The monopoly of the state for the right to inflict punishments and penalties is doubtlessly the most prominent attribute of national sovereignty – the criminal law exhibits a specific association with the state law. It is the branch of the law that is the least flexible in adapting both to the international law and the EU law. This refers to all sections of the criminal law, including the field that we may name environmental criminal law (droit de penal de l’environement in French, Umweltstrafrecht in German).

Attempts have been made to internationalise and further to Europeanise the environmental criminal law. If we adopt the publication of U. Thant’s famous report The problems of human environment in May 1969 as the starting point for the international community’s interest in the threats and thus the protection of environment, we will notice that merely ten years afterwards the problems of environmental protection appeared on the agenda of the AIDP Congress (Hamburg 1979), preceded by a preparatory colloquium (Jabonna near Warsaw 1978)\(^1\). AIDP addressed those issues again on the Rio de Janeiro Congress in 1994, preceded by the preparatory colloquium in Ottawa in 1992.\(^2\) Despite the stricte scientific nature of the Congresses, the normative structures developed there had considerable impact on the concepts of criminal liability in environmental protection in international and EU law. This was simply due to the fact that the Congresses were attended by scientific experts who then in one way or another participated in the preparation of international, EU and domestic laws.

International and European criminal law - definitions

Both the international and European criminal law is very complex, controversial notions with a vast collection of specialised literature. However, the literature on the subject is simply too broad to review here. Therefore I will only outline the basic concepts.

The notion of international criminal law in its specific sense stems from the so-called Nuremberg Principles, developed after World War II and defining crimes against peace, war crimes and crimes against humanity. Later, genocide, apartheid and international terrorism\(^3\) crimes have been included in the Principles. Also in the international crime law its strict sense we can find elements of environmental protection, for example in Protocol I to Geneva Conventions of 12 August 1949 relating to the victims of international armed conflicts, first presented for signing in Bern on 12 December 1977 and opened for signature in Geneva on 18 May 1977 Environmental Modification Convention (ENMOD)\(^4\). Let us recall Art. 35 (3) of the aforementioned Additional Protocol to the Geneva Conventions: “It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” For employing such means of warfare the entity shall be liable for international crime directly pursuant to the international law. Since the creation in Rome of the International Criminal Court this liability is no longer theoretical, like in the 1970s. Setting fire to Kuwait’s oil-wells during Operation Desert Storm is an example of such crime.

However, those considerations have little to do with everyday life; therefore we shall now return to the field of European criminal law, as it is much more significant to us. The term European criminal law covers a set of instruments and norms, comprising:

a) regulations set forth in the Community law (today: EU law)  
b) regulations concerning international cooperation in criminal cases  
c) regulations protecting human rights, in particular the European Convention on Human Rights, opened for signature in Rome in 1950.\(^5\)

The first institution to lay foundations for the European criminal law was without doubt the Council of Europe. The European Union joined the process later. At certain point the issues of environmental protection law were included in the works on the European criminal law.

The issues of environmental protection in the activities of the Council of Europe and the European Union

At the beginning of the 1990s the Council of Europe initiated works on what was first planned as a recommendation but evolved into a convention on the protection of environment through criminal law. The works reached seemingly positive conclusion in Strasbourg on 4 November 1998, when the Committee of Ministers of the Council of Europe adopted the Convention on the Protection of the Environment through Criminal Law\(^6\). The success was only apparent, since the Convention has not been yet ratified by any state, has not entered into force (despite the fact that it was conditional only upon three ratifications) and its chances of ever entering into force are nonexistent. Nevertheless, one abiding achievement of the Convention’s authors has been the development of a catalogue of acts harmful to the environment that should be prosecuted as criminal or administrative offenses, as well as highlighting the fact those corporations should also bear liability for such offenses, whereby the corporate liability might be established as either criminal or administrative.

\(^2\) The materials from the colloquium were published in a dedicated volume of “Revue Internationale de Droit Penal”, Wrocław 1978.  
\(^3\) The materials from the colloquium were published in “Revue Internationale de Droit Penal” 1994, n. 3-4.  
Another attempt was made under the banner of the European Union. In order to understand the essence of the conflict between the EU bodies in 2001 ÷ 2005, we must briefly recall the history of European integration. The starting point was the signing of the Treaty of Paris of 18 April 1951, establishing the European Coal and Steel Community (ESCE) and further the Treaties of Rome of 25 March 1957, establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The Treaty on European Union (Treaty of Maastricht), signed on 7 February 1992, established the European Union and changed EEC’s name into the European Community (EC).

