



European Union Action to  
**Fight Environmental Crime**

# Fighting Environmental Crime in Poland: A Country Report

Work package 2 on “Instruments, actors, and institutions”



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## ABSTRACT

This Country Report on Poland describes and analyses criminal responsibility in relation to the following areas of environmental protection:

- The waste management
- Trade in endangered species of flora and fauna
- Pollution of the marine environment
- It is based on the analysis of the relevant international conventions and the transposition of relevant EU Law into the Polish context.

The research was done on the basis on relevant Polish legislation, and relevant international conventions and EU law, as well as interviews conducted with relevant officials in Poland in the three above mentioned areas of interest. These interviews widened the scope and depth of the research as they covered not only the issue of what were the applicable rules and regulations, but also their issue of their practical implementation in Poland.

The Report's general assessment of the state of the relevant law in Poland, and of the country's level of compliance with EU law, gives an encouraging impression in the light of the relatively short duration of Polish membership of the EU by comparison with states such as the United Kingdom and Germany.

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## LIST OF ABBREVIATIONS

EU	European Union
MEA	Multilateral Environmental Agreement
NGO	Non Governmental Organization

# 1 Introduction

Environmental offences and crimes constitute a point of interest of Polish authorities. There are legal regulations on both crimes (included in Polish Penal Code) and environmental offences (regulations on this matter could be found in various acts on specific issues).

Fundamental legal acts related to the matter are:

- Penal Code (Kodeks karny),
  - Code of Criminal Procedure (Kodeks postępowania karnego)
  - Code of Administrative Procedure (Kodeks postępowania administracyjnego)
  - Civil Code (Kodeks cywilny)
  - Petty Offences Code (Kodeks wykroczeń)
- 
- Environmental Protection Act (Prawo ochrony środowiska),
  - Act on Inspection of Environmental Protection (ustawa o inspekcji ochrony środowiska)
  - various special legal provisions of which are *lex specialis* with regards to the Penal Code, e.g.:
    - Hunting Law (Prawo łowieckie);
    - Act on the protection of animals (Ustawa o ochronie zwierząt);
    - Nature Conservation Act (Ustawa o ochronie przyrody);
    - Waste Law (Ustawa o odpadach).

There are also national policies and programs focused on the protection of national environment and punishment of actions that are detrimental for the environment. Apart from the Ministry of Environment, which is the major body administering those issues, there are also various national and regional bodies and agencies established. What is also to be noted is that ecological security is one of the issues of the utmost importance for national security<sup>1</sup>.

Nevertheless, it should be noted that there is no serious risk of the increase in the number of environmental crimes and offences, as the consciousness of Polish society (also entrepreneurs) on the importance of environmental protection is relatively high. Therefore, it seems that for the time being, those issues do not constitute a serious problem for the country.

There are no specific statistics and data on the number of crimes and offences related to the environment. The only information available in the website of the Ministry of Environment pertains to the fines for environmental offences for 2012, being an income for national budget<sup>2</sup>. The income from fines for 2012 was 12,9 million zlotys (almost 5% more than in 2011). It is 0,7 % of total income for national budget.

A report on the offences against environment has been published by the Police. In 2009, there were 4.833 offences investigated in Poland and the total material loss in their result was 3,2 million zlotys<sup>3</sup>.

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<sup>1</sup> National Security Strategy of Poland, 2008, p. 20. Accessed February 20, 2014.

<http://www.bbn.gov.pl/pl/publikacje-i-dokumenty/dokumenty/1144,dok.html>

<sup>2</sup> Information on the fines for environmental offences for 2012, being an income for national budget, Ministry of Environment. Accessed February 20, 2014.

[http://www.mos.gov.pl/g2/big/2013\\_06/b82019cc4ee00a123a0c556558610274.pdf](http://www.mos.gov.pl/g2/big/2013_06/b82019cc4ee00a123a0c556558610274.pdf)

<sup>3</sup> Police Report on the offences against environment. Accessed February 20, 2014.

<http://www.statystyka.policja.pl/st/informacje/53172,dok.html>

There is no strategic approach related specifically to environmental crimes/offences. However, enforcement of responsibility for detriments to the environment is one of the major points reflected in National Environmental Strategy<sup>4</sup>. There are also legal regulations in force, which enable punishment for both crimes and offences against environment.

## 2 Definition of environment

**Definition from Environmental Protection Act<sup>5</sup> (Article 3, point 39):**

*“Environment – all elements of the nature, including those modified in the result of human activity, in particular the surface of the earth, mineral, waters, air, landscape, climate and other elements of biological diversity, together with mutual interactions between those elements”.*

## 3 Definition of environmental crime/environmental offence

There is **no legal definition of either environmental crime or environmental offence**.

In the literature, an offence against environment is an act that is socially detrimental (fulfilling the requirements from Penal Code or another act), unlawful, culpable and punishable with a penalty imposed by the court<sup>6</sup>.

As for the practical application of the definition of environmental crimes and environmental offences, due to the lack of one and uniform definition, each situation is analyzed *as casum*. That means that in each case a factual state is thoroughly considered in order to establish whether it matches one of the crimes from Penal Code or an offence described in Petty Offences Code or in specific acts.

## 4 Substantive criminal law principles

### 4.1 The principle *nullum crime nulla poena sine praevia lege penali*

**Article 1 paragraph 1 of Penal Code<sup>7</sup>:**

**Art. 1. Conditions of liability.**

*§ 1. Only a person who commits an act punishable under the law in force at that time bears criminal liability.*

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<sup>4</sup> National Ecological Policy for years 2009-2012, with the perspective until 2016, Ministry of Environment, 2008. Accessed February 20, 2014.

[http://www.mos.gov.pl/g2/big/2009\\_11/8183a2c86f4d7e2cdf8c3572bdba0bc6.pdf](http://www.mos.gov.pl/g2/big/2009_11/8183a2c86f4d7e2cdf8c3572bdba0bc6.pdf)

<sup>5</sup> National Journal of Acts from 2008, No. 25, pos. 150.

<sup>6</sup> <http://www.ochronaprzyrody.republika.pl/wykroczenia.html>

<sup>7</sup> Polish Penal Code, National Journal of Acts from 1997, No. 88, pos. 553, with amendments.



The role of the **principle *nullum crime nulla poena sine praevia lege penali*** in the country criminal law system is one of the provisions of the utmost importance of Polish criminal law. That means that it is forbidden to try a person for the commission of an act that was not a crime at the moment of the time of the action of that person. This principle is present in the vast majority of countries in the world and constitutes basic guarantee of the respect for human rights.

As for the European Union power to impose criminal sanctions through directives it is to be recognized that Poland is obliged to respect laws of the EU, either directly or indirectly, through implementation of EU law provisions into the national legal system. That is the case also when it comes to the implementation of environmental law provisions.

The role of the judiciary in the creation of criminal law is rather marginal as Polish legal system is not a common law one. Therefore, the decisions of the courts do not constitute law. Nevertheless, the rulings of the Supreme Court, although not formally binding, are respected by other courts, and some decisions (of 7 or more judges) have the value of law.

## **4.2 The principles according to which the national legislator have chosen to qualify certain conduct as criminal**

### **Provisions of Penal Code:**

#### **a) Art. 1. Conditions of liability.**

*(...) § 2. If the effects of a prohibited act on society are insignificant, it will not constitute an offence.*

#### **b) Art. 25. Necessary self-defence.**

*§ 1. Anyone who, out of necessary self-defence, repels a direct illegal attack on any legally protected interest is not deemed to have committed an offence.*

#### **c) Art. 26. Protective force.**

*§ 1. Anyone whose actions are carried out in order to avert an immediate danger threatening any legally protected interest, if the danger cannot otherwise be avoided and the interest sacrificed is less valuable than the interest saved, is not deemed to have committed an offence.*

#### **d) Art. 27. Experiment.**

*§ 1. Anyone who intends to conduct a cognitive, medical, technical or economic experiment does not commit an offence as long as the anticipated benefit is of vital cognitive, medical or economic importance, and the expectation of the benefits, their usefulness and the method of conducting the experiment are justified according to the state of knowledge at that time.*

#### **e) Art. 28. Mistaken circumstances.**

*§ 1. An act committed by anyone who is mistaken about the circumstances constituting a feature of a prohibited act is not deemed an intentional offence.*

**f) Art. 29. Mistake over the exclusion of guilt.** No offence is committed by anyone who performs a prohibited act in the justified but mistaken conviction that there are circumstances excluding unlawfulness or guilt; if the offender's mistake is unjustified, the court may apply an extraordinary mitigation of the penalty.

**g) Art. 30. Ignorance of unlawfulness.** No offence is committed by anyone who performs a prohibited act while being justifiably unaware of its unlawfulness; if the offender's mistake is not justified, the court may apply an extraordinary mitigation of the penalty.

**h) Art. 31. Insanity and diminished sanity.**

§ 1. No offence is committed by anyone who performs a prohibited act while incapable of recognizing its significance or of controlling his or her actions due to a mental disease, mental deficiency or other mental disturbance

## 4.3 Criminal and administrative sanctions

There is no implicit principle according to which the legislator chooses between criminal and administrative sanctions. However, as a general rule, in Penal Code there are criminal sanctions listed and in specific laws – there are administrative sanctions that are predominant.

## 4.4 Causality and the *mens rea* in the Penal Code

**Art. 8. Intent and lack of intent.**

An indictable offence must involve intent; a summary offence may be committed without intent, where stated by the law.

**Art. 9**

§ 1. A prohibited act is committed with intent when the offender wants to commit it, namely where there is a desire to commit it or an acceptance of the foreseen possibility of committing the act.

§ 2. A prohibited act is committed without intent where the offender does not intend to commit it, but does so out of a failure to exercise due care under the circumstances, even though the possibility of committing the prohibited act was foreseen, or could have been foreseen.

§ 3. The offender bears more severe liability, which the law makes dependent on certain consequences of a prohibited act, if the consequences were foreseen or could have been foreseen.

## 4.5 Constitutional Principle of culpability-blameworthiness

**a) Art. 42 section 1 of the Constitution**, having the same meaning as art. 1 § 1. of Penal Code (Only a person who commits an act punishable under the law in force at that time bears criminal liability), with an addition that also actions constituting offences under international law in the moment of their commission are to be punishable.

