

CRIMINAL LAW AS AN EFFECTIVE TOOL TO PROTECT ENVIRONMENT?¹

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Abstract: Air pollution in Serbia is 20 times higher than in EU member states, rivers are littered with waste, number of illegal dumps exist across the country, and that is only part of the environmental problems. Environmental crime is highly lucrative, it can be profitable as illegal drug trafficking, but the sanctions are much lower, and it is harder to detect and investigate. The danger of environmental crime is recognized in the new National Serious and Organize Crime Threat Assessment (SOCTA) that Serbia prepared as part of the commitments within the EU accession process and the negotiation Chapter 24. Criminal law protection in Serbia is ensured through Criminal Code that provides for criminal offences against the environment. The competent courts, the Public Prosecutor's Office and the Directorate for Inspection Affairs are responsible for implementation of criminal law protection. However, inter-institutional coordination is often mentioned as one of the biggest challenges for investigation and prosecution of environmental crimes. As a result, Serbia is facing with challenges to establish track record on implementation of the EU Environmental Crime Directive.

The authors will assess effectiveness of introduction of whole set of environmental crimes in the Criminal Code and use of criminal law as a mechanism for environmental protection.

Keywords: criminal law protection, environmental law, cooperation, prosecution, track record.

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Introduction

Environmental crimes are acts that directly harm or case risk to the environment, human health, or both.⁴ According to the EUROPOL assessment environmental crime is highly lucrative and brings significant profits to organized criminal groups. By it's meant different types and forms of manifestation of criminal activities that are aimed at endangering the environment (pollution of water, air and land in a wider area and on a larger scale). Therefore, these are criminal acts that damage, injure or threaten the environment. The authors single out several characteristics of this type of crime: massiveness, dynamism, constant expansion and the foreign element.⁵ Environmental crimes are often perceived as victimless crimes, which is one of the reasons for the lack of an adequate response from the competent institutions and enforcement agencies. However, their consequences are very negative for the whole society.⁶ Legal theorists have largely become aware of the danger of environmental crime, so among them there's a growing number of those who are engaged in the analysis of the action of social control mechanisms to suppress crimes against the environment. Therefore, it seems that there is a new direction in criminology, which authors call green criminology.⁷

Economic losses from environmental crime at the global level are extremely high. According to UN and Interpol data from 2016 they amounted 91-259 billion dollars, while the loss from illegal trade in wildlife products alone amounted 7-23 billion dollars in the observed period. Therefore, environmental crime is rightfully considered the fourth largest criminal activity in the world after drug smuggling, various types of forgery and human trafficking. High revenues from environmental crime contribute to this. According to data in the European Union, annual revenues from the illegal trade in non-hazardous waste amount to between 1.3 billion and 10.3 billion euros, while from the trade in hazardous waste amount to between 1.5 and 1.8 billion euros.⁸

⁴ See: Europol, Environmental crime: Crime Areas, <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/environmental-crime>, 12.10.2023.

⁵ JOVAŠEVIĆ, Dragan: Leksikon krivičnog prava, Belgrade: Službeni glasnik, 2006. 102. ISBN: 86-7549-556-0; ISBN: 978-86-7549-556-7.

⁶ BANKS, Debbie *et al*: Environmental crime, A threat to future. London: Environmental investigation agency (EIA). 2008. 1. ISBN: 0-9540768-5-0; SKINNIDER, Eileen: Victims of environmental crime – Mapping the issues. Vancouver: The International centre for criminal law reform and criminal justice policy. 2011. 2. ISBN: 978-0-9868799-1-3.

⁷ LYNCH, J. Michael – LONG, A. Michael: Green Criminology: Capitalism, Green Crime and Justice, and environmental destruction. In: Annual Review of Criminology. Vol. 5. 2022. 255-276. <https://doi.org/10.1146/annurev-criminol-030920-114647>.

⁸ European Commission, Commission Staff Working Document – Evaluation of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, SWD (2020) 259 final, Brussels: 28.10.2020. 6.

Environmental crime is often connected with other crimes, such as, for example, drug trade, illegal trade in pharmaceutical products, but it can also be closely related to corruption.⁹ However, in practice, problems arise in connection with the detection of environmental crimes, as well as the collection and provision of relevant evidence. It's important to achieve the stated goals not only to provide adequate material resources, but also to have an adequate level of specialization and cooperation of competent authorities. It seems that it's the lack of such cooperation that prevents the detection of environmental crimes and the passing of convictions.

