasypanstwowe.gov.pl/glowna.htm
- The Inland Fisheries National Guard,
- Municipal Police,
- The National Border Guard

**Working methods**

The officers of NFG, while performing the activities shall have the power to:

- check identity documents in order to ascertain the identity of suspected persons as well as witnesses of a crime or misdemeanours offence,
- stop and search means of transport operating in forest and surrounding areas - in case of justified suspicion that a punishable wrong act has been committed,
- search premises in case of justified suspicion that a punishable wrong act has been committed,
- catch in action potential perpetrators and escort them to Police station,
- seizure of goods deriving from a criminal or a misdemeanour offence and an equipment used for committing a crime or misdemeanours offence,
- conduct proceedings, file and support indictments in simplified proceedings if crime or misdemeanours offence concerns timber from the national forests in the course and in the cases defined in the regulations of the Criminal Procedure Code,
- carry firearms.

In order to check legality of logged timber the NFG’s officers shall be also authorized to control sawmills and other entrepreneurs involved in timber treatment.

NFG’s officers, while performing the activities shall have the power to use direct compulsion or even firearms against individuals who make execution of their powers impossible.

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\(^{212}\) Ibidem.
Funding

The activity of the NFG is not financed from the budget of the state. NFG is financed from State Forest National Forest Holding budget deriving from its commercial activities. No further information concerning the amount of budget is available.

Contact addresses

Dyrekcja Generalna Lasów Państwowych
Ilona Czujkowska
ul. Wawelska 52/54
00-922 Warszawa
tel.+48 22 825 85 62
internet@lasypanstwowe.gov.pl
Annex I : Case Questionnaire

Date:

Country:

Source of information:

1. Category
   - ☐ illegal commercial trade in endangered species and their products
   - ☐ illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste
   - ☐ illegal commercial trade in ozone depleting substances
   - ☐ illegal dumping and shipment of radioactive waste and potentially radioactive material
   - ☐ illegal logging and illegal trade in wood
   - ☐ illegal fishing

2. Criteria of organised crime which must apply:
   - ☐ Collaboration of more than two people
   - ☐ for a prolonged or indefinite period of time (refers to the stability and (potential) durability)
   - ☐ suspected of the commission of serious criminal offences
   - ☐ determined by the pursuit of profit and/or power

   Additional at least two of the following criteria must apply:
   - ☐ each with own appointed tasks
   - ☐ using some form of discipline and control
   - ☐ operating at an international level
   - ☐ using violence or other means suitable for intimidation
   - ☐ using commercial or businesslike structures
   - ☐ engaged in money laundering
   - ☐ exerting influence on politics, the media, public administration, judicial authorities or the economy

3. Type of product(s) (e.g. carbon tetrachloride)

4. Quantity of product(s) (e.g. 950 tons)

5. The products geographical source:

6. Ultimate destination:
7. Type of demand for the product(s):
   - food, description:
   - clothes, description:
   - furniture, description:
   - other, description:

8. Scale of demand for the product(s): (e.g. according to the report „Illegal fishing“ of the FAO dated 2001 approx. 7,000 t per year)

9. Type of criminal organisation implicated:
   - indigenous group
   - ethnically mixed group
   - closed ethnic group
   - closed ethnic group operating transnational
   - mixed ethnic group operating transnational
   - other, pls. describe

10. Type of specialists employed/used by the criminal organisation: (e.g. tax adviser)

11. The techniques preferred by the criminal organisation:
   - misdeclaration
   - blurring
   - false documents
   - pretence of treatening
   - transport cost
   - bribe
   - other:

12. Sums of money generated by their activities:
In this case: EUR
Estimated sum of money altogether from their operations: EUR
13. Other:

☐ Case closed, starting date in _______ and ending date in _______

☐ Case not closed yet, starting date in _______ description of current status

☐ Case abandoned, starting date of the case _______ had to be abandoned because _______

Reference number of the case:

14. Description of the case (incl. seizures/prosecutions), Remarks:

15. Are case documents available? If yes, please name source (e.g. press article „New case of wildlife crime“ in „The Times“ dated March 3rd 2000)

You have reached the end of the questionnaire!

