

*Original Research*

# **The International Standards on the Protection of the Environment through Criminal Law - Special Focus on the EU Directive on Environmental Crime**

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## **Abstract**

Protecting the environment from various exogenous factors that threaten its degradation has been part of the priorities of the governments of different states, initiatives that date back to the 1960s. This paper aims to address the problem of recognizing the importance of environmental protection within criminal law by sanctioning actions that degrade the environment. The study examined and analyzed the importance of international standards and EU directives for the protection of the environment and also for harmonization and standardization of the legal framework in the European area, including member states and aspiring countries in the EU. The paper has used the method of qualitative legal analysis to treat in the analytical sense the standards of many international instruments for environmental protection through criminal law and has also used the different literature and legislation. The results indicate that all states aspiring to EU membership should prioritize the environmental issue, because environmental protection is seen as an area of common interest among all EU countries. The study also recommends not overlooking the crucial importance of environmental protection alongside economic development. This study provides help to policymakers while designing and drafting their national legislation to understand the importance of EU standards and directives.

**Keywords:** International Standards on the Protection of the Environment through Criminal Law, EU Directive on Environmental Crime

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## Introduction

Almost in all contemporary states, environmental crime with consequences for water, air, earth, flora, and fauna has become an extremely dangerous global activity.

The annual consequences caused by environmental crime are estimated at between \$ 91 billion to \$ 259 billion, with an annual increase of 5-7%. The types of criminal offenses against the environment that cause large and irreparable consequences, in most cases, cause consequences between two or more states, which include criminal groups of organized crime, as well as corporations that carry out certain activities [1].

Efforts to further curb the consequences of environmental damage have been present since the time of the occurrence of environmental damage to water, air, and land, respectively, related to the industrialization of national economies and rapid economic development. The issue of environmental damage to water, air, earth, flora, and fauna has not been paid much attention to for a long time. This is confirmed by the fact that the protection of the environment by law was initially done by administrative-legal rules. The question arises: what is the best way to protect the environment? Is the protection of the environment sufficient only through protection from its degradation by people and the economic activities they undertake, or should the degradation of the environment be sanctioned by criminal law?!

However, with the increase of harmful and often irreparable consequences for the environment, it has become inevitable that the damage caused to the environment be sanctioned as a criminal offense. So, both at the international and national level, the development of criminal rules for the protection of the environment belongs to a later period. The international community has developed a wide range of rules and standards to protect the environment, namely water, air, earth, flora and fauna, and natural resources affected or endangered by human activities for sustainable development.

The role of the environment in people's lives is very multidimensional; it cannot be limited to one aspect or another. Based on the literature review, we better understand the role of the environment in various aspects.

Sheila [2] mentions that the perception that science can unite people from divergent perspectives and worldviews has gained support from studies of global environmental problems. Some attribute the very emergence of a global consciousness to the ability of modern science to elucidate previously uncomprehended facts about the functioning of the natural system.

Glicksman R. L., Markell D. L., Buzbee W. W., Mandelker D. R., and Bodansky D. [3] highlight of the particular importance of ecological and philosophical justifications for addressing environmental harms, be they from pollution or other modification of nature.

Zhang G., Deng N., Mou H., Zhang Z. G., and Chen X. [4] stressed that also the public is paying more and more attention to environmental governance.

Nathaniel S.P., Murshed M. and Basim M. [5] emphasize that the many and various economic activities on the one hand, and the degradation of the environment on the other, have not found any adequate balance for them to co-exist with each other. Consequently, such actions have been taken to regulate and limit economic activity in order to preserve and care for the environment.

Also, Yu X., and Wang P. [6] emphasize the effects of environmental regulation policies to better promote the upgrade of industrial structures and the high-quality development of the national economy. It is necessary to enrich environmental regulation policy tools, seek precise regulation in the field of the environment, build an environmental information service platform, promote support reform in key areas, and support the people's livelihood to alleviate transformation pressure.

