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THE PROTECTION OF MARINE WATERS AND ORGANISMS THROUGH CRIMINAL LAW IN THE LEGISLATION AND PRACTICE OF THE REPUBLIC OF CROATIA****

ABSTRACT: The protection of marine waters and organisms through criminal law is primarily governed by provisions in Chapter XX of the Criminal Code, specifically concerning criminal offenses against the environment. These offenses include: Environmental Pollution (Art. 193), Discharge of Polluting Substances from a Vessel (Art. 194), Endangerment of the Environment with Waste (Art.

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196, para. 2). Endangerment of the Environment with a Plant (Art. 197). Endangerment of the Environment with Radioactive Substances (Art. 198). Destruction of Protected Natural Values (Art. 200). Destruction of Habitat (Art. 201). Poaching Game and Fish (Art. 204). Killing or Torture of Animals (Art. 205). Transmission of Contagious Animal Diseases and of Organisms Harmful to Plants (Art. 206). The listed criminal offenses are based on contemporary biocentric concepts of the object of protection. The legal framework for the protection of marine waters and organisms through criminal law is based on the definition of the marine environment provided in the current Environmental Protection Act. Following the introduction, the paper outlines the general characteristics of the protection of the environment through criminal law, with a specific focus on marine waters and organisms, as well as the concept of maritime environmental crime. It further identifies criminal offenses against the sea and marine environment and examines their alignment with relevant European Union regulations. A significant portion of the paper is dedicated to analyzing the practice of state attorneys and courts in this context..

Keywords: marine, marine environment, environmental pollution, poaching game and fish, destruction of protected natural values

INTRODUCTION

Marine waters and organisms, as integral parts of the marine environment in the Republic of Croatia, enjoy constitutional protection. The preservation of nature and the human environment is among the highest values of the constitutional order of the Republic of Croatia, alongside freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, the rule of law, and a democratic multiparty system.¹ Likewise, the Constitution mandates special protection of the sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate, and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia.² In proclaiming and guaranteeing economic, social, and cultural rights, it is stipulated, *inter alia*, that:

¹ Art. 3 of the Constitution of the Republic of Croatia, *Official Gazette* no. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014.

² Art. 52 of the Constitution of the Republic of Croatia.

“...Everyone shall have the right to a healthy life. The state shall ensure conditions for a healthy environment. Everyone shall, within the scope of his/her powers and activities, accord particular attention to the protection of human health, nature and the human environment.”³

The importance of environmental protection was emphasized shortly after The Republic of Croatia gained independence, and when the Declaration on Environmental Protection was adopted. Following an introductory self-appreciation,⁴ the declaration critically acknowledged insufficient environmental protection in previous decades and ambitiously outlined the tasks and principles for permanent, systematic, and effective environmental protection.⁵ The declaration specifically announced the introduction of material and criminal liability for those who endanger and destroy natural values and the human environment. It also proposed the gradual implementation of compensation for environmental damage according to the “polluter pays” principle, aiming to establish financial prerequisites for the restoration and improvement of a devastated environment. Ten years later, the National Strategy for the protection of the Environment was adopted.⁶ Its introduction identified “major challenges,” including guiding the country towards sustainable development, embarking on a lengthy and complex European integration process, the necessity of establishing a comprehensive system for monitoring and assessing environmental conditions, providing special protection for the Adriatic Sea, acquiring prerequisites for climate change adaptation, and introducing new technologies.⁷ One of the Strategy’s priority topics was the protection of the Adriatic Sea, islands, and coastal areas, where the following problems were identified:

“The balance of the ecological systems of the Adriatic Sea and its coast has been seriously threatened in recent decades by various types of pollution (the atmosphere, rivers, merchant and warships, tankers, wastewater from larger cities, mariculture), mechanical destruction of the coast and seabed (construction, infilling, trawling), and especially the indiscriminate harvesting of marine organisms (sponges, corals, bivalves, crabs, cephalopods, and fish). In the shallow northern Adriatic, increased eutrophication occasionally leads to ‘sea blooms’ of higher intensity, notably observed in 1988, 1989,

³ Art. 69.

⁴ “The Republic of Croatia is globally recognized as a country exceptionally rich in diverse natural values such as its coastline and islands, fertile soils, waters and waterways, wild forests and numerous unique and globally acclaimed beauties...”

⁵ Declaration on environmental protection, *Official Gazette* no. 34/1992.

⁶ National Strategy for the protection of the Environment, *Official Gazette* no. 46/2002.

⁷ *Ibid.*

1997, and 2000. The gradual deterioration of seawater quality in the shallower areas of the entire Adriatic Sea systematically threatens the survival of multicellular algae and marine flowering plant communities, which serve as spawning, growth, and feeding grounds for numerous economically significant marine species.”⁸

The current Environmental Protection Act of 2013 specifies integrated preservation of environmental quality, conservation of biological and landscape diversity, and geodiversity and rational use of natural assets and energy in an environmentally sound manner, as basic conditions for healthy living and the concept of sustainable development.⁹ At that time the following principles of environmental protection were proclaimed: the principle of sustainable development; the principle of precaution; the principle of preservation of natural assets, biological diversity, and landscapes; the principle of substitution and/or compensation; the principle of removal and remediation of environmental damage at the source; the principle of integrated approach; the principle of cooperation; the “polluter pays” principle; the principle of access to information and public participation; the principle of promotion; and, finally, the principle of the right of access to justice. In relation to the subject of this paper, the Act differentiates three concepts: the marine environment, the coastal marine zone, and the marine ecosystem. The marine environment is defined as the living space of organisms and their communities, defined by distinctive physical, chemical, and biological features which include: open sea zones, estuaries, and coastal marine zones including internal sea waters, territorial sea, sea bottom, and seabed, in other words sea waters under the sovereignty of the Republic of Croatia and those waters in which the Republic of Croatia has sovereign rights and jurisdiction.¹⁰ The coastal marine zone is described as a geomorphological area on both sides of the coastline (tidal line), including the narrower coastal water belt, hinterlands, and islands, in which mutual effects between maritime and continental parts are developing in form of complex ecosystems composed of biotic and abiotic components, living environment for human settlements, and their social and economic activities.¹¹ Marine ecosystems are defined as regions of ocean space encompassing

⁸ *Ibid.* Problems such as the lack of planning and implementation of comprehensive coastal area management, and the inconsistency in managing renewable bio-resources in Croatian territorial waters with the established alarming state of fish stocks, are also highlighted.

⁹ Environmental Protection Act, *Official Gazette* no. 80/2013, 153/2013, 78/2015, 12/2018, 118/2018. see. Art. 3 paragraph 1.

¹⁰ Art. 4 paragraph 1 point 25 of the Environmental Protection Act.

