

CHARACTERISTICS OF ENVIRONMENTAL CRIMES AS CHALLENGES FOR THEIR DETECTION AND PROVING

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INTRODUCTION

The recognition of the environment as an object of protection by criminal law happened simultaneously with the development of the environmental consciousness and the new concept of sustainability, as an answer to the consequences of unsustainable practices that have led to serious pollution of the nature (Banić 2021: 65, 66). It should be undisputable by now that the nature and its media - water, air and soil, as well as her emanations in the form of flora and fauna are part of the elementary conditions of life of humankind and as such clearly fall into the circle of legal goods that are to be protected by means of criminal law (Schall 2014: 819).

Furthermore, it is also a highly lucrative activity, where the risks are low and the profits are high (Bachmaier 2016: 195). Environmental crime is the third most lucrative category of crime globally, with costs of up to 246 billion EUR annually.² The drivers of environmental crimes are obviously economic, and so are the financial and human costs of this type of crimes enormous, if indeterminable (Shover & Routhier 2005: 322).

Already in 1989 - still the initial phase of the emerging environmental law, the importance of environmental crimes has been recognized: „The cumulative effects of pollution are more dangerous and their repercussions more long-lasting and pro-

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2 WWF, Position Paper, March 1, 2022, 1. <https://www.wwf.eu/?6109916/A-new-EU-Environmental-Crime-Directive>, last accessed on July 5, 2022.

found than any crime yet cared by a judicial system“ (Milne 1989: 333). They can victimize entire nations or populations (Shover & Routhe 2005: 324); and they do not stop at national borders, having an organized (Bugarski 2015: 1100 – 1102) and transnational dimension of the crime (Elliott 2012: 89 – 95; Pisarić 2011: 425 - 439).

However, judicial statistics show that environmental crimes are not prosecuted as often as traditional crimes (Uhlmann 2009: 1243; Burns & Lynch 2004: 105), despite the importance of the protected legal good, its ubiquity and long-term consequences that can victimize more people than the majority of the other offences.

STATISTICAL OVERVIEW

To gain an overview of the practical situation regarding environmental crimes, Serbia³ has been chosen as an example. The following parametres have been selected: 1) reported adult perpetrators by criminal offences⁴ in the ten-year-period (2011 – 2020);⁵ 2) reported adult perpetrators by criminal offence and type of decision for 2020 (newest available data); 3) accused adult perpetrators, by criminal offence and type of decision for 2020; and 4) convicted adult perpetrators, differentiation within the group of crimes against the environment, for 2020. The aim is to shed light on the statistical path of environmental crimes in the stages report – accusation – conviction. Regarding the types of decisions that are shown in the second and third table, their selection was based on their link to the detection and proving of these crimes.

Table 1 – Reported adult perpetrators, by criminal offences, 2011-2020.

Source: Statistical Office of the Republic of Serbia

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
In total	88.207	92.879	91.411	92.600	108.759	96.237	90.348	92.874	92.797	74.394
Criminal offences against life and limb	3.908	3.923	3.734	3.268	3.818	3.451	3.278	3.084	3.064	2.481
Criminal offences against civil freedom and rights	2.470	2.676	2.850	2.975	3.874	4.046	4.052	4.264	4.390	3.643
Criminal offences against property	39.742	45.291	45.899	50.303	58.741	44.000	40.443	40.595	38.713	29.788

3 For an overview of Substantial Criminal Law in Serbia see Marković (2017: 885 – 908).

4 Chapter XXIV of criminal offences against the environment from the Serbian Criminal Code.

5 This time frame has been chosen due to the fact that it is the newest period for which complete data is available. Incomplete, outdated information and data that is not harmonized (Faure 2006: 17, 18) are further obstacles for combatting environmental crimes.