**b) Art. 42 section 3 of the Constitution**

*Each person is deemed to be not guilty until its guilt is adjudicated by the final ruling of the court.*

## **4.6 “Party to the offences” rules of the criminal law system**

### **Provisions of Penal Code**

#### **a) Art. 18. Perpetration, instigation, aiding and abetting.**

*§ 1. Not only is the offender of a prohibited act liable, whether alone or together with an accomplice, but also anyone who organizes a prohibited act to be carried out by another person, or who, taking advantage of the dependency of another person on him or her, orders that person to commit the prohibited act.*

*§ 2. Anyone who, intending another person to commit a prohibited act, induces the person to do so, is liable for instigation.*

*§ 3. Anyone who, intending another person to commit a prohibited act, serves to facilitate the commission of the act, particularly by providing tools, means of transport, or providing advice or information, will be liable for aiding and abetting. In addition, anyone who, acting against a particular legal duty to prevent a prohibited act, facilitates its commission by another person through his or her omission, is also liable for aiding and abetting.*

#### **b) Art. 19. Criminality.**

*§ 1. The penalty imposed by the court for aiding and abetting will be within the limits of the penalty provided for the given offence.*

*§ 2. In imposing the penalty for aiding and abetting, the court may apply an extraordinary mitigation of punishment.*

**c) Art. 20. Non-accessory liability.** *Everyone participating in carrying out a prohibited act is liable within the limits of his or her intent, or lack thereof, irrespective of the liability of other participants.*

#### **d) Art. 21. Personal circumstances.**

*§ 1. Personal circumstances excluding, mitigating or aggravating an individual's criminal liability are only considered for the person they relate to.*

*§ 2. If individual circumstances regarding the offender constitute a feature of a prohibited act, even if only in connection with increasing the penalty, then any accomplices are held liable under criminal law for the prohibited act if they knew about the circumstances, even though they did not relate to the accomplice.*

*§ 3. With regard to an accomplice to whom the circumstances referred to under § 2 do not apply, the court may apply an extraordinary mitigation of punishment.*

#### **e) Art. 23. Active repentance.**

*§ 1. An accomplice to a prohibited act who voluntarily prevented it from being carried out is not subject to a penalty.*

*§ 2. The court may apply an extraordinary mitigation of punishment with regard to an accomplice who voluntarily tried to prevent the prohibited act from being carried out.*

## 4.7 The types and content of criminal sanctions in the national system (there is original name, conceptual translation into English and explanation provided). There are two categories:

1. **Penalties** (*kary*), art. 32 of Penal Code – including
  - 1) fine (*grzywna*)
  - 2) restriction of liberty (*ograniczenie wolności*)
  - 3) imprisonment (*pozbawienie wolności*)
  - 4) 25 years imprisonment (*25 lat pozbawienia wolności*)
  - 5) life imprisonment (*dożywotnie pozbawienie wolności*)
2. **Penal measures** (*środki karne*), art. 39 of Penal Code

Art. 39. Catalogue.

Penal measures are:

- 1) deprivation of public rights,
- 2) disqualification from specific posts, the exercise of specific professions or engagement in specific economic activities,
  - 2a) disqualification from activities involving raising, treating and educating minors, and taking care of them,
  - 2b) a prohibition on being in certain communities and locations, a prohibition on contacting certain individuals or on leaving a specific place of residence without the court's consent,
  - 2c) disqualification from operating machinery,
  - 2d) a ban on entering gaming centers or participating in games of chance,
  - 2e) an order to leave premises jointly occupied with the aggrieved party,
- 3) disqualification from driving,
- 4) forfeiture,
- 5) an obligation to remedy damage caused or compensate for harm done,
- 6) exemplary damages,
- 7) monetary performance,
- 8) announcement of the sentence publicly.

## 4.8 As for the sanctions for the offences listed in Petty Offences Code, there are the following ones

- 1) Arrest (from 5 to 30 days),
- 2) Restriction of liberty (up to 1 month),

- 3) Fine (from 20 to 5.000 zlotys).

## 4.9 The system of corporate criminal responsibility

The Act of 28th October 2002 on corporate criminal responsibility for acts prohibited under a threat of penalty (*o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary*)<sup>8</sup> regulates issues relating to corporate criminal responsibility.

The Law defines the principles of corporate criminal responsibility for criminal and fiscal acts and the procedural principles in cases of such responsibility (Art. 1). A corporate entity may be held liable for offences committed by:

- a person acting on behalf of the corporate entity or in its interest and within the scope of that persons powers or duty to represent it,
- a person who makes decisions on behalf of the entity or who exercises internal control, or, exceeds his/her powers or fails to perform his/her duty (a "Manager"); a person given permission to act by a Manager;
  - a person acting on behalf of the corporate entity or in its interest with the consent or knowledge of a Manager; or
  - a person being "an entrepreneur" (a sole trader) who is involved in a business relationship with the corporate entity.

The entity will face liability for actions of the above-mentioned persons only if its bodies or representatives failed to exercise due diligence in preventing the commission of an offence by the Managers or the entrepreneur; or it has failed to exercise due diligence in hiring or supervising a person given permission to act by the Manager or person acting with his/her consent or knowledge. The liability of the entity is secondary to the liability of the person who committed the offence, i.e. the entity can be held criminally liable only after the person who committed the offence has been found guilty and sentenced by a court of law. Under the provisions of the Liability Act the lack of criminal liability of a corporate entity does not exclude the possibility of civil liability for the damage caused or the administrative liability of the entity. The Liability Act enumerates the offences for which a corporate entity may face criminal liability. It refers to specific offences regulated in the Polish Penal Code which are generally directed to individuals. The list is not set and is constantly being expanded and currently includes such offences as: offences against economic turnover, e.g. money laundering; offences against trading in money and securities, e.g. currency counterfeiting or the counterfeiting of official security paper; offences against the protection of information, e.g. the obtaining or removing information by an unauthorized person; offences against the reliability of documents, e.g. the counterfeiting of documents or use of such documents; offences against property, e.g. fraud, receipt of stolen property; offences against the environment (the polluting of water, air or soil); bribery and corruption; certain fiscal offences; and offences of a terrorist nature.

The Manager acting with due diligence prevents the corporate entity from being held liable. In the case of offences committed by the Managers it would need to be proved that the entity's bodies or representatives exercised due diligence in preventing the commission of an offence. The criminal liability of a manager, officer or director as determined in a court sentence may result in the criminal liability of an entity.

In practice, Poland does comply with the requirements of EU law. The main role in the implementation of the law, and the imposition of penalties is taken by:

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<sup>8</sup> Official Journal from 2002, No. 197, pos. 1661.

- In the first place, the Office for Protection of Competition and Consumers (in which case, penalties constitute administrative, rather than criminal, liabilities); and
- In the second place, Criminal Court, which have filed annually about 20 applications for the institution of proceedings in such cases (statistics for 2011-13), the majority of the cases being the follow up of the fiscal criminal procedures against the management or partners in partnerships though such cases are very few.

This comparative rarity of proceedings is the result of the system of the regulation of the penal liability of corporations or legal persons. The main prior condition for which is the imposition of a legally binding sentence for crime against the physical person who acted on behalf of, or in the interests of, corporation or other legal person.

There are, also, situations in which, though the existence of a criminal act is acknowledged, the physical perpetrator cannot be sentenced because of incapacity, so that action is also blocked against the corporate entity concerned. Criminal procedures against physical persons are, in any event, very lengthy, which discourages the Public Prosecutors office from pursuing proceedings against the corporation or juridical that benefitted from the criminal act.

Further problems in practice arise because of the necessity of proving that the corporation juridical person failed to exercise control over the physical perpetrator, or it lacked due diligence in selection of the members of its management.

It has to be said, therefore, that the threat of criminal liability against corporations or juridical persons, even when it has benefitted from the crunubak activity, is very remote.

There is a list of sanctions listed in the Articles 7-12 of the act, e.g. fines (ranging from 1,000 to 5,000,000 zlotys, but no more than 3% of the income from the year of the commission of the offence), forfeiture of the goods and material benefits obtained in result of the offence, public announcement of the court decision, prohibition of applying for public material aid etc. The Polish Code of Penal Procedure refers to the criminal liability of corporate entities and therefore public prosecutors are responsible for prosecuting such offences. Criminal proceedings against corporate entities are conducted in accordance with the Polish Code of Penal Procedure with several changes resulting from the Liability Act. The proceedings are commenced on the motion of a public prosecutor or the injured party.

Legal persons should be also held liable for the actions of its representatives (see Commercial Companies Code).

## 5 Substantive environmental criminal law

Provisions in legal texts (environmental criminal law in the Penal Code, criminal sanctions provided for in environmental laws).

Polish environmental law system is composed of numerous acts, and although certain provisions (pertaining sanctions) are included in Penal Code. Criminal sanctions for breaches of environmental law are in two forms: sanctions for environmental crimes and misdemeanors. The regulation of the criminal sanctions is vast, fragmented and placed in various numerous legal acts. It can be said that the majority of issues is regulated in specific acts related to certain aspects of environment.

Environmental criminal sanctions in Poland can be found in the following documents:

- 1997 Penal Code of Poland of 6 June 1997 (Dz U. (Official Journal), No. 88, item 553 with further amendments);
- The Code of Petty Offences of 20 May 1971 (Dz U. (Official Journal), 2010, No. 46, item 275).

(c) Environment Protection Act (Dz U. Official Journal, 2008, No. 25 item. 150 with further amendments);

(d) various legal acts regulating special areas (such hunting laws; the law on the protection of animals; law on waste which are *lex specialis* in relation to the regulation of waste in the Penal Code.

Under Polish legal system concerning the penalties for breaches of environmental law there is close link between criminal sanctions and obligations deriving from the administrative law. The provisions of the penal law fulfill the subsidiary role in relation to the provisions of administrative law. Therefore, the subject matter of the protection of the environment is not confined only to the value of the environment, but also includes the implementation of the designated administrative obligations, such as breach of the administrative obligation requiring the measuring of the level of permissible emissions, breach of which is a subject of the law of petty offences for the breach of the provision of the administrative law.

## 5.1 5.1 Environment Protection Act

The provisions contained in the Environment Protection Act have a very detailed character.

These provisions regard sanctions for non-compliance with several obligations having legal source in the Environment Protection Act. These acts of non-compliance are mostly treated as misdemeanors (Article 361 of the Environment Protection Act. According the provisions of the Penal Procedural Code (Kodeks Karny Wykonawczy), the sanctions for such petty offences are as follows: arrest (from 5 days up to 30 days); restriction of liberty (up to 1 month); fine (from 20 up to 5 thousand PLN (Polish Zloty). The following breaches of the Environment Protection Act are subject to penalties: the breach of the law relating to the admissible level of noise; omission to or cessation to collect data relating to the level of certain substance's or emissions in the environment; the breach of a duty by a contractor regarding the protection of the environment during the building work at the area where this work is conducted.

## 5.2 Penal Code – Chapter XXII (Offences against environment), Articles 181-188 – causing significant harm to plants or animals, causing serious pollution to water, soil or air, destroying environmentally protected objects etc.

### **Art. 181. Destruction.**

*§ 1. Anyone who causes significant destruction to plant or animal life is liable to imprisonment for between three months and five years.*

*§ 2. Anyone who violates the provisions in force in a protected area, destroys or damages plants or animals causing serious harm is liable to a fine, the restriction of liberty or imprisonment for up to two years.*

*§ 3. Anyone who destroys or damages protected plants or animals, causing significant damage, regardless of where the act takes place, is liable to the same penalty.*

*§ 4. If the offender of the act specified in § 1 acts unintentionally, he or she is liable to a fine, the restriction of liberty or imprisonment for up to two years.*

*§ 5. If the offender of the acts specified in §§ 2 or 3 acts unintentionally, he or she is liable to a fine or the restriction of liberty.*

### **Art. 182. Pollution.**

§ 1. Anyone who pollutes the water, air or ground with a substance or radiation in such quantities or form that could pose a danger to the life or health of many people, or cause significant destruction to plant and animal life is liable to imprisonment for between three months and five years.