The consequences of environmental corporate crime indicate that criminal law repression can no't be the only tool for its suppression, so the authors emphasize the need for preventive action, by raising the awareness of decision makers in corporations regarding compliance with environmental regulations. One of the ways to do this is to inform and educate decision-makers about the importance of sustainable and ecologically and socially responsible business. Some criminal acts may be the result of negligence, ignorance of regulations or insufficient information about one's own obligations.¹⁰ The example for that is the oil spill in the Gulf of Mexico in 2020, when as a result of failing to take regular monitoring measures, the oil platform of the British Petroleum Company exploded and sank.¹¹

The need to improve the prevention of environmental crime through criminal law is also evidenced by the European Commission's Proposal to amend Directive 2008/99/EC. It proposes to prescribe in the national legislation of the member countries criminal offenses that protect the right to a healthy environment.¹² Taking into account the weight and seriousness of the consequences of the crime against the environment, the European Commission proposed to determine the minimum sanction at the national level of ten years in prison if the criminal offense causes or may cause the death or serious injury of a person. The European Commission also proposed the introduction of some new measures against perpetrators of environmental crimes, such as: the obligation to reinstate the environment, exclusion from access to public funding, including tender procedures, grants,

https://commission.europa.eu/system/files/2021-12/environmental_crime_evaluation_report.pdf,

12.10.2023.

⁹ BUGARSKI, Tatjana: Krivični postupak za dela protiv životne sredine. In: Zbornik radova Pravnog fakulteta u Novom Sadu, Issue 4. 2015. 1644. doi:10.5937/zrpfns49-10355.

¹⁰ BATRIĆEVIĆ, Ana: Ekološka krivična dela i kriminalitet korporacija. In: Privredna krivična dela. Belgrade: Institute of Criminological and Sociological Research and Institute of Comparative Law. 2017. 252. ISBN 978-86-80756-03-5

¹¹ *Ibid.* 246.

¹² These are the following crimes: illegal timber trade, illegal ship recycling or illegal water abstraction.

concessions and licences and withdrawal of permits and authorisations and making sentences public.¹³

Given that the European Commission proposed in 2020 to amend Directive 2008/9/EC, because it did not have many effects in practical application, we start from the assumption that the criminal law legislation of the Republic of Serbia in the field of environmental protection did not achieve its full potential in practice. Therefore, we first analyze the results from the European Commission's report from 2020 on the implementation of the aforementioned Directive, and then the new National Serious and Organize Crime Threat Assessment (SOCTA) that Serbia prepared in 2022 to determine the situation in the field of environmental crime and make recommendations for improving the criminal law protection of the environment at the national level. In this paper, we tried to indicate the current situation in terms of the application of criminal law legislation based on the analysis of the report of the Supreme Public Prosecutor's Office of the Republic of Serbia and compare it with the data from the European Commission Report from 2020 and the SOCTA report from 2021. The aim of the analysis is to assess the compliance of national legislation with European standards in the field of criminal environmental protection. That is the reason that two scientific methods dominate in our paper: content analysis and dogmatic-legal method.

European Union legislation on prevention of environmental criminality

Although not explicitly stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to a healthy environment is considered a third-generation human right. In the final Declaration of the United Nations conference on the human environment, which was held in Stockholm in 1972, the first time is mentioned that the basic human right to freedom, equality and adequate living conditions in an environment in an environment of a quality that permits a life of dignity and well-being.¹⁴ By Recommendation 1614 of the Council of Europe from 2003, the Assembly of the Council of Europe proposes that

¹³ Draft European Parliament Legislative Resolution on the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, (COM(2021)0851 – C9 – 0466/2021 – 2021/0422(COD) Committee of Legal Affairs, Amendment 17, Recital 14, https://www.europarl.europa.eu/doceo/document/A-9-2023-0087_EN.html#_section1, 12.10.2023.