Prior to the Treaty of Lisbon, signed on 13 December 2007, which entered into force on 1 December 2009, the structure of the European Union was called the structure of three pillars. The matters of environments were in the 1st pillar, while matters of police and judicial cooperation in criminal cases were addressed by the 3rd pillar.

In 2001 the European Commission presented a draft of relevant directive that was met with greatly varied reactions. Both proponents and opponents of such solution voiced their opinions. Eventually the Council decided that the draft exceeded the competences given to the European Community under the Treaty establishing the European Community (1st pillar), therefore the goals proposed in the directive draft would be achieved by implementing a framework decision (3rd pillar). And that is what happened. Two years later, on 27 January 2003, the Council, acting under Art. 34 (2b) of the Treaty on European Union issued a framework decision on the protection of the environment through criminal law. The Commission appealed against the decision to the Court of Justice of the European Union (ECJ) which annulled it under the judgment of 13 September 2005 against the decision to the Court of Justice of the European Union.


The Directive was issued before the Treaty of Lisbon entered into force. Under the Treaty of Lisbon the European Community ceased to exist and its legal successor is the European Union. The amended Treaty establishing the European Union changed its name into Treaty on the Functioning of the European Union. Under the Treaty of Lisbon the pillar structure of the EU was dismissed and changed into a consolidated international organization. At the same time, the notion of community law lost its rationale and had to be replaced by the notion of EU law after 1 December 2009. However, the Directive 2008/99/EC itself, as it was issued before that date, utilizes the notion of community law, which is understandable given the time frame. When discussing the Directive I will not, therefore, replace the notion of community law with the notion of EU law.

**Directive 2008/99/EC - Concept**

Directive 2008/99/EC is a relatively short act, comprising a preamble, ten articles and two Annexes. The articles refer to: subject matter (Art. 1), definitions (Art. 2), offenses (Art. 3), inciting, aiding and abetting (Art. 4), penalties for natural persons (Art. 5), liability of legal persons (Art. 6), penalties for legal persons (Art. 7), transposition (Art. 8), entry into force (Art. 9), addressees (Art. 10). Annex A lists 61 Community Directives and 8 Regulations adopted pursuant to EC Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2a(i) of the Directive. Appendix B includes three Directives adopted pursuant to the Euratom Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2a(ii) of the Directive. The Member States of the European Union were obliged to transpose the Directive before 26 December 2010.

The EU legislator is aware of the existence of various liability systems in the field of environmental protection, including administrative penalties and damages under civil law. Opting for implementing criminal penalties (item 3 in the Preamble) the legislator emphasizes that such penalties demonstrate a social disapproval of a different nature than administrative or civil ones. Not every breach of provisions on the environmental protection can be prosecuted as crime but rather only those that cause or might cause harm. Then again, not just any harm but serious one, although an obvious reason for penalties might be the damage to conservation of species (item 5 of the Preamble). The Directive refers only to violations of Community laws that order the states to provide for prohibitive measures when implementing Community legislation (item 9 of the Preamble). The Directive provides for the minimum

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15. J. Barcz, op. cit., p. 54.
rules to be implemented in domestic criminal law; Member States of the European Union are free to adopt or maintain more stringent measures than required by the Directive (item 12 of the Preamble).

The crucial Art. 3 of the Directive obligates the Member States to ensure that the following unlawful (unlawful understood in the Directive as being in violation of the Community law and the transposition of the provisions thereof) and intentional acts, or acts committed with at least gross negligence, constitute criminal offenses:

a) discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants

b) collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants

c) shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked

d) operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants

e) production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants

f) killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species

g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species

h) any conduct which causes the significant deterioration of a habitat within a protected site

i) production, importation, exportation, placing on the market or use of ozone-depleting substances.

The aforementioned catalogue has been much improved but its impact on the conservation status of the species

ej) discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants

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The aforementioned catalogue has been much improved but its basic foundations can be traced back to the resolutions of both AIDP Congresses, the Strasbourg Convention of 1998 and the framework decision of the Council of 2003.

Art. 4 of the Directive obliges the Member States to ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offense.

The liability of legal persons is addressed in Art. 6 of the Directive. Par. 1 of this Article obligates the Member States of the European Union to ensure that legal persons can be held liable for offenses referred to in Articles 3 and 4 where such offenses 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) a power of representation of the legal person
b) an authority to take decisions on behalf of the legal person
c) an authority to exercise control within the legal person.

The scope of liability is further extended in Art. 6 (2), obligating the Member States to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offense referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.

Finally, paragraph 3 of Art. 6 states that the liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offenses referred to in Articles 3 and 4.

