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SPECIALIZATION OF JUSTICE SYSTEM OFFICIALS AND CITIZEN AWARENESS AS INSTRUMENTS FOR COMBATING ENVIRONMENTAL CRIMES[**]

ABSTRACT: Specialization, contentful training, and continuous professional growth of prosecutors and judges in the domain of ecological crimes, joint education programs for criminal justice organs, police officers and inspectors, the increase in material and human resources, especially in the domain of inspections, are all necessary requirements for the improvement in the detection, investigation, evidence collection, and prevention of ecological crimes. In this paper, the author first analyzes the significance of the specialization of public office holders, prosecutors and judges, when it comes to ecological crimes. One of the current priorities of the EU is the struggle against ecological crime, especially certain types of ecological crime. The specialization of criminal justice office holders, especially prosecutors, is the norm in certain countries. Insufficient public awareness about the consequences of ecological crimes and the damage they cause, their victims, their "profitability", and their scope is a significant obstacle for the prevention, detection, and reduction of ecological crime. Numerous international legal

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documents emphasize the imperative of improving public awareness about ecological crimes. The author relates the improvement in public awareness with the right of "members of the public" to access criminal justice and the role of the "concerned public" in a criminal procedure, above all as persons filing criminal complaints, often in the form of citizen groups/associations or in relation to the participation in criminal procedures for these crimes.

Keywords: ecological crimes, specialization of prosecutors, specialization of judges, persons filing criminal complaints, "concerned public"

INTRODUCTORY REMARKS

The increase in the incidence of crimes against the environment/ecological crimes is one of the fundamental reasons behind the introduction of professional specialization for these types of crimes in criminal justice.[1] When it comes to ecological crimes that are committed on the territory of the European Union, three main characteristics are identified: 1. the form of organized criminal activity, which is ranked fourth according to its scope and significance; 2. it is a crime with increasing incidence; 3. certain ecological crimes cause large financial losses and illegal profits.[2] The law of the European Union includes a significant set of regulations that are related to the environment. The need to consider the specialization of criminal justice office holders in national criminal procedures by way of creating specialized court departments and specialized prosecutors for procedures dealing with ecological crimes was emphasized in the European Council Resolution (77) 28 from September 28, 1977, regarding the contribution of criminal law to the protection of the environment.[3] The significance of specialization is emphasized through the formulation of "the principle of specialization", numerous recommendations in this direction, together with the emphasis on the necessity and importance of specialization for ecological crimes. The Consultative Council of European Prosecutors singles out the "principle of specialization"[4] which presupposes

[1] Clifford, M., Edwans, T. (2012). *Environmental Crime*, 2nd edition. Burlington: Jones & Bartlett Learning, 244.

[2] European Commission. Combating environmental crime. Retrieved on November 20, 2023, from: https://environment.ec.europa.eu/law-and-governance/compliance-assurance /combating-environmental-crime_en

[3] Council of Europe – Committee of Ministers *Resolution (77) 28 on the contribution of Criminal Law to the Protection of the Environment.*

[4] Consultative Council of European Prosecutors (CCPE), CCPE Opinion No. 17 (2022) on the role of prosecutors in the protection of the environment, Strasbourg, October 4, 2022, paras. 60–63.

the education of well-trained and specialized staff when it comes to the adequate application of the legislation about the protection of the environment, specialization of prosecutors and/or multidisciplinary units, especially in the domain of the system of prosecutors, as well as the precondition for the appropriate application of legislation which is reflected in sufficient funding. The trainings need to be continued and common for investigative organs. The principle of specialization does not entail the obligation of specialization in the framework of the system of prosecutors because it depends on the national context and factors. Instead, it entails the principle that in the countries in which it is feasible, it should be considered a priority.

European professional projects point out the significance of "structural specialization". In the absence of "structural specialization of prosecutors and judges, trained prosecutors and judges move to different positions to work on other cases, which is why the effort to train new staff has to be restarted frequently, which can be characterized as "Sisyphus' Work".[5] Detection and evidence procurement in ecological crimes reflects a close connection between the investigation and prosecution or the authority of investigators and prosecutors. Structural specialization, in a formal sense, enables systematic opportunities for professional development, improves communication among inspectors responsible for the protection of the environment and prosecutors as well as the harmonization of their goals.[6]

The training of prosecutors and judges should be aimed towards the accumulation of knowledge and understanding of ecological crime and the damage it (can) cause, which is of crucial importance for the commitment to criminal prosecution and penalization of ecological crimes.[7] Specialization is closely connected to the need to secure significant resources (financial, human) with the goal of obtaining evidence and carrying out certain expert investigations which are of the highest importance in determining damages, their seriousness and scope.[8]

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[5] Sanctioning Environmental Crime (WG4) Prosecution and judicial practices 2016/17, LIFE – ENPE Project, LIFE14 GIE/UK/000043, March 2018, 46. Retrieved on October 20, 2023, from: https://www.environmentalprosecutors.eu/sites/default/files/document/LIFE-ENPE_WG4_InterimReport_FINAL.pdf

[6] For more, see: Billiet, C. M., Rousseau, S. (2017). Environmental inspectors and public prosecutors: is sharing information always useful?. *The effectiveness of environmental law* (ed. Sandrine Maljean-Dubois). Cambridge-Antwerp-Portland: Intersentia, 271–294.

[7] Sanctioning Environmental Crime (WG4) Prosecution and judicial practices 2016/17, LIFE – ENPE Project, LIFE14 GIE/UK/000043, March 2018, 46.

[8] *Fajardo del Castillo, Teresea et al.* (2015). *Fighting Environmental Crime in Spain: A Country Report*. Study in the framework of the EFFACE research project. Granada: University of Granada, 57–58.