§ 2. If the offender acts unintentionally he or she is liable to a fine, the restriction of liberty or imprisonment for up to two years.

§ 3. If the act specified in § 1 is committed in connection with the operation of installations operating within a plant requiring a permit for the use of the environment, the offender is liable to imprisonment from six months to eight years.

§ 4. If the offender of the act specified in § 3 acts unintentionally, he or she is liable to imprisonment for up to three years.

**The Polish criminal code provides for general provisions on criminalization of destructions of plants or animals life and pollution of water, air or soil in case of significant pollution. Additionally, all other than significant types of pollution are regulated by administrative acts. It may be observed that this classification between “significant” and “other” may not be always clear and lead to conflicting interpretations.**

#### **Art. 183. Waste.**

§ 1. Anyone who, in violation of the law, stores, disposes of, recycles, neutralizes or transports waste or substances under conditions or in a manner that could pose a danger to the life or health of human beings, or cause significant destruction to plant or animal life is liable to imprisonment for between three months and five years.

§ 2. Anyone who, in violation of the law, imports hazardous waste or substances is liable to the same penalty.

§ 3. Anyone who, despite his or her duty, allows the act specified in §§ 1 or 2 to be carried out, is liable to the same penalty.

§ 4. If the offender of the act specified in §§ 1-3 acts unintentionally, he or she is liable to a fine, the penalty of restriction of liberty or imprisonment for up to two years.

§ 5. Anyone who, without the required notification or permission, or going against its conditions, imports hazardous waste from abroad or exports it abroad, is liable to imprisonment from six months to eight years.

§ 6. If the offender of the act specified in §§ 1-5 acts unintentionally, he or she is liable to a fine, the restriction of liberty or imprisonment for up to two years.

Therefore it may be noted that Art. 183 (1) approaches very broadly the illegality of waste management. It identifies six instances of a negative effects of illegal management wastes on human life and health; animal and plants health:

- (a) storage;
- (b) disposal;
- (c) recycling;
- (d) neutralizing;
- (e) transportation.

Art. 183 (2) deals with the importation of hazardous waste or substances. This provision is formulated in such way that the very act of transportation is penalized without the necessity of causing any adverse effects.



Art. 183 (3) indicates that the same penalty (from 3 months up to 5 years of imprisonment) is provided for illegal acts in Art. 183 (1&2 and 4). Art. 183 (3) included in the scope of this Art. as liable persons who have a duty of preventing committing of illegal acts provided for in Art. 183 (1). Such a duty is imposed on the owners and managers of administrative units. Therefore this provision may be interpreted that the such an illegal act can have the form of an act or an omission. The narrowing of the scope of persons who are liable for illegal acts to two categories is based on a premise that such persons have particular duties in relation to the protection of the environment.

As it is provided for in Art. 183 (4), penalties for the import or export of hazardous wastes from abroad incurs the imprisonment from 3 months up to 5 years. A person who without the required notification or permission, or going against its conditions, imports hazardous waste from abroad or exports it abroad, is liable to imprisonment from six months to eight years.

#### **Art. 184. Radioactive material.**

*§ 1. Anyone who transports, collects, stores, abandons or neglects without properly securing any nuclear material or other source of radiation that could pose a danger to the life or health of human beings, or cause significant destruction to plant or animal life is liable to imprisonment for between three months and five years.*

*§ 2. Anyone who, despite his or her duty, allows the act specified in § 1 to be committed is liable to the same penalty.*

*§ 3. If the offender of the act specified in §§ 1 or 2 acts unintentionally, he or she is liable to a fine, the restriction of liberty or imprisonment for up to two years.*

It may be added as an illustration of a very fragmented environmental legal system in Poland that there is also sectoral law relating to the nuclear waste, which is included in Nuclear Law of 2000 (Prawo Atomowe).

There is a specialist Unit for Neutralizing of Nuclear Waste (Zakład Unieszkodliwiania Odpadów Promieniotwórczych). This law also provides for monetary penalties which may be imposed by the Chief Inspector of Nuclear Control (Główny Inspektor Dozoru Jądrowego) on the basis of the administrative decision. The qualified breaches of nuclear law are penalized on the basis of the Penal Code.

#### **Art. 185. Significant act.**

*§ 1. If the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or Article 184 §§ 1 or 2 results in significant destruction of plant or animal life, the offender is liable to imprisonment for between six months and eight years.*

*§ 2. If the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or in Article 184 §§ 1 or 2 results in serious bodily harm to a person, the offender is liable to imprisonment for between one and 10 years.*

*§ 3. If the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or in Article 184 §§ 1 or 2 results in the death of a human being or in serious bodily harm to many people, the offender is liable to imprisonment for between two and 12 years.*

#### **Art. 186. Unperformed duty.**

*§ 1. Anyone who, despite his or her duty, does not properly maintain or use equipment protecting water, air or ground from pollution, or equipment protecting against radiation is liable to a fine, the restriction of liberty or imprisonment for up to two years.*

§ 2. Anyone who commissions or, despite his or her duty, permits a building structure or a group of facilities without the equipment required by law to be used as specified in § 1 is liable to the same penalty.

§ 3. If the offender of the act specified in §§ 1 or 2 acts unintentionally, he or she is liable to a fine or the restriction of liberty.

**Art. 187. Protected area or object.**

§ 1. Anyone who destroys, significantly damages or essentially reduces the natural values of a protected area or an object, causing serious damage is liable to a fine, the restriction of liberty or imprisonment for up to two years.

§ 2. If the offender acts unintentionally, he or she is liable to a fine or the restriction of liberty.

**Art. 188. Harmful activity.** Anyone who, in violation of the law, builds a new facility or extends an existing one, or conducts business that poses a threat to the environment in a protected area of nature or scenery, or in a buffer zone, is liable to a fine, the restriction of liberty or imprisonment for up to two years.

## 5.3 Specific provisions of law

**a) Hunting Law (Prawo łowieckie); sanctions are listed in Articles 51-54.**

**Article 51.**

1. Who:

- 1) shoots to the animals from less than 500 m from the public meetings' place in the time of their duration or from a distance less than 100 meters from residential buildings,
- 2) takes eggs and nestlings and destroys nests of predacious birds or their breeding grounds,
- 3) keeps animals without proper permission,
- 4) destroys the burrows and lairs of animals,
- 5) destroys hunting equipment, takes fodder or salt from licks,
- 6) hunts without required documents,
- 7) contrary to the provisions of Art. 42b. par. 2, does not make the required inscriptions in the permission for individual hunting.

- is subject to a fine.

2. In the cases referred to in Paragraph. 1, adjudication shall be according to the rules of procedure related to the offences (*postępowanie w sprawach o wykroczenia*).

**b) Act on the protection of animals (Ustawa o ochronie zwierząt);**

**Article 37a.**

1. Who runs the farm or keeps a dog of an aggressive breed without the required permit, is subject to arrest or fine.

2. If case of the punishment for an offense referred to in Paragraph 1, a forfeiture of the animal could be ordered.

**c) Nature Conservation Act (Ustawa o ochronie przyrody);**

**Article 1.** The Act defines the objectives, principles and forms of protection of animate and inanimate nature and the landscape.

**Article 127a.**

1. *Who, contrary to the provisions of the Act, comes into the possession of specimens of protected plants, animals, fungi in the numbering more than insignificant in such conditions or in such a way that it affects proper conservation status of the species, is subject to imprisonment from 3 months to 5 years.*

2. *If the perpetrator of the act specified in Paragraph 1 acts unintentionally, Is subject to a fine, restriction of liberty or imprisonment up to 2 years.*

In order to corroborate the findings on the laws concerning offences relating to the protection of wild fauna and flora and the practical working of the relevant provisions, an expert of customs services from the Department of Customs Service (*Departament Służby Celnej*) at the Ministry of Finance, has been consulted in relation to CITES and its implementation at the European and national (in Poland) level. In our interview with the expert we aimed at clarifying certain points which relate to working of wildlife protection in Poland in relation to the CITES Convention and the implementing EU legislation. In particular, we were interested in:

- (i) application of CITES and EU legislation in Poland;
- (ii) the effectiveness of the legislation in Poland;
- (iii) statistics;
- (iv) actors and training;
- (v) sanctions and their dissuasive effect;
- (vi) cooperation.

The expert is responsible for (i) providing comments on the national legislation; (ii) coordination of tasks of Customs Chambers (*Izby Celne*); and (iii) organisation of trainings for the Customs Chambers; all in relation to CITES Convention and CITES Regulations.

The administrative network of Customs Chambers in Poland resembles the administrative structure of customs offices introduced in the UK. There are currently 16 Customs Chambers in Poland, each one responsible for a particular region of Poland. In each Customs Chamber there is one CITES coordinator.

The below points reflect the information obtained from the expert during an interview held on March 13, 2014.

Application of CITES Regulations in Poland: as reported by the expert, after Poland's accession to the EU, the national law on illegal trade of endangered species has improved significantly. Also, since the EU legislation implements the provisions of the CITES Convention, there is no need for Polish governmental authorities to directly apply the CITES Convention.

The expert stressed that the EU law on illegal trade of endangered species is stricter than the provisions of CITES Convention. The EU provisions leave a wide margin of appreciation to Member States in terms of implementation. Each Member State is therefore free to implement even stricter legislation as long as it is line with the general aim of the regulation being implemented, the founding treaties and the general principles of EU law. However, Polish authorities considered CITES Regulations sufficient enough and no stricter legislation was adopted.

According to the expert, Polish Customs Chambers are successful in detectability of crimes of illegal trade in endangered species and are sufficiently educated in this matter.

In the last 5 years, Customs Chambers have prevented the following number of smuggling attempts:

YEAR	NO. OF DETECTED ATTEMPTS OF SMUGGLING	DETAILS <sup>9</sup>
2012	144	8650 items/specimens has been retained, among other: (i) 200 specimens of living animals; (ii) 362 kg of coral; (iii) 8217 items of eastern medicine.
2011	149	12833 items/specimens has been retained, among other: (i) 26 specimens of living animals; (ii) 750 kg of coral; (iii) 9594 items of eastern medicine.
2010	193	8495 items/specimens has been retained, among other: (i) 30 specimens of living animals; (ii) 352 kg of coral; (iii) 8286 items of eastern medicine.
2009	253	26380 items/specimens has been retained, among other: (i) 1020 specimens of living animals; (ii) 227 items of eastern medicine; (iii) 25000 pieces of frozen European Eel.
2008	186	200889 items/specimens has been retained, among other: (i) 104 specimens of living animals; (ii) 65 kg of coral; (iii) 200889 items of eastern medicine.

Source: Ministry of Finance<sup>10</sup>.

Polish Customs Chambers have also successfully prevented some large-scale smuggling attempts. As an example, 1200 cactus flowers in a suitcase were found (the specimens were smuggled from Central America); and 700 kg of corals in 10 cars were found (corals originated from Malaysia and were transported towards Russia).