¹¹ Art. 4 paragraph 1 point 30. It is further stated that the geographical scope of the coastal area includes the area defined by the outer boundary of the territorial sea of

coastal areas from river basins (estuaries) and the seaward margins of coastal current systems to the seaward boundaries of continental shelves.¹²

After the introduction, the paper discusses the general characteristics of the protection of the environment through criminal law, with an emphasis on marine waters and organisms, as well as the concept of maritime environmental crime and its application within national frameworks. The third chapter defines criminal offenses against the sea and the marine environment and evaluates their compliance with relevant European Union regulations. Given that the previously cited regulations emphasize decisive, high-level goals for environmental protection, the subsequent analysis focuses on state attorney and court practice. The conclusion provides an analysis of the research findings.

GENERAL CHARACTERISTICS OF THE PROTECTION OF MARINE WATERS AND ORGANISMS THROUGH CRIMINAL LAW

This chapter first explores the meaning of the term *Maritime Environmental Crime*, which is widely used in European and international sources but remains relatively unfamiliar in domestic (criminal law) literature and practice. It then establishes the general features of protection of the environment through criminal law.

What Does the Term *Maritime Environmental Crime* Encompass?

The term *Maritime Environmental Crime* is defined as an illegal activity that causes significant damage to the marine environment. The three most common offenses are as follows: marine pollution, illegal dredging and mining of the seabed, and illegal, unregulated, and unreported fishing.¹³ According to the literature, this term covers activities that inflict substantial harm on the marine environment, where humans are often considered secondary victims:

the Republic of Croatia, while the inland boundary of the coastal area is formed by the boundaries of coastal local self-government units and those local self-government units whose territories encompass part of the 1,000-meter protected coastal land area.

¹² Art. 4 paragraph 1 point 24.

¹³ Lycan, T., Van Buskirk, L. (2021). *What we know about Maritime Environmental Crime*. Available at: https://www.safeseas.net/wp-content/uploads/2021/09/What_We_Know_About_Maritime_Environmental_Crime.pdf. Accessed on August 28, 2022.

“Such crimes take place, in the sea, in the sense of the exploitation or degradation of the resources, fauna, cultural heritage, and infrastructures located in the oceans themselves.”¹⁴

*Marine pollution, in the broadest sense, includes activities that harm the marine environment by dumping or releasing harmful substances into the sea. For most of history, the disposal of industrial or other waste into the oceans was common and legal, including the dumping of nuclear waste beginning in the 1940s.*¹⁵ *Legislative protection of the marine environment from pollution intensified in the 1970s, following the adoption of the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter (1972).* However, marine pollution continues to be a major issue, as demonstrated by the results of Interpol’s Operation 30 Days at Sea 2.0, conducted from October 1 to 30, 2019, during which 17,000 inspections were carried out.¹⁶ The operation revealed three thousand marine pollution criminal offenses, with the primary motive being the attempt to avoid the costs of safe and legal waste disposal.¹⁷ This operation was a continuation of the first global effort involving approximately 276 law enforcement and environmental agencies across 58 countries, uncovering over 500 criminal offenses, including illegal discharge of oil and waste from vessels, ship destruction, ship emission regulation violation, and river pollution.¹⁸ The findings of this operation refute the paradigm that poorer countries are the sole polluters.¹⁹ At its conclusion, key policy positions were highlighted, aiming to finally discredit the notion of marine

¹⁴ Bueger, C., Edmunds, T. (2020). Blue Crime: Conceptualising Transnational Organized Crime at Sea. *Marine Policy*, 119. Available at: <https://www.sciencedirect.com/science/article/pii/S0308597X20300270>. Accessed on August 29, 2023.

¹⁵ Lycan, T., Van Buskirk, L. (2021). *Op. cit.*

¹⁶ Interpol (2019). *Marine pollution: thousands of serious offences exposed in global operation*. Available at: <https://www.interpol.int/News-and-Events/News/2019/Marine-pollution-thousands-of-serious-offences-exposed-in-global-operation>. Accessed: September 11, 2023.

¹⁷ Interpol (2019). *Marine pollution: thousands of serious offences exposed in global operation*. Available at: <https://www.interpol.int/News-and-Events/News/2019/Marine-pollution-thousands-of-serious-offences-exposed-in-global-operation>. Accessed: September 11, 2023.

¹⁸ *Ibid.*

¹⁹ *Ibid.* A ship in Germany released 600 liters of palm oil into the sea. Cases of severe contamination included the disposal of waste from animal farms in the coastal waters of the Philippines, where local communities collect shellfish and children play. Ghana discovered gallons of waste oil in large bottles believed to have been illegally dumped into the sea. In Albania, a disaster was averted by securing the water around a sinking ship carrying around 500 liters of oil. Similarly, a pollution threat resulting from the collision of two ships in French waters was prevented thanks to proactive action during the operation.

pollution as a low-risk crime with no real victims. Given that marine pollution poses global health risks and undermines sustainable development, collaboration among numerous agencies and sectors within a robust global security framework is necessary. Cooperation must be organized at the global level to build strong international relations with specialized experts, with the ultimate goal of ensuring that perpetrators of marine pollution crimes do not go unpunished.²⁰

The undersea is abundant in resources that attract illegal activities. Sand has been extracted from the seabed through dredging for millennia, and this process increasingly involves minerals and other natural resources accessed through the development of seabed mining technologies.²¹ Currently, seabed mining is mainly limited to shallow waters, but there is growing interest in deep-sea mining.²² Excavation and mining of the seabed pose significant environmental risks. Depending on the extraction technology used, the process can result in:

“...direct removal of seafloor habitat and organisms; alteration of substrate and its geochemistry; modification of sedimentation rates and food webs; release of suspended sediment plumes; release of toxins and contamination from extraction and removal processes; noise pollution; light pollution; and chemical leakage from mining machinery.”²³

When conducted illegally, the risks are even greater, as such activities often occur without adequate regulations or protective measures. Approximately 80% of all marine waste is dredged waste, of which about 10% is contaminated with heavy metals, which can poison water, marine organisms, and seafood.²⁴

Fisheries crime has the highest political salience among the three categories listed. It falls under the supervision of the United Nations, is involved in territorial disputes and geopolitics, and is a major focus of international law enforcement.²⁵ Like many other financial sectors, the modern fisheries sector

²⁰ *Ibid.* In this sense, on December 16, 2022, the United Nations General Assembly adopted a resolution establishing the International Day of Police Cooperation.

²¹ Lycan, T., Van Buskirk, L. (2021). *What we know about Maritime Environmental Crime*, 6. Available at: https://www.safeseas.net/wp-content/uploads/2021/09/What_We_Know_About_Maritime_Environmental_Crime.pdf. Accessed on August 28, 2022.

²² *Ibid.*

²³ Lycan, T., Van Buskirk, L. (2021). *What we know about Maritime Environmental Crime*, 6. Available at: https://www.safeseas.net/wp-content/uploads/2021/09/What_We_Know_About_Maritime_Environmental_Crime.pdf. Accessed on August 28, 2022.