Technical and technological development and fast evolution of information technologies is significantly felt in the sphere of creating modern instruments/means for discovering and proving certain ecological crimes (e.g. drones used for mapping, sampling and analysis, advanced investigative techniques, the use of thermal cameras, software for recognizing human activities (which can be used to discover illegal hunt).[9] Specialization enables familiarization with advanced techniques and efficient tools and methods for detecting criminal activities. It gains in significance in the context of potential links between certain ecological crimes and other serious crimes, primarily in the domain of commerce, abuse of office (i.e. corruption), organized crime, high-tech crime, terrorism, and "sophisticated" criminal methods.

THE MAIN SIGNIFICANCE OF THE SPECIALIZATION OF PROSECUTORS AND JUDGES FOR ECOLOGICAL CRIMES

The significance of specialization for ecological crimes rests primarily on the specificities, special nature and diversity of these crimes, the complexities of particular crimes, "the technical character", the practical requirement of a multidisciplinary approach, the possibilities of including organized criminal groups and legal persons into the execution of a crime. All these properties create the need to acquire technical knowledge, the necessity of coordination and cooperation among the responsible state bodies, the exchange of experience and best practices, the need for continued improvement for the purposes of detecting crimes, familiarization with the specificities of the ways in which crimes are committed, the acquisition of necessary criminological knowledge, and international cooperation. It is imperative for criminal justice office holders to be familiarized with a large number of laws, international conventions, regulations, rules, the relevant aspects of administrative law, a grasp of all the "links in the chain" of state organs that participate in the detection of crimes and have a certain role in evidence procurement for these crimes, their internal structure and in practical terms, who should be addressed with a request to

[9] Drones enable research from remote locations in cases when on-site research involves safety risks. They are especially useful for approaching distant and hard-to-access locations and for sampling industrial emissions. Drones that are being used nowadays also include AI components and cameras. Multi-spectral cameras have the potential to supply crucial information about the use of land, deforestation or illegal hunting (the use of thermal cameras for night surveillance). See: Colantoni, L., Sarano, G. S., Bianchi, M. (2022). *Fighting Environmental Crime in Europe – An Assessment of Trends*, *Players and Actions*. Rome: Istituto Affari Internazionali – Ambitus, 71–72.

collect the necessary information in the preliminary investigation in order to evaluate the claims from the criminal complaint.

Ecological crimes are categorized as a "low risk – high gain" type of crime, and the specialization of the organs that apply ecological law is designated as one of the means for the efficient struggle against this type of crime.[10] Many ecological crimes pass undetected precisely due to the lack of specialization on the part of official agents who have difficulties *recognizing the elements of a crime,* for instance when it comes to illegal trade in wildlife, protected products and species.[11] Also, what is necessary is the awareness on the part of prosecutors and judges regarding the proper assessment of the *value* of conserving a specimen of a protected species, which demands expert informedness in order to penalize the perpetrator in an adequate manner.[12]

The challenges for the prosecutors are correct assessment as to (i) whether charges should be of criminal nature, (ii) the degree of threat of causing damage, (iii) the assessment of the ability and willingness of the accused person to undo the damages, (iv) the collection and presentation of sufficiently convincing technical pieces of evidence.[13] It is important to determine *the degree of severity as well as the scope of the damage* caused by the crime in question. The crucial criteria for the classification of an ecological offense as a crime are "*the degree of severity* and the *damage* that was caused", and in this sense, one should bear in mind that negative effects on the environment can manifest themselves even decades after a crime has been caused and the consequences can be continued and lasting.[14] Bearing in mind that certain ecological crimes create significant illegal profits, it is necessary to enable the freezing of funds and the forfeiture of assets acquired through illegal acts as well as the use of covert investigative techniques.

> "Parallel financial investigations that focus also on ecological crimes and associated felonies of money laundering are, at the same time, an

[10] Council of the European Union: EnviCrimeNet – Intelligence Project on Environmental Crime – Preliminary Report on Environmental Crime in Europe, 16438/14, Brussels, December 5, 2014, 2. Available at: https://www.europol.europa.eu/cms/sites/default/files/documents/ipec_report_on_environmental_crime_in_europe_0.pdf

[11] Vagliasindi, G. M. (2016). The fight against environmental crime in the European Union and its member states: a perspective on the enforcement system. *Protection of the Environment through Criminal Law* (eds. José Luis de La Cuesta *et al.*). AIDP World Conference, Bucharest, Vol. 87, Issue 1, 174.

[12] *Ibid*.

[13] Clifford, M., Edwans, T. (2012). Environmental Crime, 2nd edition. Burlington: Jones & Bartlett Learning, 256.

[14] Consultative Council of European Prosecutors (CCPE), CCPE Opinion No. 17 (2022) on the role of prosecutors in the protection of the environment, Strasbourg, October 4, 2022, para 57.

> efficient means of identifying larger criminal networks and disruption of financial flows".[15]

The challenges of evidence procurement are associated primarily with the complexities of certain crimes, the necessary emergency actions, significant obstacles in finding links between a specific action/failure to act with the consequences, and the expenses of undertaking evidentiary actions such as crime scene investigations and expert assessment. The specificities of undertaking the evidentiary action of crime scene investigation are reflected in the application of the primary measures for preventing further pollution/destruction of a protected good, the need of applying measures of protecting the health of the members of the forensic staff, the appearance of the staff at a crime scene immediately after the crime has been registered.[16] Concerninga pollution/environmental damage, it is necessary to prove that there has been a certain degree of pollution or environmental damage combined with a certain amount of harmful substances in the air, water, or soil, which then represents the measure of the crime that has been committed.[17] If the concentration reduces in time, while the original concentration was not established through an expert assessment, an ecological crime will not exist.[18] The significance of specialization is apparent also with respect to execution of the evidentiary action of suspect interrogation, which demands appropriate preparations and the preparatory expert assistance in order to

> "...fully remove the possibility that the interrogator could achieve a certain psychological advantage counting on their expertise and familiarity with all the details of the technological process".[19]

The basis for the preparation of the interrogation is a careful examination of a large number of heterogeneous regulations, legal and sublegal acts that regulate the matters of environmental protection, and, when it comes to pollution,

[15] Consultative Council of European Prosecutors (CCPE), CCPE Opinion No. 17 (2022) on the role of prosecutors in the protection of the environment, Strasbourg, October 4, 2022, para 59.

