

**Protection of the environment through criminal law:
the implementation and application of the Eco-crime Directive
in the EU Member States**

Answers to the questionnaire

Estonia

1/ *Who can be held criminally liable in your country?*

a/ In Estonia, both natural and legal persons can be held criminally liable. The criminal liability of a legal person needs to be specified in the corresponding provision, but it extends to almost all types of crimes (excluded are only those which can only be committed by natural persons).

A legal person is held responsible for an act which is committed in the interests of the legal person by its body, a member thereof or by a senior official or competent representative (§ 14(1) of the Penal Code¹). Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence (§ 14(2) of the Penal Code), but it is possible to only hold the legal person liable without prosecuting the natural person(s). In the case-law of the Supreme Court of Estonia, it has been accepted that the legal person may be held liable for an act committed by any employee, if it has been ordered or at least approved by a person listed in § 14(1) of the Penal Code.

Legal persons are deemed to have acted without guilt if an act committed by a competent representative thereof was inevitable for the legal person (§ 37¹ of the Penal Code), and are thus not held criminally responsible (this, however, does not preclude the liability of the natural person).

b/ Persons inciting, aiding and abetting the actual perpetrators of a crime can also be held criminally liable in Estonia (§ 22 of the Penal Code).

2/ *Are the Art. 3 offences criminal offences in your country?*

The art 3 offences are criminal offences in Estonia, both when committed intentionally and through negligence (chapter 20 and chapter 22, division 3 of the Penal Code). I am not aware of any gaps in the transposition.

3/ *How were the Art. 3 offences implemented?*

a/ All the art 3 offences are implemented in the Penal Code. Minor environmental offences (misdemeanours) are not codified in the Penal Code – these provisions are included in different environmental laws.

¹ "Karistusseadustik" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/519032015003/consolide>.

b/ The legislator has not used the copy-paste method.

c/ Those requirements are mostly present in Estonian law, although not always with identical wording. As an administrative judge, I have not needed to apply these provisions. However, since similar requirements exist in other provisions of the Penal Code, they probably do not pose a significant difficulty to a judge. What is probably the most difficult when dealing with environmental offences is the application of § 14 of the Penal Code (i.e. the prosecution of a legal person), especially in misdemeanour (i.e. minor crime) cases.

4/ What about the availability of criminal sanctions to punish environmental offences?

a/ Criminal sanctions include pecuniary punishments as well as imprisonment.

The range of pecuniary punishments in Estonia for natural persons is from thirty to five hundred daily rates, with the daily rate calculated on the basis of the average daily income of the offender, but no less than 10 Euros. The court may reduce the daily rate due to special circumstances or increase the rate on the basis of the standard of living of the offender. In case of a legal person, the court may impose a pecuniary punishment of 4,000 to 16,000,000 Euros (§ 44 of the Penal Code).

Imprisonment may be imposed for a term of thirty days to twenty years, or life imprisonment (§ 45 of the Penal Code). For environmental offences, the maximum length of imprisonment is generally two or five years, in one case seven years.

Commission of the offence by a group is an aggravating circumstance to consider when imposing the punishment (§ 58 of the Penal Code).

b/ The court shall confiscate the assets acquired through an intentional offence if these belong to the offender at the time of the making of the judgment or ruling. As an exception, assets belonging to a third person at the time of the judgment or ruling may be confiscated, if these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price, or if the third person knew that the assets were transferred to the person in order to avoid confiscation (§ 83¹ of the Penal Code). It must be noted, that the confiscation of objects and assets is a penal measure (i.e. confiscation is not an administrative sanction).

c/ The court may confiscate the object used to commit an intentional offence. If the court decides to suspend the sentence on probation, among other supervisory requirements and obligations, the court may impose on the offender the obligation to remedy the damage caused by the criminal offence within a term determined by the court. Otherwise, the remedying of environmental damage is organised by the Environmental Board, using administrative measures (§§ 14–15 of the Environmental Liability Act²). See also answer to question 5(b)(iii).

² "Keskkonnastututuse seadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/517062015003/consolide>.

