

POLAND

1.1. In my country proceedings are initiated ex officio. It means that authorities are obliged to initiate and lead proceedings, they must initiate proceedings always when they find out about committing an offence. The way how they found out about it is not important. It can find out from other authorities, TV, newspapers, radio and in any other way.

Polish penalty proceedings code in art. 304 states that everyone who finds out about committing any offence prosecuted ex officio has the duty to report it to prosecutor or police.

In Poland offences are divided into those prosecuted ex officio and those subject to private prosecution. Environmental offences belong to those prosecuted ex officio.

The reception of a notice of violation by prosecutor causes immediate initiation of proceedings.

1.2. There is no required time in my country in criminal proceedings to go from a citation to a first instance judgment and appeal judgment. But Polish penalty proceedings code gives tools creating conditions for finishing the case in reasonable time. About it states art. 2 § 1 p. 4 of penalty proceedings code.

1.3. Among these procedural steps which take time is gathering evidence for example: hearing witnesses, taking proof from experts opinions, visual examination.

1.4. Yes. I am aware of difficulties with this guarantee therefore I think that the most important is to care about concentrating evidence. It allows shorten time of conducting proceedings.

1.5. In my country we have a special act from 17 June 2004 about appeal against right violation to hearing the cases in preliminary proceedings and judicial proceedings in reasonable time. According to this act everyone has right to appeal against right violation to hearing the cases in reasonable time. This tool allows to force prosecutor and court to proceed according to rules and hearing

the case in reasonable time. When court states that the case was conducted extensively, it means that dates were not respected, court ex officio or on demand of complainant orders executing by the court or prosecutor certain actions in given time. On demand of complainant court awards the complainant certain amount of money.

Moreover, president of each court and president of prosecutor office has to supervise if proceedings are conducted quickly and efficiently.

2.2. Implementation of judgements in Poland takes place in different ways. It depends on the type, i.e. if it is a civil judgement, penal judgement or administrative decision. When remedial sanctions were taken by civil judgement then in case of lack of voluntary implementation of judgement creditor may demand to commence execution proceedings. This proceeding is led by court bailiff. Possible is forced execution of financial debt and non-financial obligations. Means of force depend on the type of executed by bailiff obligation.

In case of forced implementation of penal judgement applied is Executive Penal Code from June 6, 1997. Executive proceedings are initiated immediately when penal judgement became enforceable (art. 9 EPC).

Sentenced to prison is ordered by court to appear in prison which is located near their place of residence with ID. If the sentenced person does not appear in the prison court takes them to prison and charges them with cost of the taking.

The regional court supervises the execution of restriction of liberty. The probation officer organises and implements the penalty. Restriction of liberty depends on performing free of charge social work.

In case of a fine ordered by penal court the sentenced person is summoned to pay it within 30 days. After this deadline the fine is collected by execution proceedings. If execution is unsuccessful the fine is changed in to social work. When sentenced person does not agree on social work or in court opinion such change is impossible or pointless the court orders commutable penalty of imprisonment. The penalty of imprisonment cannot last longer than 12 months or longer than penalty for this offence. If the act does not list a penalty of imprisonment for this offence the penalty of imprisonment cannot be longer than 6 months.

In case of other penalties e.g. in the instance of penalty of taking a certain stance or performing a certain occupation the court sends a copy of judgement to the proper government administrative body or local government and employer or institution in which the sentenced person holds a position prohibited by the court or performs occupation prohibited by the court.

In the instance of sentencing the perpetrator on request of the aggrieved party and another entitled person the court may apply regulation of civil code order reinstatement of the damage in total or partly order a compensation for sustained harm.

Polish penal code in art. 47 § 2 provides directly that the sentence of the perpetrator for an offence against environment the court may order compensatory damage for the National Fund of Environmental Protection. In this case the court acts ex officio and does not require an application.

Execution of damage repairment and compensatory damage takes place during civil proceedings according to part three of Civil Proceedings Code from 17 November 1964.

Reinstatement of the previous state takes place during civil proceedings too. To the execution of this type of services is entitled creditor. Penal court ex officio sends the entitled warrant of execution free of charge.

Supervision over the proceeding of court bailiff is done by common court. For the acts of court bailiff is possible a complaint (Art. 767 § 1 C.P.C.) Administrative decisions are performed according to the Act of execution administrative proceeding from 17 July 1966. Execution of financial service and non financial service takes place in a different way. While executing non financial services it is possible to fine in order to compel. After fulfilling certain conditions in case when execution touches upon a duty to perform an action which can be outsourced it is possible to apply performance replacement for which the debtor will pay.

2.2. Yes. Criminal court can impose remedial sanctions. It may do it sometimes ex officio and sometimes on request by entitled person.

