

ENVIRONMENTAL CRIMES: A CHALLENGE WITH SIGNIFICANT EFFECTS ON OUR WELL-BEING

Gianina-Anemona Radu¹

Police Academy “Alexandru Ioan Cuza”, Bucharest, Romania

THE CONTEXT

Environmental crime is a growing threat that affects natural resources, peace, development and security. For decades it was not covered in its true essence in many parts of the world, resulting in critical effects to humans and the environment today. Environmental crime investigations and financial intelligence are significant responses to prevent natural resources and human beings from environmental criminal activities. There is a problem in identifying and setting priorities, and responding to emerging trends in environmental crime. It is also a priority to implement a forum for law enforcement officials to share experience and expertise, and discuss new strategies.

What can we do to help protect our environment from criminals? Our actions as a consumer or traveler can be a link in the illegal wildlife supply chain, or break the chain.

Environmental crime is an illegal act that directly harms both humans and the environment. It is a negligent, knowing or willful violation of an environmental law within jurisdiction. These offences can include, but are not limited to the improper collection, transport, recovery or disposal of waste, illegal operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored, killing, destruction, possession or trade of protected wild animal or plant species, production, importation, exportation, marketing or use of ozone-depleting substances.

¹ gianina_anemona@yahoo.com

Waste trafficking demonstrates the extent of the problem. The use of legal business structures by criminal actors are an inherent feature of this crime area. In many cases, criminal actors and legal businesses are indistinguishable. As part of this development, criminals involved in waste trafficking have moved towards the more complex business model of illicit waste management rather than simply illegally dumping waste.

Waste traffickers now operate along the entire waste-processing chain and rely heavily on the use of fraudulent documents.

Major drivers of environmental crime include economic benefits, sustainable demand, poverty, as well as institutional and regulatory failures. Environmental crime has not been regarded as a priority in some countries, which has resulted in a lack of appropriate and proportionate governmental responses. Perceived as a “victimless” and low priority crime, environmental crime often fails to prompt the required response from governments and law enforcement.

ENVIRONMENTAL CRIME – A PROBLEM OF CONCEPTUALIZATION

The environment as we know it faces composite challenges which seem to be worsening with time, bringing us into a time of a complex environmental crisis. It is therefore becoming increasingly important to raise awareness of the existence of these challenges, as well as the solutions to reduce their impact. Some of the key challenges are: pollution, global warming, overpopulation, waste disposal, ocean acidification, loss of biodiversity, deforestation, ozone layer depletion, acid rain, public health issues. This is not an exhaustive list, but rather some points to be mentioned. At EU level for instance, a set of 14 megatrends with impact on the society as we know it, were identified. Climate change and environmental degradation is one of them.

Since the late 1980s the procedures and perspectives of criminal justice have been applied to the environmental crisis. Environmental violations have been defined as crimes, and violators viewed as criminals; criminal prosecutions of the accused and criminal sanctions against the convicted have accelerated.

Environmental crime is the fourth-largest criminal activity in the world, growing at a rate of between 5% and 7% per year, according to the Interpol and UN Environment Programme estimate. This increase, combined with the organized, transnational nature of environmental crime requires administrative, law enforcement and judicial authorities to adopt a coordinated approach at international level.



A broad range of offences is covered by the notion of environmental crime at the national, EU and international levels. Lacking a unique definition of environmental crime, we considered the crime qualification as such by the national authorities that referred the case to EUROJUST as the starting point in the process of identifying the relevant cases. An environmental crime is an unauthorized act or omission that violates the law and is therefore subject to criminal sanctions. This offence harms or endangers people's physical safety or health as well as the environment itself. It serves the interests of either organizations – typically corporations – or individuals. This definition stresses three features of environmental crime.

Firstly, environmental crime violates the existing environmental laws. Behavior, however egregious or offensive, that does not violate the law is not crime. Environmental crime, in other words, is the creation of environmental law.