Please name or number the file on your own convenience and return it immediately by e-mail to froehlich@bfu-mbh.de or by fax to +49 (0)561 96996-60.

The researchers would like to be able to contact you if questions occur. If you would you agree to talk to them, please be sure to give your name and telephone number here.

Name: _______ Phone: _______

Thank you very much for your co-operation.
Annex II: QUESTIONNAIRE

This questionnaire is addressed to persons dealing with (organised) environmental crime. The marked fields are not limited in size and allow as much text input as required.

Country:
Date of information:
Your Name:
Name of organisation:
Address of organisation:
Tel. and Faxnumber:
EMail:
Website:

Your position:
(e.g. head of department)

1. Area of responsibility related to organised environmental crime:
   a) of the interview partner

   b) of the organisation as a whole

2. Please enclose an organisation chart (or send it via Fax to +49 (0)561 96996-60)
   If no organisation chart is available or the following information is not part of the organisation chart, please answer: how many employees are responsible for dealing with (organised) environmental crime and who is responsible for what and how is this area of responsibility organised?

3. How is the work of your organisation, especially the department for dealing with (organised) environmental crime, financed?
   a) Applicable legislation:

   b) Yearly budget?
4. In relation to (organised) environmental crime: which organisation is the next authority beneath your institution?

a) Which authorities do you have in relation to it?

b) Applicable legislation:

c) How do you work together with that organisation; how are you connected with each other?

d) How and when do you exchange information?

5. In relation to (organised) environmental crime: which organisation is the next authority above yours?

a) Which authorities does it have in relation to you?

b) Applicable legislation:

c) How do your work together with that organisation; how are you connected with each other?

d) How and when do you exchange information?

6. Do you know further organisations which are responsible for dealing with (organised) environmental crime in your country (national bodies, nature protection organisations etc.)?

a) Name of organisation

b) Scope of work of the organisation

c) Contact person

d) Scope of work of the contact person
c) Do you cooperate with this organisation? If yes, please specify how

f) Name of another organisation

g) Scope of work of the organisation

h) Contact person

i) Scope of work of the contact person

j) Do you cooperate with this organisation? If yes, please specify how

7. Which working methods do you employ? (e.g. how do information get to you and how do you deal with it etc.)

8. Which investigative powers do you use/could you use in the area of dealing with (organised) environmental crime?

- Initiation of investigation in case of suspicion
- Cooperation of contacts within these organisations
- undercover agents
- electronic instruments
- screen search
- bugging operation
- provocation of a deed
- controls unwarranted by specific events and suspicions/random controls
- hidden cameras
- surveillance of financial transactions in order to detect illegal profits
- surveillance of the transport of goods in order to detect incriminating goods or substances
9. Do you work together on an international level? If yes, with whom
   □ Europol, if yes, how
   □ Interpol, if yes, how
   □ International customs authority CCC, if yes, how
   □ other, namely , if yes, how

10. Which international information systems do you use?
    □ Schengener/European Information system
    □ Other(s), namely

11. In the area of illegal trade with endangered species: Do you work together with the CITE office? If yes, how

12. Do you work together with nature protection organisation (e.g. WWF) ? If yes, how?

13. Remarks
   (e.g. own proposals on better practise of dealing with environmental oc on European level)

You have reached the end of the questionnaire!
Please name or number the file on your own convenience and return it immediately by e-mail to froehlich@bfu-mbh.de or by fax to +49 (0)561 96996-60.

Thank you very much again for your co-operation.
The Czech Republic

Regional Offices of the Police of the Czech Republic

Okresní ředitelství Policie ČR Česká Lípa
Mr. Veselý
Pod Holým vrchem 152
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541 11 Trutnov

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81 23 Český Krumlov
Městské ředitelství PČR Brno
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Tel.: +42 097 462 5766

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Okresní ředitelství PČR Břeclav
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**Kaišiadorių region county**
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**Kauno region county**
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Organised crime in the sphere of environment in a few Candidate Countries

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Organised crime in the sphere of environment in a few Candidate Countries

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Organised crime in the sphere of environment in a few Candidate Countries

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Organised crime in the sphere of environment in a few Candidate Countries

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