In this regard, criminal law has played an important role in ensuring sustainable development. However, this is not the only instrument for environmental protection, and this remains only part of a complex set of mechanisms [7]. The idea of incriminating actions against environmental damage for the protection of water, air, soil, flora, fauna, and other natural resources was intended to serve two basic functions. First, the imposition of a criminal sanction on the subject of causing environmental damage has important symbolism for the moral guilt of the perpetrator, as the behavior that prompts the imposition of a criminal sanction is not simply illegal behavior, but constitutes criminal behavior. Second, criminal sanctions for environmental damage serve uniquely in preventing environmental legal violations [8]. Regarding the second function, proponents of criminal sanctions argue that criminal sanctions are an effective preventive instrument because they can focus directly on responsible individuals who pose a risk or cause harm to the environment [9].

Several important international actors, such as the UN, the Council of Europe, or the European Union, have issued several important instruments that are of great importance in setting minimum standards for environmental protection as well as serving as an important basis for development. Further criminal rules in the field of environmental protection within the framework of national legislation. In this regard, states are left with wide discretion on how to accommodate the requirements arising from these standards, as states are allowed to exceed the requirements of the standards promoted through various international instruments, which is often reflected in differences that states may have in their legal systems regarding the extent to which these standards are met. The main purpose of this study is the analytical treatment of international instruments for environmental protection through criminal law that are promoted globally and regionally. The analysis

of standards promoted in these instruments is also addressed, as is their importance and impact on national legal systems.

The paper is structured into two main parts. In the first part, we will address international rules and standards with a global scope of environmental protection through criminal law, namely the protection of water, air, land, flora, fauna, and other natural resources. In this section, we will discuss the legal efforts to provide legal protection to the environment through various initiatives undertaken over several periods. We will respectively discuss the content of some provisions included in the Protocol to the Geneva Convention and the Rome Statute of the International Criminal Court, and we will discuss the Convention on the Protection of the Environment through Criminal Law, drafted by the Council of Europe. In the second part, we will first address the idea of creating a criminal legal framework for environmental crime in the EU, including the Council's decision to establish a legal framework within the EU on this issue. Further, the standards contained in Directive 2008/99/EC for the protection of the environment through criminal law will be discussed, namely the minimum standards required by this instrument for criminal offenses that cause damage to water, air, earth, flora, fauna, and other natural resources, namely criminal liability and criminal sanction.

### **Research Methodology**

The paper promotes an intertwined methodological approach, combining literature review and the method of qualitative legal analysis. Through the method of browsing the literature, many scientific papers and other documents have been used for the purpose of more clearly reflecting the problem of the study, namely the most comprehensive treatment of environmental protection standards through criminal law at the global and European level. While the method of qualitative legal analysis treats in the analytical sense the standards of many international instruments for environmental protection through criminal law, namely the standards of the Convention on the Protection of the Environment through Criminal Law issued by the Council of Europe, the Rome Statute of the International Criminal Court, and the Directive 2008/99/EC of the European Parliament and of the Council of November 19, 2008 on the protection of the environment through criminal law. To answer the above-mentioned research question first, the literature and legislation were reviewed, and the evidence was collected and analyzed.

This research is aimed at exploring and understanding the applicability of the standards of the Convention on the Protection of the Environment through Criminal Law.

During this research using the qualitative method, different literature and legislation were useful and

provided an important perspective to gain a deeper understanding of the problem.

### **Results and Discussion**

#### **International Standards with the Global Scope of Environmental Protection through Criminal Law**

Efforts globally to provide legal protection to the environment, namely water, air, land, flora, and fauna, began with bilateral fishing treaties in the 19th century and ended with the creation of new international organizations in 1945. During this period, peoples and nations began to realize that the process of industrialization and development required restrictions on the use of certain natural resources (flora and fauna) and the adoption of appropriate legal instruments [10]. The second period began with the creation of the UN and culminated with the UN Conference on the Human Environment, held in Stockholm in June 1972. During this period, several international organizations with competence in environmental matters were established and legal instruments were adopted. specific pollution sources and the conservation of general and specific environmental resources, such as oil pollution, nuclear tests, wetlands, the marine environment and its living resources, freshwater quality, and waste dumping into the sea [10]. The third period began with the 1972 Stockholm Conference and ended with the United Nations Conference on Environment and Development (UNCED) in June 1992. During this period, the UN attempted to establish a system for coordinating responses to international and regional environmental issues; global conventions were adopted; and, for the first time, the international production, consumption, and trade of certain products were banned globally [10]. The fourth period was set in motion by UNCED and can be characterized as a period of integration when environmental concerns, as a matter of international law and policy, must be integrated into all activities. Attention has been paid in the period which has been devoted to compliance with international environmental obligations, with the result that there is now a well-developed body of international jurisprudence [10].