[16] Perović, M. (2015). Krivična djela protiv životne sredine sa aspekta normiranja, otkrivanja i dokazivanja ekoloških delikata na vodama, edited volume. *Collection of Papers: Nauka – Društvo – Tranzicija*. Banja Luka: European Defendology Center, Banja Luka, 1001.

[17] Malish Sazdovska, M., Murgoski, B., Latifi, L. (2018). Forensic Analysis in environmental crimes. *Criminalistic theory and practice*, Vol. 5, 2/2018, 60.

[18] *Ibid.*

[19] Škulić, M. (2022). *Kriminalistika*. Belgrade: University of Belgrade, Faculty of Law, 476.

the analysis of all internal documents of the polluting company with the aim of establishing possible violations of lex generalis regulations.[20]

In the Republic of Serbia, the media have reported on the importance of forming a specialized unit within the Ministry of Internal Affairs of the Republic of Serbia in charge of suppressing ecological crime as a special investigative unit as well as a large number of criminal complaints that were submitted as soon as this unit came into existence and the newly formed department for the protection of environment and prevention of illegal construction as part of one public prosecutor's office in the country (the First Basis Public Prosecutor's Office).[21]

One of the basic obstacles for the specialization of the judges for ecological crimes is a significantly lower number of cases because a large number of procedures are ended in earlier phases outside of the court. The importance of the specialization of judges in the matters of ecological crime is reflected primarily in the following domains: 1. the specialization of the police and public prosecutors for ecological crimes cannot be achieved to the full extent without the specialization of the judges concerning these matters; 2. improving the awareness on the judges' part about the significance of ecological crimes; 3 specialization is an obstacle for the practice of *a priori* classifying ecological cases as less significant or cases of lower urgency (deprioritization of cases) and a one of the guarantees of a trail within a reasonable time; 4. specialization has the potential to improve the consistency of the application of the law and the uniformity of court practice; 5. it enables the issuing of penalties and sanctions that are adequate and proportionate to the committed act, especially concerning restorative measures; 6. it contributes to the process of decision-making concerning property-related legal claims in criminal procedures; 7. the path towards the practices of applying asset forfeiture on assets obtained

[20] Škulić, M. (2022). *Kriminalistika*. Belgrade: University of Belgrade, Faculty of Law, 476.

[21] Cveta ekološki kriminal, policija za nekoliko meseci podnela 300 prijava. Retrieved on October 23, 2023, from: https://www.rts.rs/vesti/drustvo/4953291/cveta-ekoloski-kriminal-policija-za-nekoliko-meseci-podnela-300-prijava.htmll; Alimpić, M. (2022). Krivična dela protiv životne sredine. Krivično zakonodavstvo Srbije i međunarodni pravni standardi – usaglašenost ili ne?. *Glasnik of the Bar Association of Vojvodina – Journal of Legal Theory and Practice*, 4/2022, 1328.

The results of an investigation of newspaper articles in 2022 show that 25 articles dealt with the formation of a specialized unit within the Ministry of Internal Affairs of the Republic of Serbia, while several of them referred to the special department in the First Basic Prosecutor's Office as the first department of this kind in our country. Lukić, N, *Zelena kriminologija*. Belgrade: University of Belgrade, Faculty of Law, 171–172.

through criminal acts; 8. the path towards strengthening the public confidence regarding the work of the courts.[22]

THE SPECIALIZATION OF PUBLIC PROSECUTORS AND JUDGES: A COMPARATIVE PERSPECTIVE

European countries are increasingly facing problems of illegal waste management, illegal trade in waste products, wildlife, and illegal hunting. There is an emphasis on transnational activity in illegal trade in lumber, waste and illegal logging. The Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replicing Directive 2008/99/EC[23] states that the specialization for ecological crimes presupposes regular training and additional material and human resources. Trainings need to be comprehensive and they should include the training of all subjects or "all the links in the chain of application of ecological law" (inspectors, police, prosecutors, judges). There is also mention of the need for the EU member states to consider the possibility of forming specialized investigative units, the specialization of prosecutors and judges who would rule in cases involving ecological crimes and the possibility of organizing specialized councils within general criminal courts. An additional guarantee of the efficiency of detection, case resolution, evidence procurement and penalization of ecological crimes are technical experts who are available to all organs in the "chain of application of ecological law".

In European Countries, various forms of specialization of public prosecutors and judges have been put in place. In some countries, one can observe specialization within the system of public prosecutors for ecological crimes, i.e. in certain public prosecutors' offices and within their organization (Austria, Germany[24]) or a specialized department within the system of prosecution which consists of specialized prosecutors with the authority on the central/

[22] For more, see: Miljuš, I. (2023). Specializacija službenih aktera u postupku za krivična dela protiv životne sredine. *Raskršća međunarodnog krivičnog i krivičnog prava - reforma pravosudnih organa Republike Srbije* (eds. M. Škulić, I. Miljuš, A. Škundrić, eds.), proceedings from an international conference. The Association for International Criminal Law, Intermex - University of Belgrade, Faculty of Law, Palić, June 16–19, 2023, 415–417.