¹⁴ The Principle 1 of the Declaration of the United Nations Conference on the Human Environment states: „The Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.“ Text is available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/PDF/NL730005.pdf?OpenElement>, 12.10.2023.

governments and member states provide adequate protection of life, family and private life, freedom of information, which includes the right to receive information in accordance with Articles 2, 8, Article 1 of Protocol 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and Article 10 of the mentioned Convention.¹⁵ Furthermore, Article 37 of the European Charter on Human Rights stipulates that a high level of environmental protection and environmental improvement must be part of Union policies and ensured in accordance with the principle of sustainable development.¹⁶ Although the mentioned Charter contains a special provision on the environment, according to the attitudes of some authors it's formulated in such a way that it can't be interpreted as a guarantor of the right to a healthy environment and only defines the general goals and obligations of competent entities.¹⁷

Due to the cross-border nature of criminal acts that endanger the environment, the increase in their number and major consequences for the health and life of people at the level of the European Union, Directive 2008/99/EC on the protection of the environment through criminal legislation was adopted. The purpose of the adoption of the Directive was to standardize the sanctions for perpetrators of crimes against the environment at the level of the Union. The reason for its adoption was the fact that the criminal justice mechanisms established at the national level were not adequate in terms of crime prevention, and especially in terms of the availability of effective investigative models and mutual legal assistance among member states. To enable environmental protection, it was necessary to prescribe adequate, proportional and dissuasive criminal sanctions for persons who, either in the capacity of a natural person or a responsible person in a legal entity, undertake activities that are harmful to the environment and that cause or are likely to cause significant damage to air, water, animals or plants, including the preservation of species.¹⁸ Although the Member States were obliged to prescribe penalties for behaviors against the environment that represent a serious violation of regulations on its protection, the provisions of the Directive did not establish any obligation to

¹⁵ Text of the Recommendation 1614 (2003) is available at: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10403&lang=EN>. The European Convention on Human Rights doesn't expressly provide for the right to a healthy environment, but it's protected by an extensive interpretation by the European Court of Human Rights of Articles 2 (right to life), 8 (right to respect for private and family life), 10 (freedom of expression) and Article 1 of the Protocol of the mentioned Convention (protection of property).

¹⁶ EU Charter on fundamental rights (2016/C 202/02).

¹⁷ TODIĆ, Dragoljub: Povelja EU o osnovnim pravima i pravo na (zdravu) životnu sredinu. In: *ECOLOGICA*, Vol. 28. No. 104, 2021, 632. <https://doi.org/10.18485/ecologica.2021.28.104.19>.

¹⁸ Articles 5 and 7 of the Directive 2008/99/EC on the protection of the environment through criminal legislation, *Official Journal of the European Union*, L 328/18, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0099>, 12.10.2023.

actually apply those penalties or other criminal legal mechanism in each individual case at the level of the Member States. It provides only minimum standards in terms of criminal law environmental protection at the level of the European Union.¹⁹

During 2011-2019, the European Commission evaluated the implementation of the Directive at the level of the EU member states and the United Kingdom. During the assessment, it was determined that environmental crime leaves the opportunity for significant profit, that there are difficulties in detecting criminal acts, and that the cross-border character is increasingly present in their execution. In addition, it was established that there is a great difference between the member states of the European Union in terms of the incriminations of violations of regulations in the field of environmental protection, as well as that legislation prescribed too mild sanctions for such offenses at the national level. According to the opinion of the European Commission, this could act as an incentive for perpetrators of crimes that can be classified as environmental crime to transfer their activities to member states with the least efficient law enforcement systems and prevent judicial cooperation between member states.²⁰

Based on the evaluation of the application of the Directive, the European Commission found that in the coming period it is necessary to collect statistical data related to environmental crime at the level of the member states, which should be publicly available. The report expressed the view that the lack of information on the state of environmental crime can be conditioned by the lack of awareness of its scope, impact and prioritization and allocation of necessary resources in its suppression.²¹ Therefore, it is necessary not only at the EU, but also at the national level to strengthen the awareness, not only among the relevant authorities and institutions, but also among the general public.

A special problem in the regulations of the member states that prevents the detection of environmental crime, and the sanctioning of perpetrators is the use of imprecise legal terminology, such as e.g. "substantial damage", "irreparable amount", "dangerous activity" or "significant deterioration". Bearing in mind the cross-border character of crimes against the environment, this terminology should be defined as much as possible at the level of the European Union, because the impreciseness of the mentioned terms could have a negative impact on the cooperation of the member states in their suppression. The interpretation of disputed terms is generally carried out by competent courts of the member states,

¹⁹ Items 10 and 12 of the Preamble of the Directive 2008/99/EC.

²⁰ Commission Staff Working Document Evaluation of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Environmental Crime Directive), 6. https://commission.europa.eu/system/files/2021-12/environmental_crime_evaluation_report.pdf, 12.10.2023.