However, despite the existence of several international organizations with competence in environmental issues and the adoption of legal instruments at both regional and global levels, there is no international instrument with a global scope that sets rules or sets comprehensive standards for environmental protection through law. Action against environmental crimes is usually led by three main entities on the national, European, and international stages: law enforcement agencies, the judiciary, and civil society. These include all relevant actors responsible for designing, monitoring, investigating, prosecuting, and sanctioning environmental crimes [11].

Due to the devastating consequences of armed conflicts, at the global level, Article 55 of the Geneva Protocol to the Convention provides for the protection of the environment as a criminal offense, which provides for the prohibition of the use of methods which are intended or expected to cause damage to the natural environment as follows: In a war, care will be taken to protect the natural environment from widespread, long-term, and severe damage [12].

Environmental crime is estimated to rise by 5-7% annually, representing 2-3 times the growth rate of the global economy. A 2016 UNEP report estimated the total monetary value of environmental crime (which includes the illegal revenue derived from environmental crime, the loss to legal commerce, and the loss of tax revenue) to be worth between USD 91-259 billion annually, a 26% increase compared to the previous estimate released in 2014 [13].

Article 55 (1) of Additional Protocol I of 1977 provides for the prohibition of the use of methods or means of war that are intended or may cause serious damage to the natural environment, as well as may damage the health or physical survival of the population exposed to the consequences of such. This issue is also included in the Rome Statute of the International Criminal Court, namely Article 8.2 (b) (IV), which stipulates that damage caused to the environment is sanctioned as a “war crime” and is defined as such when there is a violation of laws or customs applicable in international armed conflicts: “deliberate initiation of an attack, knowing clearly that such an attack would cause accidental loss of human life or may cause injury to the civilian population or damage to objects for the purpose of using civilian or extensive, long-term, and serious damage to the natural environment, all of which are clearly disproportionate to the concrete military priorities and objectives envisaged” [14]. Both of these international instruments provide for these offenses in the context of an armed conflict, and these rules cannot be applied in other civil circumstances. The inclusion of environmental protection in the content of these instruments is of particular importance, as armed conflicts have had irreparable consequences for the environment, and this, in particular, poses a high risk as states possess various weapons that have great destructive power over the environment, including weapons of mass destruction. In the regional initiatives,

we notice that on the European continent, the criminal legal rules of environmental protection have undergone a special development in the last 30 years. In most countries, environmental criminal legislation has started as an appendix to laws, mainly administrative laws [15].

Criminal rules for environmental protection are mainly provided in special laws, which further complicate the practical implementation of these rules as they are not incorporated into the basic criminal law. In this regard, the International Criminal Law Congress held in 1994 recommended that criminal offenses against the environment be envisaged as *sui generis* offenses and that their content should not be dependent on other laws, and that the same should be specified in national criminal codes [15].

In 1998, the Convention on the Protection of the Environment through Criminal Law was drafted within the Council of Europe. The idea of drafting such an international instrument began after the adoption of Resolution No. 1 by the 17<sup>th</sup> Conference of European Ministers of Justice (1990, Istanbul) and the Committee of Ministers of the Council of Europe set up a newly elected committee of experts in 1991 named “Group of Specialists in Environmental Protection through Criminal Law.” The committee drafted the convention, and in September it was approved by the Committee of Ministers of the Council of Europe [16].

Since its adoption, this instrument has been signed by only 13 member states, while it has only been ratified by Estonia. This instrument aims to improve environmental protection at the European level by using criminal law as the last resort for environmental protection. This legal instrument obliges state parties to incorporate specific provisions into their criminal law or to amend existing provisions in this area. Criminal offenses are defined as many offenses committed intentionally or negligently when they cause or are likely to cause damage to the quality of air, earth, water, animals, or plants, or result in the death or serious injury of a person. It envisages the concept of criminal liability of natural and legal persons, specifies the measures to be adopted by states to enable them to confiscate property, and determines the international cooperation of the powers available to the authorities. Sanctions should include imprisonment and fines. Another important provision concerns the possibility

Table 1. Estimated costs (revenue and loss) per category of environmental crimes.