[23] Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, European Commission, Brussels, 15. 12. 2021 COM(2021) 851 final 2021/0422 (COD).

[24] It is not customary in Germany to form specialized departments for ecological crimes within public prosecutor's offices, but these departments are being formed in larger metropolitan areas such as Berlin, Hamburg, and Frankfurt in which several public prosecutors receive cases related to ecological crimes. Sina, Stephan et al. (2014). Fighting

state level (Sweden). In certain countries, there is a smaller number of specialized public prosecutors (Greece, Finland). In some countries, practical training for prosecutors in this domain is taking place without structural specialization. In the Netherlands, a specialized national office of the state prosecutor is in charge of the investigation and criminal prosecution of complex ecological and economic crimes (The National Office for Serious Fraud, Environmental Crime and Asset Confiscation – *Functioneel Parket*). This form of organization within the system of public prosecutors, in principle, enables specialized public prosecutors to coordinate all investigations and information gathering activities carried out by various investigative bodies and the strengthening of the authority of specialized public prosecutors over investigative bodies. Norway is an interesting example from the comparative legal standpoint when it comes to the struggle against ecological and related crimes. In Norway, a unified organ for investigation and prosecution of ecological and commercial cries (ØKOKRIM) has been formed, and it contains a team of individuals specialized for the protection of the environment which is made up of persons that have completed special police training, experts in the domain of natural sciences and finance whereby public prosecutors are part of the police force.[25]

France has formed a special institution for the struggle against ecological crime, OCLAESP, which consists of the members of the Gendarmerie, police forces and technical advisors for questions of the environment and health, whose authorities have been expanded with time.[26] In the Netherlands, specialized police units for ecological crimes have been formed both at the national and at the regional level.

Spain exhibits one of the most transparent examples in Europe when it comes to the specialization of official actors in investigating ecological crimes – a specialized police service Civil Guard for the Protection of Nature (*Servicio de Protección de la Naturaleza* – SEPRONA) in charge of protecting soil, water, air, animal welfare and the preservation of fauna,[27] one of the largest, most systemic agencies for ecological crimes. There is a specialized prosecutorial body at the national level as well as ecological departments within

Environmental Crime in Germany: A Country Report. Study in the framework of the EFFACE research project. Berlin: Ecologic Institute, 54.

[25] See: Lukić. T. (2012). Otkrivanje i istraživanje ekološkog kriminaliteta. *Journal of Criminology and Criminal Law* , no. 1–2, 228–229.

[26] Fajardo del Castillo, T. et al. (2015). Fighting Environmental Crime in Spain: A Country Report. Study in the framework of the EFFACE research project. Granada: University of Granada, 113.

[27] Vagliasindi, G. M. (2016). The fight against environmental crime in the European Union and its member states: a perspective on the enforcement system. Protection of the Environment through Criminal Law (eds. José Luis de La Cuesta et al.). AIDP World Conference, Bucharest, Vol. 87, Issue 1, 174.

prosecutor's offices at the local level. Public prosecutor's office in front of the Supreme Court has a coordinator for ecological crimes (*Fiscal de Medio Ambiente y Urbanismo*) in charge of coordination and surveillance of the activities of all public prosecutors in relation to ecological crime. Specialization in the framework of public prosecution has significantly improved criminal prosecution of ecological crimes, but specialized prosecution departments issue numerous requests for the inclusion of technical experts - experts for ecological questions who would be able to solve scientific problems in specific cases in order to improve the level of expertise in investigations. [28]

The specialization of judges in ecological matters is also related to organizational changes in courts or changes in subject matter and functional jurisdiction of courts. The wave of specialization of judges has led to the formation of special and specialized departments or acting councils in "ecological cases" within general courts or the formation of ecological courts in charge of cases which fall in the narrow or broader area of environmental protection. In certain countries, projects are under way to establish special courts (so-called "green courts") or specialized courts and tribunals for the application or ecological law have already been formed. What is apparent is a global trend of growth in the number of specialized courts and the reasons for that are the growing complexity of regulations and the development of principles of ecological law, the recognition of the link between human rights and protection of the environment, the threat that originates in climate change, the public dissatisfaction with the work of legal fora.[29] There are certain reasons that stand out when it comes to the formation of special courts (the need for expertise, efficiency in trails, the visibility of progress in the domain of environmental protection, the formation of unique practice, the prioritization of ecological cases, etc.), but there are also some counterarguments (insufficient number of cases, the lack of highly trained professionals, fragmentation of the legal system), so the solutions are found in informal guidance and advice in specific cases coming from judges who are trained and have exhibited interest to judge in this domain.[30]

In 2018, according to SEPRONA's data, 2690 ecological crimes were investigated and 2598 persons were investigated/arrested. Gómez Puerto, Á.B. (2020). *Constitutión, ciudadanía y medio ambiente*. Madrid, 73.

[28] Sanctioning Environmental Crime (WG4) Prosecution and judicial practices 2016/17, LIFE – ENPE Project, LIFE14 GIE/UK/000043, March 2018, 28.

[29] EUFJE, Summary Report on training and specialisation of judges in environmental law, 2019, 37., fn. 29. Available at: https://www.eufje.org/images/docConf/so2018/EUFJE_Report_on_Training_and_Specialisation_in_Environmental_Law_2019.pdf

[30] George (Rock) Pring, Catherine (Kitty) Pring with an Introduction by Lalanath de Silva, Greening Justice – Creating and Improving Environmental Courts and Tribunals, The Access Initiative, 2009, 14–17.