The provisions of Art. 5 and 7 of the Directive obligate the Member States of the European Union to implement effective, proportional and dissuasive penal sanctions, applicable both to natural persons (Art. 5) and legal persons (Art. 7). The Directive (unlike its draft of February 2007) does not impose on the states to implement sanctions of specific type and amount but rather requires that such sanctions meet three requirements, usually listed in EU laws, i.e. that the sanctions be: 1) effective, 2) proportional, 3) dissuasive.

Polish criminal law on environment and the EU Directive

The essential part of the Directive is that it does not on principle apply directly to the Member States of the European Union but the States are obliged to transposition the provisions thereof into their domestic law, not necessarily verbatim but in a manner convergent with the Directive’s goals. Therefore each Member State, including Poland, is obligated to first examine whether and to what extent its domestic law is already compliant with the Directive and, in the event of discovering any discrepancies, to amend its law accordingly.

When examining the extent of convergence of Polish environmental criminal law, the essence of which is described in Chapter XXII “Criminal offenses against environment” of the Polish Penal Code of June 1997, with the requirements of the Directive, we must distinguish between the liability of natural persons and legal persons, since the assessment of convergence varies depending on the entity.

Considering the liability of natural persons, the following observations can be made:

1) The regulations set forth in Art. 3 (a) of the Directive converge with Art. 182 and 185 of the Polish Penal Code.

The essence of the former Article is the penalisation of polluting water, air or soil with a substance or ionising radiation in such quantity or form posing a threat to the life or health of substantial number of people, or inflict extensive damage on the flora or fauna (Art. 182 § 1, with inadvertent equivalents set forth in § 2). The latter Article qualifies types of crimes by their actual effects in the form of extensive damage to flora or fauna (Art. 185 § 1), or death of a human or substantial damage to the health of a large number of people (Art. 185 § 2).

The threat stipulated as potential in Art. 182 corresponds to the requirements of the Directive. Serious health damage as set forth in Polish provisions is equivalent to serious injury, as specified in the Directive. Extensive damage to flora or fauna as set forth in Polish law, is equivalent


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The regulations set forth in Art. 3 (b) of the Directive converge with Art. 183 § 1, 3 and 6, and Art. 185 of the Polish Penal Code.

Under Art. 183 § 1, those who, in violation of the law, dispose of, collect, utilise or transport substances in conditions or in a manner constituting a threat to the life or health of multiple people, or cause substantial damage to the flora or fauna, commit a crime. Art. 183 § 3 extends the liability to the person allowing the act to be committed, Art. 183 § 6 stipulates liability for inadvertent offenses. Art. 185, covering waste, pollution, radiation, stipulates types of crimes qualified by substantial damage to flora or fauna (Art. 185 § 1) and by death of a human or serious health damage to multiple persons (Art. 185 § 2).

Also here we can observe considerable correspondence of Polish law with the Directive. The differences are similar to those specified in Art. 182. Further differences arise from the fact that the list of waste operations in the Directive is broader that in Art. 183 § 1.

3. The regulations set forth in Art. 3 (c) of the Directive converge with Art. 183 § 2, 4, 5 and Art. 6 of the Polish Penal Code.

Under Art. 183 § 2 those who, in violation of the law, imports from abroad substances hazardous for the environment. The essence of crime under Art. 183 § 4 is illegal (in violation of the law) import or export of waste. Art. 183 § 5 penalises the import or export of hazardous waste without proper declarations or permits, or in breach of the terms and conditions thereof. Art. 183 § 6 stipulates liability for inadvertent offenses.

The provisions of the Polish law address those crimes in a very general manner but in essence converge with the requirements of the Directive. Furthermore, Polish law even exceeds the requirements of the Directive, as there is no notion of substantial volume of waste in the relevant provisions of the Penal Code.

4. The regulations set forth in Art. 3 (d) of the Directive do not have an equivalent in the Polish environmental criminal law. The idea behind Art. 186 of the Polish Penal Code is substantially different, as it is based on the penalisation of the absence or failure of protective devices.

The regulations set forth in Art. 3 (d) of the Directive converge with some extent with Art. 171 of the Polish Penal Code, pursuant to which crime is committed by those who, without proper permit or in violation of the terms and conditions thereof, manufacture, process, collect, possess, utilise or trade explosive substances or devices, radioactive materials, devices emitting ionising radiation or other items or substances that may be hazardous for the life and health of multiple persons, or substantial portions of property. However, this is a crime against general safety and not against environment, and the idea behind Art. 171 of the Polish Penal Code is substantially different from Art. 3 (d) of the Directive.