²¹ *Ibid.* 79.

which could lead to different approaches and understanding of terms. For this reason, it is considered that it would be useful to establish at the level of the EU member states Union the databases of the judicial decisions passed against the perpetrators of criminal acts against the environment. The database should have impact on the cooperation of the member states in the suppression of the environmental crime.²² The existence of such a database is of particular importance bearing in mind the transnational character of environmental crime.²³

The European Commission believes that prescribing additional sanctions at the national level could improve the prevention of crimes against the environment. The sanctions should apply to legal entities responsible for such acts, e.g., to parent companies that use the offending company as a shield or to mother, daughter or sister companies that indirectly profit from environmental violations. Therefore, as additional sanctions and measures the following should be introduced: mandatory compensation for damage, cancellation or suspension of the license, exclusion from participation in public tenders or grant awarding procedures, banning the use of certain internet platforms for trading (e.g. with authorization to require trading platforms to eliminate perpetrator of a criminal offense against the environment), confiscation of profits, rights and things acquired directly or indirectly based on the violation, temporary or permanent closure of a certain facility or activity as a whole, publication of court judgements or summaries of the same or administrative decisions related to violations, publication of names and public condemnation of natural or legal persons who were in conscious cooperation with a natural or legal person who violated the regulations (e.g. a person who distributed the profit obtained by committing a criminal act). The Report on the Evaluation of the Implementation of the Directive highlights the importance of the specialization of competent institutions and bodies at the national level, bearing in mind the need for continuous cross-border cooperation in combating environmental crime.²⁴

Based on the evaluation, the European Commission proposed changes to the Directive on the protection of the environment through criminal law 2008/99/EC. The proposal was adopted on December 15, 2021, and it foresees measures aimed at improving the efficiency of criminal investigations, and thus the criminal procedure. The terms used in the definitions of environmental crime, which left the possibility of

²² *Ibid.* 80.

²³ BEJATOVIĆ, Stanko – ŠIKMAN, Mile: Transnacionalni ekološki kriminalitet. In: Suzbijanje kriminaliteta i evropske integracije s osvrtom na ekološki kriminalitet. Banja Luka: College of International Affairs. 17. ISBN: 978-99938-43-450.

²⁴ Commission Staff Working Document Evaluation of the Directive 2008/99/EC, 81.

different behaviour such as “significant damage”, were clarified in the proposal to introduce more coherence among member states.²⁵

The state of environmental crime in the EU according to the 2021 SOCTA Report

According to data from SOCTA’s 2021 report, most reported cases of waste trafficking involve individuals working or managing waste management companies as managers or employees who violate national and international legislation governing the collection, treatment, and disposal of waste in order to increase profits. Individuals who trade in waste in a manner contrary to the law generally have control over the entire processing cycle, from the country of origin to the country of destination. Criminals use different legal business structures to commit waste crimes. According to the SOCTA Report, legal business structures often change management and are dissolved after a short period of activity and as a new business entities take over the business. Companies operating in different stages of the waste cycle are often located in different jurisdictions. Waste trade is closely related to other criminal acts, such as forgery of documents, various types of fraud, corruption, money laundering, theft, illegal production, and drugs’ trafficking.²⁶ During the production of synthetic drugs, large amounts of chemical waste are created, which producers often throw in public places, which has a very negative impact on the environment. Synthetic drug producers take advantage of open borders and minimal controls by dumping waste in neighbouring countries near drug production sites.²⁷ The EU SOCTA report identified the connection between fraud related to excise duties on petroleum products and environmental pollution. Taxes on various types of petroleum products, such as heating oil or agricultural oils are lower than the tax rate for diesel. Criminal organizations abuse price differences as part of oil fraud schemes.²⁸

In addition to the above, environmental crime is also associated with counterfeiting and the sale of low-quality plant protection products, which can pollute not only agricultural land, but also the foods that are grown on it. Due to the potentially negative impact the pesticides are the most strictly regulated products. If improperly produced, they can pollute air, water, and soil over a long period of time. The impact

²⁵ Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, Brussels, 15.12.2021 COM(2021) 851 final 2021/0422(COD), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0851>, 12.10.2023.

²⁶ EUROPOL, EU Socta 2021 – Serious and Organised Crime Threat Assessment, A Corrupting influence: The Infiltration and Undermining of Europe’s Economy and Society by Organised Crime, 54, https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021_1.pdf, 12.10.2023.