The specialization of judges in the sense of forming special courts which would rule in criminal justice matters is not a characteristic of European countries. In EU countries, we find examples of judges (magistrates) specialized for ecological crimes and specialized departments within certain lower courts which rule in ecological cases but also in other cases and practically specialized councils within courts of appeal (Belgium). The formation of special councils for ecological cases within general courts is formulated as a recommendation for European countries. A characteristic example of specialization in criminal courts comes from Sweden, where there is a possibility for technical experts to be named as judges in criminal cases.[31] The tendency of specialization is pronounced also in countries in which there is a lack of specialization within the criminal justice system and in which there is a low degree of priority attached to ecological crimes and it is reflected in the observation that the absence of specialization is one of the fundamental obstacles in the struggle against ecological crimes.

The formation of specialized courts in charge of ecological crime figure prominently in Latin American countries.[32] A dominant reason for the formation of a specialized court for this domain, *Madre de Dios,* in Peru, was a large number of cases for individual crimes against the environment (especially illegal mining and crimes against forests) and the interrelatedness of certain crimes within this category. Still, there is an emphasis on the problems in criminal cases that cannot be solved by forming a specialized court: the shortcomings in the investigations of these crimes, the necessity of engaging multiple institutions to detect and solve these crimes as well as the complexity of such cases.[33]

[31] Gerstetter, C. et. al. (2016). Environmental crime and the EU, Synthesis of the Research Project "European Union Action to Fight Environmental Crime" (EFFACE). Berlin: Ecologic Institute gGmbH, 33.

[32] Certain Latin American countries are specific comparative legal examples when it comes to the approach to environmental protection. Out of several exceptions from the anthropocentric approach to environmental protection based on human rights, the most significant ones come from Latin American countries: the Constitutions of Ecuador and Bolivia formulate a more eco-centric right of the environment (the rights of Mother Nature/Mother Earth): its right to exist, survive, maintain and renew its life cycles, structure, function and processes in evolution". Saloni Malhotra, (2017). „The International Crime that Could have Been but Never Was: An English School Perspective on the Ecocide Law". Amsterdam Law Forum, Vol. 9, 3/2017, 65–66.

[33] Mongabay, Special judiciary on environmental crimes established in Peru. Retrieved on October 20, 2023, from *https://news.mongabay.com/2018/04/special-judiciary-on-environmental-crimes-established-in-peru/*

THE NECESSITY OF IMPROVING PUBLIC AWARENESS AS AN INSTRUMENT OF COMBATING ECOLOGICAL CRIMES

Improving the awareness of the citizens who are supposed to implement ecological norms about the significance of the environment and the far reaching and serious consequences of environmental damage is a precondition in the prevention of ecological crimes and the struggle against ecological crime. One of the fundamental problems of environmental protection is a low degree of public awareness about the need for environmental protection, the scope and significance of ecological crime and its victims.[34] Improving public awareness is closely connected to the specialization of criminal justice office holders and the efficiency of court cases. There is an emphasis on the educational value of practical application of the environmental laws - it sends a message to the society about the importance of the environment and incites social concern and the awareness about the care for the environment.[35]

A step forward towards the inclusion of the citizens into the struggle against ecological crimes is the creation of a unified ecological information system in the form of the application called gReact (*Green Reaction*) whose aim is to collect information on the ground and activate and coordinate the work of the authorities.[36] Recently, in Romania, certain programs have been initiated to include citizens into the detection of illegal logging through the online availability of data on the transportation of lumber and by allowing the citizens to report suspicious shipments.[37]

One of the basic principles of environmental legislation is "the principle of informedness and public participation" from Article 9 Paragraph 1 Line 10

[34] In the literature, a systematic and continual approach in the framework of educational programs and the insistence on the topic of environmental protection in the public sphere through the media are emphasized from the measures of raising public awareness about the protection of the environment. For more on this: Pavlović, Z. (2022). Svest građana o značaju zaštite životne sredine i prevencija krivičnih dela protiv životne sredine. *Glasnik of the Bar Association of Vojvodina – Journal for Legal Theory and Practice*, 4/2022, 1221.

[35] Sanctioning Environmental Crime (WG4) Prosecution and judicial practices 2016/17, LIFE – ENPE Project, LIFE14 GIE/UK/000043, March 2018, 46.

[36] More on this: Kraći put u rešavanju problema: Ekološke probleme građani mogu da prijavljuju preko jedinstvenog sistema. gReact. Available at: https://www.novosti.rs/drustvo/vesti/1111208/kraci-put-resavanju-problema-ekoloske-probleme-gradjani-mogu-prijavljuju-preko-jedinstvenog-sistema-greact

[37] More on this: Spapens, A., Mehlbaum, S. L. (2019). Policing and prosecution of transational environmental crime. Research Handbook on Transnational Crime (ed. Mitsilegas, V., Hufnagel, S., Moiseienko, A.). Cheltenham: Edward Elgar Publishing, 182.

of the Law on the Protection of the Environment[38] which establishes the right to informedness ("the right of every individual to be informed") and the right to participation in making decisions whose implementation has the potential to create an effect on the environment. The doctrine explains that this principle transfers the basis of the Aarhus Convention on the existence of the obligation of signatory states to include the public into decision-making "about activities that bear ecological risks" and inform them about this risk and the state of the environment.[39]

Improving the awareness of citizens/the public, nonetheless, does not, by itself, lead to the suppression of ecological crimes. Instead, it demands simultaneity and efficiency on the part of criminal justice organs in the struggle against these crimes, starting from the elimination of negative practices such as deprioritization of cases and a proactive approach of the authorized organs in the case.