The above statistics however, according to the expert, cannot be considered as a reliable source for specifying the performance of Customs Chambers and the actual number of smuggling cases. Firstly, the total amount of smuggling cases is not known (and no proper scientific research on that issue is performed). Secondly, the above statistics depend on many factors such as changes in the administrative structure of the Customs Chambers, changes in the standards of control; change in trends as to the smuggled specimens, strikes of the administrative officers, level of knowledge of the officers, internal reorganisation of Customs Chambers, and/or popularity of certain travel destinations.

The controls run by the Customs Chambers are based on the risk assessment basis. In case of airport controls, flights categorised as a high-risk flights (for example from Egypt or Thailand) are controlled more often than others.

<sup>9</sup> Details of the detected attempts of smuggling are not complete and are provided only for the information purpose

<sup>10</sup> Available at [http://www.finanse.mf.gov.pl/clo/informacje-dla-osob-fizycznych/towary-objete-ograniczeniami-i-zakazami/-/asset\\_publisher/v3Cc/content/cites;jsessionid=C6B91E4A11C2C647324904F68E9E4DB1?\\_101\\_INSTANCE\\_v3Cc\\_redirect=http%3A%2F%2Fwww.finanse.mf.gov.pl%2Fclo%2Finformacje-dla-osob-fizycznych%2Ftowary-objete-ograniczeniami-i-zakazami%3Fp\\_p\\_id%3D101\\_INSTANCE\\_v3Cc%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-2%26p\\_p\\_col\\_count%3D1&\\_101\\_INSTANCE\\_v3Cc\\_cur=0&page=4#p\\_p\\_id\\_101\\_INSTANCE\\_v3Cc\\_](http://www.finanse.mf.gov.pl/clo/informacje-dla-osob-fizycznych/towary-objete-ograniczeniami-i-zakazami/-/asset_publisher/v3Cc/content/cites;jsessionid=C6B91E4A11C2C647324904F68E9E4DB1?_101_INSTANCE_v3Cc_redirect=http%3A%2F%2Fwww.finanse.mf.gov.pl%2Fclo%2Finformacje-dla-osob-fizycznych%2Ftowary-objete-ograniczeniami-i-zakazami%3Fp_p_id%3D101_INSTANCE_v3Cc%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1&_101_INSTANCE_v3Cc_cur=0&page=4#p_p_id_101_INSTANCE_v3Cc_) ; accessed April 6, 2014.

There is also one team of customs officers responsible for monitoring an internet, which works among other on CITES issues.

Customs officers are undergoing regular CITES trainings. Those started to be run in 1998 and are organised at two levels: (i) central; and (ii) local. Central trainings are organised by the Ministry of Finance, local trainings are organised by Customs Chambers. In trainings a number of experts in the field of biology and/or zoology take part.

Initially, the number of central level educational trainings was considerable (2 or 3 per year). Later on the number of trainings decreased to 1 or 2 per year. The number of trainings was lowered as the level of knowledge of CITES coordinators has significantly increased. At the local level, trainings are organised in Customs Chambers. Number of local trainings is significant – there are organised even up to 60 trainings in all Customs Chambers across the whole country in one year.

The Customs Chambers organize also a number of promotional activities, such as school visits, exhibitions or public events. As a result of such activities more than 5.000 people may gain knowledge on CITES issues.

Challenges: as specified by the expert prevention of environmental crimes related to CITES Regulations faces some challenges.

Customs Chambers face practical difficulties in case of animals' seizure as there is no means to secure the animals. Currently, when the trial is pending, animals may be sent to the zoo's. Those however are not always willing to take care of seized specimens as they may have a negative impact on other animals (e.g. the specimens can be sick or transmit unknown diseases). A new proposal for an establishment of a rescue centre has been put forward; however, it is already known that it is going to be very small.

Further proposals aimed at the improvement of prevention of CITES crimes were made recently (for example sniffing dogs at the border controls for CITES purposes; proposition of creation of a specialized police unit dedicated solely to environmental crimes), however it seems there is not enough of political will to implement them.

A number of improvements to the existing EU legal scheme may also be advisable to implement. The provisions of CITES Regulations on internal trade in specimens may be considered as too general. It would be therefore advisable to harmonise Member States' national provisions, otherwise too many different standards are applied. It seems highly advisable to unify the Member States' national provisions on criminal penalties for the illegal trade in CITES specimens. As of today, under Polish provisions of law, punishment for the illegal transboundary movement of specimens is imprisonment (from 3 months up to 5 years) and/or a fine. Provisions on derogation from a general obligation of obtaining import permit or re-export certificate (Articles 4, 5 and 7 of the Regulation 338/97) should be improved. Under those provisions dead specimens, parts and derivatives of specimens which are of personal or household effects are exempted from a general obligation of obtaining permit or certificate. However, Art. 57 of the Regulation 865/2006 provides the above derogation is not applicable to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale. In practice however it is difficult to verify the compliance with the above provision.

At the national level, some improvements to legal scheme should also be introduced. Some minor offences (for example trade in very small, almost insignificant number of specimens) should be penalised only with administrative fine. As of today, in any factual situation that can be potentially qualified as a criminal offense, the prosecutor has to exercise the criminal action which in the majority of cases leads to a full criminal trial. This suggestion, if implemented, may prevent Courts overload. Currently existing registration procedure of Annex B specimens (that is those endangered with extinction) requires improvements. The main shortcomings of this procedure are: (i) the registration is not linked with simultaneous individual marking of specimens; and (ii) the authorities in charge of registration are not competent and/or lack expert knowledge.

Last but not least, more training for practicing lawyers and for law students should be introduced. Also, although the judges progressively acquire expertise in dealing with environmental crimes, further specialisation in this area is highly needed.

#### **d) Waste Law (Ustawa o odpadach)**

**Article 1.** *The Act sets out the measures to protect the environment, human life and health, to prevent and reduce the negative impact on the environment and human health resulting from the production and management of waste and to limit the overall impact of resource use and to improve the efficiency of such use.*

**Article 171.** *Who manages the waste contrary to the order set out in Art. 16 shall be liable to arrest or a fine.*

- **Article 16** states that waste management shall be performed in the manner ensuring the protection of human life and health and the protection of the environment.

In order to corroborate the laws concerning offences relating to the waste management and the practical working of the relevant laws, an expert on waste management from the Polish Border Guard (*Straż Graniczna*) has been consulted. The expert is competent for the control of transfrontier (international) movement of waste.

In our interview with the expert we aimed at clarifying certain points which relate to working of waste management in Poland in relation to the Basel Convention and the implementing EU legislation. In particular, we were interested in:

- (i) application of Basel and EU legislation in Poland;
- (ii) the effectiveness of the legislation in Poland;
- (iii) statistics;
- (iv) actors and training;
- (v) sanctions and their dissuasive effect;
- (vi) cooperation.

Colonel reported that the main authority that is responsible for the issues related to the transfrontier movement of waste in Poland is the Chief Inspector of Environment Protection (*Główny Inspektor Ochrony Środowiska*). It is however Polish Border Guard that is mostly involved in the control of transfrontier movement of waste.

Other organs involved in the control are the Chief Inspector of Environment Protection, Customs Chambers, the Police, and the Road Transport Inspection. The competences of those organs are specified in provisions of numerous legal acts and are rather complex and very detailed in nature.

In 2012, Border Guard performed 108 organised controlling actions, in which 304 officers took part. These actions were performed either independently by the Border Guard, or in cooperation with other authorities, such as Customs Chambers or Inspectorates for Environment Protection. In 19 cases an illegal waste movement was identified. In 41 cases the waste movement was classified as infringing the provisions of law.

In 2013 the number of organised controlling actions was 110, in which 283 officers took part. 8 cases of illegal waste movement, and 37 cases of waste movement infringing the provisions of law, were identified.

As far as positive aspects of waste management are concerned, the most important issue related to the waste management is the proper management of the municipal waste, especially dealing with the increasing piles of rubbish. Similarly, unsustainable management of forests and raw materials or inappropriate spacial planning also contribute to irreversible, adverse effects on the environment. It is difficult however, to pinpoint the exact differences between short and long term effects of environmental crimes on human beings.

In view of the expert Poland's accession to the EU was the turning point of the increase of the importance of environmental protection. Namely, there are being implemented more projects on the environmental protection in a field of municipal waste management, i.e. the introduction of the legal obligation on the segregation of waste (which until present was not legal). Thanks to the funds from the National Fund for Environment Protection and Water Management (*Narodowy*

*Fundusz Ochrony Środowiska i Gospodarki Wodnej*) the controlling authorities have the possibility to educate themselves and purchase an advanced controlling equipment.

There is a well-developed system of trainings for the Border Guard officers on transfrontier movement of waste. The main purpose of trainings is to improve the knowledge of Border Guard's officers on existing law and, by that, improve its proper implementation. During trainings, officers learn among others, how to (i) identify particular types of waste; (ii) apply notification procedures; (iii) verify documentation required for the transport of waste; (iv) apply relevant procedures in case of illegal transfrontier movement of waste.

Trainings on transfrontier movement of waste are organised in Koszalin (Poland) and are divided into two levels: (i) basic level; and (ii) advanced level. Basic level training is designated for the officers who are commencing their activities in controlling activities in the field of transfrontier waste. Advanced level trainings are designated to further expand the knowledge on the topic. In two last years, 324 officers of the Polish Board control were trained. In 2012 there were 10 trainings organised. In 2013 a number of organised trainings decreased to 5.

Except for the trainings organised for the officers of the Border Guard, a Working Group on Transfrontier Movement of Waste has been established by the Chief Inspector of Environment Protection. The Working Group meets twice a year and consists of representatives from all the relevant offices that are involved in the transfrontier movement of waste, that is the Chief Inspector of Environment Protection, the Border Guard, the Customs Chambers, the Police and the Road Transport Inspection.

Additionally, some of the authorities involved in transfrontier waste movement, in order to improve their performance, implement agreements that contribute to the coordination of tasks. For example, the Polish Border Guard, the Customs Office and the Chief Inspector of Environment Protection on February 7, 2007 entered into a Memorandum of Understanding. The purpose of the document is to coordinate the control activities; share the information and know-how; promote and assure a uniform interpretation of the applicable law; and organise joint trainings.

Also, a number of soft law documents were implemented by the Chief Inspector for Environment Protection. These legal instruments, such as guidelines on the recognition of vehicles falling under the definition of waste or joint procedures on a standards of conduct in case of illegal movement of waste, significantly helped the Border Guard when performing their controlling activities.

As for the shortcomings of waste management, according to the expert consulted, in Poland we are only now starting to observe the importance of the environment protection. The society becomes more conscious on this matter, however it would be advisable to educate children and young people on the importance of the environment protection since an early age.

The importance of the environment protection has been also noted by the politicians and the Government, Although it is a very good indication, still not enough actions aimed at the protection of the environment are undertaken. Also, the judiciary and the enforcement organs pay more attention to, other than environmental, types of crimes.

According to the expert consulted, Polish legislation on transfrontier movement of waste is in general satisfactory. A new Act on Waste was introduced last year, the Act on Transfrontier Movement of Waste<sup>11</sup> was amended, and there are also an ongoing works on the amendment of the Regulation 1013/2016.

