

EUFJE Conference 2015

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

Bolzano, 30 and 31 October 2015

REPORT ON POLAND

1. Who can be held criminally liable in your country?

b) In Poland criminally liable might be held both natural and legal persons.

Criminal liability of legal persons extends to specific types of crimes listed in the act on the liability of collective entities for acts prohibited under penalty.

Legal persons are criminally liable for all environmental crimes listed in criminal code, as well as for crimes listed in other acts. Catalogue of environmental crimes for which criminally liable are held legal persons is wide.

Legal persons are held criminally liable for prohibited conducts done by natural persons and when specific conditions mentioned in the act on liability of collective subjects are fulfilled. One of such conditions is conviction under a final and valid court judgment of a natural person for committing prohibited conduct or issuing a judgment conditionally discontinuing a criminal proceeding against natural person or proceeding in the case of tax offence or issuing a decision on giving to this person a permission for voluntary submission to punishment or issuing a court decision on discontinuation of proceeding against natural person due to circumstances excluding punishing the perpetrator.

The basic condition of criminal liability of legal person is the conduct of natural person that brought or could bring to legal person benefits, even non – material.

The hypotheses mentioned in art. 6.1 and 6.2. of the Eco – crime Directive are covered fully in Polish law. Legal persons can be held liable for environmental offences which have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on: a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person. Legal persons can be held liable where the lack of supervision or control, by a person referred to above has made possible the commitment of any environmental offence for the benefit of the legal person by a person under its authority.

- c) Persons inciting, aiding and abetting the actual perpetrators of a crime are held also criminally liable.

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

Criminal offences mentioned in Art. 3 Eco – crime Directive are environmental crimes in Poland. Polish law does not have any gaps in the transposition of the Eco – crime Directive. The Directive was transposed fully. In Poland criminalized is not only serious negligence but also ordinary negligence and recklessness.

3. How were the Art. 3 offences implemented?

The Art. 3 offences were implemented in Poland in the criminal code as well as parts of environmental laws.

In relation to Art. 3 the Polish law requires only possibility of danger to life or health. Referring to the water quality, soil quality, air quality or animals or

plants is needed substantial damage. The same applies to the other offences mentioned in Art. 3, Polish law requires only possibility of danger to life or health, and not causing death or serious injury to any person.

Polish law requirements shall be considered as the strict ones.

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

a) The principal criminal sanction in Poland is imprisonment but Polish environmental criminal law allows also fines.

The minimum and the maximum of imprisonment is: 3 months to 12 years.

The minimum and the maximum of 100 PLN (25 euro) to 1.080.000 PLN (240.000 euro).

In the case when the crime is committed by an organized criminal group then the punishment must be higher than the lowest punishment for this crime but a judge may give a punishment higher by half than the one foreseen for this crime.

b) In the Polish law the forfeiture of illegal benefits is possible.

c) A criminal judge can impose remedial sanctions for example order the defendant to reinstate to the prior state and condition.

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

a) Environmental offences in Poland are brought to criminal courts. It happens in every case of detection of environmental crime. The court investigates all kinds of cases prohibited in the criminal code and particular environmental acts.

b) Imprisonment is used often with probation. The maximum length is 3 years. Very often are used financial fines. It refers to Art. 3 a, f, g.

The forfeiture of illegal benefits is used as an additional monetary sanction.

Criminal courts can also impose remedial sanctions.

c) The main reason for which environmental offences would not reach a criminal court is difficulties of proof and lack of training or specialization.

The rule is that punishment of crimes in Poland falls within the competence of a court. But administrative authority can impose administrative sanctions for breaching the environmental acts. Environmental rules are enforced.

For animal waste storing on the improper territory (owned by the perpetrator) and endangering people's lives and health a big Polish businessman was convicted to 8 years of imprisonment by the court of first instance. The second instance court acquitted the defendant. But the Supreme Court overturned the sentence of second instance court and ordered in - detail investigation of the case because appeared doubts about the innocence of the defendant.

6. As to structure of prosecuting environmental crime.

Prosecution and court procedure for environmental crimes are not concentrated on specialized prosecution offices or specialized sections.

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

a) The rule is that courts investigate environmental offences. Administrative bodies can impose administrative fines. The minimum and maximum are varied depending on the conduct. For example when the case concerns the transportation of waste the punishment is between 2000 PLN (500 euro) and 10000 PLN (2500 euro), for cutting down one tree the punishment is between 810 PLN (200 euro) and

10500 PLN (2520 euro). The rule is that the administrative fines can be imposed by specialized environmental protection bodies.

b) Remedial sanctions can be imposed by specialized environmental protection bodies. Administrative bodies can give remedial orders and can order to stop an illegal conduct. They can also suspend permits.

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

- a) Environmental offences are sanctioned by administrative authorities. It happens very often i.a.: waste, cutting down trees without permission.
- b) In practice these are administrative fines. In practice these fines are very high. It depends on a particular case and circumstances. Remedial sanctions are used often and seems to be effective.

An example:

A company conducted the business activity on the basis of the permissions to introduce to air gases and dust. Inspection (administrative authority) concluded that the company exceeded the emission level mentioned in permission. For the violation of introduction of gases and dust into air the administrative body imposed administrative fine of 228 171 PLN (57 000 euro) The company appealed to the higher instance body but the decision remained unchanged. The company appealed to the administrative court which concluded that this fine was correctly calculated.