²⁷ *Ibid.* 53.

²⁸ *Ibid.* 64.

on health is present for all consumers of cultivated food products. Unauthorized pesticides may be adulterated or substandard. Both types are marketed without official testing or regulatory approval.²⁹

According to the data from the report, improper disposal of pharmaceutical waste is a special problem, and in the coming period, organized criminal groups could organize various schemes for committing criminal acts that include green certificates. In addition, waste management and recycling will certainly become key sectors of activity for organized crime groups. It is possible that the management of illegal waste will be on the rise, so the prices of legal waste management services will continue to rise. Illicit waste management can include the illegal reintroduction of waste into production cycles, the resale of hazardous waste mixed with other waste, or the reuse of waste products. Therefore, the expected concern for food safety is also present. However, at the international level, the difficulty in detecting crimes that significantly affect biodiversity, such as illegal fishing, illegal logging and hunting of wild animals, is highlighted.³⁰ In the following period, the cooperation of various authorities at the national level should be improved, and this could be formalized through various agreements on cooperation. Non-governmental organizations could significantly contribute to the detection of such crimes, so efforts should be made to strengthen mutual trust and cooperation between the governmental and non-governmental sectors. In its 2021 report, Europol also identified environmental crime as key problems of organized crime. Based on the available data, it can be expected that organized criminal groups will infiltrate and exploit the recycling and renewable energy industry in the coming period. Those two sectors will develop significantly and will attract investments from both the private and public sectors.³¹

Certain circumstances contribute to the increase in environmental crime. Thus, during the COVID-19 virus pandemic, Europol identified an increased number of cases of illegal storage and disposal of sanitary waste, and its officers' conducted inspections and checks of facilities for sanitary waste and transport, which was important for stopping illegal trade, storage, disposal and shipment of waste and falsification of documents. In that period, the trend of worsening the environment in cities was also identified. The Spanish Civil Guard then launched an investigation into the filtration of water treatment for contaminants and the confirmation of the possible presence of the COVID-19 virus.³²

In the era of the COVID-19 virus pandemic, the regulations, and standards on how to dispose of sanitary waste were also violated. According to the standards sanitary

²⁹ *Ibid.* 78.

³⁰ *Ibid.* 93.

³¹ *Ibid.* 99.

³² *Ibid.* 55.

waste should be sterilized under high pressure to eliminate all dangerous components. To increase profits, companies reduce treatment time, so waste may be improperly sterilized before disposal. Inadequate treatment can pose a high risk to public health. Thus, in Portugal, during the pandemic the National Republican Guard inspected more than 2,000 companies, hospitals and health centers. At that time, 30 persons were arrested and property worth almost 790,000 euros was seized.³³ Therefore, it can be concluded that the success of detecting criminal acts against the environment and collecting and securing evidence against their perpetrators depends on the timely action of the competent institutions. Based on the presented experience the control activities should be carried out in a period of time that is close to the time of undertaking the act of committing the crime, which would also mean planned and continuous action of the competent institutions.

Criminal law protection on environment in the Republic of Serbia

Article 74 of the Constitution of the Republic of Serbia³⁴ guarantees the right to a health environment and timely and complete information about its condition.³⁵ Consequently, everyone, especially the Republic of Serbia and the autonomous province, is responsible for environmental protection. Therefore, everyone is obliged to both protect and improve the environment. The Law on Environmental Protection regulates the integral system of environmental protection, which ensures the realization of the human right to life and development in a healthy environment and a balances relationship between economic development and the environment in the Republic of Serbia. That system includes a set of measures, conditions and instruments intended for sustainable management, preservation of natural balance, integrity, diversity and quality of natural values and conditions for the survival of all living beings, as well as prevention, control, reduction and remediation of all forms of environmental pollution.³⁶ In addition, some criminal acts that endanger or injure the environment are also included in secondary criminal legislation. At least 7 laws

³³ EUROPOL, Covid-19 waste environmental crime: Europe wide operation to tackle unlawful sanitary waste disposal, <https://www.europol.europa.eu/media-press/newsroom/news/covid-19-waste-crime-europe-wide-operation-to-tackle-unlawful-sanitary-waste-disposal>, 12.10.2023.

³⁴ The Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 98/2006 i 115/2021.