Category of environmental crime	Estimated costs (USD)
Wildlife crime	7-23 billion
Forestry crimes (incl. corporate crimes & illegal logging)	50.7-152 billion
Illegal fishing	11-23.5 billion
Waste crime	10-12 billion
Illegal mining	12-48 billion



for environmental protection associations to participate in criminal proceedings in connection with the criminal offenses provided for in the Convention [17].

### The Idea of Creating a Criminal Legal Framework for Environmental Crime in the EU

With the entry into force of the Maastricht Treaty, criminal law has been at the center of cooperation between the member states of this organization [18]. The EU institutions have a central role to play in imposing positive and negative obligations on member states regarding criminal law. The EU's founding treaties provide the organization with a solid foundation for regulating certain aspects of criminal law, which, along with other subsequent instruments derived from these treaties, has enabled the organization and member states to develop even more criminal law standards.

Article 83 of the Treaty on European Union recognizes the right of Parliament and the Council to lay down minimum rules concerning the definition of criminal offenses and sanctions in the field of crime, in particular serious crimes with cross-border dimensions, arising from the nature or effect of such offenses or from a particular need to combat such offenses on a common basis through directives adopted under the ordinary legislative procedure [19].

Thus, the EU institutions are allowed to issue legal instruments that oblige member states to harmonize their legislation in the areas of common interest of the EU, including the field of environmental protection through criminal law, to determine certain criminal offenses, or even set minimum criteria regarding the implementation of criminal sanctions for perpetrators of environmental offenses, which are in the function of protecting the environment, namely water, air, earth, flora and fauna, and other natural resources.

Efforts within the EU to establish a criminal legal framework for environmental crime were early and date back 10 years before the adoption of the Environmental Crime Directive. The directive aimed to address two concerns related to environmental protection: 1) the increase in environmental violations, the effects of which extend beyond the borders of the states in which the offenses were committed; and 2) the insufficiency of penalties in existing national systems to achieve full harmonization with environmental protection laws [20]. The Lisbon Treaty has contributed to this effort, envisioning a new legal framework for the adoption of criminal legislation at the EU level. The new framework seeks to facilitate EU action in this area by taking into account the specifics of each national system in such a sensitive policy area [21].

In January 2003, the EU Council first introduced a framework decision listing several anti-environmental offenses that required member states to provide in criminal law as criminal offenses. The Commission, supported by the EU Parliament, began to challenge the legality of the Framework Decision in the European

Court of Justice. In the case of the Commission vs. (C-176/03), the Court held that the Community had jurisdiction to require the Member States to impose criminal penalties for actions against the environment under the former Article 175 of the Treaty on European Union (now Article 192 of the Treaty on the Functioning of the European Union). As this power was reserved for the community, the Council was not competent to pass such an instrument with the same effect. The Court thus overturned the Framework Decision, paving the way for today's Environmental Crime Directive. The issuance of this court decision paved the way for the construction of legal rules for a directive such as this one for the environment [22].

Following these events, Directive 2008/99/EC on the protection of the environment through criminal law was adopted on November 19, 2008 by Parliament and the Council, and this directive is the first EU instrument to contain legal rules relating to criminal law. With this directive, the EU aimed to ensure the minimum harmonization of national criminal law systems dealing with criminal offenses against environmental legislation within EU countries [23].

The directive sets out broad measures to be taken by EU member states to protect the environment through criminal law. This instrument sets standards for the protection of the environment, obliging each member state to transpose these standards into their national legislation.

### Standards of Criminal Offenses Promoted by Directive 2008/99/EC

The EU Institutions' Directive 2008/99/EC on environmental protection enumerates several reasons that have pushed the EU institutions to devise and draft criminal rules aimed at sanctioning actions and omissions that cause damage to the environment, namely damage to water, air, earth, flora and fauna, and other natural resources. First of all, the concern of increasing the consequences of actions against the environment is mentioned, i.e., exceeding the national borders of these environmental damages. An alternative construction of criminal protection rules, i.e., criminal sanctions.