²⁴ *Ibid.*

²⁵ *Ibid.*, 7.

is globalized, industrialized, and integrated into the global financial market; hence, it is similarly vulnerable to organized crime.²⁶ While organized crime within the fisheries sector is not a new phenomenon, the term *fisheries crime* itself is relatively recent, emerging from the current emphasis on sustainable fishing within the broader context of sustainable marine management. Significant attention is placed on the role of organized crime in the development of a parallel shadow blue economy.²⁷ Fisheries crime encompasses various criminal offenses across the entire value chain, from the preparatory phase and activities at sea to landing, processing, transportation, trade, and sale.²⁸ These criminal offenses can occur at sea, on land, along the shore, or in cyberspace, including the use of the *darknet*.²⁹ What they have in common is that they are all aimed at profit generation, making them a form of financial crime.³⁰ Many of these criminal offenses are committed extraterritorially, on the high seas, or in areas outside of national jurisdiction, rendering most cases transnational and accompanied by challenges in determining jurisdiction. Organized crime can occur within or outside the fishing industry, using the sector as a front for other criminal activities.³¹

A significant element of fisheries crime is illegal, unreported, and unregulated fishing (IUU). These are three different but related phenomena.³² Illegal fishing, as the name itself suggests, is fishing that takes place in direct opposition to the provisions of national or international law regarding where fishing can take place, what can be caught, or how (with what).³³ It includes fishing conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in

²⁶ Witbooi, E., Ali, K.D. et al. (2020). Organized Crime in the Fisheries Sector Threatens a Sustainable Ocean Economy. *Nature*, no. 588, 48.

²⁷ *Ibid.*, 49. For example, Al Capone used the fishing industry to smuggle rum back in the 1920s. On the phenomenon of *Rum running* see.: Demont, J. (2003). *Maritime Drug Smuggling and Rum-Running*. Available at: <https://www.thecanadianencyclopedia.ca/en/article/maritime-drug-smuggling-and-rum-running>. Accessed on September 12, 2023.

²⁸ *Ibid.*

²⁹ *Ibid.*, see. Wright, J. (2019) *Darknet usage in the illegal wildlife trade*. Available at: <https://osf.io/preprints/socarxiv/fgr9d/>. Accessed on September 12, 2023.

³⁰ *Ibid.*

³¹ Wright, J. (2019) *Darknet usage in the illegal wildlife trade*. Available at: <https://osf.io/preprints/socarxiv/fgr9d/>. Accessed on September 12, 2023.

³² Lycan, T., Van Buskirk, L. (2021). *What we know about Maritime Environmental Crime*, 7. Available at: https://www.safeseas.net/wp-content/uploads/2021/09/What_We_Know_About_Maritime_Environmental_Crime.pdf. Accessed on August 28, 2022.

³³ *Ibid.*

contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.³⁴ Unreported fishing refers to fishing that may or may not be illegal in its methods or practices, where the fish caught is not reported to the relevant authorities.³⁵ It is defined as fishing that is not reported, or is incorrectly reported to the relevant national authority, in contravention of national laws and regulations; or it takes place within the jurisdiction of the relevant regional fisheries management organization and is not reported, or is incorrectly reported, contrary to that organization's reporting procedures.³⁶ Unregulated fishing is fishing carried out in the area of application of a relevant regional fisheries management organization that is conducted by vessels without nationality, by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.³⁷

From the above, it is clear that the concept of maritime environmental crime is broader than the protection of marine waters and organisms through criminal law, as it includes all unlawful behavior, not only criminal offenses.

What are the General Features of the Protection of the Environment through Criminal Law?

Until the early 1960s, environmental law and environmental policy were practically unknown concepts.³⁸ In the development of environmental protec-

³⁴ Food and Agriculture Organization of the United Nations. *What is IUU Fishing?* Available at: <https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/>. Accessed on September 13, 2023.

³⁵ Lycan, T., Van Buskirk, L. (2021). *Op. cit.*, 7.

³⁶ Food and Agriculture Organization of the United Nations. *What is IUU Fishing?* *Op. cit.*

³⁷ Food and Agriculture Organization of the United Nations. *What is IUU Fishing?* Available at: <https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/>. Accessed on September 13, 2023.

³⁸ Bačić, A. (2008). Ustavni temelji i problemi zaštite okoliša u hrvatskom i europskom pravu. *Collected Papers of the Faculty of Law in Split*, vol. 45, 4/2008, 727.

tion, three theories emerged, each implying different approaches to protection and different ethical attitudes of humans towards nature.

“Anthropocentric theory is based on the care for natural life relationships from the perspective of human well-being, particularly for future generations. Today’s laws and legal sciences are still founded on an anthropocentric value system. The theory of ecocentric environmental protection perceives nature as a value in itself and its protection as a right belonging to nature itself. Its ultimate scope is a comprehensive ethical position, called holistic, which holds that everything in the world has value within the totality of nature. Resource-economic theory considers the protection of natural resources, especially those that are non-renewable, from the perspective of economic benefit.”³⁹

When considering environmental protection measures, priority is given to economic and financial measures and instruments; scientific and technical, educational and ethical, and finally legal measures and instruments.⁴⁰ In the case of criminal offenses against the environment, there are three possible models for regulating individual criminal offenses with regard to the primary protection objective. Namely, if the goal is the primary protection of humans, it is an anthropocentric model; if the aim is to protect flora and fauna, it is a biocentric model; and it is an ecocentric model in the case of environmental protection as such.⁴¹ Two fundamental features of criminal law—subsidiarity and fragmentation—are particularly evident in the protection of the environment through criminal law. Namely, criminal law, in the criminal-political sense, builds on the system of environmental law and serves as *ultima ratio societatis*, meaning it is employed only when legal protection through administrative, financial, civil, tax, or other legal branches is insufficient.⁴² Protection

For more about citizens' awareness of the importance of environmental protection and prevention of criminal offenses against the environment, see Pavlović, Z. (2022). Citizens' awareness of the importance of environmental protection and prevention of environmental crime. *Glasnik of the Bar Association of Vojvodina*, vol. XCIV, book 82, no. 4, 1229–1243.

³⁹ Lončarić-Horvat, O., Cvitanović, L., Gliha, I., Josipović, T., Medvedović, D., Omejec, J., Seršić, M. (2003). *Pravo okoliša*. Zagreb, 24 Cf.: Kirn, A. (1992). Od antropocentrične k ekocentričnoj etici. *Social ecology*, vol. 1, no. 3. Available at: <https://hrcak.srce.hr/file/204475>. Accessed on September 18, 2023. See also: and Pavlović, Š. (2015). *Kazneni zakon. Zakonski tekst, komentari, sudska praksa*. Rijeka: Libertin Naklada, 888.

⁴⁰ *Ibid.*, note 14, 30.

⁴¹ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., Munivrana Vajda, M., Mrčela, M., Nola, S., Roksandić Vidlička, S. et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Official Gazette, tr. 263.