However, some improvements into the legislation should still be introduced. For example, the Polish Border Guard has faced difficulties related to the above issue. An old vehicle that was to be transported from the UK to Ukraine was stopped in Poland. The driver of the vehicle held a British certificate stating that the vehicle is not considered as waste as it could have been repaired..

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<sup>11</sup> Ustawa z 29 czerwca 2007 r. o międzynarodowym przemieszczaniu odpadów (Statute on the Transboundary Movement of Wastes – Official Journal of Poland, DzU, 2007 r. nr 124, poz. 859. Minister's of the Environment Ordinance on the types of waste which import is prohibited in Poland (DzU (Official Journal of Poland), 2008 nr 119, poz. 769)).

However, the British certificate could have not been recognized in Poland as the vehicle fall under the definition of “waste” of Polish law.. As a result, upon a decision of the Chief Inspector for Environment Protection decided to release the vehicle as the final destination was Ukraine where the vehicle did not fall under the definition of waste. Instead, only a fine for not having duly informed the Polish authorities before entering its territory was imposed.

According to the expert consulted, the cooperation between all Polish organs involved in the transfrontier movement of waste is good, both when it comes to exchange of information and training. However, as several institutions/authorities are involved in the control and enforcement of the transfrontier waste movement legislation (i.e. the Border Guard, the Road Transport Inspection, the Police and the Customs Chambers), sometimes the competences of these different forces overlap what can lead to confusion and problems with the enforcement. Therefore strong coordination between the different actors involved in controlling activities is crucial. According to the expert the enforcement of the waste movement control would improve significantly if controlling authorities such as the Border Guard, the Customs Chambers or the Road Transport Inspection could directly consult Inspectorates for the Environment Protection not only during the office hours, but also 24 hours a day.

The international cooperation, which is within the competence of the Chief Inspector for Environment Protection, is also developed very well. The Border Guard participates in the European Union Network for the Implementation and Enforcement of Environmental Law, Transfrontier Shipment of Waste (IMPEL TFS). At the international arena, Poland is highly appreciated in activities related to IMPEL TFS.

Among other problems encountered in a day-to-day experience, according to the expert, like in other areas of life, Polish Border Guard lacks sufficient financial means for training, education and equipment for the controlling authorities and Inspectorates for Environment Protection. Also, if additional funds were available, a bigger number of people in Inspectorates for Environmental Protection might be employed what would improve the performance of relevant authorities in the area of transfrontier movement of waste.

As a result of the introduction of the Schengen Agreement, which abolished the border controls, a number of controls within territory of Poland (precisely, its border area and on the roads leading to the borders) has increased significantly. In order to counteract the illegal import of waste through the EU borders, the Border Guard applies detailed control of profiled vehicles. The profiling of vehicles for the control is the result of the document assessment, the behaviour of the driver and the information received. In controlling activities, the Border Guard uses their police competences and other functions for the control of road traffic and road transport.

#### **Article 28.**

- 1. Who, being obliged under Article 9, do not take preventive or corrective measures, shall be punished by a fine.*
- 2. The same penalty shall be imposed to the one who, being obliged under Article 11, does not report to the environmental protection authority and the provincial environmental protection inspector an imminent threat of injury to the environment or harm to the environment.*

It should be noted that after Poland’s accession to the EU a significant number of environmental law provisions had to be implemented into Polish law. Those changes to the national law however, by all officers interviewed, were considered as a very positive change and since then Polish environmental legislation in this respect significantly improved. As stated by some interviewees, accession to the EU has been described as a turning point in the increase of the importance of environmental protection. Consequently, the issue of environment protection and liability for environmental crimes has significantly gained on importance. The society started to pay much more attention to the condition of the environment. This issue became also an interest of policy makers, politicians and business entities.



Another challenge relates to the complexity of competences division. Legal provisions in this respect tend to be rather detailed, very extensive and often provided in a number of different legal acts.

There is a need of better coordination among different actors involved in the application and execution of law. Hence, sometimes the competences of actors overlap what significantly adversely affects the law enforcement. As suggested by the officers controlling authorities could directly consult each other also outside the office hours, but also 24 hours a day.

As practice shows the law enforcement is also improved when efficient communication among entities that cooperate with each other the most is present. As actors who directly are engaged in the specific activities, they are the most qualified for identifying the existing problems with application and interpretation of law. Close cooperation with policy makers and among themselves is therefore highly needed.

The efficient communication can also be exercised by way of creating working groups where information, best practices are experiences may be shared.

It is highly needed to adopt soft law documents such as guidelines, standards of conduct and joint procedures. Those significantly help authorities when performing their duties and contribute to the unification of law enforcements.

Although a number of initiatives and ideas exist and officers can easily identify difficulties they are facing in their day-to-day operation, still not enough funds are designated for the realisation of those plans. This issue gains on its importance especially after the credit crunch events and current financial crisis that most European countries are going through. As practice shows when governments face significant economic and social problems, the issue of environment protection usually is not treated with the required attention. As a result innovative projects are frozen, no new equipment is bought and no more highly educated personnel is employed.

The importance of environmental education and promotion of environmentally friendly behaviour was underlined by all persons interviewed. The attitude of the society towards environmental crimes is one of the most important factors that can contribute to the lower number of environmental crimes. For this reason the education and promotional activities should be as often organised as possible and for the people of all ages, in particular children and teenagers.

More training for practicing lawyers, judges and law students should be introduced. Although they progressively acquire expertise in dealing with environmental crimes, further specialisation in this area is highly needed.

## 6 Substantive criminal law on public servants liability in relation to environmental crimes/offences

There is **no specific act related to the liability of public servants for environmental offences**. However, there is an act from 20th January 2011 on the material responsibility of public servants for serious infringement of law (*Ustawa o odpowiedzialności majątkowej funkcjonariuszy publicznych za rażąco naruszenie prawa*)<sup>12</sup>. Its provisions are applicable to public servants and their responsibility is a

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12 Official Journal of Laws from 2011, No. 34, pos. 173.

material one. Apart from provisions on the material responsibility of public servants for serious infringement of law, also general principles of Civil Code are applicable to the matters not regulated by specific provisions of the law. Apart from those grounds for executing liability of public servants, general provisions of Penal Code are also applicable to them. What is more, public servants are also subject to disciplinary sanctions that could be imposed by their superiors

According to Article 5:

*A public servant shall be liable in the event of cumulative occurrence of the following conditions:*

- 1) pursuant to a final judgment of a court or pursuant to a settlement a compensation for the damage caused in the exercise of public authority in serious infringement of the law was paid by the responsible entity;*
- 2) a serious infringement of the law referred to in paragraph 1 was caused by the wrongful act or omission of a public servant;*
- 3) a serious infringement of the law referred to in paragraph 1 has been established in accordance with the Article 6.*

## 7 Substantive criminal law on organised crime

General criminal law provisions on organised crime that can be applied to all or certain environmental crime provisions. According to Polish criminal law anyone who participates in an organised group or association whose purpose is to carry out criminal offences is liable to imprisonment for three months to five years. As well as anyone who sets up or leads a group or association with the intention of carrying out a terrorist attack is liable to imprisonment for at least three years.

### 1. Penal Code (penalization of organized crimes – art. 258)

#### **Art. 258. Organised criminal group.**

*§ 1. Anyone who participates in an organised group or association whose purpose is to carry out criminal offences is liable to imprisonment for three months to five years.*

*§ 2. If the group or association specified in § 1 uses weapons or have terrorist aims, then the offender is liable to imprisonment for six months to eight years.*

*§ 3. Anyone who sets up or leads a group or association specified in § 1 that uses weapons, is liable to imprisonment for between one and 10 years.*

*§ 4. Anyone who sets up or leads a group or association with the intention of carrying out a terrorist attack is liable to imprisonment for at least three years.*

### 2. Penal Procedure Code (incognito witness – art. 184, a provision that can be used in cases related to organized crime but not specifically related to the matter)

#### **Article 184.**

*§ 1. If there is a reasonable apprehension of danger to life, health, liberty or property of significant value for witness or the person close to him, the court, and in preparatory proceedings the prosecutor, may decide to make a decision to disclose the identity of the witness, including personal data, if they are irrelevant to the outcome of the case. The proceedings in this regard goes without participation of the parties and an information is subject to a secret classified as "secret" or "top secret" information. The decision omits the circumstances referred to in the first sentence.*

**3. Crown Witness Act (Ustawa o Świadku koronnym)** - cases of crime or tax offenses committed in an organized group or association aimed at committing an offense or a tax offense.

There is **no legally binding definition of organized crimes** included in the abovementioned provisions.

## 8 General criminal law influencing the effectiveness of environmental criminal law: sanctions in practice

In Poland a prevalent sanction for environmental offences is a **financial one (fine)**. There is no practice of imprisonment for this type of offences, also because the entities liable for them are more often than not legal persons. However, as it was visible in the provisions on the specific crimes that were indicated above, the imprisonment is not excluded in theory, and almost each provision contains such sanction, however of not very restrictive character (short period of imprisonment).

As for the **statute of limitation for environmental crimes**, general provisions from Penal Code applicable to crimes are used:

### **Art. 101. Period of limitation.**

*§ 1. An offence stops being punishable if, from the moment it was committed, the following number of years have passed:*

- 1) 30 - where the act constitutes an indictable offence of homicide;*
- 2) 20 - where the act constitutes any other indictable offence;*
- 2a) 15 - where the act constitutes a summary offence subject to imprisonment exceeding five years;*
- 3) 10 - when the act constitutes a summary offence subject to imprisonment exceeding three years;*
- 4) 5 - for all other offences;*
- 5) (repealed)*

*§ 2. An offence prosecuted by an aggrieved party stops being punishable 1 year, from the date on which the aggrieved party learnt the identity of the offender, but not later than three years from the moment the offence was committed.*

*§ 3. In the cases provided for in §§ 1 or 2, if committing the offence was dependent on a consequence specified by law, the period of limitation starts to run from the moment the consequence occurred.*

*§ 4. Where the aggrieved party is a minor, the offences set out in Article 199 §§ 2 and 3, Article 200, Article 202 §§ 2 and 4, and in Article 204 § 3, as well as the offences set out in Article 197, Article 201, Article 202 § 3, Article 203 and Article 204 § 4 do not stop being punishable for 5 years after the aggrieved party reaches the age of 18.*

*Art. 102. Extending the period of limitation. If proceedings are started against a person within the period provided for in Article 101, the offence ceases to be punishable after 10 years for the offences defined in § 1 sections 1-3, or for five years in all other cases, from the end of that period.*

### **Art. 103. Period of limitation on enforcement.**

§ 1. A sentence may not be enforced if, from the time when the judgement became final, the following numbers of years have passed:

- 1) 30 - for a sentence to imprisonment for more than five years, or to a more severe penalty;
- 2) 15 - for a sentence to imprisonment for up to five years;
- 3) a sentence to any other penalty.

§ 2. The provision of § 1 section 3 applies accordingly to the penal measures specified in Article 39 sections 1-4 and 6 and 7; the provision of § 1 section 2 applies accordingly to the penal measure specified in Article 39 section 5.

#### **Art. 104. Delayed period of limitation.**

§ 1. The period of limitation does not run if a provision of law prevents criminal proceedings from being started or from being continued; this does not apply to the lack of a request or to a private charge.