5/ What about the actual use of criminal sanctions to punish environmental offences?

a/ Environmental offences are brought to criminal courts rather often, as conducting criminal or misdemeanour (i.e. minor crime) proceedings is required upon the appearance of facts referring to criminal or misdemeanour offence. A county court hears both criminal and misdemeanour matters as a court of first instance (§ 9(1) of the Courts Act³). There is however a limited number of cases, where the county court conducts the first instance proceedings for misdemeanour matters. Firstly, the county court will conduct the first instance proceedings if the county court is competent to hear the misdemeanour matter or decide on confiscation pursuant to law (§ 83(1) of the Code of Misdemeanour Procedure⁴). Secondly, a county court will hear a misdemeanour matter if the imposition of detention or prohibition to keep animals is decided in the hearing of the misdemeanour matter (§ 83(2) of the Code of Misdemeanour Procedure). In other cases, a body conducting extra-judicial proceedings conducts misdemeanour proceedings (see question 8).

Even though all types of cases reach criminal court, it must be noted that acts that match the elements of environmental crime provisions are committed rather rarely: the overwhelming majority of the environmental offences are small-scale misdemeanours (i.e. catching undersized fish etc).

The main environmental offences which the courts hear are the crimes included in article 3 (f), (b) and (h) of the directive. This cannot however lead to the conclusion that other cases are limited to administrative proceedings etc, but rather that the offences included in other points of the article are committed significantly less often (or not at all). It should also be emphasized that this kind of a division is conditional, because some of the crimes can be included under different points of article 3 of the directive.

b/ For criminal offences it is possible to impose a pecuniary punishment or imprisonment as principal punishments (§ 44(1) of the Penal Code) and for misdemeanours (minor crimes) it is possible to impose a fine or detention as principal punishments (§ 47 and 48 of the Penal Code). As a supplementary punishment, it is possible for a criminal offence relating to violation of hunting or fishing rights to deprive the offender of the hunting and fishing rights for the term of up to three years (§ 52 of the Penal Code). In addition, for commission of a prohibited act against an animal, a court may impose, as a supplementary punishment, a prohibition on the keeping of any animals or animals of certain species for up to five years in the case of a criminal offence and for up to three years in the case of a misdemeanour (§ 52² of the Penal Code).

i) Imprisonment is used as widely as the pecuniary punishment (approximately 50% of cases); though in vast majority of cases the imprisonment is used with probation. The length of the inflicted prison sentence varies mostly from four months to a year, averaging at approximately seven months.

³ "Kohtute seadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/516032015002/consolide>.

⁴ "Väärteomenetluse seadustik" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/503082015005/consolide>.

As outlined in the response to question 5a, the courts have mainly heard cases included in article 3 (f), (b) and (h). The average term of imprisonment for cases included in article 3 (f) is approximately five months. It is worth noting that the pecuniary punishment is rarely used for violations included in article 3 (f). On the other hand, imprisonment for violations included in article 3 (b) is mostly not applied, but rather the pecuniary punishment. In addition, the prosecution of legal persons occurs quite often in these cases. The average imprisonment for violations included in article 3 (h) is the highest of the environmental offences – an average of one year. However, in half of the cases relating to article 3 (h), the pecuniary punishment is used.

ii) For an environmental criminal offence the courts impose a pecuniary punishment mostly from 100 to 300 daily rates, averaging at approximately 200 daily rates (in Euros approx 1,000-10,000 Euros). For legal persons most of the pecuniary punishments are located in the range of 10,000 to 100,000 Euros; I am not aware of cases where a pecuniary punishment of near the maximum amount (i.e. 16,000,000 Euro) has been imposed.

The fines imposed for environmental misdemeanours vary depending on the field of the offence. For example in misdemeanours that relate to animal protection, hunting and fishing, the imposed fines average at approximately 50 Euros; if the misdemeanour relates to waste or water protection, the fines average at approximately 150 Euros; if the misdemeanour relates to chemicals, radiation or the protection of ambient air or earth's crust, the fines average at approximately 250 Euros; if the misdemeanour relates to pollution the average imposed fine is over 550 Euros.