This instrument requires the Member States to incriminate acts or omissions that are harmful to the environment, considering them to be criminal offenses throughout the Community, whether committed intentionally or through gross negligence. This is primarily intended to ensure that environmental protection rules are fully effective against harmful activities that cause or are likely to cause significant damage to the air, including the stratosphere, earth, water, animals, or plants, including species conservation. The directive sets out minimum environmental protection measures through criminal rules. On the other hand, states are not limited to building stricter and more comprehensive criminal legislation, and

in terms of the internal regulation of certain issues where there is a directive issued by the EU, restraint from breach of obligations should be taken into account. General attitudes of states toward the *acquis communautaire* and the eventual clash of legal rules for specific situations. This directive contains material criminal rules for the protection of the environment and is structured into several parts, including the definition of types of criminal offenses; the issue of assistance; incitement and incitement to commit these criminal offenses; criminal sanctions; criminal liability of legal persons; as well as criminal sanctions for legal entities. The instrument sets out the procedures and timeliness of transposition by EU member states of the standards contained in this instrument.

Article 3 of the Directive sets out a list of offenses to be foreseen as criminal offenses by EU Member States when intentionally or through gross negligence. Almost all categories of these offenses include damage to water, air, earth, flora, and fauna, as follows [24]:

Art. 3 (a) provides that Member States must include as a criminal offense the following actions: discharging, emitting or introducing a quantity of materials or ionizing radiation into the air, land or water. Provided that the consequences may cause or are likely to cause death or serious injury to any person or substantial impairment of air quality, soil quality, or water quality, or there is substantial or irreparable damage to the health and welfare of animals or even plants;

Art. 3 (b) provides that the Member States must include as a criminal offense the following actions: the collection, transport, recovery, or disposal of waste, including the supervision of the activity and the care of the places where the waste is deposited. This also includes actions undertaken by other people in the capacity of traders or intermediaries (waste management). All of the above actions must cause consequences or risk causing death or even serious injury to a person or even significant damage to air quality, soil quality, or water quality, but also to animals and plants;

Art. 3 (c) provides that the Member States must include as a criminal offense the following actions: carrying waste, when this activity is contrary to the regulation provided for in Article 2 (35) of Regulation (EC) No. 1013/2006 issued by the European Parliament and the European Council (2006) on waste transport. All these actions, which have been undertaken in a non-negligible amount, i.e., substantial, either in a single consignment or in several consignments, which have a reasonable interrelationship with each other and are part of an organic activity;

Art. 3 (d) provides that the Member States must include as criminal offenses the following actions: the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, whether outside the plant, causes or is likely to cause death or serious injury

to a person, or may cause significant damage to air, soil, or water quality, as well as animals and plants;

Art. 3 (e) provides that Member States must include as a criminal offense the following actions: the production, processing, handling, use, keeping, storage, transport, import, export, or disposal of nuclear materials or other dangerous radioactive substances that cause or are likely to cause death or serious injury to a person or endanger or cause significant damage to air quality, soil quality or water quality, as well as animals and plants;

Art. 3 (f) provides that Member States should include as criminal offenses the following actions: killing, destroying, possessing or taking specimens of protected species of wild fauna or flora, except in cases where the action concerns a negligible amount that is not significant and has a negligible impact on the conservation status of the species overall;

Art. 3 (g) provides that Member States must include as criminal offenses the following actions: trading in specimens of protected species of wild fauna or flora or parts or derivatives thereof, except in cases where the action results in negligible amounts and has a negligible impact on the conservation status of the species in general;

In Art. 3 (h), it provides that Member States must include as a criminal offense the following actions: Behavior that significantly degrades a habitat within a protected area established by national law; and

Art. 3 (i) provides that the Member States must include as a criminal offense the following actions: the production, import, export, introduction to the market or even the use of substances or materials that destroy the ozone layer.

#### Standards of Criminal Sanctions Promoted by Directive 2008/99/EC

Directive 2008/99/EC contains some provisions regarding criminal sanctions against criminal offenses described in Article 3. The content of Article 3 relates to 72 other EU instruments protecting the environment which are tax-exempt in Annex A and Annex B of the Directive.