Secondly, environmental crime has two victims – the people and the environment – whereas the victims of street crime are usually only the individuals. Moreover, when a street crime occurs, generally one victim at that moment is produced. When an environmental crime occurs, in contrast, it typically has many victims – sometimes the population of an entire region. Their victimization may also be gradual and silent, going undetected for years. The environment that is victim is often public property (e.g. a state park) or resources on which there is no private claim (e.g. the air), whereas the property that street crime harms is usually private.

Although corporations are the chief environmental offenders, other organizations (e.g. government agencies), as well as individuals can also commit environmental crimes. For example, the crime groups has infiltrated the waste disposal industry and illegally disposed hazardous waste; local governments have shipped solid waste to prohibited sites; individuals have contributed to the destruction of protected forests and wildlife; vendors have sold contaminated meat and seafood to the public. These are just mere examples of environmental crimes currently taking place.

INVESTIGATION OF ENVIRONMENTAL CRIMES

Criminal justice role in environmental regulation expands as the environmental crisis increases. The crisis is both the context and stimulus for heightened interests in criminal justice remedies. Consequently, the scope of the crisis should be better considered before examining how the criminal justice system may or may not help abate the crisis.

It can be assessed that the environmental crime causes substantially more illness, injury and death than street crime does. Illegal waste disposal pose threats of mis-



carriage, birth defects, cancer, chromosome damage, skin rashes, headaches, nervous disorders and other ailments to residents who live in their vicinity.

Environmental crime creates huge profits for transactional criminal groups. Concealing origins of environmental crime proceeds, saving funds and further making them available is a major goal of money launderers. Cases involved in money laundering reported to financial intelligence units lead to enhanced investigations and prosecutions found to be connected to environmental crime.

Combating environmental crime via financial intelligence must be of great importance to compliance professionals at financial institutions. Detecting and reporting suspicious transactions involved in suspected environmental crime to competent authorities can help mitigate risk of harm to the environment, natural resources and human health.

The environmental crime investigation model is based on the following areas:

- **Investigation methods:** Criminal investigations of environmental crimes target the most harmful violations of environmental laws that pose significant threats to human health and the environment. Criminal investigations are carried out via methods including interviews, searching a person or document, examining documents or objects, use of force for self-defense (where required), and subject expert area, i.e. environmental crime (illegal logging, dumping of hazardous waste and their trade, etc.). This requires well-trained special agents and investigators.
- **Science and technical expertise:** Environmental crime investigations require in-depth investigations with scientific methodologies and technical expertise. Sampling and testing of materials (e.g. chemicals or colored liquids) to obtain evidence against environmental criminals is a critical and specialized area. Scientists and specialized technical experts are required to collect this evidence.
- **Legal and prosecution aspects:** The legal and prosecution aspect of environmental crime is significantly increasing in demand. Environmental laws and developed regulations are at all levels (i.e. criminal, administrative and environmental liabilities levels) including sanctions, prison sentences, fines and restoration of damage. Cost of legal and prosecution cases are high and are conducted by specialized environmental law experts.

LEGAL AND OPERATIONAL ISSUES

A number of legal issues and practical difficulties encountered in the environmental crime cases can be attributed to such specifics of environmental crime investigations and prosecutions as their complexity and their multidisciplinary

and resource-intensive nature. These legal issues and practical difficulties included the following:

- Insufficient specialized knowledge and practical experience about the EU's environmental criminal legal framework, because environmental crime cases are not frequently encountered by investigators and prosecutors dealing with organized cross-border crime and international judicial cooperation.
- The existence in different jurisdictions of different investigative approaches to environmental offences by means of administrative and criminal law, and in particular a lack of recognition of environmental crime as organized crime, which hampers the initiation of cross-border environmental crime investigations.
- A lack of incentive for competent national authorities to get actively involved in a potentially large-scale, complex international environmental crime investigation, possibly due to the abovementioned lack of specialized knowledge and experience, along with a lack of resources and the existence of other priorities. The lack of incentive to engage actively is manifested through a hesitation on the part of national authorities to initiate parallel criminal proceedings.
- The existence in different jurisdictions of different legislative approaches to environmental crime (even though the current EU legal framework requires a harmonized approach), which results in different perceptions about some key legal qualifications and can trigger dual criminality issues during cross-border cooperation.
- The multidisciplinary nature of environmental investigations, with diverse specialized national administrative authorities (e.g. customs, environmental, veterinary, fisheries, public health and food safety authorities) that have relevant competences along with police and prosecutors, and the related challenges, in particular the following.