Criminal offences against the economy	2.957	3.221	3.397	3.347	3.526	3.333	2.939	2.767	2.461	1.814
Criminal offences against human health	3.409	3.603	3.464	3.161	3.731	3.687	4.574	5.546	6.693	7.329
Criminal offences against the environment	1.789	1.841	1.996	2.148	2.205	2.507	2.187	2.550	2.425	2.153
Criminal offences against the public safety of persons and property	1.128	1.305	1.210	1.264	1.284	1.220	1.135	1.285	1.291	1.010

In this statistical display, crimes that are in relative connection to environmental crimes have been selected; either because they are committed in similar ways, or because the consequences of the crimes are close. Here, we can observe a low number of reported environmental crimes, despite their high frequency of occurrence in practice. Only criminal offences against the public safety or persons and property have been reported less. For other groups of crimes that have been left outside of this display (offences against the security of computer data; offences against constitutional order and security; offences against humanity and other assets protected by international humanitarian law; offences against the Army of Serbia), their even lesser percentage is attributed to their extraordinary character or also to lack of criminal enforcement (for computer crimes).

Compared to the total numbers of all crimes reported in the 10 year period, crimes against the environment circle around 2% (in 2011: 2, 07%, 2015: 2, 03%), with a slight increase in the last two years observed (2019: 2, 61%, 2020: 2, 89%). However, the percentage remains low.

Table 2 – Reported adult perpetrators, by criminal offence and type of decision, 2020

Source: Statistical Office of the Republic of Serbia

	Total	Perpetrators known					Perpetrators unknown
		Perpetrators known, total	Crime report rejected		Investigation suspended		
			The act is not a criminal offence	No reasonable ground for suspicion, prosecutorial inopportuneness	The act is not a criminal offence	No proofs	
Republic of Serbia	74.394	51.863	10.945	1.231	31	198	22.531
Criminal offences against the environment	2.153	1.072	213	15	-	-	1.081



In this table of reported adult perpetrators for the year 2020, listed by the type of decision that is relevant in the context of detection and further investigation of the crimes, we can firstly observe a very high number (50.21%) of perpetrators that remain unknown. The average for these types of crimes is higher than for the average of all crimes in Serbia (30.29%). Regarding the rejection of the crime reports, the vast majority is because of the conclusion that the act is not a criminal offence.

Table 3 – Accused adult perpetrators, by criminal offence and type of decision, 2020

Source: Statistical Office of the Republic of Serbia

	Accused persons - total	Proceedings discontinued	Exoneration judgment		
			All	The act is not a criminal offence	No evidence
Republic of Serbia	29.389	1.150	1.330	147	1.183
Criminal offences against the environment	382	18	31	-	31

Looking at the next stage, a remarkable difference becomes obvious. While out of the reported overall crimes 39.50% of the cases resulted in accusations, for environmental crimes this number is more than halved (17.74%). It confirms the hypothesis that environmental crimes are not prosecuted as often as traditional crimes (Uhlmann 2009: 1243).

Even when the enforcement authorities have formally established that a violation has taken place, the case is very often not prosecuted and simply ends with a dismissal (Faure 2016: 17, 18). 8.12% of the accusations resulted in exoneration judgments; compared to 4.53% for the overall crimes – nearly a double value. All 31 exoneration judgments were made because evidence could not be found. This is the first stage where the absence of evidence is seen in the statistics for 2020. In the previous stage (reported crimes), no investigation was suspended because of the absence of proofs.

Table 4 – Convicted adult perpetrators, differentiation within the group of crimes against the environment, 2020

Source: Statistical Office of the Republic of Serbia

	Total
Republic of Serbia	25.487
Criminal Offences against the environment	291
Damaging the environment	3
Destroying, damaging and taking abroad or into Serbia a protected natural asset	3



Bringing dangerous substances into Serbia and unlawful processing, depositing and stockpiling of dangerous substances	3
Killing and abuse of animals	14
Contamination of drinking water and food for animals	1
Devastation of forests	12
Forest theft	240
Illegal poaching	13
Illegal fish poaching	2

In the final stage, the number of convictions shows again a flattening. While the ratio of the reports for environmental crimes and overall crime reports was 2.89% in 2020, this ratio decreased to 1.14% for convictions. In other words, only a bit more than 1% of the overall convictions in Serbia in 2020 were convictions for environmental crimes.