³⁵ VUČKOVIĆ, Branislava. Nadležnost javnog tužilaštva u zaštiti životne sredine. In. MATIĆ BOŠKOVIĆ, Marina (ed.) *Javno tužilaštvo i zaštita životne sredine – Normativni okvir i analiza problema u primeni*. Association of public prosecutors and deputy public prosecutors of Serbia and Swiss Agency for Development and Cooperation (SDC). 2022, 8.

³⁶ Article 1 and 2 of the Law on Environmental Protection regulates the integral system of environmental protection, *Official Gazette of the Republic of Serbia*, no. 135/2004, 36/2009, 26/2009-another law, 72/2009-another law, 43/2011 – Decision of the Constitutional Court of Serbia, 14/2016, 76/2018, 95/2018-another law and 95/2018-another law.

prescribe another 10 criminal acts of environmental crime: Law on water³⁷ established as criminal acts unauthorized filling and use of reservoirs (Art. 209) and damage during the exploitation of river sediments (Art. 210); Law on mining and geological survey³⁸ introduced strike in pit rooms or other facilities (Art. 177), introduction of flammable substances into pits and facilities with fuel and gas (Art. 178), and violation of prescribed safety and health measures at work in rooms with explosives (Art. 179); Law on plant protection products³⁹ introduced making and using illegal plant protection products (Art. 78); Veterinary Law⁴⁰ has two crimes concealment of infected animals (Art. 154), illegal performance of veterinary activities (Art. 155); Law on plant health⁴¹ introduced import of harmful organisms and plants and plant products into Serbia (Art. 95); Maritime navigation Law⁴² has pollution of the marine environment (Art. 194); and Law on genetically modified organisms⁴³ introduced illegal use of GMOs and GMO products (Art. 45). Having in mind diversity of legislation it is not easy to apply environmental law, since it requires specialisation.

Furthermore, it is important to assess adequacy of the existing environmental protection mechanisms in combating environmental crime, bearing in mind that according to the Interpol report, the biggest profit for criminal organizations after drug and counterfeit goods trade is the environmental crime. According to the available data, there is an increase in illegal trade and wastewater treatment, while economic crime increases every year by five percent. According to these data, illegal trade also includes trade in waste.⁴⁴

In 2022 the largest number of reported crimes from the group of crimes against the environment (out of a total of 1,652 reported) were forest theft (1,187), followed by killing and abuse of animals (124), illegal hunting (96) and forest destruction (98) (Report on the work of the Republic Public Prosecutor's Office in 2022, 18 and 19).⁴⁵

³⁷ *Official Gazette of the Republic of Serbia*, no. 30/2010, 93/2012, 101/2016, 95/2018.

³⁸ *Official Gazette of the Republic of Serbia*, no. 101/2015, 95/2018, 40/2021.

³⁹ *Official Gazette of the Republic of Serbia*, no. 41/2009, 17/2019.

⁴⁰ *Official Gazette of the Republic of Serbia*, no. 91/2005, 30/2010, 93/2012, 17/2019.

⁴¹ *Official Gazette of the Republic of Serbia*, no. 41/2009, 17/2019.

⁴² *Official Gazette of the Republic of Serbia*, no. 87/2011, 104/2013, 18/2015, 113/2017, 83/2018.

⁴³ *Official Gazette of the Republic of Serbia*, no. 41/2009.

⁴⁴ Internet portal of the Serbian radio and television, Droga, falsifikati, pa ekologija – Interpol beleži 3.000 hapšenja zbog ekoloških zločina. 4.12.2020, <https://www.rts.rs/lat/vesti/drustvo/4167902/droga-falsifikati-pa-ekologija--interpol-belezi-3000-hapsenja-zbog-ekoloskih-zlocina.html>, 12.10.2023.

⁴⁵ The Republic Public Prosecutor's Office, Report on the work of public prosecutor's offices to combat crime and protect constitutionality and legality in 2022, March 2023 http://www.rjt.gov.rs/docs/lzvestaj_Republika_Srbija_Republicko_javno_tuzila%C5%A1tvo_martzo_23.pdf, 12.10.2023.