⁴² Cvitanović, L. in: Novoselec, P. (ed). (2007). *Posebni dio kaznenog prava*. Zagreb: Faculty of Law, University of Zagreb, 269.

of the environment through criminal law is fragmentary to the extent that it applies only to the most significant environmental values and only to the most dangerous forms of endangerment or violation.⁴³

Another feature of the protection of the environment through criminal law that results from subsidiarity and fragmentation is its accessory nature. Cvitanović notes that the right to environmental protection encompasses dozens of laws and several hundred by-laws, which are either directly—as in the case of blanket provisions—or indirectly referred to by criminal offenses.⁴⁴ During the process of harmonizing legislation, it was noted that environmental protection is one of the most extensive and demanding areas, involving around 300 legal documents.⁴⁵ These documents are classified according to whether they belong to the so-called horizontal legislation, with further classifications such as air quality and climate change, product quality, waste management, water management, industrial pollution control and risk management, chemicals, noise, and nature protection.⁴⁶ A similar overview and list of legal sources of environmental protection is provided on the website of the State Inspectorate of the Republic of Croatia: environmental protection, air protection, climate change, ozone layer protection, and waste management.⁴⁷ Regulations related to the protection of marine waters and organisms are not categorized separately but are integrated with environmental protection, climate change, and waste management. The laws and by-laws relevant to certain incriminations will be discussed *infra* 3.1.⁴⁸

In modern legislation, criminal offenses against the environment are primarily conceived as offenses of endangerment, meaning that it is not

⁴³ Cvitanović, L. in: Novoselec, P. (ed). (2007). *Posebni dio kaznenog prava*. Zagreb: Faculty of Law, University of Zagreb, 269.

⁴⁴ *Cit., ibid.*

⁴⁵ Pavlović, Š. (2015). *Kazneni zakon. Zakonski tekst, komentari, sudska praksa*. Rijeka: Libertin Naklada, 889.

⁴⁶ *Ibid.*, 889–894.

⁴⁷ <https://dirh.gov.hr/o-drzavnomo-inspektoratu-9/ustrojstvo-77/20-sektor-za-nadzor-zastite-okolisa/pravni-izvori-vezani-za-podrucje-zastite-okolisa/279>. Accessed on September 11, 2023.

⁴⁸ Some of the more important bylaws are: Ordinance on Strictly Protected Species, *Official Gazette* no. 144/2013, 73/2016. Regulation on the Preparation and Implementation of Documents of the Marine Environment and Coastal Area Management Strategy, *Official Gazette* no. 112/2014, 39/2017, 112/2018. Decision on the Adoption of the Action Program of the Marine Environment and Coastal Area Management Strategy: Monitoring and Observation System for Continuous Assessment of the State of the Adriatic Sea, *Official Gazette* no. 153/2014. Decision on Determining the Reference Center for the Sea, *Official Gazette* no. 91/2018. Decision on the Adoption of the Program of Measures for the Protection and Management of the Marine Environment and Coastal Area of the Republic of Croatia, *Official Gazette* no. 97/2017.

necessary for the protected legal good to be actually violated; the threat of its violation is sufficient.⁴⁹ When it comes to offenses in the Criminal Code⁵⁰ most crimes against the environment are categorized as criminal offenses of abstract endangerment. Additionally important is warranty liability, which states that whoever fails to avert the consequence which is an element of a criminal offense described under the law shall be liable for omission if he or she is legally bound to avert such a consequence and if the omission to act is by its effects and meaning equivalent to committing the criminal offense by acting, in accordance with Art. 20, paragraph 2 of the Criminal Code. It should be emphasized that criminal offenses against the environment can affect entire ecosystems in cross-border areas, making the cross-border dimension of these offenses crucial for establishing effective tools for their investigation and prosecution.⁵¹ Given that the motive for committing these crimes is often the acquisition of unlawful financial gain, they are frequently carried out within criminal organizations.⁵² Finally, within the framework of the general characteristics of the protection of the environment through criminal law, it is important to highlight the criminal liability of legal entities, not just natural persons.⁵³

⁴⁹ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., Munivrana Vajda, M., Mrčela, M., Nola, S., Roksandić Vidlička, S. et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Official Gazette, tr. 263. See: Börner, R. (2019). *Umweltstrafrecht*. Berlin: Springer, 31–58. Cf.: Alimpić, M. (2022). Criminal offenses against the environment. Criminal legislation of Serbia and International Legal Standards – in Compliance or not? *Glasnik of the Bar Association of Vojvodina*, vol. XCIV, book 82, no. 4, 1332–1350.

⁵⁰ Criminal Code, *Official Gazette* no. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022. Hereinafter: CC.

⁵¹ See: Todić, D., Todić, J. (2022). Transboundary issues and cooperation in the domain of environmental protection in the legislation of Croatia, Serbia, Montenegro and Bosnia and Herzegovina. *Glasnik of the Bar Association of Vojvodina*, vol. XCIV, book 82, no. 4, 1154–1178.

⁵² See: United Nations, Office on Drugs and Crime (2022). *Crime, corruption, maritime insecurity and the environment: why a criminal justice approach is necessary to protect our oceans*. Available at: https://www.unodc.org/unodc/frontpage/2022/August/crime--corruption--maritime-insecurity-and-the-environment_-why-a-criminal-justice-approach-is-necessary-to-protect-our-oceans.html. Accessed on September 11, 2023.

⁵³ A recent case involves the Rijeka Thermal Power Plant, or HEP. In November 2022, an unknown quantity of mazut leaked into the sea from the Rijeka Thermal Power Plant, polluting beaches from Kostrena, through parts of Liburnia, all the way to Ližnjan in Istria. The State Attorney's Office of the Republic of Croatia identified elements of misdemeanor and criminal liability for this incident, and further proceedings are underway. An agreement on compensation has been made with HEP, under which the state company will pay the complete cost of cleaning the polluted coastline, which is currently estimated at at least two million euros. Glavan, M. (2023). *Curenje nafte: HEP će platiti čišćenje plaža u*

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Directive 2008/99/EC on the protection of the environment through criminal law, along with Directive 2004/35 on environmental liability and Regulation (EU) 2019/1010 on the harmonization of reporting obligations in the field of environmental legislation, constitutes the current triple EU legislative reference for criminal offenses against the environment.⁵⁴ Their purpose is to establish criminal liability for perpetrators of criminal offenses against the environment and to allow member states to determine the type of applicable penalty, provided that the penalty is effective, proportionate, and deterrent for that type of offense, whether committed intentionally or through gross negligence.⁵⁵

Kostreni i na Liburniji. Cifra je trenutno 2 milijuna eura. Available at: <https://www.novilist.hr/rijeka-regija/rijeka/curenje-naft-e-hep-ce-platiti-ciscenje-plaza-u-kostreni-i-na-liburniji-cifra-je-trenutno-2-milijuna-eura/>. Accessed on September 10, 2023.