Furthermore, if we look at the distribution of convictions within the group of environmental crimes, an even greater imbalance can be seen. Out of the 291 convictions for eco-crimes, 240 of them are for forest theft. This means that 82.47% of the convictions are basically for only one offence. Beside the concrete monetary damage and hence interest for prosecution of the concrete owners of the felled trees, another reason might be the easier detection and proving of the cutting off the trunk and its roots (see DeliĆ 2022: 293, 294).

LEGISLATIVE FORMULATIONS OF ENVIRONMENTAL CRIMES

Apart from the fact that there are many definitions of environmental crimes in general - particularly their complexity,⁶ variety⁷ and heterogeneity represent challenges for criminal law enforcement. Lazarus has even questioned whether

6 Bachmeier has identified additional, non-normative factors that contribute to rare prosecutions of environmental crimes: their transnational (organized) character; profitability as a corporate crime („and even as a normalized part of manufacturing corporations everyday activities“ and the connection to corruption in public institutions, especially in developing countries (Bachmaier, pp. 195, 196). She mentions the study of Brian Wolf, in which empirical data show that the larger the firm the more likely it is to commit environmental violations, although this factor alone is not decisive (Wolf 2009: 127 – 131). For the criminal liability of legal entities and their employees in general see DeliĆ (2011): 289 – 301 and Vuković (2011): 302 – 317.

7 The US Sentencing Guidelines, for example, divide environmental violations into four categories of seriousness: knowing endangerment of human life, violations involving hazardous or toxic substances, those involving other pollutants, and conservation and wildlife offense (Shover & Rote 2005: 351). However, not even this relatively modest number of categories manages to object all the critiques on behalf of the nature of environmental crimes and the arising difficulties for detecting and proving crime.



environmental law⁸ and criminal law are sufficiently integrated at all (Uhlmann 2009: 1232). He pointed out the environmental law's complexity as a distinguishing feature that makes it a difficult fit for criminal enforcement and identified the following characteristics: focus on technicality (the scientific underpinnings of environmental law require expertise to master), indeterminacy (the uncertain jurisdictional lines that define what conduct is covered by the environmental laws, and the fact that much of environmental law does not involve prohibitions against pollution, but limits on how much one can lawfully pollute),⁹ and obscurity (the volume and density of the various regulatory definitions and concepts) (Lazarus 1995: 2429 – 2438, according to Uhlmann 2009: 1231, 1232).¹⁰

These features can be found in the Chapter XXIV of criminal offences against the environment from the Serbian Criminal Code (hereinafter: CC)¹¹ as well. Out of the 18 crimes regulated in the Chapter, for at least 16 of them, either directly from their wording or from practice, the above-mentioned characteristics are valid. Let's take as an example the first and basic environmental crime from the Chapter – environmental pollution from Article 260 CC. By imprisonment of six months to five years and a fine should be punished „whoever by violating the regulations on protection, preservation and improvement of the environment pollutes air, water or soil to a larger extent or over a wider area“ (para. 1). Firstly, regulations on protection, preservation and improvement of the environment have to be identified, known and understood, in order to then be able to recognize their violation. Law enforcers are instructed to search both in administrative or other legal acts (instructive part of the wording) and also to continue to do so in the technical and subject-specific context when it comes to recognizing pollution of air, water or soil. This search continues in the next paragraph, where the negligent form is criminalized (para. 2), so the level of the duty of care has to be established. Ambiguity continues in paragraph 3, where a stricter sentence is stipulated if the offence „results in destruction or damage to animal and plant life to large extent or environmental pollution in such an extent that clean-up requires a longer period of time or a great expense.“ The elements „large extent“, „longer period of time“ and „great expense“ have to be specified, which cannot be done without the interpretational help of the (with regard to eco-crimes underdeveloped) judicial practice and other legal sources. These elements have to be specified enough to enable criminal investigations. Other examples of notions whose meaning has to be searched for outside criminal legislation are „protected natural asset“ or „protected or rigorously protected plant or animal species“, or even international

8 On Environmental Law in Serbia see Drenovak-Ivanović (2021).

9 In this regard also Kuhlen (1993: 726).

10 Uhlmann remarks that it is therefore not surprising that environmental crime is cited as an example of overcriminalization (2009: 1229).