5. The regulations set forth in Art. 3 (e) of the Directive converge with Art. 184 and 185 of the Polish Penal Code.

The essence of crime under Art. 184 § 1 is transporting, collecting, storing, abandoning or leaving without proper security nuclear materials or other sources of ionising radiation, if such actions can be hazardous to the life or health of humans, or inflict damage to flora or fauna. The provisions of Art. 184 § 2 extends the liability to the person allowing for such act to be committed. Art. 184 § 3 provides the inadvertent counterpart and Art. 185 (collectively covering pollution, waste and radiation) establishes the crime types qualified by inflicting substantial damage to flora or fauna (Art. 185 § 1) and by the death of a human or serious health damage to multiple persons (Art. 185 § 2).

6. The regulations set forth in Art. 3 (f) of the Directive converge with Art. 181 § 3 and 5 of the Polish Penal Code.

Under Art. 181 § 3 those who destroy or damage plants or animals under species protection, causing substantial damage, commit a crime. Art. 181 § 5 provides the inadvertent equivalent of this crime.

We can probably assume that reasonably interpreted substantial damage within the meaning of Polish law covers more than a minor number of specimens and more than minor impact on the behaviour of species within the meaning of the Directive. However, the differences are significant, since the Polish law does not provide for separate liability for possession or appropriation of specimens.

7. The regulations set forth in Art. 3 (g) of the Directive does not have an equivalent in the Polish environmental criminal law. Some elements of the Directive can be found in Art. 128 of the Environmental Protection Law of 16 April 2004 (Polish Journal of Laws of 2009, No. 151, item 1220, as amended). The provision was formulated in a manner deserving very strong criticism, however, there are certain elements therein that converge with the contents of Art. 3 (g) of the Directive, i.e. penalisation of illegal transportation of protected species beyond EU borders (Art. 128 item 1) or offering, purchasing or acquiring specimens (Art. 128 item 2d), with severe consequences of imprisonment from 3 months to 5 years. However, the absence of any differentiation of liability, no liability for inadvertent act and most clumsy formulation of the provision make it impossible to converge with the requirements of the Directive.


The Directive (unlike its draft of February 2007) does not impose on the states to implement sanctions of specific type and amount but rather requires that such sanctions meet three requirements, usually listed in EU laws, i.e. that the sanctions be: 1) effective, 2) proportional, 3) dissuasive.

The correspondence of Polish provisions with the requirements of the Directive is probably higher than in previously discussed Art. 182 and 183, since the prerequisite for liability under Art. 184 is the hazard to a single individual. However, in the type qualified under Art. 185 with respect to serious health damage again multiple persons are stipulated, while under the Directive a single individual is sufficient. Furthermore, the difference lies in the considerably more scarce description of criminal conduct in Art. 184 as compared to the Directive and (similarly as in the case of Art. 182 and 183 § 1), no independent clause of substantial damage to the quality of air, soil and water as the prerequisite for liability for the crime.

Under Art. 187 § 1 those who destroy, inflict substantial damage or considerably lower the environmental value of the legally protected area of facility, thereby causing substantial damage, commits a crime. Art. 187 § 2 provides the inadvertent equivalent of this crime.

Given the fact that in the concept of the Polish Environmental Protection Law the environmental habitat protected by EU law is always subject to the executive act of a crime under Art. 187 and the requirement of substantial damage as the criterion of the crime is precisely the substantial damage within the meaning of the Directive, we can assume that Art. 187 is the exact equivalent of the requirements of the Directive.

The regulations set forth in Art. 3 (i) of the Directive does not have an equivalent in the Polish environmental criminal law. This is surprising, given the fact that the preceding Act of 2 March 2001 on the handling of substances depleting the ozone layer (Polish Journal of Laws, No. 52, item 537, as amended) stipulated – aside from liability for misdemeanours and administrative offenses – the liability for crimes. That Act was repealed by the currently binding Act of 20 April 2004 on the substances depleting the ozone layer (Polish Journal of Laws, No. 121, item 1263, as amended), which limits the penal regulations to administrative offenses punishable by fines (Art. 37) and misdemeanours (Art. 38-48), but does not provide for criminal liability. Although it is possible to punish the illegal import into Poland of substances depleting the ozone layer under Art. 183 § 2 of the Polish Penal Code, but this is just a small portion of the broader problem of penalisation of illegal handling of substances depleting the ozone layer. In this respect Polish criminal law does not converge with the requirements of the Directive.