Ensuring the complementarity of competences and the exchange of information and coordination during an investigation at the national level is already a challenge, and it becomes even more challenging at the cross border level. Multidisciplinary coordination at national and international levels among the competent administrative, law enforcement and judicial authorities may be needed promptly, for example in wildlife trafficking cases involving the seizure of live animals and the subsequent need to ensure their survival and a swift return to their natural habitat. A lack of such coordination can have a dramatic result: in a multilateral case concerning the trafficking of European glass eels, a significant number of the seized species did not survive because of the lack of prompt cooperation among the authorities involved.



The risk of confusion regarding the competences of the authorities involved may see a particular increase during the process of cross-border cooperation. For example, in a case on illegal trading in pesticides, the execution of an Mutual legal assistance (MLA) request was assigned to the national environmental authority (because the offence concerned fell under the competence of that authority), even though that authority lacked the investigative and coercive powers to execute most of the requested measures, such as arrests, interviews, searches and the seizure of documents. As a result, the MLA request in respect of these measures was refused.

Environmental crime cases may require highly specialized legal, scientific or technical expertise, and thus the need to cooperate with relevant national or international authorities and organizations. For example, an MLA request may involve measures specific to environmental crime, such as taking samples of wild animals' DNA, taking samples of and testing hazardous substances or transporting seized live animals and reintroducing them into their natural habitat.

COUNTERING ENVIRONMENTAL CRIME: ENFORCEMENT AND PROSECUTION

Many environmental crimes are not the core focus of criminal justice systems or public concern about crime and safety despite having the potential to cause far wider social harm and a large number of deaths. Instead much environmental enforcement is regulatory or administrative in nature, particularly in respect of corporate environmental wrongdoing, which is often categorized as accidental wrongdoing, largely considered to be the fault of 'rogue' employees or the unintended consequences of governance failures. Unlike traditional street and property crimes, environmental crimes (and environmental harms) frequently have long-lasting and irreversible effects. This raises questions about the effectiveness of justice systems in dealing with environmental offenders and the damage they cause. Criminal justice systems that are predominantly based on the punishment of offenders, often fail to address the harm caused by environmental incidents.

Most of the legal issues and practical difficulties encountered in the environmental crime cases were closely related to the use of the judicial cooperation instruments and tools. These legal issues and practical difficulties included the following.

- Choosing the appropriate legal instrument for the necessary international judicial cooperation and exchange of information, and identifying the competent national authority to be addressed, including in cases involving cooperation and the exchange of information with non-EU countries.
- The urgency dictated by national procedural deadlines or by the operational needs of the investigation.

- Issues relating to the execution of MLA or mutual recognition instruments, particularly delays in execution and difficulties arising from the peculiarities of the national criminal material and procedural laws of the states involved (e.g. when clarifications were needed by the requested / executing Member State concerning dual criminality, the criminal qualification of the suspected acts, the procedural status of the persons in question or other information was needed as a precondition for the use of certain investigative measures).
- Legal and practical issues in the context of parallel criminal proceedings (e.g. a need for the urgent identification of ongoing parallel proceedings; the initiation of parallel proceedings; the prevention or resolution of jurisdictional and ne bis in idem issues; the coordination of investigative actions; the exchange of information and evidence in relation to parallel proceedings conducted at different procedural stages in different jurisdictions).
- Legal and practical aspects relating to the transfer of criminal proceedings and the transfer of sentenced persons, and extradition-related issues (e.g. when the Member State of nationality and the Member State of residence of the person being sought are different and the request is to extradite to a non-EU country).
- Matters relating to asset recovery (e.g. coordinating financial investigations; facilitating the execution of a freezing order or of an MLA aimed at the confiscation of assets).
- JIT-related legal issues and practical difficulties, including choosing the appropriate legal basis (the European Convention on Mutual Assistance in Criminal Matters of 1959, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000, the Council Framework Decision 2002/465/JHA on joint investigation teams), the potential implications of national legal requirements (e.g. the duty of disclosure; the withdrawal of the United Kingdom from the EU) and, the last but not the least important, practical difficulties in working together as a multicultural team.