11 Criminal Code, *Official Gazette of RS*, nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.



treaties and documents, which additionally broaden the scope of legal sources that have to be taken into account (all examples are from Article 265 – Destruction, Transfer into a Foreign Country or into Serbia of Protected Natural Asset) (see Author 2021: 99, 100).

Even seemingly common notions, like waste, can open up space for vague interpretations. The offender could claim that the substance is not waste, but a by-product, and as such not criminally relevant. This vagueness may affect the detection, investigation and proving of the respective case, at the same time using (wasting) already scarce resources (Vagliasindi 2016: 162). Dogmatically speaking, this is problematic with regard to the *lex certa* segment of the principle of legality, and consequently, to the principle of guilt and the possibility to know the criminal provision.¹²

In criminal cases where the meaning of law has to be determined, where detection has to be supported by strong evidence, in the light of the concomitant burden of proof (see Ilić, Majić, Beljanski & Trešnjev 2022), the tendency is to avoid prosecution. The defendant's guilt must be proved beyond reasonable doubt, which is cumbersome to accomplish when the underlying regulations and definitions are unclear or confusing (Uhlmann 2009: 1234). The process of proving the claims is complex in non-environmental cases as well (see Škulić 2015); yet the highly technical nature, combined with intertwined and overlapping regulations and consequences of the crime that are often in the somewhat blurry form of endangerment¹³ seem to be particularly deterring with regard to eco-crimes. In addition, the environment and its various manifestations as the protected legal goods seem to have the same reputation as victimless crimes, where the illegal act typically either involves only the perpetrator or occurs between consenting adults. Prosecutors have limited resources and will not tend to pursue cases that seem unwinnable (Uhlmann 2009: 1234), especially if no person and, some may add, media attention is involved.

DEPENDENCE ON ADMINISTRATIVE LAW PROVISIONS

¹² The WWF lists and defines specifically those two terms in their position paper on a new EU Environmental Crime Directive. So is substantial damage additionally defined by the criteria of monetary value of the damage, the conservation status of the species affected, and the habitat affected. The scale of financial benefits gained by committing the offence, and whether the act is committed by an organized criminal group or not are mentioned with regard to what constitutes negligible quantity. WWF (2022: 3).

¹³ See section „Technical Expertise and Models of Liability“.



Another overarching issue is the dependence of ecological crimes on administrative law provisions. Like criminal and ecological law, administrative law is a form of public law. It deals with the establishment, duties, and powers of and available remedies against authorized agencies in the executive branch of the government.¹⁴ The previously mentioned blanket formulations from criminal law provisions have to be specified by the respective regulations from administrative law; they rely and depend directly upon them.

This dependence existed already since the emergence of environmental laws in the 1970s. They were usually of administrative nature and imposed, for example, an obligation for the operator to apply for permission and to conduct the operations in accordance to the conditions set out in the permit (Faure 2016: 12). The criminal law provisions would be located only at the end of the respective environmental statute, to assure that disobedience of the law would be followed by criminal sanctions (Faure 2016: 12). It was mostly pollution without a permit or the violation of permit conditions or other obligations that were criminalized (Faure 2016: 12). Although today the issue of environmental crime has gained momentum and received a more prominent place within the (core) criminal legislation, this simple formula – absence of or violation of permit leading to criminal liability, remained an integral part of criminal law provisions in formulations from the Criminal Code like „by violating the regulations“ (i.e. in Article 260, Article 264), „contrary to regulations“ (i.e. in Article 262, Article 267, Article 268), „in breach of regulations“ (Article 269) or even literally „without a special permit when such permit is required“ (Article 276) - meaning in the broader sense „unlawful“, „illegal“ or „illicit“ (see also Marković 2015), and by this, maintained the administrative dependence as well. Also, secondary criminal legislation still contains ecologic crimes at the end of the respective laws like in the early period and by this also the absolute administrative dependence. This highly dispersed nature of environmental criminal law (spread throughout primary and secondary law, and then again within numerous secondary laws) makes it obviously difficult for the law enforcer to find out to what extent the respective behaviour would be prohibited (Faure 2016: 15). The law enforcers may consider environmental issues to be of higher significance if they are a part of the criminal codifications and criminal laws. The implementation of these provisions into the penal code could affect general prevention and could facilitate prosecution of these crimes. However, the walk through the administrative jungle remains. As we have seen, the provisions from the central criminal codes also refer to administrative notions; hence dependence on them cannot be avoided even there.