This is because one of the most contentious issues for low scores in combating and preventing environmental crimes is considered to be punitive policies implemented by states. To reinforce this finding, empirical data shows that even if the indictment is brought before a court and it is upheld, low fines are imposed in those cases. Imprisonment is imposed on a very small scale, while the order for service to the community is imposed even less frequently. Lack of experience in case law in dealing with environmental crimes may be one of the factors behind these sanctions imposed. In the case of legal entities, fines are the penalties most often imposed by the courts, which reveals a problem in terms of the purpose of the penalty as a preventive effect, as some companies may calculate the fine as an "operational

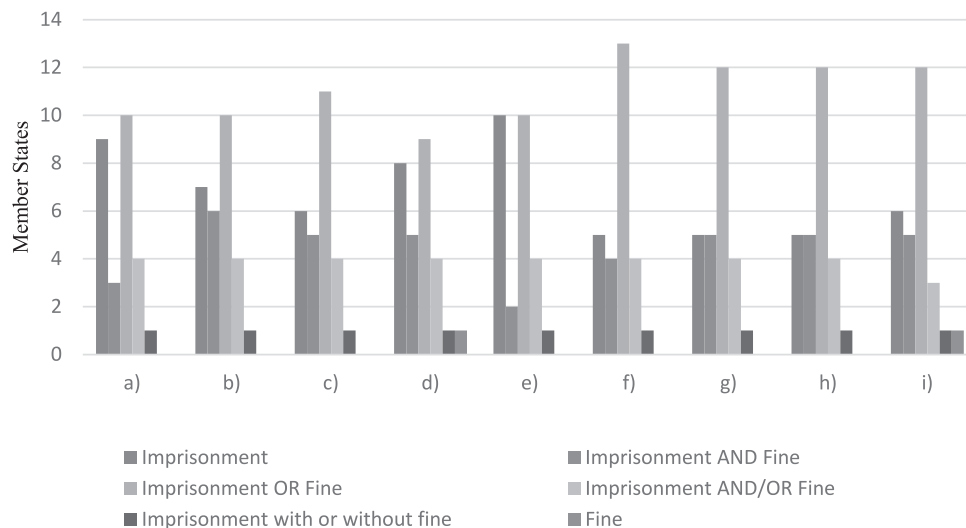


Fig. 1. Criminal penalties by typology - Offence (Art. 3) [22].

expense” [25] and not feel at all the imposition of this sanction. For this reason, the sentences imposed should be proportional to the social danger and the consequences caused by the illegal activity, and by imposing the criminal sanction, the purpose of the sentence should be achieved, i.e., the effect of personal and general prevention should be achieved.

This concern is also reflected in the provisions contained in the directive, which with this instrument requires states to tighten their penal policies, for these to serve as an instrument to further reduce or prevent the consequences of environmental crimes.

Six options have been identified in the national legislation: 1) Only imprisonment 2) Imprisonment and fine 3) Imprisonment or fine 4) Imprisonment and/or fine 5) Imprisonment with or without fine 6) Only (criminal) fine [18]. Below we will present, in the form of a graph, the types of criminal sanctions that have been foreseen by the EU member states.

It dominates in all member state legislations’ imprisonment or fine as a criminal sanction, then only imprisonment, imprisonment and fine, imprisonment and/or fine, imprisonment with or without fine, only (criminal) fine.

Article 4 stipulates the obligations of states, which stipulate that aiding, abetting, and inciting towards the commission or non-commission of these criminal offenses provided for in Article 3, should be sanctioned as criminal offenses.

Whereas, Article 5 stipulates that states must take the necessary measures to ensure that the criminal offenses referred to in Article 3 and Article 4 are punished with effective, convincing sentences and in proportion to the socially caused consequences of these offenses. Despite the description of the offenses to be incriminated, the directive does not provide for a minimum criterion that would oblige states to impose prison sentences or fines for these offenses.

As long as this instrument does not specify the type or height of the sentence, it remains within the autonomy of the states to impose the sentences as determined by the national legislature [26]. The Directive does not set out concrete measures for the implementation of the procedural part of criminal law, nor does it specifically require states to designate a special competent authority to prosecute and prosecute these criminal offenses, as it is assumed that due process and law enforcement authorities in most states can ensure the implementation of the Directive. However, some states, such as e.g., Sweden, have set up a special system within the prosecuting authority, appointing special prosecutors for environmental offenses [23]. So, there is a difference in terms of how to prosecute these crimes in individual states, depending on the organization of justice systems at the national level but also on the existence of capacities that these states have to concentrate personnel and to specialize only in the criminal field of environmental protection. However, it must be acknowledged that environmental legislation is distinguished by the complexity and challenges of its implementation [27], which means states must consider the nature and importance of preventing and combating environmental crime through criminal law as one of the important mechanisms in this area.