§ 2. The period of limitation regarding the offences specified in Article 144, Article 145 §§ 2 or 3, Article 338 §§ 1 or 2 and in Article 339 runs from the moment the obligation was performed, or the moment from which the obligation was no longer binding.

#### **Art. 105. Exceptions to the period of limitation.**

§ 1. The provisions of Articles 101-103 do not apply to crimes against peace, crimes against humanity or war crimes.

§ 2. The provisions of Articles 101-103 do not apply to the intentional offences of homicide, grievous bodily harm, serious damage to health, or unlawful imprisonment connected with particular suffering, that are perpetrated by a public official in connection with his or her official duties.

That is the same with the **provisions on probation:**

#### **Art. 70. Probation period.**

§ 1. A penalty will be suspended for a probation period running from the time the sentence becomes final, for:

- 1) from two to five years - in the case of a suspended sentence of a penalty of imprisonment,
- 2) from one to three years - in the case of a suspended sentence of a fine or a penalty of the restriction of liberty.

§ 2. For a suspended sentence of the penalty of imprisonment with respect to a young offender or an offender as specified in Article 64 § 2, the probation period is from three to five years.

## **9 Responsibility of corporations and collective entities for environmental crimes**

There is **no specific act related to the liability of on responsibility of corporations and collective entities for environmental crimes** in Poland.

A main act regulating general corporate criminal responsibility system is **Act on the liability of collective entities for acts prohibited under penalty** (Ustawa o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary) from 28<sup>th</sup> October 2002<sup>13</sup>.

The 2002 defines the principles of corporate criminal responsibility for criminal and fiscal acts and the procedural principles in cases of such responsibility (Art. 1).

Article 3 enumerates three types of persons whose culpable behavior might lead to criminal liability of a corporate entity: persons acting on behalf or in interest of corporate entity (even in case of *ultra vires* acts); its representative; persons who adopt decisions on its behalf; are internal auditors of an entity;

The entity will face liability for actions of the above-mentioned persons only if: the entity's bodies or representatives failed to exercise due diligence in preventing the commission of an offence by the Managers or the entrepreneur; or it has failed to exercise due diligence in hiring or supervising a person given permission to act by the Manager or person acting with his/her consent or knowledge. The liability of the entity is secondary to the liability of the person who committed the offence, i.e. the entity can be held criminally liable only after the person who committed the offence has been found guilty and sentenced by a court of law. Under the provisions of the Liability Act the lack of criminal liability of a corporate entity does not exclude the possibility of civil liability for the damage caused or the administrative liability of the entity. The Liability Act enumerates the offences for which a corporate entity may face criminal liability. It refers to specific offences regulated in the Polish Penal Code which are generally directed to individuals. The list is not set and is constantly being expanded and currently includes such offences as: offences against economic turnover, e.g. money laundering; offences against trading in money and securities, e.g. currency counterfeiting or the counterfeiting of official security paper; offences against the protection of information, e.g. the obtaining or removing information by an unauthorized person; offences against the reliability of documents, e.g. the counterfeiting of documents or use of such documents; offences against property, e.g. fraud, receipt of stolen property; offences against the environment (the polluting of water, air or soil); bribery and corruption; certain fiscal offences; and offences of a terrorist nature.

The Manager acting with due diligence prevents the corporate entity from being held liable. In the case of offences committed by the Managers it would need to be proved that the entity's bodies or representatives exercised due diligence in preventing the commission of an offence. The criminal liability of a manager, officer or director as determined in a court sentence may result in the criminal liability of an entity.

There is a list of sanctions listed in Articles 7-12 of the act, e.g. fines (ranging from 1,000 to 5,000,000 zlotys, but no more than 3% of the income from the year of the commission of the offence), forfeiture of the goods and material benefits obtained in result of the offence, public announcement of the court decision, prohibition of applying for public material aid etc. The Polish Code of Penal Procedure refers to the criminal liability of corporate entities and therefore public prosecutors are responsible for prosecuting such offences. Criminal proceedings against corporate entities are conducted in accordance with the Polish Code of Penal Procedure with several changes resulting from the Liability Act. The proceedings are commenced on the motion of a public prosecutor or the injured party. In 2004 the Constitutional Court of Poland stated that the model of the criminal liability adopted in this Act in relation to physical persons is not criminal liability *sensu stricto* and the adopted solution does not have the legal nature of the traditional criminal liability and should be recognized as the a sort of 'repressive liability.' Generally speaking, in 2011 the Supreme Court of Poland, however, decided that the crime committed by member of the management board of a corporate entity cannot constitute a legal ground for holding as criminally liable that corporate entity for an act prohibited under the law.. The adoption of a different view would always lead to liability of the corporate entity in case of a criminal act committed by the manager as it could not rely in its defence on the lack of culpability in the supervision..

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<sup>13</sup> Journal of Acts from 2012, pos. 268.(uniform text Journal of Acts Dz.U. 2002 Nr 197 poz. 1661)

Apart from national law, Poland is obliged to respect **laws of the EU**, either directly or indirectly, through implementation of EU law provisions into the national legal system. That is the case also when it comes to the implementation of environmental law provisions (eg. Directive 2008/99/EC and Directive 2009/123/EC provisions). National law must remain in conformity with EU law.

## 10 General procedural provisions

In general, in Polish procedural system there is a **duty to prosecute**. Only in some cases, the opportunity principle is applied (e.g. a rape and some offences where a harm on the body was made; also offences committed by a member of a family etc.). As it is therefore visible, the existence of a duty to prosecute depends on particular crime. Majority of crimes in Polish criminal law are nevertheless indictable ones.

Specific provisions on criminal procedure in Poland are contained in **Code of Criminal Procedure** and also in **Code of Conduct in Petty Offences Cases**. Those are complex and elaborated acts, therefore detailed indication of their provisions in the Report is impossible.

## 11 Procedural provisions on environmental crimes

Environmental crimes are prosecuted *ex officio* (indictable offences), a public prosecutor has a **duty to investigate**. As for the procedural provisions that are to be applicable in those cases, due to the fact that there are no specific rules related solely to environmental crimes, provisions of the Code of Criminal Procedure are to be applied.

## 12 Procedural provisions – actors and institutions mentioned in legal texts

- **Actors**

As it was indicated above, there are **no specific provisions on environmental crimes or organized crimes in Poland**. Therefore, **general provisions on the Code of Criminal Procedure** etc. are applicable.

In case of minor offences and administrative proceedings in “environmental” cases, procedures of conduct from Code of Conduct in Petty Offences Cases and Code of Administrative Procedure are applied.

Regarding the **actors**, it should be noted that, in general, **public prosecutor** is a body managing criminal proceedings. He manages preparatory proceedings or supervises it if it is carried out by the Police (Article 299 of Code of Criminal Procedure). Environmental crimes are prosecuted *ex officio* (indictable offence), therefore public prosecutor has a **duty to investigate**. **The Public Prosecutor has full discretion in pursuing environmental crimes.**

Among the **entities that participate in the criminal process** we could list:

- Prosecutor,
- Auxiliary prosecutor,

- Victim,
- Accused,
- Defender,
- Representative of the public (if there is a need to protect the public interest or important individual interest arises, representative of the public may participate in the criminal process, provided that such participation is enumerated among statutory tasks of the NGO that he/she represents).

In specific cases, also **other bodies** could participate in criminal proceedings (Article 312 of Code of Criminal Procedure):

- o the Police,
- o Border Guard (Straż Graniczna),
- o Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego),
- o Customs Service (Służba Celna),
- o Central Anti-Corruption Bureau (Centralne Biuro Antykorupcyjne).

In practice, the bodies who discover and report conduct leading to criminal investigation are:

- o Members of local communities,
- o Representatives of public administration, in particular:
  - General Directorate for Environmental Protection,
  - General Inspectorate for Environmental Protection.

**Individual may act as an auxiliary prosecutor and NGO representatives may act as representatives of the public** (if a need to protect the public interest or important individual interest arises, representative of the public may participate in the criminal process, provided that such participation is enumerated among statutory tasks of the NGO that he/she represents). Those entities **cannot bring action before criminal courts**. However, NGOs may **inform** prosecutors of their suspicion of committing environmental crime and the prosecutor has a **duty to commence** an investigation.

It is also vital to describe the relationship between the criminal law and the civil law system. An individual that is victim of an environmental crime may move for **compensation for damages in a separate proceedings before civil court or as a part of proceeding before criminal court**. Relationship between the criminal law and civil law are regulated in art. 62 KPK. The meaning of the provision is the following:

*Article 62*

*Until the start of the trial in open court the victim can institute a civil action against the defendant to enforce the criminal property claims resulting directly from the offense.*

- **National and international cooperation**

Regarding **cooperation between the institutions on the national and international level (within the EU)**, it is vital to take note of exemplary national documents' provisions:

- o **Environmental Protection Act**, Title IV, Part III – provisions on the international cooperation, basic rules governing trans-boundary cooperation with regards to environmental issues.
- o **Act on Inspection of Environmental Protection**, Article 4 sec. 2, - environmental protection cooperation of the Chief Inspector of Environmental Protection with: authorities of the EU

member states, authorities of other States that are parties to international treaties and with international organizations.

- **Act on Inspection of Environmental Protection**, Article 2 sec. 2 point f) - rules of cooperation with European Environmental Agency.

Inspection of Environmental Protection is obliged to **cooperate with national bodies**: the Police, judiciary and the Head of the National Criminal Information Centre (Art. 2 of the Act on Inspection of Environmental Protection).

As for **international cooperation** referred to in the abovementioned documents, it takes place both within and outside the EU framework. Poland is a State-Party to numerous **international environmental conventions and agreements**<sup>14</sup>, in particular to Multilateral Environmental Agreements (MEAs). According to the data provided by the Ministry of Environmental Protection, our country is the party to 20 global environmental conventions, 11 regional (European) conventions and 4 sub-regional conventions. Poland is also a member to **Europol, Interpol** and **Eurojust**.

## 13 Administrative environmental offences: instruments

In Poland, various specific acts regulate environmental issues by imposing certain sanctions for breaching their provisions. Nevertheless, as it is visible in the indicated examples, it is not clear whether environmental offence can be qualified as administrative or not, as the violation of the provision may result in both administrative and criminal sanctions.

For example, the following acts are punished:

- **Water Law (Prawo wodne)** – using water without required permission

*Article 192. 1. Who, without the required water permit or in excess of the conditions laid down in the water permit, use water or make water producing equipment, or perform other activities that require a water permit – is subject to arrest, restriction of liberty or a fine.*

In order to corroborate the laws concerning offences relating to ship-source pollution an expert from the Ministry of Infrastructure and Development has been consulted. The expert is in a top managerial position in the “DTM2” Marine Protection Unit (*Wydział Ochrony Środowiska Morskiego DTM2*) in the Department of Marine Transport and Shipping Safety (*Department Transportu Morskiego i Bezpieczeństwa Żeglugi*) within the Ministry of Infrastructure and Development (*Ministerstwo Infrastruktury i Rozwoju*). In our interview with expert we aimed at clarifying certain points which relate to working of ship-source pollution in Poland in relation to MARPOL and the implementing EU legislation. In particular, we were interested in:

- (i) application of MARPOL and EU legislation in Poland;
- (ii) the effectiveness of the legislation in Poland;
- (iii) statistics;
- (iv) actors and training;
- (v) sanctions and their dissuasive effect;
- (vi) cooperation.

