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SPECIAL CIRCUMSTANCES FOR SENTENCING IN CRIMINAL OFFENSES AGAINST THE ENVIRONMENT***

ABSTRACT: Criminal offenses against the environment, as a special group of criminal offenses, are prescribed in Chapter XX-IV of the Criminal Code of the Republic of Serbia and constitute a specific group of criminal offenses that reflects contemporary challenges in preserving natural resources and human health, because they disturb the ecological balance, endanger human health, and cause lasting consequences for natural resources. Their specificity lies in the fact that the consequences are most often not limited to an individual or the moment of commission, but rather affect the broader community, the public interest, and future generations. Sentencing for these criminal offenses should involve a different approach compared to classic criminal offenses, that is, for this type of criminal offense, when determining the sentence, special consideration should be given to the scope and severity of the actual

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*** The paper was received on August 19, 2025, and it was accepted for publication on December 8, 2025.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

or potential damage to the environment, the duration and irreparability of the consequences, the degree to which human health was endangered, the motive and benefit obtained by the perpetrator, and especially the conduct of the accused after the commission of the criminal offense (remediation, compensation, cooperation with the competent authorities). The paper examines the normative frameworks of the Republic of Serbia and the European Union, analyzes the special circumstances that arise in the sentencing process, and provides an overview of prosecutorial and judicial practice of domestic courts, as well as the standards developed in the judgments of the European Court of Human Rights. Special attention is devoted to the efforts of the Republic of Serbia to harmonize its legislation and practice with European standards in the field of environmental protection. The aim of the paper is to demonstrate the specific features of criminal offenses against the environment, which require a differentiated, stricter, and remedial approach to sentencing, one that should be proportionate, deterrent, and aimed at preventing future violations, all in order to ensure effective environmental protection and achieve the goals of general and special prevention.

Keywords: environment, natural resources, sentence

1. INTRODUCTION

Environmental protection is one of the key issues of contemporary society and one of the most important features of the concept of sustainable development. Contemporary society is characterized by industrialization, urbanization, and global climate change, all of which indicate the need to take measures aimed at preserving natural resources and ecological balance. It is precisely this need that has become a priority at both the national and international levels. The legal regulation of environmental protection extends across various branches of law. The importance of the environment is particularly reflected in the fact that the Constitution of the Republic of Serbia has elevated the right to a healthy environment to the rank of constitutional rights. Article 74 of the Constitution of the Republic of Serbia prescribes that everyone shall have the right to a healthy environment and the right to timely and full information about the state of the environment, that everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of the environment, and that everyone shall be obliged to preserve and improve the environment.¹ It is precisely this constitutional regulation that

¹ Constitution of the Republic of Serbia, *Official Gazette of the RS*, No. 98/2006 and 115/2021.

indicates that everyone is obliged to care for the environment, without specifically emphasizing the role of the Republic and the autonomous province.² The protection of the environment through criminal law occupies a special place in the system of legal protection because it represents the highest degree of social response to conduct that endangers human health, flora and fauna, and natural ecosystems. The protection of the environment through criminal law also entails respect for and application of international documents on environmental protection. Within the framework of criminal liability, the issue of sentencing for criminal offenses against the environment is of particular importance, since the proper determination of the sentence should reflect the severity of the offense, the degree to which the environment was endangered or damaged, as well as the personal circumstances of the perpetrator. In addition, the special circumstances that the court takes into account when determining the sentence, such as motive, manner of commission, consequences of the offense, degree of culpability, and circumstances relating to the personality of the perpetrator, may have a decisive impact on the final sentencing decision. The aim of this paper is precisely to analyze the special circumstances that affect sentencing for criminal offenses against the environment in the domestic legal system, with reference to the relevant international standards and mechanisms that guide the development of environmental criminal law.

2. THE CONCEPT AND LEGAL FRAMEWORK OF ENVIRONMENTAL PROTECTION

The concept of the environment is regulated by the 2009 Law on Environmental Protection,³ which, in Article 3, paragraph 1, point 1, stipulates that the environment is a set of natural and created values, the complex mutual relations of which comprise the setting, i.e., the space and conditions for life. The contemporary concept of the environment encompasses not only natural elements such as air, water, soil, flora, and fauna, but also the broader ecological balance, quality of life, protection of biodiversity, and preservation of natural resources for future generations. The concept of the environment is defined broadly in legislation in order to cover various types of threats to

² Babić, B. (2023). „Krivično-pravna zaštita životne sredine u Republici Srbiji i uporednom zakonodavstvu“, doctoral dissertation. Novi Sad, 12.