The right of "the members of the public"/ "concerned public" to access to criminal justice – the role / potential role of NGOs in criminal cases

Persons submitting criminal complaints can be citizens, citizen groups, citizen associations or NGOs. NGOs can play a very significant role in the application of ecological law when it comes to monitoring the harmonization of court practice with ecological regulations, informative role concerning ecological cases, initiating appropriate procedures due to the violations of ecological regulations, as well as to improve public awareness about the importance of the environment. Groups of victims and NGOs educate citizens about the nature and consequences of ecological crime, help to discover the perpetrators and impose direct expenses on the business activities of the perpetrators through "naming and shaming campaigns" and act as legal representatives of victims.[40]

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the United Nations

[38] The Law on the Protection of the Environment, *Official Gazette of the RS*, no. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – Verdict of the Supreme Court, 14/2016, 76/2018, 95/2018 – other law and 95/2018 – other law.

[39] Drenovak-Ivanović, M. (2021). *Ekološko pravo*. Belgrade: University of Belgrade, Faculty of Law, 44.

[40] Gerstetter, C. et. al. (2016). Environmental crime and the EU, Synthesis of the Research Project "European Union Action to Fight Environmental Crime" (EFFACE). Berlin: Ecologic Institute gGmbH, 37

Economic Commission for Europe (UNICE)[41] from 1998 (henceforth: Aarhus convention), according to Article 9 Paragraph 3, establishes the right to access to justice to the "members of the public" and practically "opens the door" to the participation of ecological NGOs which meet the requirements of national legislations (if they are included in the law of a given signatory state) in criminal cases. Namely, in criminal procedures related to environmental crimes, the accused are charged with actions or failures to act that are in violation of the legal provisions regarding the environment including the criminal code. The Aarhus Convention is interpreted in such a way as to assign a broad and active role to ecological NGOs in criminal cases.[42] Its adoption has as its goal to "give a voice to nature" by enabling "members of the public", especially ecological NGOs access to justice – through administrative and court cases aimed at disputing acts or failures to act that threaten the environment.[43]

This interpretation is not in accordance with the interpretation of the right of access to justice, one of the requirements of the right to fair trial, in the decisions of the European Court for Human Rights, whereby the right to fair trial from Article 6 Paragraph 1 of the European Charter for the Protection of Human Rights and Fundamental Freedoms (ECHR) refers to the accused and the damaged party but only in a qualified via in the part that deals with civil law claims made in a criminal case.[44] Tubić points out the difference between the Aarhus Convention and other conventions on human rights, which prescribe that

> "...associations that associations whose activities focus on the environment will have access to court cases only if their civil rights have been violated, but there is no assumption that public ecological interest is equivalent to human rights in the sense of Article 6 of ECHR".[45]

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[41] The Law on the Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters, *Official Gazette of the RS - International Documents*, no. 38/2009.

[42] The rules of the Aarhus Convention are interpreted by the Arhus Convention Compliance Committee – ACCC and the European Court of Justice (in its decisions that are binding for EU countries).

[43] Schalk-Unger, L. (2022). The participation of environmental NGOs in (Austrian) criminal proceedings in the light of Art. 9 (3) Aarhus Convention. Opolskie Studia Administracyjno-Prawne, Vol. 20, 1/2022, 212.

[44] For more on this, see: Ilić, G. P. Oštećeni i standardi ljudskih prava u krivičnom postupku. *Annals of the Faculty of Law in Belgrade* 2/12, 141.; Miljuš, I. (2022). *Načelo jednakosti "oružja" u krivičnom postupku*. Belgrade: University of Belgrade, Faculty of Law, 165.

[45] Tubić, B. (2011). Polje primene Arhuske konvencije. *Collected Papers of the Faculty of Law in Novi Sad*, 2/2011, 388. The author points out further that it is not clear what the scope of the ECHR outside of the domain of private property is (e.g. in the case of the right to clean air, nature, etc.). *Ibid.*

Fundamental questions that are being asked in comparative law of the signatory states of the Aarhus Convention since the passage of the Aarhus Convention in relation to the right to access to criminal justice are:

1. *the interpretation of the notion of a victim/damaged party* which meets the requirements of the Aarhus Convention;

2. *the treatment of nature/environment as a victim*, and ecological NGOs as its representatives in criminal cases;

3. the *potential introduction of new autonomous rights of ecological NGOs* into criminal justice cases;

4. the development of criminal justice legislation in the direction of *empowering the role of a "citizen party"/a person that has put forth a civil law claim*, i.e. the damaged party.

In some European countries, NGOs play an active role in criminal procedures (Spain, Portugal); however, in many other countries such as Germany and Austria, they can participate in a criminal procedure if they have suffered direct damage as a result of an ecological crime,[46] in the sense of bearing the expenses of the pollution of the land that they own, the reduction in its value, veterinary expenses if the crime had an effect on livestock or other animals that the NGO possesses.[47]

In Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, Article 14 prescribes the requirement of all signatory states to ensure that in accordance with their national legal systems, members of concerned public have appropriate legal rights to participate in procedures that are related to ecological crimes. In the Preamble, there is an emphasis on the role of "concerned public" in a criminal procedure - to represent nature as a public good. *Nature cannot represent itself as a victim* in a criminal procedure, which is why "representatives of the concerned public should be allowed to act *in the name of the environment* as a public good to ensure the efficacy of the criminal procedure" (Preamble to the Proposal for a Directive, 26).[48]

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[46] In regards to violations of the Species Trade Act, the Higher Regional Court in Vienna found that: 1. Every person or ecological NGO that operates in the domain of species protection is not considered a damaged party in regards to violations of their interests as protected by criminal law; 2. An ideological interest in species protection is not sufficient to justify a damaged party status. Schalk-Unger, L. (2022). The participation of environmental NGOs in (Austrian) criminal proceedings in the light of Art. 9 (3) Aarhus Convention. Opolskie Studia AdministracyjnoPrawne, Vol. 20, 1/2022, 222.