Confiscation is used in most cases of environmental crimes and misdemeanours. Mostly the confiscation of the direct object of the offence (e.g. undersized fish) is used. Other types of confiscation (e.g. the confiscation of an object used to commit the offence or the confiscation of assets acquired through an offence) are used much less frequently.

iii) Different environmental laws, e.g. the Earth's Crust Act⁵, Forest Act⁶, Fishing Act⁷, Nature Conservation Act⁸, Hunting Act⁹, Water Act¹⁰ and the Environmental Charges Act¹¹, include provisions on compensation for damaging the environment. For example, according to § 74(4¹) of the Earth's Crust Act damage to the environment shall be compensated for by the person who has damaged the environment and according to § 74(5) environmental damage shall be collected by the Environmental Inspectorate and

⁵ "Maapõueseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/510082015001/consolide>.

⁶ "Metsaseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/517062015002/consolide>.

⁷ "Kalapüügiseseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/504092015011/consolide>.

⁸ "Looduskaitseeseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/517062015004/consolide>.

⁹ "Jahiseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/530012015001/consolide>.

¹⁰ "Veeseadus" in Estonian. Available only in Estonian: <https://www.riigiteataja.ee/akt/130062015005>.

¹¹ "Keskkonnatasude seadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/504092015010/consolide>.

the compensation for damage shall be transferred to the state budget. The compensation of damages is not a penal measure, but measure similar to a civil tort remedy, which is solved based on the Environmental Liability Act, Law of Obligations Act¹² (chapter 53 – unlawful causing of damage) and the provisions on compensation for damaging the environment found in specific environmental law. When the court is discussing an environmental criminal offence, the monetary compensation for the damage caused to the environment will also be an issue adjudicated by the court, but the compensation may also be adjudicated separately, in civil procedure. In cases of misdemeanour (i.e. minor crime) proceedings, the compensation is always adjudicated in a separate civil procedure. Otherwise, the remedying of environmental damage is organised by the Environmental Board, using administrative measures.

c/ A practical issue that has restricted the number of cases reaching criminal courts has been that due to communication issues between the police, prosecutor and the Environmental Inspectorate misdemeanour (minor crime) and criminal proceedings for the same act have commenced roughly at the same time. When this occurs, the Environmental Inspectorate will likely sanction the person subject to misdemeanour proceedings before criminal proceedings even reach a court, thus creating a ground to terminate the still ongoing criminal proceedings due to the *ne bis in idem* principle.

Even though the prosecution is not specialized, the prosecution has the use of professional inspectors, who in their everyday work exercise supervision in all areas of environmental protection – the Environmental Inspectorate as a specialized institution conducts pre-trial proceedings in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources and extra-judicial misdemeanour proceedings. According to the representatives of Environmental Inspectorate, there is also no lack of time or financial resources that would impede the inspections or proceedings. Altogether, the general understanding is that environmental offences reach criminal courts rather often.

6/ As to structure of prosecuting environmental crime

Neither prosecution nor court procedure for environmental crimes are concentrated on specialized prosecution offices/courts or sections within prosecution offices/courts. However, according to § 31(1) of the Code of Criminal Procedure¹³, amongst others, the Environmental Inspectorate performs the functions of an investigative body within the limits of its competence. The limits of its competence are provided for in § 212(2)(7) of the Code of Criminal Procedure, according to which the Environmental Inspectorate conducts pre-trial proceedings in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources. This means that the Environmental Inspectorate plays a significant role

¹² "Võlaõigusseadus" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/516062015006/consolide>.

¹³ "Kriminaalmenetluse seadustik" in Estonian. Available in English: <https://www.riigiteataja.ee/en/eli/501042015002/consolide>.

in gathering evidence and providing professional expertise for the prosecution. This also means that courts have access to this professional expertise through the evidence presented to the court.

The Code of Misdemeanour Procedure provides a regulation in § 52, according to which the Environmental Inspectorate is the body that conducts extra-judicial proceedings concerning environmental misdemeanours (i.e. minor crimes) provided for in the Penal Code (for example § 366 of the Penal Code, which penalizes the violation of procedure for utilization of natural resources or procedure for maintenance of records on pollution). In addition, special environmental laws provide that the Environmental Inspectorate is the body that conducts extra-judicial proceedings (for example § 72(2)(1) of the Forest Act). This means that the Environmental Inspectorate conducts the first instance proceedings and imposes the punishment (only a fine) for environmental misdemeanours. The Environmental Inspectorate will also be a party to court proceedings and execute the functions of the prosecution.