#### Standards of Criminal Liability of Legal Persons Promoted by Directive 2008/99/EC

The criminal liability of legal persons is a highly controversial issue, even in criminal offenses against the environment as provided by Directive 2008/99/EC. The difficulty in determining the criminal responsibility of a legal person stems from the fact that natural persons who have authorization or exercise control within the legal person act in the name and on behalf of these legal entities at all times. The interest of criminal law so far in criminal offenses committed within the scope

of legal persons has always been to find and determine the criminal responsibility of the natural person who acts or should act in the name and on behalf of the legal person. But with the great and rapid development of legal entities in legal relations, inevitably, legal entities are also charged with criminal liability, which is also reflected in criminal offenses against the environment.

In addition, Article 6 of Directive 2008/99/EC also provides for the criminal liability of legal persons for criminal offenses against the environment in cases where it is possible to establish such criminal liability. According to the instrument, the legal person is responsible in situations when any of the foreseen acts are performed to benefit the legal person by a person holding a leading position within the legal person, acting as part of the legal person, or having power or authority to do so. Furthermore, legal entities may be liable under national law when a managing person's lack of supervision or control over a legal entity causes an environmental crime.

Whilst there is an explicit requirement in the Directive to impose criminal penalties on natural persons, there is no requirement to impose criminal penalties on legal persons. Member states have the option of imposing civil, administrative, or criminal penalties. This is related to the fact that, in some Member States, there is generally no criminal liability for legal persons. Germany is one example. Until 2012, the Czech Republic was the only EU member state that refused to recognize corporate criminal liability. On the other hand, Sweden, recognizes not only individual and corporate criminal liability, but also the liability of public authorities such as the state and municipalities [25].

#### Efforts for a New Environmental Crime Directive

Environmental protection through criminal law, as one of the many mechanisms for environmental protection, as a new field, is also a very dynamic field since, in recent years, it has gained special importance and, at the same time, has built its own special identity. This aspect has had a significant impact on the EU legislation on environmental protection, especially in the field of environmental protection through criminal law [28].

At the level of the EU institutions, there is already a wide discussion and important efforts are being made to advance the current directive on environmental protection through criminal law with new standards for environmental protection. It is a well-known fact that the current directive is the first document that provides standards for the protection of the environment through criminal law, and during its implementation, areas and aspects have been identified that are estimated to have to be revised to adapt to current developments in order for environmental protection to be effective. The European Commission during 2019 and 2020 has undertaken activities to evaluate the current directive and issued

a special report on this aspect. This public document contains an important assessment to highlight the strengths and weaknesses during the implementation of the directive. Weaknesses identified by this assessment: the report highlights the poor results that the current directive has produced, as there are a very small number of cases that have been sentenced with a final judgment, as well as in cases where any judgment has been pronounced, the sentences pronounced have been very low and disproportionate, which did not meet the standard of being effective and convincing as the directive envisaged [29].

According to the assessment contained in this report, since environmental crime affects more than one country, it is emphasized that there is a lack of cooperation between countries in efforts to prevent and fight environmental crime. Most states have not seen any significant commitment to fight this form of criminality, as states also lack a concrete strategy to respond to forms of this type of criminality, and still some states have not taken proactive actions to clarify the nature of administrative violations from criminal offenses against the environment. The report also points out that states have not correctly administered environmental crime statistics, and in cases where these statistics exist, they are not credible and cannot be taken as completely accurate and reliable [29]. Some general but also imprecise expressions which are in the current directive, e.g. the expressions "substantial damage", "may cause damage", "negligible quantity" and "a non-negligible quantity", in the new draft directive are intended to be more concrete and more precise, since the same may be unenforceable in many cases. Article 3 of the draft foresees the types of violations that states should include as criminal offenses in their national legislation. These are listed in the table below [30].

Even in terms of penalties, the new draft includes significant innovations, radically changing the approach that has been followed so far through the current environmental crime directive. The current directive provides that member states must sanction criminal

Table 2. The new environmental offences.