Although there is often talk of great air and water pollution, according to the available data, only 20 criminal acts of environmental pollution were reported, the same number of acts of environmental damage, criminal charges were filed against 3 persons for the criminal offense of polluting food and water for consumption, i.e. feeding animals and 2 criminal charges were filed for the criminal offense of violating the right to information about the state of the environment.⁴⁶ According to Republic Public Prosecutors's Office Reports, the police is usually the one who file criminal charges for environmental crimes. However, a small number of reports were submitted by the inspection, which should be the first to be informed and detect the environment rules violations. In 2022 in total there were 57 environmental protection inspectors in Serbia, working in 19 towns across the country. The EU progress reports from 2020, 2021 and 2022 repeated recommendation to enhance administrative and financial capacity of environmental inspectorates.⁴⁷ Therefore, there is a need to increase the number of inspectors, establish specialization of public prosecutors and judges in the area of environmental crime, strengthen cooperation among relevant stakeholders, as well as invest in technical means and equipment. Some authors even emphasize the need to establish specialized courts for environmental protection, but our position is that the specialization of public prosecutors, police officers and judges should be sufficient for achieving better results in detection and conviction of environmental crime.⁴⁸

The danger of environmental crime is recognized in the 2019 National Serious and Organize Crime Threat Assessment (SOCTA) that Serbia prepared as part of the commitments within the EU accession process and the negotiation Chapter 24. Within the SOCTA whole chapter is dedicated to environmental crime, while only illegal international trade of protected plant species and animals and improper collection, transport, recovery or disposal of waste is recognised as chllanaging from the perspective of organised crime. According to SOCTA Republic of Serbia is located on the one of the most frequent corridors of transnational crime in connection with the endangered plant and animal species.⁴⁹

The national legislation of the Republic of Serbia is harmonized with EU Directive 2008/99/EC, taking into account the proportionality and adequacy of the prescribed

⁴⁶ *Ibid.* 19.

⁴⁷ Commission Staff Working Document, Serbia 2022 Report, SWD(2022) 338 final, p. 122. Available at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>

⁴⁸ See: ZHANG, J D: A Thesis on the establishment environmental and resources courts in China. Iop Conference Series: Earth and Environmental Science. 4. Sci. 354 012059, <https://iopscience.iop.org/article/10.1088/1755-1315/354/1/012059/pdf>, 12.10.2023.

⁴⁹ Ministry of Interior of Republic of Serbia, 2019, National Serious and Organize Crime Threat Assessment, p. 116-121.

criminal sanctions. However, a challenge is the implementation of legislation and the enforcement of decisions. Bearing in mind the fact that to successfully prosecute criminal offenses against the environment, there must be a short period of time between the discovery and collection of evidence and the time of committing the crime, the proactive action of the public prosecutor's office would be of particular importance. The reports on the state of environmental pollution of the competent institutions and authorities, which should be available to the public, could greatly help in this, as well as the actions of various non-governmental organizations. However, even in that situation, the question of possessing specialized knowledge of public prosecutors in the field of environmental protection arises. Interdisciplinary knowledge is required to discover and prove environmental crime acts, so an adequate approach could be the establishment of teams made up of special experts to carry out the investigation under the leadership of the competent public prosecutor.

The Criminal Code of the Republic of Serbia prescribes, within a special chapter Criminal offenses against the environment.⁵⁰ The Criminal Code is aligned with the provisions of Directive 2008/99/EC and obligations established for the member states to prescribe in their national legislation criminal sanctions for violations of environmental rules. Adequate and proportionate criminal sanctions have been prescribed for the perpetrators of those acts. However, what can be a problem in practice, are specifically the same shortcomings that were identified both by the European Commission and by Europol in their reports that were the subject of analysis in the paper. Namely, the Criminal Code does not define certain concepts precisely enough. That is for example a criminal offense prescribed by Article 260 of the Criminal Code. Criminal offense will exist if the air, water, or soil is polluted to a "greater extent" or in a "wider area" by violating the regulations. The definition of "broader space" is not precise enough. Such definitions are usually left to the interpretation of court jurisprudence. However, bearing in mind that there are not many judicial cases, it is possible that different interpretations will arise in practice of different courts in Serbia. This specific challenge the European Commission tried to eliminate by the Proposal for Amendments to Directive 2008/99/EC. The same objection applies when it comes to the more severe form of the crime, which exists when, as a result of undertaking the act of execution, the destruction of animal or plant life occurred on a "large scale" or "longer time" or "large costs" are required to remove the consequences.

⁵⁰ Criminal Code of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 85/2005, 88/2005 – Corrigendum, 107/2005 – Corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

The same challenges in interpretation apply to the basic and more serious form of the crime of illegal construction and putting into operation of buildings and plants that pollute the environment (Article 262 of the Criminal Code), more serious forms of the criminal offense of damaging buildings and devices for the protection of the environment (Article 263 of the Criminal Code), damage to the environment (264 of the Criminal Code), the more serious form of criminal offense of bringing dangerous substances into Serbia and illegal processing, disposal and storage of dangerous substances (Article 266 of the Criminal Code).