[47] *Ibid*., 219–220.

[48] Three basic reasons behind the role of NGOs in a criminal procedure are mentioned: 1. "*the environment cannot fight for itself*", which is why NGOs are "spokespersons of the victim(s)" whose presence and representation is ensured in this way; 2. NGOs improve the visibility and knowledge about the *damages that were caused*: both inside and

The notion of a "concerned public" and "interested person" are defined in Article 2 Paragraph 4 of the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99 EC. "Concerned public", as a broader term, comprises "persons that affect or could affect" crimes against the environment in the sense of the Proposal for a Directive. "Interested persons" are: persons that have sufficient interest; 2. persons that claim that their rights have been violated; 3. NGOs that promote the protection of the environment and fulfill the conditions prescribed by the national legislation.

The right of the "members of the public" to access criminal justice is related to the efficacy of initiating court cases and eventually other rights of participation (participation rights) as part of the criminal procedure. In the context of the Austrian criminal justice system, the doctrine is that efficacious initiation of a trial inherently leads towards the existence of the right "of the members of the public" to dispute/question the decision of a public prosecutor about the termination of an investigation, given the fact that experience has shown that a large number of "ecological cases" are terminated precisely in the early stage of the procedure, which is why it is recommended that registered NGOs should be given the right to submit a justified claim (a legal instrument) in order to continue a procedure related to environmental crimes.[49] This problem is particularly acute in criminal justice systems which do not recognize the victim's or the damaged party's right to question the decision of a public prosecutor about non-prosecution or the cessation of prosecution. There also arises a question of the right of a victim/damaged party to participate, to a certain extent, in a procedure of the application of the principle of qualified deferred prosecution in criminal justice systems that do not establish the role of the damaged party in these processes, which is the case in our criminal justice system since the passage of the Criminal Procedure Code from 2011[50] (hereinafter: CPC).

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outside the courtroom; 3. when the NGO has the right to damages as a party, the *compensation reflects the collective expenses of the crime* that the perpetrator should be aware of and responsible for. Sanctioning Environmental Crime (WG4) Final report, Key observations and recommendations 2016–2020, LIFEENPE Project LIFE14 GIE/UK/000043 Action B2: Working groups to improve consistency and capacity June 2020, 35. Retrieved on October 28, 2023, from: https://www.environmentalprosecutors.eu/sites/default/files/document/WG4_Y4_Final%20Report_0.pdf

[49] Schalk-Unger, L. (2022). The participation of environmental NGOs in (Austrian) criminal proceedings in the light of Art. 9 (3) Aarhus Convention. Opolskie Studia Administracyjno-Prawne, Vol. 20, 1/2022, 215– 217, 228.

[50] Criminal Procedure Code, *Official Gazette of the RS,* no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the Constitutional Court and 62/2021 - decision of the Constitutional Court.

The recommendations about the role of NGOs in the criminal procedures in EU countries have three main directions: 1) in relation to the initiation of the criminal procedure; 2) the opportunity to be witnesses or expert witnesses; 3) participation in the capacity of a party in a criminal procedure; 4) the recognition of the minimal right to demand compensation with the aim of protecting the environment, which they are entitled to under their statutes.[51] Criminal procedural legislations of Spain and Portugal recognize the application of the institute *actio popularis* in criminal procedures, which can be held by any citizen without proving concrete and direct interest as in the case of NGOs. NGOs have the right to demand restorative measures in order to remove/mitigate harmful consequences for the environment or to restore ecological balance that has been disturbed as well as to claim compensation.

Actio popularis in the Portuguese criminal procedure

Portugal is a characteristic comparative example of the recognition of the right of NGOs and citizens to individually demand compensation for ecological damage in a criminal procedure. The basic source of criminal procedural law, the Code of Criminal Procedure establishes procedural rights of the holders or rights to *actio popularis*, defined in the Law on actio popularis. The literature explains that *actio popularis* is completely aligned with the defined right to access criminal justice from the Aarhus Convention even though it is not explicitly stated in it.[52] The Portuguese Constitution and laws state that "the environment is a dispersed interest", which means that it does not have "a privileged holder" and every individual and NGO has the right to demand compensation for ecological damages.[53] On this conception, a positive status of the environment is in everyone's interest: the environment concerns each indi-

[51] Sanctioning Environmental Crime (WG4) Final report, Key observations and recommendations 2016–2020, LIFE-ENPE Project LIFE14 GIE/UK/000043 Action B2: Working groups to improve consistency and capacity June 2020, 35.

[52] Ćorić, D. (2006). Actio popularis as an instrument for protection. *Collected Papers of the Faculty of Law in Novi Sad*, 1/2006, 420.