⁵⁴ Committee on Petitions (2022) *Mišljenje Odbora za predstavke upućeno Odboru za pravna pitanja o Prijedlogu direktive Europskog parlamenta i Vijeća o zaštiti okoliša putem kaznenog prava i zamjeni Direktive 2008/99/EZ (COM(2021)851 – C9 0466/2021 – 2021/0422(COD))*. “However, as demonstrated by the impact assessment conducted by the European Commission in 2020, the number of successfully prosecuted cases was low, sanctions were insufficient to be deterrent, and cross-border cooperation was weak. Furthermore, given the differences in the legal systems of various Member States, it has proven difficult to define vague legal terms. Deficiencies were also identified in Member States regarding resources, expertise, awareness-raising, prioritization, cooperation, and information exchange, and it was found that comprehensive national strategies to combat environmental crimes—which would include all levels of the enforcement chain and a multidisciplinary approach—do not exist. Moreover, insufficient coordination between the application of administrative and criminal regulations and sanctions often leads to a lack of effectiveness. The lack of reliable, accurate, and comprehensive statistical data on proceedings related to environmental crimes in Member States prevents national policymakers and experts from monitoring the effectiveness of their measures; based on the evaluation results, the Commission decided to revise the Directive so that the legislative proposal to combat environmental crimes fulfills one of the key commitments of the European Green Deal.” *Ibid.*

Available at: https://www.europarl.europa.eu/doceo/document/A-9-2023-0087_HR.html. Accessed on September 20, 2023.

⁵⁵ Committee on Petitions (2022) *Mišljenje Odbora za predstavke upućeno Odboru za pravna pitanja o Prijedlogu direktive Europskog parlamenta i Vijeća o zaštiti okoliša putem kaznenog prava i zamjeni Direktive 2008/99/EZ (COM(2021)851 – C9 0466/2021 – 2021/0422(COD))*

Offenses under the Criminal Code⁵⁶

The basic form of the offense of environmental pollution under Art. 193, paragraph 1, is committed by whoever, contrary to regulations, discharges, introduces, or emits a quantity of materials or ionizing radiation into the air, soil, subsoil, water, or sea, which can over a longer period of time or to a considerable degree jeopardize their quality or to a considerable degree or over a greater area jeopardize animals, plants or fungi, or the lives or health of people. The prescribed penalty is imprisonment ranging from six months to five years. This basic form is classified as an offense of abstract endangerment, as it presupposes the potential for endangerment. Unlike the basic form, the aggravated form under Art. 193, paragraph 2, constitutes an offense of specific endangerment, prescribing a prison sentence of one to eight years for a perpetrator who discharges, introduces, or emits materials or ionizing radiation into the air, soil, subsoil, water or sea and thereby jeopardizes the lives and health of people. Additionally, both forms of the offense are punishable if they are a product of negligence. This offense is aligned with Art. 3(a) of Directive 2008/99/EC on the protection of the environment through criminal law.⁵⁷ Which regulations, when violated, fulfill the elements of this maritime criminal offense? The relevant national regulations are: the Maritime Code, the Law on Maritime Domain and Seaports, Law on the Gradual Phasing Out of Single-Hull Tankers from Navigation, the Law on the Transport of Dangerous Substances, the Regulation on Conditions that Ports Must Meet, the Ordinance on Conditions and Methods for Maintaining Order in Ports and Other Parts of Internal Sea Waters and the Territorial Sea of the Republic of Croatia, the Ordinance on the Protection of the Marine Environment in the Protected Ecological-Fishing Zone of the Republic of Croatia, the Ordinance on the Management and Supervision of Ballast Water, the Ordinance on the Handling of Dangerous Substances, Conditions and Methods of Transport in Maritime Traffic, Loading and Unloading of Dangerous Substances, Bulk and Other Cargo in Ports, and Methods for Preventing the Spread of Spilled Oils in Ports, the Ordinance on the Methods of Transporting Dangerous Substances

⁵⁶ Cf.: Sokanović, L., Boko, M. (2021). Marine Pollution in Croatia: Old Questions and New Developments from the Perspective of Criminal Law. *Collected Papers of the 3rd International Conference of Maritime Law "Modern Challenges of Marine Navigation"*. ISCML Split 2021. DES Split. 295–319.

⁵⁷ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., Munivrana Vajda, M., Mrčela, M., Nola, S., Roksandić Vidlička, S. et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Official Gazzete, tr. 264. DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND COUNCIL of November 19, 2008 on the protection of the environment through criminal law, OJ L 328, 28–37.

in Maritime Traffic, the Decision of the Croatian Parliament on the Extension of the Jurisdiction of the Republic of Croatia in the Adriatic Sea, and others.⁵⁸

Discharge of polluting substances from a vessel referred to in Art. 194, paragraphs 1 and 2, is committed by whoever, contrary to regulations, discharges polluting substances from a maritime object into the sea or from a vessel into the fresh water and thereby deteriorates their quality. It also applies to whoever, contrary to regulations, discharges smaller quantities of polluting substances from a maritime object into the sea or from a vessel into fresh waters, which in conjunction result in the deterioration of their quality. Criminal negligence is also punishable. This offense is aligned with Art. 4 and 5 of Directive 2005/35/EC of September 7, 2005, as amended by Directive 2009/123/EC of October 21, 2009, concerning pollution from ships and the introduction of sanctions, including criminal sanctions, for criminal offenses related to pollution.⁵⁹

Endangerment of the environment with waste from Art. 196, paragraph 2, is committed by whoever, contrary to regulations, discards, disposes of, collects, stores, processes, imports, exports or transports waste, or mediates in such an activity, or in general manages or handles waste in a manner that can over a longer period of time or to a considerable degree jeopardize the quality

⁵⁸ Maritime Code, *Official Gazette* no. 181/04, 76/07 and 146/08. Law on Maritime Domain and Seaports, *Official Gazette* no. 158/03, 100/04, 141/06 and 98/09. Law on the Gradual Phasing Out of Single-Hull Tankers from Navigation, *Official Gazette* no. 48/04. Law on the Transport of Dangerous Substances, *Official Gazette* no. 79/07. Regulation on Conditions that Ports Must Meet, *Official Gazette* no. 110/04. Ordinance on Conditions and Methods for Maintaining Order in Ports and Other Parts of Internal Sea Waters and the Territorial Sea of the Republic of Croatia, *Official Gazette* no. 90/05 and 10/08. Ordinance on the Protection of the Marine Environment in the Protected Ecological-Fishing Zone of the Republic of Croatia, *Official Gazette* no. 47/08. Ordinance on the Management and Supervision of Ballast Water, *Official Gazette* no. 55/07. Ordinance on the Handling of Dangerous Substances, Conditions and Methods of Transport in Maritime Traffic, Loading and Unloading of Dangerous Substances, Bulk and Other Cargo in Ports, and Methods for Preventing the Spread of Spilled Oils in Ports, *Official Gazette* no. 51/05. Ordinance on the Methods of Transporting Dangerous Substances in Maritime Traffic, *Official Gazette* no. 79/96 and 76/02. Decision of the Croatian Parliament on the Extension of the Jurisdiction of the Republic of Croatia in the Adriatic Sea, *Official Gazette* no. 153/03, 77/04, 138/06 and 31/08. The list of relevant international regulations is listed on the website of the Ministry of Maritime Affairs, Transport and Infrastructure. See: <https://mmpi.gov.hr/more-86/zastita-jadrana-103/propisi-o-zastiti-mora-i-voda-od-oneciscenja/15246>. Accessed on September 20, 2023.