A special challenge in practice is the prosecution of criminal offenses in the field of environmental protection, specifically the investigation of environmental crimes and securing of evidence. When it comes to the investigation, the question of dealing with waste or pollution of land, water and air can be raised. The public prosecutor, as the authority in charge of the investigation, as well as other authorities, must possess professional knowledge and have the necessary technical support, and provide the necessary and high-quality evidence. One of the challenges for public prosecutors present securing of evidence related to waste. A particular issue concerns waste disposal and storage during the proceedings. The problem is the handling of waste during the procedure, i.e. proceeding during the temporary confiscation of waste, which was confiscated in accordance with Article 147 of the Criminal Procedure Code. As a problem, the question can be raised as to whether the waste can be permanently disposed of, that is destroyed without a legally binding decision of the court, which is authorized to issue an order on the permanent destruction of the object of the crime (Article 87, paragraph 3 of the Criminal Code). If the waste is temporarily disposed by an authorized operator it is possible to keep it for only 12 months in accordance with Article 36 of the Law on Waste Management, which is not a sufficient period considering that criminal procedures take longer than a year due to their complexity.⁵¹

Conclusion

At the level of the European Union, but also at the national level of the Republic of Serbia, a significant problem in connection with the detection of criminal activities against the environment and the sanctioning of their perpetrators is the use of insufficiently precise legal terminology, such as: "substantial damage", "irreparable amount", "dangerous activity" or "significant deterioration". The terminology needs to be specified as much as possible in the national legislation, especially bearing in mind the lack of judicial practice in that area, which would establish a legal standard

⁵¹ Association of public prosecutors and deputy public prosecutors of Serbia and Swiss Agency for Development and Cooperation (SDC): Kako unaprediti krivičnopravnu zaštitu životne sredine, 15 and 16, https://uts.org.rs/wp-content/uploads/2022/02/kako_unaprediti_zastitu.pdfm 12.10.2023.

of importance for the interpretation of the mentioned terminology. The establishment of an international database of court jurisprudence in proceedings against perpetrators of criminal acts against the environment could be important to overcome this issue.

According to the data from the analysed reports, we concluded that the success of detecting environmental crime and collecting evidence against perpetrators depends on timely undertaking of adequate activities by competent institutions. That is why they should be planned, and cooperation between institutions should be improved. At the national level, it is necessary to increase the number of inspectors from the field of environmental protection, to establish mandatory specialization of police officers, public prosecutors and judges in the mentioned field, as well as to improve the technical means of importance for detecting and proving criminal acts against the environment. In addition, the period that elapses between the discovery and collection of evidence and the execution of the aforementioned acts should be as short as possible, which implies efficiency in the action of competent institutions, and proactive investigations by competent public prosecutors could also contribute to this. Regular publication and updating of reports on the state of environmental pollution by competent institutions, as well as the action of various non-governmental organizations, would be of particular importance for such an action. This indicates the need for an interdisciplinary approach in the prevention of environmental crime. The existence of adequate technical support that would ensure a higher quality of evidence that can be used in criminal proceedings is important for the actions of public prosecutors during the investigation. In addition, it is necessary to improve the way of keeping evidence related to pollution, as well as the way of disposing of that evidence during their confiscation and later during criminal proceedings. At the level of the Republic of Serbia, a particular problem is the fact that Article 36 of the Law on Waste Management stipulates that waste temporarily disposed of by an authorized operator can only be stored for 12 months, which is not a long enough period considering the fact that criminal proceedings due to complexity in the area environmental protection lasts longer than the specified period. In addition, the question can be raised whether waste can be disposed of or destroyed without a legally binding decision of a court authorized to issue an order on the permanent destruction of criminal objects. Therefore, it seems that in addition to the establishment of adequate cooperation of competent institutions at the national level, it is also necessary to change and harmonize national regulations with the use of practice in the field of combating environmental crime.

Bearing in mind the transnational nature of environmental crime, which is often connected with other serious crime, such as, for example, trade in drugs or illegal pharmaceutical products, it is crucial to harmonize national regulations with

European standards as much as possible. The exchange of experiences and knowledge in this area at the international level could improve the current situation.

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