[53] In Portugal and Portuguese-speaking countries in Latin America and Africa the right given to NGOs to participate in court cases "in the interest of the environment" is "a legal construct based on the special assumption about the *sui generis* nature of ecological goods: the environment is omnipresent (everywhere around us), indivisible (every individual part is strongly linked with all the others) and dispersed (there is no privileged holder)." Alexandra Aragão, Portugal, Study on the Possibilities for Non-governmental Organisations Promoting Environmental Protection to Claim Damages in Relation to the Environment in Four Selected Countries, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters Task Force on Access to Justice. UN Economic Commission for Europe, 2015, 59–60.

vidual, family, community, organization, region, country, and finally the whole of mankind.[54] It is explained that *actio popularis* is not a kind of complaint but an admission that certain damages are dispersed to such a degree that any person should have the right to demand from a judge to examine the legality of an act and issue a verdict in a case.[55] The legal concept of "dispersed interest" rests on the admission of trans-individual interests, a subcategory of interests above individual interests and above public interest.[56]

The necessary regime of intervention on the part of citizens and associations in a criminal procedure is defined in the Law on *actio popularis*[57], Article 25, and it is reflected in the fact that the holders of the right to *actio popularis* are entitled to submit complaints about criminal actions (*denúncia, queixa)* or notifications *(participação ao Ministério Público)* to the public prosecutor as well as to become a private party in prosecutorial rights (a*ssistente*) in accordance with the Code of Criminal Procedure (*Código de Processo Penal*). The holders of rights to *actio popularis* according to Article 2 of the Law on *actio popularis* are: 1. *citizens, associations, or foundations* regardless of whether they have a direct interest for the claim in question, whereby, associations and foundations have to meet certain criteria[58]; 2. *local authorities/local governments* in relation to the interests of the residents of the territories under their jurisdictions.

A*ssistente* have the legal status of an associate/"assistant" to the prosecutor ("*colaboradores do Ministério Público*") which in practice provide assistance to the public prosecutor by suggesting evidence and criminal procedural actions. The Code of Criminal Procedure provides them with special participation rights when it comes to crimes which are prosecuted according to official obligation, e.g. damage to the environment or pollution that causes severe damage. These are:

1. to intervene in the investigation in the intermediary stage of the procedure in which the court decides whether the case will be forwarded to trial,

[54] UN Economic Commission for Europe, 2015, 59–60.

[55] Aragão A., Celeste Carvalho, A. (2017). Taking access to justice seriously: diffuse interests and action popularis. Why not?. *Environmental Law Network International*, 2/17, 43.

[56] *Ibid.*

[57] Direito de participação procedimental e de acção popular, Lei n.º 83/95, Alterado pelo/a *Rectificação n.º 4/95 – Diário da República* n.º 236/1995, Série I-A de 1995-10-12, em vigor a partir de 1995-10-12.

[58] It is necessary to meet the following conditions: 1) the status of a legal person; 2) explicit inclusion of the protection of the interests that are not part of the given type of procedure into its jurisdiction/statutory goals; 3) the absence of any other professional activity that would compete with companies/free professions (Article 3 Law on actio popularis).

to submit evidence (evidentiary initiative) and other initiatives that are deemed necessary as well as to be informed about the decisions about those initiatives;

2. to press charges autonomously or independently of the prosecutor;

3. file complaints against decisions that relate to them, even if public prosecution did not do so; the right of access to key elements of the procedure in order to file a complaint (Article 69).

CONCLUSION

Numerous international and European legal documents point out the significance of structural specialization within the prosecutorial system (the formation of specialized departments or organizational units within prosecutors' offices), the specialization of public prosecutors and judges for ecological crimes and the formation of specialized councils within courts' jurisdictions whose primary purpose will be to act in ecological cases. Continual and contentful acquisition of knowledge and skills in this area, common trainings of public prosecutors and judges with inspectors and the police force in order for them to coordinate their actions, qualified public prosecutors and judges, solving the problem of the lack of human and technical capacities, experts for different areas who possess expert/technical knowledge (primarily for the purpose of proving the causes of pollution and its spatial scope) and the adequacy of application of penal norms are all important instruments in combating ecological crimes. The incidence of these crimes is growing, the profits that are created through these crimes are increasing, the ties with organized crime and crimes of corruption are growing stronger, and the consequences on the national and global level are becoming more and more serious. On the other hand, one of their basic characteristics is a high "dark number" and a very low or negligible share of convictions for crimes against the environment.

It is important to recognize, at an early stage, the existence of a relevant degree of suspicion about the realization of the elements of a crime against the environment, the links between these crimes and crimes of corruption and organized crime, as well as to initiate a unified case in front of a public prosecutor's office and court in jurisdiction in order to secure a unified evidentiary record and carry out parallel investigations. Numerous recommendations and opinions at the level of the European Council and the European Union as well as the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99 EC emphasize the significance of specialized evidentiary actions/specialized investigative measures and techniques/special investigative

tools ordered by the court for the efficiency of the investigation in cases where there is a relevant degree of suspicion in the early phases of the procedure related to the *serious ecological crimes*, i.e. *the involvement of organized criminal groups* in ecological crimes. In this sense, the conclusion emerges that it is necessary to consider recognizing and listing serious crimes against the environment alongside crimes from Article 162 Paragraph 1 Line 2 of CPC in a future reform of criminal procedural legislation, which would simultaneously raise awareness about the incidence and significance of ecological crime among criminal justice office holders.

The application of the right to access criminal justice in the sense of the Aarhus Convention is realized in certain countries of continental Europe primarily by means of criminal complaints issued by citizens or associations of citizens/NGOs enabled by the interpretation of the definition of the damaged party in a criminal case and the prescribing of the right of the damaged party in a criminal case, while, on the other hand, in accordance with the interpretation of the Aarhus Convention, broad rights are given to NGOs (*actio popularis* and other related procedural rights when it comes to the participation in a criminal case), such as the right to submit a compensation claim or a request to undertake restorative measures. In this context, academic and expert analysis of comparative law points to the need to empower the role of the damaged party with respect to the questioning of the decision of a public prosecutor to drop charges and when it comes to the procedures of applying deferral of prosecution as well as to establish procedural rights of NGOs in cases involving ecological crimes to dispute the decision of a public prosecutor to refrain from prosecution or drop charges in early, investigative phases of these cases when the majority of ecological cases are terminated.

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