7/ What about the availability of administrative sanctions to punish environmental offences?

a/ In Estonia, fines are imposed for misdemeanours (i.e. minor crimes). While misdemeanours are counted among criminal offences, fines for misdemeanours can be imposed not only by a court, but also by a body conducting extra-judicial proceedings (§ 47 of the Penal Code). If a person commits an act which comprises the necessary elements of both a misdemeanour and a criminal offence, the person shall be punished only for the criminal offence. If no punishment is imposed for the criminal offence, the person may be punished for the misdemeanour (§ 3(5) of the Penal Code).

Administrative sanctions include issuing a precept and, on failure to comply with the precept, imposing a coercive penalty payment¹⁴ (multiple times, if necessary) or performing the obligation at the expense of the addressee or organising the performance of the obligation by a third party. Administrative sanctions can be applied alongside criminal sanctions.

b/ Administrative bodies that exercise state supervision over environmental matters and organise the remedying of environmental damages are the Environmental Inspectorate, the Environmental Board and local authorities; in some cases also the Police and the Technical Regulatory Authority.

As written in part (a) of this question, the administrative bodies can issue precepts (i.e. administrative acts which impose on a person an obligation to perform a required act or refrain from a prohibited act) as well as clean up the damages themselves and oblige the offender to pay the bill. While there is no explicit legal basis to suspend the permit until the damages are remediated, the precept can include an obligation to stop the activities causing the damage.

¹⁴ Coercive penalty payment as a measure of administrative coercion is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a precept within the term indicated in the warning (§ 10 (1) of the Substitutive Enforcement and Penalty Payment Act).

8/ *What about the actual use of administrative sanctions against environmental offences?*

a/ For many misdemeanour cases (i.e. minor crime cases, not administrative cases), all of which are provided by law, the first instance proceedings are not conducted by a court, but rather by a body conducting extra-judicial proceedings. In environmental misdemeanour matters, this body is the Environmental Inspectorate.

The Environmental Inspectorate also has the authority to impose administrative coercive measures as the result of administrative procedures. When the Environmental Inspectorate is conducting misdemeanour proceedings (i.e. a type of criminal procedure), it has the right to impose penalties (e.g. a fine) and other penal measures (e.g. confiscation of object used to commit offence and the object of offence – see § 83(6) of the Penal Code).

b/ Many environmental laws also provide for the possibility to apply administrative coercion for some minor violations (i.e. when administrative coercion would clearly be more efficient compared to offence proceedings). A precept to remedy an unlawful situation is the main administrative coercion measure used. Remedial measures are applied in order to restore, replace or compensate for natural resources or the benefits thereof and to eliminate significant risks threatening human health. Simultaneously, preventive measures are applied, which help eliminate a threat of damage, reduce the extent of possible environmental damage, or prevent further environmental damage as well as damage to human health. These remedial (and preventive) measures are applied in approximately 1/3 of the administrative coercion proceedings in environmental matters to ensure that the most effective measures are taken to prevent any damage from occurring or at least limit any further damage from taking place.

If a person fails to comply with this precept, substitutive enforcement and coercive penalty payment¹⁵, the maximum of which in environmental matters is in most cases 32,000 Euros, may be applied. It is worth noting that this penalty rate is exceptionally high compared to other fields, where as a rule, the maximum rate is from 3,200 Euros to 9,600 Euros. It is not possible to define the average amount of penalty payments, as it depends highly on the field and the nature of the violation. In general however, the penalty payments for environmental matters are substantially higher than in other areas of life, and the maximum penalty rate, for example, is used considerably more often than the maximum punishment rate.

¹⁵ Coercive penalty payment as a measure of administrative coercion is an amount determined in a warning, payable by the addressee if the addressee fails to perform the obligation imposed by a precept within the term indicated in the warning.