One consequence of this dependence¹⁵ is that ecological values are not directly protected by criminal law (Faure 2017: 328), not even if they are part of the pri-

14 <https://www.merriam-webster.com/dictionary/administrative%20law>, last accessed July 10, 2022.

15 For a comparison of models of the administrative dependency see Andrea Rocco Di Landro 2022,



mary legal acts. A huge pollution of a river, for instance, will not necessarily be a crime or will be punishable at all.¹⁶ Before criminal liability can be investigated and confirmed, the act committed has to constitute an administrative violation first. In other words, administrative acts do not only establish criminal liability; they are the forerunners and set the direct boundaries to criminalize pollution. By defining the conditions for obtaining permits and licences, and by setting the reference values for pollution, they directly determine the requirements for penal liability and relativize the autonomy of criminal law.¹⁷

The structure of environmental crimes, involving the element of „(administrative) unlawfulness“ in many different expressions, differs from the structure of traditional crimes that protect individual values, such as property, life or health (Faure 2017: 328); although all of them constitute an intrinsic part of eco-crimes. Unlawfulness in this context is a violation of regulatory rules promulgated and enforced by environmental protection (Shover & Routhier 2005: 324) or other, less specified agencies. By introducing an intermediary (the administrative authority), the legislator does not deem the environment as such to be the foundational legal interest of eco crimes; the central point is the violation of administrative requirements (Faure 2017: 329). This is further differentiated depending on the form of endangerment/harm that is required according to the respective criminal law provision.¹⁸

The detection and proving of environmental crimes will therefore have to overcome the „administrative jungle“ of numerous regulations that concern threshold values and that are spread throughout various acts that regulate a multitude of different issues and that are not necessarily connected and easy to find.

On the other hand, these manifold provisions can also intersect and create another challenge, namely the untangling and identification of the right provision that has been breached. So, the steps in establishing the element of unlawfulness will have to include the identification of the correct provision and the eventual delimitation from similar regulations. This often also involves cross-referencing from act to act, including international agreements that have been implemented in the national legal systems. For example, for wildlife protection in Serbia, not only are the Criminal Code and the Convention on International Trade in Endangered

SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029962, last accessed July 5, 2022.

16 Pollution in Belgium, caused by the German pharmaceutical company Bayer, could not be assessed by the Antwerp Court of Appeal, because there was no valid license, due to an administrative error and hence the company could not be blamed. This administrative dependence of environmental criminal law (here the non-existence of a license due to failure of administration) disallowed the Court to verify if the emissions from Bayer were illegal pollution. Faure 2017: 328.

17 This lack of autonomy was criticized at the AIDP (Association Internationale De Droit Pénal – International Association of Penal Law) Conference in 1994, where it was stated that „where offences against the environment are subject to criminal sanctions, their key elements should be specified in legislation and not left to be determined by subordinate delegate authorities.“ Faure 2016: 13, 14.

18 See next section.



Species of Wild Fauna and Flora (CITES) relevant, but also the – almost identical-sounding – Law on Environmental Protection and the Law on Nature Protection (Marković 2021: 94, 95). Also, the demarcation line has to be established between criminal offences, misdemeanors and economic crimes.