⁵⁹ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., Munivrana Vajda, M., Mrčela, M., Nola, S., Roksandić Vidlička, S. et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Official Gazette, tr. 265. See: Vizjak, S. (2010). Kaznenopravna zaštita mora od onečišćenja s brodova u pravu Europske unije. *Naše more*, vol. 7, no. 3–4., 164–169. Available at: <https://hrcak.srce.hr/file/89791>. Accessed on September 20, 2023.

of air, soil, subsoil, water or sea, or to a considerable degree or over a greater area jeopardizes animals, plants or fungi, or the lives or health of people. Endangerment of the environment with a plant referred to in Art. 197, paragraph 1, is committed by whoever, contrary to regulations, operates a facility where dangerous procedures are carried out or where dangerous substances or preparations are stored or used, which can permanently or significantly endanger the quality of the air, soil, subsoil, water or sea outside the facility, or endanger animals, plants or fungi to a significant extent or in a greater area, or endanger the life or health of people. Endangerment of the environment with radioactive substances from Art. 198 is committed by whoever, contrary to regulations, produces, processes, handles, uses, possesses, stores, transports, imports, exports, or disposes of nuclear material or other hazardous radioactive substances which can over a longer period of time or to a considerable degree jeopardize the quality of air, soil, subsoil, water or sea, or to a considerable degree or over a greater area jeopardize animals, plants or fungi, or animal, plant or fungi communities, or jeopardize the lives or health of people. All three criminal offenses of abstract endangerment are harmonized with Art. 3. (c, d, and e) of Directive 2008/99/EC.⁶⁰

Destruction of protected natural values from Art. 200, paragraph 1, is committed by whoever, contrary to regulations, kills, destroys, possesses, captures, or takes a specimen of a protected species of an animal, plant or fungus, or other protected natural value. An aggravated form of the offense is committed when the perpetrator's basic offense results in a significant reduction in the population size or causes its extinction. Destruction of habitats from Art. 201. is committed by whoever, contrary to regulations, destroys or causes a significant deterioration of the habitat of a target species of an ecological network area or a significant deterioration of a target habitat type of an ecological network area. There are two aggravated forms of the offense: when it is committed against a priority species or habitat type within an ecological network area, and when, contrary to regulations, a breeding, rearing, migration, or hibernation site of a highly protected wild species is destroyed or damaged to an extent that significantly affects the conservation status of that species (paragraphs 2 and 3). These offenses are aligned with Art. 3(f and h) of Directive 2008/99/EC.⁶¹

Poaching game and fish from Art. 204, paragraph 2, is committed by whoever hunts game, catches fish or other freshwater or marine organisms in

⁶⁰ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., Munivrana Vajda, M., Mrčela, M., Nola, S., Roksandić Vidlička, S. et al. (2013). *Komentar Kaznenog zakona*. Zagreb: Official Gazette, 268–271.

⁶¹ *Ibid.*, 273–274.

such a manner or by such means that cause their massive destruction or by using prohibited accessory equipment. Killing or torture of animals from Art. 205, paragraph 1, is committed by whoever kills an animal without a justified reason or severely maltreats it, inflicts unnecessary pain on it, or puts it through unnecessary suffering.⁶² Transmission of contagious animal diseases and of organisms harmful to plants from Art. 206, paragraph 1, is a textbook criminal offense of omission, committed by whoever, contrary to regulations or decisions by the competent state authority prescribing measures to control or prevent the spread of infectious diseases in animals or organisms harmful to plants, thereby creating a risk of the spread of the disease or its agents, or the occurrence or spread of organisms harmful to plants.

Severe environmental criminal offenses are prescribed under Art. 214, where a stricter penalty (imprisonment from one to ten years) is stipulated if a criminal offense under Art. 193, paragraphs 1 and 2; Art. 194, paragraphs 1 and 2; Art. 196, paragraphs 1 and 2; Art. 197, paragraph 1; Art. 198, paragraph 1; and Art. 199 results in one or more persons suffering serious bodily injuries, or the changes brought about by pollution remaining for a considerable period of time, or a major disaster occurring. Imprisonment from three to fifteen years is prescribed if these same criminal offenses result in the death of one or more persons.⁶³

Persecution in Practice

Previous research indicates that criminal complaints, indictments, and convictions for these crimes are almost isolated cases.⁶⁴ Most complaints are filed against an unknown perpetrator, and a significant percentage of these complaints are dismissed. Regarding the imposed sentences, suspended sentences ranging from six to twelve months or three to six months are the most common. Sometimes fines are also imposed, and some proceedings may end up being discontinued.⁶⁵ In the context of prosecuting these offenses, it is important to highlight the role of the Environmental Protection Inspection, which oversees the enforcement of relevant regulations. The Inspection's

⁶² For more on this crime, see: Mišić Radanović, N., Banovac, A., Rakuljić, V. (2022). Status i zaštita životinja u kaznenom pravu Republike Hrvatske. *Yearbook of the Law Faculty in Sarajevo*, vol. 65, 279–311.

⁶³ For other forms, see Art. 214, paragraphs 3–7.

⁶⁴ Sokanović, L., Boko, M. (2021). Marine Pollution in Croatia: Old Questions and New Developments from the Perspective of Criminal Law. *Collected Papers of the 3rd International Conference of Maritime Law "Modern Challenges of Marine Navigation"*. ISCML Split 2021. DES. Split, 307–309.

⁶⁵ *Ibid.*

activities include: inspection oversight, participating in coordinated inspection oversight, organizing, preparing, and drafting recommendations for inspection implementation, coordinating and carrying out systematic thematic inspections, monitoring compliance, proposing amendments, and participating in the drafting of regulations within the scope of the inspection.⁶⁶ If a violation of regulations does occur, the Inspection: handles it through administrative proceedings, issues (mandatory) misdemeanor notices, submits indictments and criminal complaints, participates in main hearings in misdemeanor proceedings as a witness, and engages in criminal investigation procedures based on requests from the State Attorney's Office.⁶⁷

The research for this paper, considering the previously presented data, focused on obtaining and analyzing the practices of state attorneys' offices and courts concerning the offenses *supra* 3.1.⁶⁸ In one case, a complaint regarding the criminal offenses of illegal construction and environmental pollution was dismissed because, in the same matter:

"...corresponding misdemeanor orders had already been issued, and decisions made in the misdemeanor proceedings, which, in relation to possible criminal offenses, appear as legally resolved matters."⁶⁹

Similarly in another case, the complaint for the criminal offense of endangering the environment was dismissed because it was determined that the illegal conduct had been finally resolved in misdemeanor proceedings for a misdemeanor under the Law on Maritime Domain and Sea Ports.⁷⁰ Specifically, the suspect had carried out infilling works, namely, the construction of two embankments on maritime property. In another case, a complaint for

⁶⁶ State Inspectorate (2022) *Annual Report on the Work of the Environmental Protection Inspection for 2021*. Available at: <https://dirh.gov.hr/UserDocsImages/planovi/Godi%C5%A1nje%20izvje%C5%A1%C4%87e%20o%20radu%20DIRH%20za%202021.pdf>. Accessed on September 20, 2023.