To conclude the considerations on the relation between the Directive and the Polish environmental criminal law with respect to the liability of natural persons, two observations must be given:

1) nearly all criminal offenses against environment provided for in Chapter XXII of the Penal Code are punishable also when committed inadvertently (the sole exception being Art. 188, without a counterpart in the Directive), which indeed exceeds the requirements of the Directive. Since Polish law does not distinguish between gross and normal negligence, all types of negligence are penalised. On a side note we should ask that the lack of liability for inadvertent offense under Art. 128 of the Polish Environmental Protection Law determine the incompliance of this provision with the requirements of the Directive.

2) the Polish concept of liability for inciting, aiding and abetting a crime as a matter of principle corresponds to the requirements of Art. 4 of the Directive which enforces the parties to ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offense.

The assessment of convergence of the requirements of the Directive with the Polish environmental criminal law will be different when viewed in terms of criminal liability of legal persons for offenses against environment. In general, the “penal” liability of collective entities (not only legal persons) is addressed by the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty (Polish Journal of Laws, No. 197, item 1661, as amended). However, it is not by any means clear what type of liability does the Act refer to – whether it is the “true” criminal liability, or criminal liability within the meaning of the Constitution, or rather a specific type of liability, similar to criminal liability but not equivalent to it. I will not go into detail on doubts concerning the legal character of such liability, but I would like to indicate that pursuant to Art. 16 sec. 1 item 8a) of the Act of 28 October 2002 the collective entity is subject to liability under this Act, if the natural person stipulated in Art. 3 thereof commits a criminal offense against environment as specified in Art. 181-184 and Art. 186-188 of the Penal Code, i.e. nearly all offenses listed in Chapter XXII. Omitting in this list the offense under Art. 185 of the Penal Code seems to lead to a conclusion that if a natural person pollutes the water to the extent that may potentially cause substantial damage to flora or fauna (Art. 182 § 1 of the Penal Code), then the collective entity shall be liable, but if the offense caused actual substantial damage to flora or fauna (Art. 185 § 1 of the Penal Code), then the collective entity shall be exempt from liability. Such conclusion is so absurd that in the literature of the subject it was postulated to resign from linguistic interpretation and assume that if the liability of the natural person for lesser included offense (Art. 182-184 of the Penal Code) substantiates the liability of the collective entity, then the liability of the natural person for aggravated felony (Art. 185 of the Penal Code) shall analogically substantiate the liability of the collective entity17.

The list of criminal offenses against environment, the commitment of which by natural persons substantiates the liability of collective entities, is missing the offenses under Art. 128 of the Environmental Protection Law, which could probably be explained only by the fact that when passing the Environmental Protection Law the legislator “forgot” to update the list in the Act on the liability of collective entities.

An opinion was given in the literature of the subject that, concerning the scope of liability of legal persons and the relationship of the conduct of actual perpetrators with this category, it should be assumed that the Polish law fully implements the provisions of the Directive18. This opinion has, however, raised many doubts. First of all, in the concept of the Directive the liability of the legal persons is primary which only “does not exclude” the liability of natural persons, whereas under the Polish Act on the liability of collective entities for acts prohibited under penalty the liability of the natural person is the prerequisite for triggering the liability of the collective entity. The Polish legislator employed the technique of non-independent secondary liability of the collective entity, triggered only by primary, classic for the criminal law, fault-based liability of the natural person for a crime. This type of liability is used here as a form of additional prerequisite for court proceedings for the liability of the collective entity. Instead of the “criminal” fault of the natural person, the legislator used as the foundation for such liability the specific quasi-fault of the collective entity, based on structures typical rather for the civil law. This structure has been called original, yet too guarded, considerably weakening the “criminal” philosophy of the liability of the collective entity19.

These concepts are basically contradictory and from that viewpoint the Polish Act on the liability of collective entities requires

18. L. Mering, M. Pchalek, Uwarunkowania transpozycji do prawa polskiego dyrektywy w sprawie ochrony środowiska poprzez prawo karnie, “Prawo i Środowisko” 2008, no. 4, p. 83.
Criminal offenses against environment may also be addressed using penal measures ruled in line with general principles or specifically intended for criminal offenses against environment.

Moving on to the issue of criminal sanctions for offenses against environment, we must provide separate description of criminal sanctions against natural persons and possible sanctions against collective entities, assessing them in terms of the requirements of the Directive.