BEST PRACTICES IDENTIFIED

Based on the legal and operational issues encountered and the solutions to issues that were successfully applied, Eurojust has built up a set of best practices that can improve the effectiveness of international judicial cooperation in environmental crime cases. These are:

- In complex cases in which an extensive MLA request or EIO needs to be sent, before issuing the MLA request or EIO discuss it with the national authority that will be its addressee.



- Before requesting information in evidential format, request that the available information be shared as intelligence at the police level, to obtain prompt access to this information and to have the opportunity to evaluate it and to prioritize the information needed in evidential format for your investigation.
- Consider that combating environmental crime is a multidisciplinary area, where competent administrative authorities play an important role in the national environmental enforcement system but have fewer investigative and coercive powers than police and prosecutors. If, in an environmental crime case, an MLA requests or EIO requires special or coercive investigative measures, make sure that the execution of the request /order is assigned to an authority that has the necessary powers to execute the requested measures.
- In cases of a delayed or refused MLA request or EIO, or other mutual recognition instrument, ask for assistance from Eurojust as soon as possible, before a significant delay has occurred or an official negative reply has been received.
- If information on national criminal law provisions is needed in the course of an ongoing cross-border investigation, obtain the necessary clarifications promptly via the National Desks or Liaison Prosecutors of non-EU countries at Eurojust, which are trusted sources of up-to-date national legal information and its interpretation.
- Enhance close cooperation and mutual trust between investigators and prosecutors by meeting in person, particularly in complex or sensitive cases; consider using CMs organized by Eurojust as a tool for that purpose.
- Discuss your cross-border case from the different perspectives of all of the countries involved to ensure that a common understanding is achieved. Environmental crime cases may need more explanation and specialized expertise than cases relating to other crime types. Use CMs organized by Eurojust to discuss and agree on a common investigation and prosecution strategy. Keep in direct contact or, if a language barrier exists, keep in contact via National Desks and Liaison Prosecutors at Eurojust, to inform each other about steps planned in the investigation and to coordinate investigative actions.
- In multilateral cases, issue MLA requests, EIOs or other mutual recognition instruments in a coordinated manner, so that the results can be used in the proceedings of all of the countries involved, and decide in a coordinated manner about the best place to prosecute, so that ne bis in idem issues and possible conflicts of jurisdiction can be prevented.
- Consider establishing a JIT, which has proved to be an effective tool for the prompt and direct exchange of evidence in a number of Eurojust environmental crime cases. JITs provide a basis for working in a multidisciplinary team of experts, including prosecutors, police, environmental protection inspectors, customs, tax authorities, etc. Working in a JIT helps to build trust among authorities



from different jurisdictions. In a JIT setting, national authorities have a complete overview of the evidence gathered in all of the jurisdictions involved and have the possibility to analyze it jointly, which will ensure a stronger evidential position for all of the national judicial authorities involved (18 Report on Eurojust Casework on Environmental Crime, January 2021).

- Considering that cross-border organized crime groups are often involved in committing environmental crimes, strive to detect and investigate the involvement of organized crime in the environmental crime that has been committed, be it waste trafficking, wildlife trafficking or environmental pollution. If an environmental crime case is identified as a case involving cross-border organized crime, this qualification enables the case to be prioritized and a more extensive set of investigative measures to be used, including special investigative tools for organized crime. This qualification also enables national authorities to refer the case to Eurojust, so that cross-border coordination and cooperation is ensured in environmental crime cases on a more regular basis.
- Environmental crimes involve a financial component, as their incentives are often the reduction of economic costs or the generation of profit; therefore, strive to conduct a financial investigation as part of the criminal investigation in each environmental case. When establishing a JIT, include financial investigation and asset recovery in the JIT agreement as objectives of the JIT.
- Strive to identify the existence of ongoing parallel proceedings in other jurisdictions as soon as possible, to avoid conducting linked investigations in a non-coordinated manner. Use Eurojust assistance to check in a prompt and centralized manner whether parallel criminal proceedings are ongoing in any other Member State.
- Consider requesting Europol assistance for information analysis, particularly when extensive amounts of data from different jurisdictions need to be processed.