Those administrative rules, however, do not necessarily entail specifications that go beyond quantitative values. This means that in addition, the nature of the offence has to be determined whether it is an instantaneous or continuous crime. It has to be done for various reasons – for the sake of the criminal classification (what crime?), for later sentencing (mitigating or aggravating circumstances), for the application of the law over time and for the potential for initiating new proceedings (Billiet 2018: 15). A continuous behaviour carries on as long as the perpetrator does not terminate his criminal behaviour (i.e. pursuing a polluting activity without authorization) (Billiet 2018: 15). An instantaneous crime happens in one single moment and is completed with the termination of the act (i.e. the killing of an animal that belongs to a protected species) (Billiet 2018:15). This is an additional effort, inseparably connected to precise technical knowledge about the eco-medium and the possible pollution.

TECHNICAL EXPERTISE AND MODELS OF LIABILITY

From the aforementioned administrative dependence, further challenges arise. The most practical and straining in terms of time and finances is the proving of breaches of administrative obligations, which can be done by the use of technical knowledge and skills. The expertise is necessary to establish the extent of contamination, to determine the remedial requirements and the costs of restoration and to allocate, at least technically, the liability for the immediate consequences and for injuries due to the exposure to toxics ((Murphy 2016: 1-20, according to Bachmaier 2016: 200).¹⁹ This is insofar important as damages to the environment are often caused by the mere accumulation, addition or synergetic effects of hazardous actions, raising problems regarding the proof of causality (Cho 2000: 22).

¹⁹ These can be broken down into the following questions: What is the subject of pollution? / In what form has the pollution manifested itself? / Are there other harmful consequences? / Where and when did the consequences occur? / Where is the origin of the pollution? / What is the source of pollution? / What circumstances have facilitated the commission of the offence? / What were the technical preconditions for the pollution to occur? / What regulations on the protection of the environment have been breached and have the rules of operation and the company policy been breached? / Who is responsible for the pollution? / Were the regulations violated by action or omission? / What is the causal link? / What are the motives, goals? / What are the mitigating and aggravating factors? / What is the form and level of guilt? / What type of eco-delict (criminal offence, misdemeanor, economic offence) has been committed? Pisarić 2015: 790, 791.



This knowledge and evaluation is provided by an (appointed and sworn) technical expert or by administrative agency, and the judge can rely heavily on that expertise (Faure & Visser 1995: 327). These specialists derive from various technical fields, traffic, medicine and other vocations, and have to fulfill the triad of technical knowledge, experience, and knowledge of the applicable provisions.

Here we see not only is the administrative dependence an interim step; the interpretation of the actual consequences in the respective case is a further intermediate point. In addition, the admissibility, reliability and the high costs of scientific expert evidence represent further obstacles in the prosecution of environmental crimes (Bachmaier 2016: 193). The gathering and assessment of evidence gets even more complicated when the expertise has to be conducted in a foreign country, due to the transnational dimension of environmental crimes, having to apply the already complex cross-border judicial cooperation procedures (Bachmaier 2016: 193).

These consequences are, together with the required form of guilt, basically establishing the model of liability that is attributed to the offence; they represent the relationship between the way the crime is legally defined and the conditions of proof that have to be met to provide evidence for this crime (Faure & Visser 1995: 316).

The first possible consequence is abstract endangerment – not the creation of risk, but the potential creation of risk. As it is only a potential, it is not specifically required in legal wordings of crime and has not to be proven. An example would be the offence from Article 272 CC – Producing Harmful Products for Treating Animals. The crime commits whoever produces for sale or puts into circulation by trade products for treatment or prevention of animals that are dangerous to life or health of animals (para. 1). It is not necessary that life or health of animals are endangered; it is only necessary that the possibility for concrete danger occurs, not the occurrence itself is required (Stojanović 2018: 851). In other words, since the potential risk suffices for establishing criminal liability, it is not needed for the danger or even damage to arise. The problem of proof is therefore small here (Cho 2000: 26). In this case, all the public prosecutor has to do is to show that the products are dangerous to life or health of animals; there is no need to prove that this was done illegally or that it actually has constrained the life or health of animals. What constitutes the danger is standardized in general legislation, or, as in this case, it is specified in by-laws (Faure & Visser 1995: 319). The downside to this kind of regulation is its conflict with the legality principle (*lex certa*) when the legislator defines the conditions of criminal liability very broadly and leaves all the power to determine the more specified conditions to the executive and its administrative agencies (Cho 2000: 25). The focus of protection is then more on



the administrative provisions than on the environmental legal good, bringing us back to the issue of administrative dependence.²⁰