With respect to criminal sanctions against natural persons, the Polish Penal Code stipulates the following types of penalties (in ascending order):

- fine or restriction of liberty – inadvertent offenses under Art. 181 § 5, Art. 186 § 3 and Art. 187 § 2
- fine, restriction of liberty or imprisonment to 2 years – intentional offenses under Art. 181 § 2 and 3, Art. 186 § 1 and 2, Art. 187 § 1 and Art. 188, and inadvertent offenses under Art. 181 § 4, Art. 182 § 2, Art. 183 § 6, and Art. 184 § 3
- imprisonment from 3 months to 5 years – intentional offenses under Art. 181 § 1, Art. 182 § 1, Art. 183 § 1, 2, 3 and 4, and Art. 184 § 1 and 2
- imprisonment from 6 months to 8 years – intentional offenses under Art. 183 § 5 and intentional-inadvertent aggravated felony under Art. 185 § 1
- imprisonment from 2 months to 12 years – intentional-inadvertent aggravated felony under Art. 185 § 2.

Criminal offenses against environment may also be addressed using penal measures ruled in line with general principles or specifically intended for criminal offenses against environment. Concerning the penal measures ruled in line with general principles, these include in practice:

- prohibition to take certain position, execute certain profession or conduct specific business activity (Art. 39 item 2 and Art. 41 of the Penal Code)
- forfeiture (Art. 39 item 4 and Art. 44 or 45 of the Penal Code)
- obligation to repair the damage or compensation for inflicted harm (Art. 39 item 5 and Art. 46 of the Penal Code)
- publishing the sentence (Art. 39 item 8 and Art. 50 of the Penal Code).

The penal measures intended specifically for environmental protection include exemplary damages in the amount up to PLN 100,000 (Art. 48 of the Penal Code) which, pursuant to Art. 47 § 2 of the Penal Code, can be ruled in the event of convicting the perpetrator for criminal offense against environment. Until 30 June 2011 such exemplary damages were ruled in favour of an institution, foundation or social organization, entered into the register maintained by the Minister of Justice, whose basic objective or statutory goal is the provision of services directly related to environmental protection, to be used for attainment of that goal. However, since 1 January 2011 exemplary damages are ruled in favour of the National Fund for Environmental Protection and Waste Management, to be used solely for purposes related to environmental protection.

With respect to criminal offenses against environment also refunding of financial gains can be ruled within the meaning of Art. 52 of the Penal Code. Pursuant to this provision, in the event of conviction for criminal offense bringing financial gain to a natural person, or organizational entity without legal personality, committed by the perpetrator acting for or on behalf thereof, the court obligates the entity who received the financial gain to refund it in whole or in part to the State Treasury; the provision does not apply to financial gains subject to refund to another entity.

We can imagine a situation where the perpetrator violates the law by importing waste from abroad for the purpose of recovery or neutralisation (Art. 183 § 4), for which the perpetrator receives a certain amount of money from the foreign contractor. Here, there is no doubt that the received amount is a financial gain as set forth in Art. 52 of the Penal Code.

It is not easy to determine whether those penalties and penal measures meet the three criteria of the Directive, i.e. are effective, proportional and dissuasive. The cases of criminal offenses against environment are scarcely brought to court and it is impossible to responsibly assess the effectiveness, nor the dissuasive effect of penalties and penal measures. This would be possible only on the basis of deep criminological research which has yet to be conducted.

A little more can be said in the theoretical analysis on the proportionality of penalties and penal measures available against the perpetrators of criminal offenses against environment. We can justify the twofold understanding of this proportionality:

1) "external", when we seek the answer to the question whether the penalties and penal measures are proportional to the degree of social harm of damaging the environment.
2) "internal", when we examine the possibility of differentiating the penalties and penal measures in accordance with effect, criteria of the perpetrator and other factors.

The abstract assessment of whether the sanctions set forth in the provisions of Chapter XXII of the Polish Penal Code correspond to the social harm of damaging the environment is difficult, if at all possible. Therefore, we need to find a point of reference, in this case probably the offense of destroying or damaging items (Art. 288 of the Penal Code) which exhibits substantial similarity to offenses under Art. 181 § 2, 3 and 5, and Art. 187 of the Penal Code, as those provisions also refer to destruction of or damage to plants, animals, environmental areas or facilities. Taking this perspective leads to a conclusion that in terms of intentional offenses the sanctions set forth in Art. 181 § 2 and 3, and Art. 187 (fine, restriction of liberty or imprisonment for up to 2 years) are considerably more lenient than those under Art. 288 § 1 (imprisonment from 3 months to 5 years). However, Art. 181 § 2 and 3, and Art. 187 do not provide for acts of lesser significance, which is specified in Art. 288 § 2 with a more lenient sanction (fine, restriction of liberty, imprisonment for up to 1 year) than in the three preceding offenses. Finally, inadvertent destruction of or damage to items within the meaning of Art. 288 is not punishable, whereas inadvertent destruction of or damage to plant, animal, protected area or facility is subject to penalty (Art. 181 § 5 and Art. 187 § 2).
up to 2 years. An even more drastic example is the comparison between killing a raccoon dog (huntable animal – thus, under Art. 53 of the Hunting Act) and killing a bison (animal under species protection – this, Art. 181 § 3 of the Penal Code). Taking all of the above into consideration, we can conclude that penalties stipulated for "environmental" offenses fail to meet the requirement of proportionality.