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<sup>14</sup> List of international agreements Poland is a party to is available on the Webpage of the Ministry of Environmental Protection:  
[http://www.mos.gov.pl/arttykul/2516\\_umowy\\_wielostronne/9055\\_umowy\\_wielostronne.html](http://www.mos.gov.pl/arttykul/2516_umowy_wielostronne/9055_umowy_wielostronne.html)



The Ministry of Infrastructure and Development is responsible for crimes related to marine environment pollution caused by ships and partly by other activity at sea (e.g. offshore infrastructure).

Adequacy of Polish legal provisions on prevention of pollution from ships: effects of crimes related to marine environment pollution caused by ships are e.g (i) deterioration of water; (ii) impact on biodiversity; and (iii) social impact of destroyed, unhealthy marine environment.

In view of the Maritime Transport and Shipping Safety Department, sufficient attention is given to the environmental crimes from the ship-source pollution.

Sanctions for general environmental crimes are regulated in Criminal Code Act and the Act on the Liability of Collective Entities for Acts Prohibited under Penalty. In case of marine pollution from ships, Poland has transposed and implemented the Directive 2009/123/EC (amending Directive 2005/35/EC) by introducing Act of July 28, 2011 amending the Ship-Source Pollution Prevention Act and the Act on the Liability of Collective Entities for Acts Prohibited under Penalty.

Relevant provisions that provide penalties for the infringements of law protecting the marine environment from pollution were also introduced. However, according to knowledge of the Ministry of Infrastructure and Development, so far, no cases of imposing the criminal sanctions for the marine environment pollution caused by ships were imposed.

According to the Ministry of Infrastructure and Development there is no need for the improvement of law at the national level, Polish provisions setting out the criminal sanctions as well as enabling the criminal prosecution for ship-source pollution are in place and may be used if necessary. Based on the levels of sanctions set out in the legislation, the criminal sanctions provided can be regarded as effective, proportionate and dissuasive.

The same conclusion has been also made in the "Report for Poland. Evaluation Study on the Implementation of Directive 2009/123/EC on amending Directive 2005/35/EC on Ship-Source Pollution and on the Introduction of Penalties for Infringement", prepared by Milieu Ltd. for European Commission in 2012.

There are no suggestions as to the improvement of Polish provisions in this respect at the moment.

Conformity of Polish law with the provisions of the Directives 2008/99/EC and 2009/123/EC: the Ministry of Infrastructure and Development is only responsible for implementation of the Directive 2009/123/EC.

There was a discussion between Ministry of Justice and Ministry of Infrastructure and development if already existing Criminal Code Act covers also specific crimes included in the Directive 2009/123/EC. After discussions it was decided that establishing new, specific regulations in the Polish law will be more appropriate.

There are doubts as to the transposition of Art. 4 p. 1 and 2, with regard to responsibility of legal persons. As of today, Poland has requested explanations on this responsibility. We are hoping that they can be answered.

The role of criminal law in combating environmental crimes: in the view of the Ministry of Infrastructure and Development crimes related to the ship-source pollution, criminal law is in general very rarely, if at all, used in environmental cases. Therefore, the administrative sanctions seem to be much more effective in practice.

However, it has to be observed that criminal prosecution may have a positive deterrent effect especially on members of ships crews (natural persons) and ship-operators (legal persons) with regard to large, intentional pollution or repeated minor cases, which do not individually but in conjunction result in deterioration in the quality of water.

- **Act on the Protection of nature (Ustawa o ochronie przyrody) – burning fields and forests**

**Article 127.**

*1. Who intentionally:*

- 1) violates the prohibitions in force in:
- a) national parks,
  - b) nature reserves,
  - c) landscape parks,
  - d) protected landscape areas,
  - e) the Natura 2000 areas
- is subject to arrest or a fine.

Each specific act on the environmental law is related to different area of environmental obligations. Those are, for example: waste management, water pollution, air pollution etc. Apart from that, sanctions for some type of breaches are included in acts that are not specifically related to the environment but also to the areas and actions where a breach for the provisions on the environment could be violated. The example of this type of act is Construction Law.

As for specific administrative instruments, among the sanctions that can be imposed by public authorities may be not only financial ones, but also other measures, such as e.g. denial of granting built permission.

## 14 The role of administrative authorities

Main institutions (administrative authorities and courts) responsible for administrative enforcement of environmental legislation are **Ministry of Environment** and **General Inspectorate of Environmental Protection – Chief Inspector of Environmental Protection**. Those administrative authorities have powers to control compliance with environmental legislation. For example, pursuant to art. 9 of the Act on Inspection of Environmental Protection the Chief Inspector, provincial environmental inspectors and employees of the Inspectorate can **control entrepreneurs**. They have **the right to**:

- enter the premises of undertakings with the necessary equipment,
- take samples,
- conduct tests,
- request written explanations.

In cases of environmental crimes, the Inspector of Environmental Protection has the right to participate in criminal proceedings with the rights of a public prosecutor, also when an indictment was made by a prosecutor himself (art. 14 of Environment Protection Inspection Act).

Inspection of Environmental Protection is obliged to cooperate with the Police, judiciary and the Head of the National Criminal Information Centre (Art. 2 of the Act on Inspection of Environmental Protection), including cooperation during investigation and prosecution of environmental crimes. Inspectorate of Environmental Protection is also in charge of executing administrative sanctions.

## 15 Implementation of the Environmental Liability

### Directive 2004/35/EC

#### 15.1 Introduction

In transposing the Environmental Liability Directive (the “**IEL Directive**”), the Polish government decided to adopt new legislation and, to a limited extent, amend several pieces of existing legislation.

The transposition of the IEL Directive was made mostly by adoption of a new piece of legislation, that is the Prevention of Harms to the Environment and their Reparation Act dated April 13, 2007 (the “**Environmental Harm Act**”). This act, which entered into force on April 30, 2007, comprehensively implements the IEL Directive.

The adoption of the Environmental Harm Act was consequently followed by an introduction of the following legal instruments:

- (i) Ordinance of the Minister of the Environment on types of remedial measures and on the conditions and manner in which they are carried out dated June 4, 2008<sup>15</sup>; and
- (ii) Ordinance of the Minister of the Environment on assessment criteria for environmental damage dated April 30, 2008<sup>16</sup>.

Also, a number of already existing acts were amended, among others:

- (i) Environmental Protection Inspectorate Act dated July 20, 1991;
- (ii) Protection of Agricultural Lands and Forests Act dated February 3, 1995;
- (iii) Environmental Protection Act dated April 27, 2001;
- (iv) Water Law dated July 18, 2001; and
- (v) Nature Protection Act dated April 16, 2004.

## 15.2 Competent authorities

The competent authorities in cases governed by the Environmental Harm Act are the Regional Directors for Environment Protection and the Chief Director for Environment Protection (serving as an authority of the second instance).

In particular cases, e.g. those relating to the use of the GMO, its potential introduction to the environment or its marketing a competent authority is Minister of the Environment.

## 15.3 Applicability of the environmental harm act

The Environmental Harm Act deals only with cases of an Imminent Threat of Damage to the Environment and the Actual Damage to the Environment only if they occurred after April 30, 2007. For other cases, that is, those existing before April 30, 2007, a general provision of Environment Protection Law Act apply (Article 362).

## 15.4 Exclusions

Provisions of the Environmental Harm Act are NOT applicable when the emission or event which caused the Imminent Threat of Damage to the Environment or the Actual Damage to the Environment:

- (i) happened more than 30 years ago;
- (ii) was caused as a result of a military conflict, war, internal conflict or riots; natural catastrophe; or an activity undertaken to protect the international security, national self-defense or aimed at protection from the natural disasters;

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<sup>15</sup> Journal of Laws of 2008, No. 103, Item 664

<sup>16</sup> Journal of Laws of 2008, No. 82, Item 501.

- (iii) nuclear damages; or
- (iv) sustainable forest management specified under the provisions of the Act on Forests.

## 15.5 Entity liable

The Environmental Harm Act did not introduce a definition of an “Operator” which exists under the IEL Directive. Instead a definition already existing under Polish law was used.

Namely, the Environmental Harm Act refers to the definition of an “Entity that Uses the Environment” introduced by virtue of the Environmental Protection Law. An entity falls under this definition if it carries out an activity involving a risk of environmental damage, or any other activity referred to in the Environmental Harm Act, causing environmental damage or an imminent threat of such damage.

If an Imminent Threat of Damage to the Environment, or an Actual Damage to the Environment, was caused with the consent or knowledge of the owner of the land, the landowner is jointly and severally liable for carrying out the Preventive and Remedial Measures with the operator that caused the damage. The landowner however, is not liable for the damage or its threat if it notifies the competent authority immediately after becoming aware of it.

Similarly, in case the imminent threat of damage to the environment or an actual damage to the environment were caused by more than one entity that uses the environment, all such entities are jointly and severally liable.

## 15.6 Threshold

In order to impose a liability on the entities causing damage to the environment, the Environmental Harm Act introduced two definitions:

(i) the “imminent threat of damage to the environment” defined as the “high probability of the occurrence of environmental damage being able to be foreseen in the future; and

(ii) the “actual damage to the environment” in general defined as the “adverse, able to be quantified, change in a state or functions to elements of the environment specified on a basis of a comparison to the Initial State, which was caused directly or indirectly as a result of the activity of the entity using the environment.

The above mentioned term of an “initial state”, being a baseline, has been in general defined as a “state and functions of the environment and its specific elements existing under the occurrence of the environment specified under the available data”.

## 15.7 Liability

After the imminent threat of damage to the environment has occurred, an entity that used the environment” is obliged to immediately undertake “preventive measures”.

After an actual damage to the environment has occurred, an entity that used the environment is obliged to undertake the “remedial measures” as well as other actions necessary for avoiding the increase of damage, preventing a new damage, an adverse impact to peoples’ health or further deterioration to functions of the environment.

In case the imminent threat of damage to the environment was not remedied by preventive measures, or the actual damage to the environment an entity that uses the environment has occurred, the entity that uses the environment should notify the competent authority.

The scope of the remedial measures should be agreed with the competent authority which issues an administrative decision specifying details of the actions to be undertaken. In case the entity that uses the environment does not undertake the remedial measures or preventive measures the competent authority may issue a decision requesting such entity to undertake such measures and specifies the scope of works, state to which the environment has to be restored to its previous conditions and sets the deadline.

The remedial and preventive measures may be also undertaken by the competent authority when: (i) the entity that uses the environment cannot be identified; (ii) due to the threat to life or health of people; or (iii) due to a threat of irreversible damage to environment, actions need to be undertaken. In such cases the owner or possessor of the land has to give the permission for remedial and preventive measures.

The owner or possessor of the land may however seek compensation for the damages he/she incurred as a result of such measures. The amount of compensation is specified by the competent authority in the administrative decision. This decision may be however appealed to the general court. In general, the compensation should be paid by the entity that uses the environment that caused the damage or threat of the damage. Also, the competent authority may seek compensation for the measures undertaken by it.