For example the sentencing the perpetrator for an offence against environment the court may order compensatory damage for the National Fund of Environmental Protection. In this case the court acts ex officio and does not require an application.

In the instance of sentencing the perpetrator on request of the aggrieved party and another entitled person the court may apply regulation of civil code order reinstatement of the damage in total or partly order a compensation for sustained harm.

In case conditional discontinuance of criminal proceedings the court is obliged to impose on the perpetrator the duty to compensate damage in total or partly. May impose as well damage compensation or instead of these duties impose compensatory damage. In special cases listed in the act criminal court may ex officio impose compensatory damage e.g. art. 35 § 5 Polish act on animal protection.

2.3. NGO's can submit a request to participate in criminal proceedings up to the beginning of court proceedings. The request should be justified with the need of protection of social interest or important individual interest according to the NGO's statute.

The access to criminal proceedings is easy because the court allows the NGO's to participate in criminal proceedings always when it lies in the interest of justice.

NGO which participates in criminal proceedings may take part in hearing, state the opinion and make statements.

3.1. In Polish criminal law exists a principle of material truth, e.i. that the basis of all decisions should be real factual findings. During the proceedings must be taken into account legally protected interests of the aggrieved with regard for their dignity.

The accused is considered innocent until their guilt is proven and confirmed by judgement in force. Irremovable doubts are interpreted to the advantage of the accused. The consequence of this principle is a fact that material burden of proof of guilt lies on the prosecutor.

Means of proof in criminal proceedings are many. Proof in criminal proceedings can be among others: explanations of the accused, witness statements, examination evidence, experts statements, proof of documents and others.

Polish law prohibits however conducting and using evidence obtained by prohibited act.

In case of environmental offences most frequent evidence are witness statements, experts statements, examination evidence including examination evidence with participation of experts and proof of documents.

The biggest problem is conducting evidence from experts statements when there are few experts on a given field. It may prolong the waiting time for this statement.

3.2. The prosecutor has to gather all evidence and present trustworthy proofs to support charges included in the bill of indictment. In my opinion it is not a restrictive impact. A bigger problem for the prosecutor are offences whose proof requires the need to present evidence supported by expert knowledge.

3.3. The impact of the principle on the assessment of facts and guilt in the conviction decision is crucial. The principle does not have overly restrictive impact, in general, for some type of cases.

3.4. The principle has huge impact on court decisions. In case of any doubts if we are dealing with an offence the court must issue an acquittal decision. It is the same in all cases.

4.1. Polish environmental law uses self-monitoring and reporting obligations. The user of environment may be obliged to give information to environmental inspector. Such procedure is not used in criminal proceedings but in administrative proceedings in the field of environmental protection. These proceedings may conclude with issuing an administrative fine.

4.2. Yes, in case of criminal proceedings appear difficulties caused by the privilege against self-incrimination. Drawing the boundaries is not easy and can cause difficulties which evidence can be used in favour of the accused.

5.1. There may be cases that Polish court is forced to assess if we are dealing with double jeopardy. Such case will happen when earlier was a criminal proceeding against the same person and for the same offence. The court is obliged to dismiss the criminal proceeding based on art. 17 § 1 p. 7 C.P.C.

Doubts may appear regarding issuing an administrative fine according to the administrative proceedings. It may happen that the same act is at the same time an offence.

5.2. Doubts appear when we deal with earlier administrative proceedings in which a fine was issued. In this case appear doubts if it is double jeopardy or

not. Cases in which mandatory cuts in the income support were introduced can hardly be considered double jeopardy as in these cases there are no fines. Lack of compliance does not create conditions to give only support.

6.1. Penalties inflicted in criminal proceedings are not too severe. More severe are fines inflicted in administrative proceedings.

6.3. I believe that for the scope of fine should not matter if the offence was committed by natural or legal person. Important is the degree of law infringement. The height of the fine should depend on income level of the accused. Criminal courts inflict fine depending on income of the perpetrator.

7.1. In Polish criminal law the next of kin of the accused has the right to refuse giving testimony. The accused can refuse to give explanation or answer questions. Both next of kin and the accused must be informed about their rights. In Poland there is no possibility to record phone calls to obtain evidence of an offence.

8.1. Yes, I noticed an impact of the right to life on the environmental adjudication in my country. In my opinion, this right has influence on assessment of social harm of the act, so it impacts the height of punishment. I would be willing to use this right in support of environmental adjudication, when the act influences life of other people. For example there would be severe contamination of the environment.

9.1. Yes, I consider impact of principle of sustainable development on environmental adjudication.

9.2. I agree with the proposition that, in environmental adjudication, it is only fit to impact on the sanctioning policy, meaning choice and level of sanctions inflicted.