One more example of the legislator’s shortcomings. The perpetrator of intentional destruction of a nature reserve, causing substantial environmental damage, is subject to a fine, restriction of liberty or imprisonment for up to 2 years (Art. 187 § 1 of the Penal Code), whereas the individual applying for permit for trade in protected species without informing of a prior rejection of such application is subject to imprisonment from 3 months to 5 years (Art. 128 item 2 f) of the Environmental Protection Law). The comparison of those two offenses and corresponding penalties is shocking enough, without the need of any further comments.

The sanctions for offenses under Art. 182-184 of the Penal Code seem to be situated somewhere “between” the sanctions for causing individual hazard (Art. 160 of the Penal Code) and general hazard (Art. 163 of the Penal Code), which allows for cautious assessment that those provisions meet the criteria of external proportionality.

Concerning the assessment of internal proportionality in Chapter XXII of the Penal Code, we should note that the legislator follows the path laid out in the Penal Code of 1932, providing a general overview of the criteria of criminal offenses. The only factors differentiating the liability are in fact: twofold effect (Art. 185), creating the aggravated felony, as well as intentionality or inadvertence. We can cautiously determine that the differentiation of sanction according to those factors meets the requirement of proportionality of penalties.

With respect to penal sanctions stipulated against collective entities, the Act on the liability of collective entities provides in Art. 7 thereof only a financial penalty in the amount from PLN 1,000 to 20,000,000, however, not exceeding 10% of revenue in the fiscal year in which the offense was perpetrated that constitutes the basis for liability of the collective entity. Aside from the financial penalty other penal means can be ruled, e.g. forfeiture, prohibition or publishing of the sentence. Thus, pursuant to Art. 8, it is mandatorily ruled that the following shall be forfeited:

1. items originating directly from the offense or which have been used or intended for committing the offense.
2. financial gain originating even indirectly from the offense.
3. equivalent of items of financial gains originating even indirectly from the offense.

Pursuant to Art. 9 sec. 1 items 1-5, the following types of prohibition can be ruled against a collective entity:

1. promotion or advertisement of conducted activities, produced or sold goods, provided services or benefits.
2. receiving donations, subsidies or other forms of financial support from public funds.
3. receiving assistance from international organizations of which the Republic of Poland is a member.
4. placing bids for public procurement orders.
5. conducting specific basic or secondary activities.

Finally, pursuant to Art. 9 sec. 1 item 6, it can always be ruled to publish the sentence.

Those sanctions are common for all types of offenses for which collective entities are liable. Given the fact that the liability of collective entities for criminal offenses against environment is – due to the normative structure of such liability – purely theoretical, it cannot be assessed, whether the sanctions stipulated in the Act are effective or dissuasive. In terms of the proportionality thereof only more or less justified theoretical considerations can be given.

Amendment of Polish criminal provisions

The EU Directive obligated the Member States to implement the provisions thereof into their internal legal systems before 26 December 2010. Poland has failed to meet this obligation.

The draft of the project of the Act amending the Penal Code and other Acts, constituting a transposition of Directive 2008/99/EC of the European Parliament and Council of 19 November 2008 on the protection of the environment through criminal law was first published on 8 March 2010. The draft proposed amendments to Art. 182-186 of the Penal Code and adding new penal regulations to the Environmental Protection Act and the Act on substances depleting the ozone layer, as well as supplementing the Act on the liability of collective entities for acts prohibited under penalty with new provisions added to the PC and the EPA.

The project dated 11 October 2010 comprises four substantive articles (the fifth and final one designates the date of the Act entering into force). Art. 1 items 1-4 amends Art. 182, 183, 184 and 185 of the Penal Code, as per the provisions of the Directive: establishing the deterioration of the quality of water, air and soil as independent criterion for criminal offense, and limiting the hazard or impact on multiple persons (Art. 182, 183 and 185 § 2) to a single individual. Art. 1 item 5 introduces an editorial change to Art. 186 of the PC.