⁶⁷ *Ibid.* The procedure is based on Article 258 of the Environmental Protection Act, which stipulates that the State Inspectorate shall file a charge according to the Misdemeanor Act, submit a criminal complaint to the competent authority due to a criminal offense, and undertake other measures and perform other actions it is authorized to undertake and perform if, during an inspection, it is determined that the Environmental Protection Act has been violated.

⁶⁸ Therefore, five decisions from the Municipal State Attorney's Office in Split dismissing criminal charges and ten judgments issuing penal orders from the Municipal Court in Split have been obtained. We take this opportunity to thank the First Deputy Municipal State Attorney in Split, Mr. Damir Mišić, for his assistance.

⁶⁹ Municipal State Attorney's Office in Split, Decision KP-DO-145/2020 of October 15, 2020.

⁷⁰ Municipal State Attorney's Office in Split, Decision KP-DO-497/22 of September 26, 2022.

environmental pollution was dismissed due to the lack of reasonable suspicion.⁷¹ Namely, it could not be reliably established whether the disputed inorganic substance—sodium hypochlorite at a 17% concentration—had been used when cleaning the legal entity's equipment, and if so, in what quantity, and whether such quantity or method of use was contrary to the Environmental Protection Act or any other regulation. Additionally, it could not be determined whether the quantity used was sufficient to significantly or permanently endanger the environment. It was concluded that the results of the criminal investigation and the available evidence did not provide reasonable suspicion that the suspect or any other involved individual committed the reported criminal offense of environmental pollution. Furthermore, any additional evidence that might support this, given the passage of time and the nature of the offense, was no longer obtainable. In the following case, a criminal complaint was also dismissed due to the lack of reasonable suspicion that the suspects committed the reported criminal act.⁷² The criminal complaint alleged that the suspects (2nd & 3rd) set up a fishing net after the first suspect observed a large group of fish and threw two firecrackers into the shallows, enabling all three to catch approximately twenty kilograms of fish. However, this event occurred in September 2016, and the senior fisheries inspector only acted a year later in an attempt to gather information about the event. It was not possible to reliably establish that the suspects committed the criminal offense of **poaching game and fish** because they denied committing the crime, and there were no other direct witnesses to confirm that the suspects had used pyrotechnic devices to catch the fish. A particularly interesting case highlights the challenge of distinguishing between a criminal offense and a relevant misdemeanor.⁷³ Based on a criminal complaint filed by the Split Department of Fisheries Control, a fisheries inspector reported that, in October 2021, during a coordinated action by the fisheries inspection and the police, the illegal fishing of two bluefin tuna specimens was discovered, and the suspects were caught during their unauthorized road transportation. An additional curiosity of the case lies in the fact that a drone-recorded video showed two individuals catching two tuna specimens, landing them, and placing them in a vehicle, which was then stopped, confirming that the suspects were the ones in the vehicle. The nature of the offense entails illegal fishing but only applies if fishing is done in such a manner or by such means that cause massive destruction or by using prohibited accessory

⁷¹ Municipal State Attorney's Office in Split, Decision KP-DO-2078/2019 of November 14, 2019.

⁷² Municipal State Attorney's Office in Split, Decision K-DO-97/2018 of April 9, 2018.

⁷³ Municipal State Attorney's Office in Split, Decision KP-DO-102/2021 of February 11, 2021.

equipment. In this particular case, the bluefin tuna were caught using a hook and boat. Article 2, paragraphs 1 and 2 of the Rulebook on Fishing for Bluefin Tuna with Fishing Tools and the Conditions and Criteria for Exercising the Right to the Allocation of an Individual Fishing Quota stipulates that bluefin tuna may be fished with the specified tools and equipment, provided that the necessary permits are obtained beforehand.⁷⁴ Therefore, considering the quantity of fish caught, the method of fishing, and the means used, it is evident that this case does not involve massive destruction of bluefin tuna. Additionally, it cannot be classified as using prohibited accessory equipment, which, according to case law, would entail fishing with explosives, electric currents, poison, stunners, or similar devices.

The harvesting of date mussels has been prohibited in the Republic of Croatia since January 1, 1995, under the Marine Fisheries Act.⁷⁵ According to some studies, up to 300 tons of date mussels were extracted annually, primarily along the west coast of Istria, around Split, Šibenik, and on the islands.⁷⁶ Since extracting these mollusks requires breaking rocks, the practice results in the destruction of large areas of rocky coastline, causing the devastation of entire habitats of living communities and the disappearance of native species.⁷⁷ However, as many as nine out of ten collected court rulings pertain to the illegal harvesting of date mussels, while in the remaining case, the offender was convicted for collecting 50.55 kilograms of sea cucumbers.⁷⁸ In the latter case, a penal notice was issued to the defendant for the criminal offense of destroying protected natural values under Art. 200, paragraph 1. The defendant's naive defense was that he had collected the sea cucumbers for himself and his friends to use as bait for fishing for gilthead sea bream, not to sell them for financial

⁷⁴ Ordinance on the Fishing of Bluefin Tuna (*Thunnus thynnus*) Using Angling Gear and the Conditions and Criteria for Obtaining the Right to Allocation of Individual Angling Quotas, *Official Gazette* no. 20/19, 77/19, 147/20, 116/21 and 53/22.

⁷⁵ Marine Fisheries Act, *Official Gazette* no. 74/1994, Art. 38, paragraph 2: In order to protect the rocky coastline as a special habitat of the fishing sea, the harvesting of date mussels is prohibited, and their sale throughout the entire territory of the Republic of Croatia, as well as their export, is prohibited.

⁷⁶ Višić, M. (2021). *Prstaci: Evo zašto su zakonom zabranjena delicija*. Available at: <https://www.morski.hr/prstaci-evo-zasto-su-zakonom-zabranjena-delicija/>. Accessed on September 21, 2023.

⁷⁷ *Ibid.*

⁷⁸ Municipal Court in Split, Judgment K-987/2021 of September 24, 2021. Harvesting of sea cucumbers is prohibited by the Ordinance on the Protection of Sea Cucumbers (*Holothurioidea*), *Official Gazette* no. 76/1998. Currently, harvesting is banned based on Article 10, Paragraph 1 of the Ordinance on the Collection of Indigenous Wild Species. *Official Gazette* no. 114/2017. The collection of sea cucumbers is prohibited by the Ordinance on the Closed Season for Sea Cucumbers (*Holothurioidea*), *Official Gazette* no. 29/2018.

gain.⁷⁹ Considering the phenomenology of these offenses, we identified specific elements in the prosecution process: joinder of offenses, continuing offense, confiscation of objects, awarding of property claims to the injured Republic of Croatia, assessment of the perpetrator's admission of guilt, special recidivism, and special obligations imposed during sentencing. Due to the limited scope of this paper, we will only analyze the qualification of the offense based on the collected rulings concerning the issuance of penal notices.