– Illegal timber trade
– Illegal ship recycling
– Illegal water abstraction from ground-or surface water
– Serious breaches of EU chemicals legislation
– Serious breaches related to dealing with fluorinated greenhouse gases
– Serious breaches of legislation on invasive alien species of Union concern
– Serious circumvention of requirements to obtain development consent and to do environmental impact assessment, causing substantial damage
– Source discharge of polluting substances from ships



offenses against the environment only with fines and imprisonment and does not provide for other sanctions that can be imposed on the person found guilty of the environmental crime. In the new draft directive, other criminal penalties are foreseen, which can be imposed as main penalties or even as alternative penalties. For natural persons, in addition to the penalty of a fine, there is an obligation to restore to the previous state the environment to which damage has been caused. It also foresees the restriction for a period of time, or even permanently, of the right to win contracts with public funding; prohibiting the management of entities that have caused environmental damage; revocation of permits or licenses to companies that have caused environmental damage with their activities; and it is also provided that natural persons found guilty of environmental damage will be prohibited from running for or being elected to public office. In the end, the possibility of distributing the verdict in the entire EU area is envisaged for the subject who is declared guilty of environmental crimes [31].

This draft foresees criminal liability for legal entities as well. This will be a challenge for national legislations which still do not recognize the criminal liability of legal persons for criminal offences. In the course of further discussions, this draft may encounter resistance precisely from those states that do not support the legal regime that even legal entities can be held responsible for a criminal offense.

Unlike the current directive, the new draft envisages a significant expansion of the scope of the directive, i.e., it includes components that are envisaged for the first time, such as: Aggravating and mitigating circumstances that are taken into account by the court for perpetrators of criminal offenses; or freezing, seizure, and confiscation of the instruments by means of which the criminal offense was committed, or the products of the criminal offense. Prescription periods for criminal offenses against the environment were also foreseen, as well as the protection of persons who report environmental violations or help in the investigation of these criminal offenses. It is planned to include the public interested in participating as a party or participant in the procedure. Some of the most important issues are those related to preventing the consequences of these crimes, which includes the necessary training, namely investigative tools or techniques, as well as foreseeing concrete cooperation between the states, since cooperation has been identified as a weak point. It also foresees a national strategy against environmental crime and also a standard for the collection and administration of data on violations and environmental crimes.

### Conclusion

Due to transnational environmental damages, i.e., the damages to water, air, earth, flora, and fauna,

the protection of the environment by law has been the continuous goal of international initiatives, which shows the continuous efforts that have been made in different periods. As the consequences for the environment increase, the criminal law is also seen as a more effective tool in preventing further environmental degradation. At the international level, this issue was initially defined by Protocol I of the Geneva Convention, but only in the circumstances of the existence of an armed conflict, excluding civil situations, with which in this regard this instrument has no definite impact. At the regional level, we have the Convention on the Protection of the Environment through Criminal Law issued by the Council of Europe, which did not find the instrument it intended to draft, as only 13 states have signed it and only one state has ratified it.

The EU has made significant efforts to change standards with the aim of preventing and combating environmental damage effectively. With Directive 2008/99/EC issued by the Parliament and the Council, the first step has been taken to establish standards for environmental protection in the European Union. This directive contains material criminal rules for the protection of the environment and is structured into several parts, including the definition of types of offences; inciting, aiding and abetting; penalties; and liability of legal persons. The instrument sets out the procedures and timeliness of transposition by EU member states of the standards contained in this instrument.

At the level of the EU institutions, there is already a wide discussion and important efforts are being made to advance the current directive on environmental protection through criminal law with new standards for environmental protection.

The European Commission during 2019 and 2020 has undertaken activities to evaluate the current directive and issued a special report on this aspect. This public document contains an important assessment to highlight the strengths and weaknesses during the implementation of the directive. Some general but also imprecise expressions which are in the current directive, e.g. the expressions “substantial damage”, “*may cause damage*”, “negligible quantity” and “a non-negligible quantity”, in the new draft directive are intended to be more concrete and more precise, since the same may be unenforceable in many cases.

Even in terms of penalties, the new draft includes significant innovations, radically changing the approach that has been followed so far through the current environmental crime directive. The current directive provides that member states must sanction criminal offenses against the environment only with fines and imprisonment and does not provide for other sanctions that can be imposed on the person found guilty of the environmental crime.

This draft foresees criminal liability for legal entities as well. Unlike the current directive, the new draft envisages a significant expansion of the scope

of the directive, i.e., it includes components that are envisaged for the first time.

### Conflict of Interest

The authors declare no conflict of interest.

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