Art. 3 introduces two new criminal offenses to the Environmental Protection Act, as required by the Directive:

1. Art. 127a – coming into possession of specimens of protected plants, animals or fungi in quantity larger than minor, in conditions or manner affecting the proper state of species conservation.
2. Art. 128a – killing, destroying, coming into possession of or trading in specimens protected by EU law in quantity larger than minor, in conditions or manner affecting the proper state of species conservation.
3. Art. 4 repeals Art. 46 and 47 of the Act on substances depleting the ozone layer, and introduces Art. 47a, stipulating liability of criminal offense for those who, in violation of EU laws, produces, imports, exports, trades, utilizes controlled or new substances, and products, devices and systems containing controlled substances.
4. Art. 2 amends the Act on the liability of collective entities for acts prohibited under penalty by adding to the list in Art. 16 sec. 1 item 8 the newly introduced criminal offenses under Art. 127a and 128a of the Environmental Protection Act, and Art. 47a of the Act on substances depleting the ozone layer (for unknown reasons the draft does not include supplementing the aforementioned list with offenses under Art. 128 of the Environmental Protection Act, which are not on the list).

The draft indeed adjusts the Polish environmental criminal law to the requirements of the Directive, which, however, does not mean that some of the solutions proposed therein may not be
questioned. The provisions on "environmental" offenses were met with strong criticism from the Polish Society for Nature Protection "Salamandra", but we will not go into details on this.

The later fate of the draft was as follows: The draft, assigned the number 3755, was submitted to the Sejm on 21 December 2010. Two weeks later, on 4 January 2011, it was submitted for first reading, which took place at the session of the Sejm on 19 January 2011. Then, the draft was submitted to the Justice and Human Rights Committee (SPC). The draft was accompanied with partially negative opinion of the legislation expert from the Bureau of Parliamentary Analysis (BAS). During the session of the Justice and Human Rights Committee of 2 February 2011, the chairman announced that he had received the letter from the Polish Chamber of Refrigeration and Air-Conditioning industry, informing that on 1 October 2010 the Regional Prosecutor's Office Warszawa-Ochota initiated investigation on criminal offense under Art. 231 § 1 of the Penal Code (misuse of authority or failure to comply with duties by a public officer), which could have been committed in connection with the change of the wording of Directive 2009/99/EC in translation in favour of one of the interested entities. The chairman of the Committee asked the representative of the Ministry of Environment, present at the session. The representative stated that he had no prior knowledge of the situation and thus would only be able to present his opinion after reading the case files at the Prosecutor's Office. The chairman gave the representative two weeks to do that and suspended further works.

This paper is being prepared at the end of March 2011; I do not have any information on the work on the draft has been taken up again.

Concluding, I would like to refer to the already highlighted problem of the liability of collective entities. The congress of criminal conduct university chairs in Cracow (25-28 September 2008) spoke for amending the Code of Criminal Procedure and one of the directions of the amendments should be eliminating the legal fiction of the liability of collective entities. The congress of criminal conduct representative two weeks to do that and suspended further works.

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**Exceptional prize in the Space Research Centre competition for students**

Space Research Centre PAS organises a knowledge about space research competition for secondary and high school students. The winner gets a unique prize - he or she will become a godparent of the first Polish scientific satellite and take part in the naming ceremony. Deadline for entries is October 21.

Competition is open to students of secondary and high schools (high schools, technical and vocational schools). It is conducted in two age categories: "junior" for secondary school students and "student" - for youth in high schools. Contestants must answer 12 questions about satellites and the BRITE program, and send a piece of literature devoted to the first Polish scientific satellite. Competition laureates will be invited to the Space Research Centre headquarters and participate in testing the satellite in a special clean room. They will also receive honorary diplomas for fans of the first Polish scientific satellite BRITE-PL and for participation in the competition. The winner will be awarded the title "Godparent of the First Parent Polish Scientific Satellite BRITE-PL" and will be invited to the satellite naming ceremony. The competition aims to raise interest of the youth in space research and disseminate knowledge about satellite research, in particular the work done in this field in Poland. The first Polish scientific satellite Lem and the second Polish satellite Hevelius are prepared by the Space Research Centre PAS and Nicolaus Copernicus Astronomical Centre PAS in the project BRITE-PL. Both instruments will be part of international project BRight Target Explorer Constellation - BRITE. According to the Centre, Lem is to be launched into space in 2012. Polish satellites, in a group of six similar objects, in a flying formation will be put in orbit at an altitude of 800 km. Their task will be running continuous, high-precision photometric measurements of 286 brightest stars in the sky for several years.

(Exceptional prize)