In three cases, the defendants were convicted of a joinder of poaching game and fish under Art. 204, paragraph 2, and destruction of protected natural values under Art. 200, paragraph 1.⁸⁰ The factual description of the offenses states that the defendants, with the intent of conducting illegal fishing, used impact tools to collect mollusks that grow in the rocks, catching date mussels in such a way that they broke the rocks with an iron hammer - sledgehammer thus destroying parts of the rocky coastline, fully aware that this species is highly protected. In the first case, the defendant was convicted for harvesting a total of 330 date mussels (this was a continuing offense), in the second case for 158 date mussels, and in the third case for 142 date mussels. However, in the case of a defendant who was convicted of catching 113 date mussels, the indictment was reduced, and then the penal order was only for the destruction of protected natural values under Art. 200, paragraph 1, despite the fact that he also used a metal hammer when committing the offense⁸¹.

In the next case, a defendant was caught by a police officer using a metal hammer to break a rock and extract date mussels. He was found in possession of 219 date mussels and was charged and convicted solely for the destruction of protected natural values under Art. 200, paragraph 2⁸². In the subsequent case, the defendant was charged and found guilty only of destroying protected natural values under Art. 200, paragraph 2, because he had extracted "an as-yet undetermined number of date mussels" on at least two occasions.⁸³ The defendant denied committing the offense, but a video was submitted as evidence, showing a "diver" using a handy tool to break stones, placing the date

⁷⁹ Namely, it can be read in the media that sea cucumbers are the latest hit on the world market with a price of 3,000 dollars per kilogram. See: G. D. (2021). *Sve veća potražnja za delikatesom, zbog koje ronioci gube živote*. Available at: <https://www.morski.hr/sve-veca-potraznja-za-delikatesom-zbog-koje-ronioci-gube-zivote-2/>. Accessed on September 21, 2023.

⁸⁰ Municipal Court in Split, Judgment K-962/2019 of October 30, 2019, Judgment K-800/2021 of June 1, 2023, Judgment K-1210/2021 of July 19, 2023.

⁸¹ Municipal Court in Split, Judgment K-1143/2020 of May 21, 2021. The defendant admitted to committing the offense and stated in his defense that he went diving to 'catch some date mussels for dinner because he has an elderly mother whom he wanted to please.'

⁸² Municipal Court in Split, Judgment K-1028/2020 of October 1, 2020.

⁸³ Municipal Court in Split, Judgment 15 K-63/18-2 of November 21, 2018

mussels in a makeshift bag, and emerging from the sea. It was clearly visible that the diver was the defendant.⁸⁴

Another defendant, who was not caught in the act of harvesting date mussels but with 386 date mussels (6.450 kg) in his home, along with tools and equipment used for extracting them was also convicted of destroying protected natural values.⁸⁵ The defendant chose to remain silent, and no other evidence was provided to prove that he had harvested the date mussels himself. Nevertheless, he was charged and convicted not only for possession but also for catching specimens of a highly protected species. The complexity of qualifying offenses is illustrated by the following two examples. In the refrigerator of a defendant who is a craftsman engaged in the retail trade of fish, shellfish, and crabs, a total of 644 date mussels with a combined weight of 10.760 kg were discovered. He was charged and convicted for a combination of destruction of protected natural values under Art. 200, paragraph 1, and illegal trade under Art. 264, paragraph 1, because “he possessed specimens of a highly protected species and unlawfully sold items the trade in which is prohibited.”⁸⁶ In the second case, 335 date mussels weighing 6.35 kg were found in a refrigerator at a catering establishment operated by a trading company, where the defendant was the responsible person. The defendant was charged and convicted solely for possessing specimens of a highly protected species, i.e., destruction of protected natural values under Art. 200, paragraph 1.⁸⁷ The legal entity was not charged.

CONCLUSION

In foreign literature, crime against the marine environment is distinguished from general crime by its concept, phenomenology, and prosecution while in national contexts it remains relatively unknown and burdened by the extensive scope of punishable behaviors. Research conducted on the protection of marine waters and organisms through criminal law shows that the Republic of Croatia ambitiously protects these proposed goals in their entirety

⁸⁴ The recording was made by a swimmer. 'Also attached are images of the diving suit, a metal hammer with pointed tips and a wooden handle, and pliers known as "špicange" in black and yellow color.' *Ibid.*

⁸⁵ Municipal Court in Split, Judgment K-500/2020 of August 25, 2020. Items confiscated from him: 'black diving suit, black fins, diving mask, approximately 10 kg of lead weights, pliers, hammer, handheld compass, brown mesh bag for shells, and two diving cylinders with a vest and regulators.'

⁸⁶ Municipal Court in Split, Judgment K-278/2022-2 of March 22, 2022.

⁸⁷ Municipal Court in Split, Judgment K-753/2022-2 of August 30, 2022.

at the legislative level, fully aligning with relevant EU regulations. However, in practice, the situation is markedly different: the number of cases is limited, only individual perpetrators or, at most, co-perpetrators are prosecuted, material damages are relatively minor, and punishments are lenient (though they include compensation and confiscation). The impact of both special and general prevention is absent. The phenomenology of criminal offenses against the marine environment in Croatia from the obtained decisions of local authorities points to the absence of the involvement of organized crime, in contrast to the perception of the European Union in which large-scale criminal offenses against the environment are often connected with other severe criminal offenses (money laundering, corruption, counterfeiting, smuggling, and physical violence). Such crime threatens three essential areas of the European Union: security goals, financial interests, and commitments from the Green Deal. In addition, high profitability and low risk as characteristics of criminal offenses against the environment create unfair competition with legal businesses. There is a lack of efficiency and capacity of national authorities for detection, investigation, and prosecution.

The effective fight for environmental protection advocates for a synergy between the new Directive on the protection of the environment through criminal law and The Council Framework Decision on the Fight against Organized Crime at the regulatory level, alongside enhancing cross-border cooperation among EU member states. The imperative of cross-border cooperation includes establishing special police units and joint investigative teams, exchanging data from criminal records, and using mutually recognized procedures (such as arrest warrants, fines, and confiscation orders). These units must be well-trained and equipped with the financial and technical resources necessary to carry out their tasks effectively. Additionally, there is a pressing need for the establishment of a so-called Green Public Prosecutor by expanding the jurisdiction of the European Public Prosecutor's Office under Art. 84, paragraph 4 of the TFEU. This expansion would encompass environmental crimes involving organized crime, as requested by the European Parliament.

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