The next model is that of concrete endangerment – a threat that has occurred and is not anymore only a possibility. Unlike abstract endangerment from the previous case, the concrete risk is part of the wording of the criminal offence and therefore needs to be proved. Contamination of drinking water and food for animals from Article 273 CC is an example for a criminal act with concrete danger, committed by „whoever contaminates livestock food or water by a harmful substance and thereby endangers the life or health of the animals (Stojanović 2018: 852). This kind of provision aims more directly at the protection of the environment, the administrative component is less in focus. However, contrary to the previous example, additional operations of proving the actual danger have to be conducted when we speak about concrete endangerment.

The last option is that of harm. Physical alterations in the form of damage or destruction, as part of the legal wording, have to be substantiated. Example for that is Damaging the Environment from Article 264 CC. Demarcation issues with regard to pollution of the environment may arise, though (Stojanović 2018: 838, 839). The causality link to this kind offences should be established easier than in the previous case due to its materialization in the environment.

CONCLUSION

The importance of water, air and soil, flora and fauna is indisputable by now. However, the statistics on reported crime, accusations and convictions, a high number of unreported and unprosecuted cases is in strong disproportion to the importance and frequency of violations of those goods. The combination of huge profits, low risk of detention and ineffective penalties has made environmental crime extremely profitable (Bachmeier 2016: 195).

Certain characteristics of those crimes can be seen as contributing factors. The legislative provisions try to regulate intrinsically complex facts in a vague way that is often contrary to the legality principle of criminal law. In fact, their immanent administrative dependence raises the need to reconcile the logic of administrative law with that of criminal law. On the other hand, a universal definition of environmental crimes is not necessary, especially as it would not satisfy the requirements of the main criminal law principle of legality. However, the existing national provisions do need to be more specific or at least backed by a developed judicial practice that will give orientation in detecting, proving and prosecuting these types of crime.

²⁰ See previous section.



A connected issue to low detection and persecution rates is the lack of understanding of the respective, rather scattered provisions – their content, their limits, and their scope of harm. The lack of resources for costly investigative operations and the involvement of experts in various fields adds up to this. Expert evidence is crucial; depending also on the formulation of the consequences of the crime (harm/endangerment). Naturally, the high technical and factual complexity of this expertise is raising its costs (de la Cuesta 2016: 346). The judicial system as such lacks the required technical knowledge to fully grasp, understand and classify polluting and otherwise damaging actions. As a result, prosecutors will have the tendency to use their discretion to bring only the most egregious cases to court (Faure 2017: 328). A vicious circle is formed: on the one hand, criminal prosecution tends to be avoided because of the lack of specialization; and on the other hand, judges do not acquire the needed experience in environmental crimes as there are only few cases (Bachmaier 2016: 197). Together with the dismissal rates in environmental cases and in absence of alternative penalties, environmental crimes are likely to suffer from under-deterrence (Faure 2017: 328).

This is the reason why some countries (i.e. Australia, New Zealand) have established specialized environmental courts (Bachmaier 2016: 197).²¹

In order to achieve a more developed judicial practice that would provide orientation for the ambiguous provisions, training for prosecutors and judges would be beneficial. They would gain enhanced and specified knowledge of environmental offences and harm it causes or potentially can cause. To paraphrase Billiet: by getting a full insight into the scope of the illicit benefits eco-crimes generate, law enforcers would understand what a „big business“ environmental crime can be (Billiet 2018: 45).

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²¹ For a differentiated view see Lukić & Pisarić 2012: 219 – 239.



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