FOOD FOR THOUGHTS...

Unlike traditional crimes, environmental crimes (and environmental harms) frequently have long-lasting and irreversible effects. This raises questions about the effectiveness of justice systems in dealing with environmental offenders and the damage they cause. Environmental harm cases represent a challenge for 'traditional' justice systems. The implications of such incidents also represent a challenge to punishment-based criminal justice systems.

The way forward...

What is to be done for a more effective countering of Environmental crimes? I would propose to start with the awareness on the long term impact they might



have on the society. Understanding the irreversible impact and the social and economic consequences might lead to legislative endeavors at national level for a higher criminalization of these acts.

REFERENCES

- Faure, M. (2017). The Development of Environmental Criminal Law in the EU and Its Member States. *26 Review of European Comparative & International Environmental Law*, p. 145.
- Holger, T. (2006). *EC Competence for Environmental Criminal Law*. College of Europe.
- Lynch, M. S. (2014). *Exploring green criminology: Toward a green criminological revolution*. Ashgate.
- Nurse. (2022). *Contemporary Perspectives on Environmental Enforcement*. Int J Offender Ther Comp Criminol.
- Nurse, A. (2015). *Policing wildlife: Perspectives on the enforcement of wildlife legislation*. Palgrave Macmillan.
- Stallworthy, M. (2008). *Understanding environmental law*. Sweet and Maxwell, p. 8

ENDNOTES

1. Pollution of the air, water and soil caused by toxins such as plastics, heavy metals and nitrates, caused by factors such as toxins and gases released by factories, combustion of fossil fuels, acid rain, oil spill and industrial waste.
2. The emission of greenhouse gases due to human activity causes global warming, which in turn causes an increase in temperature that then leads to rising sea levels, melting of polar ice caps, flash floods and desertification.
3. We are facing a shortage of resources such as food, water and fuel to sustain the rising global population, particularly in developing countries. Intensive agriculture attempting to lessen the problem actually leads to more damage through the use of chemical fertilizers, pesticides and insecticides.
4. An excessive amount of waste is produced and dumped in the oceans. Nuclear waste is particularly dangerous, as well as plastics and electronic waste.
5. The increase in the production of carbon dioxide by humans causes the oceans acidity to rise, which has a negative impact on marine life.



6. Species and habitats are becoming extinct due to human activity. This causes an imbalance in natural processes like pollination and poses a threat to ecosystems – coral reef destruction is particularly affected.
7. Loss of trees in order to make space for residential, industrial or commercial projects means that less oxygen is produced, and temperature and rainfall are affected.
8. Pollution caused by chlorofluorocarbons (CFCs) in the air creates a hole in the ozone layer, which protects the earth from harmful UV radiation.
9. Pollutants in the atmosphere such as sulfur dioxide and nitrogen oxides cause acid rain, which has negative consequences for humans, wildlife and aquatic species.
10. Lack of clean water is one of the leading environmental problems currently. Pollutants in the air also cause issues such as respiratory disease and cardiovascular disease.
11. https://knowledge4policy.ec.europa.eu/foresight/tool/megatrends-hub_en
12. In addition, the following EU and international sources were used as reference points for establishing the definition of an environmental crime and for identifying the cases relevant for the study: the environmental offences set out by Directive 2008/99/EC on the protection of the environment through criminal law and the typology of environmental crime applied by Europol, the United Nations Environment Programme and Interpol.
13. Such a proposal is currently ongoing in Romania aiming to stop the waste import <https://www.constantapress.ro/news/proiectul-legislativ-pentru-stoparea-traficului-de-deseuri-ilegale-a-ajuns-in-comisia-de-mediu-a-senatului-reprezentantii-remat-au-cerut-respingerea-lui?uid=635763>