The remedial or preventive measures may be ceased when already undertaken measures guarantee that no significant risk of adverse effect on people's health, protected species or habitats exist, or costs of further remedial measures necessary to bring back the environment to its initial state would be non-proportionally high compared to the to the environmental advantages to be achieved.

On the territory where the imminent threat of damage to the environment or the actual damage to the environment has occurred, the competent authority may impose an obligation on the entity that uses the environment by conducting business activity which can result in a risk to the environment to undertake: (i) measuring of the relevant substance contents present in the soil, subsoil or water; and (ii) to monitor natural biological and landscape diversity.

## **15.8 Costs of the Remedial and Preventive Measures**

In general costs of the preventive and remedial measures are borne by the entity that uses the environment. The costs entail among others data collection costs, costs of the projects on measures to be implemented and their implementation as well as costs of the court and administrative proceedings.

The entity that uses the environment may however avoid incurring costs if it proves that the imminent threat of damage to the environment or the actual danger to the environment:

- (i) were caused by other entity and despite the application of safety measures; and
- (ii) they occurred as a result of complying with the order of the administrative authority (unless the order was not made as a result of the entity's own business activity).

Then the entity that uses the environment may seek compensation from the entity as being responsible (point (i)) or the administrative authority (Point (ii)).

## 15.9 Notices

Any person may notify the competent authority about the imminent threat of the damage to the environment or the actual damage to the environment.

## 15.10 Transboundary cases

In case of the imminent threat of damage to the environment, or the actual damage to the environment caused by an entity from outside Poland, the Polish competent authority may, through the Minister of the Environment, request that Member State (i) to carry out preventive or remedial measures; and (ii) reimburse costs incurred for such measures.

## 15.11 Criminal sanctions

Fines may be imposed for:

- (i) failure by an operator to carry out preventive or remedial measures;
- (ii) failure by an entity that uses the environment to notify the competent authority and the Regional Environmental Protection Inspectorate of an imminent threat of damage to the environment or an actual damage to the environment;
- (iii) failure to consult with the competent authority concerning the conditions and scope of remedial measures; and
- (iv) failure by a third party to allow preventive and/or remedial measures to be carried out on its land.

Except for the obvious advantages of the EU environmental law, there are some challenges that they have to face in their day-to-day activities. Among others, the officers noted that the EU law, on issues such as waste law or illegal trade of endangered species, tends to be very complex and highly specialised. As a consequence, it is difficult to apply these provisions. These shortcomings to some extent have been rectified by trainings organised for the officers. In this way, the qualifications of staff are elevated and application of legal provisions is improving.

As described by way of examples, another challenge is the lack of unified standards of different registration procedures as each EU country has its own; separate technical requirements and/or standards that each country sets; and document requirements that vary from country to country. It must be added that the free movement of goods, persons and trade among EU countries are also of a significant importance.

## 16 Summary

In Poland there is a very broad environmental legislation. There are core regulations in the penal code and also in particular areas of criminal, administrative and civil law. Specific areas of environmental protection, such as water law, hunting law and waste law are regulated by administrative acts. The penal code imposes very severe penalties, including imprisonment, for the violation of the provisions on the transboundary movement of hazardous waste. In general, the penalties reflect well the seriousness of the crime. However, the law in general is very fragmented.

In Poland there is also specific law regulating organized crime contained in the penal code and in the penal procedural code as well as in particular statutes.

As far as shortcomings are concerned, the national environmental law system is very fragmented. Its provisions are included in various legal acts. Moreover, the violation of those provisions contained in these acts result in both administrative and criminal sanctions, depending on the gravity of the offence.

Another challenge relates to the complexity of competences division. Legal provisions in this respect tend to be rather detailed, very extensive and often provided in a number of different legal acts. There is a need of better coordination among different actors involved in the application and execution of law. Hence, sometimes the competences of actors overlap what significantly adversely affects the law enforcement. As suggested by the officers controlling authorities could directly consult each other also outside the office hours, but also 24 hours a day.

Some minor offences (for example trade in very small, almost insignificant number of specimens) should be penalised only with administrative fine. As of today, in any factual situation that can be potentially qualified as a criminal offense, the prosecutor has to exercise the criminal action which in the majority of cases leads to a full criminal trial. This suggestion, if implemented, may prevent Courts overload.

It appears that the impact of Directive 2008/00/EC and 2009/123/EC is rather symbolic in changes to the national law. It did not lead to substantial increase in the number of people being prosecuted or more several penalties imposed. The level of fragmentation and complexity of the national legislation adopted in order to transpose the EU legislation made hardly possible to assess the degree of compatibility between national law and EU law.

The Polish Government transposed the Environmental liability directive through the adoption of a new legislation in 2007 (Environmental Harm Act) which comprehensively the EIL Directive. The adoption of this act was followed by an introduction of several other instruments. According to all consulted experts, the effect of the accession of Poland to the EU on the protection of the environment has been enormous.

Protection of the environment is one of the focal objectives of Polish authorities. The ecological security is one of the utmost importance for national security in the National Security Strategy Document. The consciousness of Polish society and companies as for the need for the protection of the nature is also relatively high, therefore the risk of the increase in the number of environmental crimes and offences is not serious.

Poland did not elaborate legally binding definition of environmental offence. There is also no complex strategy related to the prevention and punishment of crimes and offences against environment.

Responsibility for the environmental offence could be enforced against both natural and legal persons (corporate responsibility). What may be regarded as somehow complicating the matter is that although certain provisions (pertaining sanctions) are included in Penal Code, the vast majority of the issues are regulated in specific acts related to certain aspects of the environment. Therefore, in order to establish whether there was a violation of the provision, a reference to a specific act (e.g. Water Law, Waste Law, Hunting Law, Act on the Prevention of Harm to the Environment and their Reparation etc.) is usually required. As for the adjudication, it is often conducted according to the special rules of procedure related to the offences.

Despite various range of possibilities of environmental crimes and offences punishment, in practice the most prevalent sanction is a financial one (a fine). Administrative sanctions, such as cancellation of a permit etc., are also very common.

The level of sanctions is aimed at dissuasive effect. It is of utmost importance to draw a clear cut between criminal and administrative penalties. Although criminal sanctions for the environmental crimes may have a deterrent effect on potential future criminals, in minor cases administrative penalties may be more efficient in preventing environmental offences. Additionally administrative liability would eliminate long court proceedings for petty offences, limit the costs of law enforcement and contribute to its higher effectiveness. Administrative sanctions can be much more effective than the criminal ones. Administrative sanctions would also eliminate long court proceedings for petty offences, limit the cost of law enforcement and contribute to its higher effectiveness. In area such as ship-source pollution criminal law in general is

applied very infrequently if at all. According to the consulted experts there is no need in many cases for criminal sanctions.

There are also certain definitional issues. For example, in Polish legislation there is no clear division between hazardous and non-hazardous waste. Also, as each country has its own legal definitions of waste, the lack of differentiation and clear-cut definitions at the EU level can also lead to a confusion in relation to movement of waste among EU countries.

As for best practices, the most successful in Poland is the fighting of the prevention of pollution of ships. The prevention of marine pollution from ships in Poland is through transposition and implementation of the EU Directive 2009/123/EC and the Act on the liability of collective entities for prohibited acts. In general, it can be said that the transposition of all the EU Directives in a very significant way raised the level of environmental protection in Poland. On a national level ample criminalization of breaches of environmental law (both through criminal law and administrative criminal law) contributed to the gradual reduction of breaches of environmental protection law.

One of the drawbacks of the Polish environmental system is the lack of knowledge of reliable statistics. However, it can be said that in comparison to other areas of criminal acts being reported, investigated and brought to trial, the number of environmental cases is quite low. There are several reasons for the shortcomings in this area, too complex systems of criminal administrative and civil law, not clear-cut competences of actors and willingness of public prosecutors' offices to bring environmental law cases to trial.

Cooperation between the institutions on national level, between the Police, local and regional administrative authorities, courts and specific "environmental" bodies with an aim to detect and punish offences and crimes that may occur (or has already occurred) exists but still there is a room for improvement. The actors and institutions forward ample information on environmental crimes to prosecution authorities, however, according to experts prosecutors are not always willing to prosecute such crimes.

At the European level (within the EU), Polish bodies (Chief Inspector of Environmental Protection, regional and local authorities) cooperate with: authorities of the EU member states, authorities of other States-non EU members that are parties to international treaties and with international organizations. There is also cooperation with the European Environmental Agency.

It has to be mentioned that one of the obstacles to implementation of environmental provisions in Poland is the lack of sufficient funds, the necessity of extensive environmental education for both individuals and corporations involved in environmental matters. Better cooperation between different authorities would be of benefit for the implementation of environmental law. Last but not least, more training for practicing lawyers and for law students should be introduced. Also, although the judges progressively acquire expertise in dealing with environmental crimes, further specialization in this area is highly needed.

Enforcement in Poland is mainly based on ex post enforcement. The level of cooperation between administrative authorities and prosecution authorities could be improved. As stated above, prosecutors often hesitate to bring environmental cases to justice. Administrative fines play a very important role in Polish environmental law as it was explained above in ship-source pollution as the main sanctioning measure. Actors and institutions are very proactive in bringing information on environmental crimes to prosecution authorities, but it is not always acted upon. As explained above, in view of all the interviewees administrative penalties were considered the best practice in the enforcement. They are considered to be straightforward easy to apply and eliminate lengthy and time-consuming criminal law proceedings.

In our view, national legislation in Poland is far too complex. There is a nexus of pre-European law; law transposed from EU Directives; multitude of penalties originated in administrative and criminal law. There is also lack of clear-cut competence between various relevant authorities. Due to its complexity it cannot be fully effective. Therefore, we recommend simplification of the law and more uniform approach to various areas of environmental protection. We would also like to add that it appears that the legislation together with the enforcement of the ship-source pollution does not need further improvements in any respect,



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therefore, it is advisable to consider is as possible model to be applied in other areas of environmental protection.

Our recommendations are as follows:

In case of Poland the existing legal regimes on environmental crimes is far too complex and fragmented. There is a nexus of pre-European law; law transposed from EU Directives; multitude of penalties originated in administrative and criminal law. This creates difficulties in complying with the system. There is a lot of overlap in competences between various governmental agencies in environmental crime area and the degree of coordination between them could be improved. Environmental crimes are still not the priority in the Polish legal system. Neither police nor prosecutors are interested in environmental crimes. That should be changed and statistics should be improved. In general, police and prosecution officers should accord more importance to environmental crimes. The system of penalties is very complex in comparison to other Countries and there is not clear understanding of what types of penalties applies to the various environmental crimes. Therefore, we recommend a general simplification and review of the relevant legislation, including the system of penalties accompanied by the establishing of sentencing guidelines. A long term sustained funding of national agencies and specialist units should be established. The expert consulted emphasized the commitment of the Polish Government to inform and educate the actors involved in environmental crimes. Generally we recommend a better understanding of the European legislation (such as the ELD and the Environmental Crime Directive).

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