³ Law on Environmental Protection, *Official Gazette of the RS*, No. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – decision of the Constitutional Court, 14/2016, 76/2018, 95/2018 – other law, 95/2018 – other law and 94/2024 – other law.

ecological integrity. Bearing in mind that the consequences of environmental degradation often exceed the local or national level, contemporary law increasingly uses an integrated approach to protection based on respect for the ecological, economic, and social dimensions of sustainable development. Environmental protection acquires special significance because it is the subject of special normative protection, including administrative, misdemeanor, and criminal mechanisms. The legal system of the Republic of Serbia in the field of environmental protection is based on a combination of constitutional guarantees, systemic laws, and special sectoral regulations. The Constitution of the Republic of Serbia establishes the right of citizens to a healthy environment and obliges the state to ensure the protection and improvement of environmental living conditions. This constitutional guarantee represents the foundation for the development of special legislative mechanisms. The fundamental law in the Republic of Serbia regulating the field of environmental protection is the Law on Environmental Protection, which sets out the basic aims and principles of environmental preservation, such as sustainable development, preventive action, polluter liability, and the principle of integral protection, the principle of prevention and precaution, the principle of preserving natural values, the principle of sustainable development, the “polluter pays” principle, the “user pays” principle, the principle of information and public participation, and the principle of protection of the right to a healthy environment and access to justice. In addition to the above-mentioned law, the Republic of Serbia has also adopted numerous special laws (the Law on Nature Protection,⁴ the Law on Waters,⁵ the Law on Air Protection,⁶ the Law on Waste Management,⁷ the Law on Environmental Impact Assessment,⁸ etc.), which regulate individual environmental sectors and establish standards that must be observed in order to prevent pollution and the endangerment of the ecological balance. In addition to the special laws mentioned above, the right to a healthy environment has also received protection through criminal law in the legislation of the Republic of Serbia, which is provided for by the provisions of the Criminal Code of the Republic of Serbia, which prescribes criminal offenses against the environment in a separate chapter. The normative framework of criminal offenses represents

⁴ Law on Nature Protection, *Official Gazette of the RS*, No. 36/2009, 88/2010, 91/2010 – corr., 14/2016, 95/2018 – other law and 71/2021.

⁵ Law on Water, *Official Gazette of the RS*, No. 30/2010, 93/2012, 101/2016, 95/2018 and 95/2018 – other law.

⁶ Law on Air Protection, *Official Gazette of the RS*, No. 51/2025.

⁷ Law on Waste Management, *Official Gazette of the RS*, No. 36/2009, 88/2010, 14/2016, 95/2018 – other law and 35/2023.

⁸ Law on Environmental Impact Assessment, *Official Gazette of the RS*, No. 94/2024.

the strictest form of social response when the consequences of endangering the environment are particularly serious. Given that, as noted, the consequences of environmental problems exceed the boundaries of national legislation, the field of environmental protection cannot be viewed in isolation from the international obligations undertaken. The Republic of Serbia has ratified a large number of international conventions and protocols aimed at ensuring global standards in the preservation of environmental resources, among which Directive 2008/99/EC on the protection of the environment through criminal law is of particular importance. This Directive prescribed measures that Member States should take in the field of criminal law in order to ensure more effective environmental protection, and proceeds from the standards established by the Council of Europe Convention established by the Convention on Environmental Protection (1998).⁹ It is also necessary to mention the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹⁰ and the Stockholm Declaration on the Human Environment,¹¹ which introduced the concept of the right to a healthy environment at the international level and stipulated 26 basic principles for environmental protection, which the signatory states were to incorporate into their national legislation. It is also necessary to mention the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,¹² which aimed to ensure transboundary control of hazardous waste and chemicals. The normative framework of environmental protection, which encompasses all regulations at both the national and international levels, constitutes a coherent mechanism of environmental protection that includes preventive, administrative, misdemeanor, and criminal instruments.

⁹ Babić, B. (2023). „Krivično-pravna zaštita životne sredine u Republici Srbiji i uporednom zakonodavstvu“, doctoral dissertation. Novi Sad, 29.

¹⁰ 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 Treaties*, No. 38/2009.

¹¹ Law on the Ratification of the Stockholm Convention on Persistent Organic Pollutants, *Official Gazette of the RS – International Treaties*, No. 42/2009.

¹² Law on the Ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, *Official Gazette of the RS – International Treaties*, No. 2/99.

3. CRIMINAL OFFENSES AGAINST THE ENVIRONMENT IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

With the adoption of the 2006 Criminal Code, the legislation of the Republic of Serbia systematized and prescribed in a special chapter of criminal offenses entitled “Criminal Offenses Against the Environment” (XXIV), 18 criminal offenses whose primary protected object is the environment. It should be noted that, in the Criminal Code, in addition to new criminal offenses and those from secondary legislation, the legislator also systematized certain criminal offenses that, under the previous law, had been included in the group of criminal offenses against the economy, such as Timber Theft and Illegal Hunting and Fishing.¹³ In addition, this group also contains criminal offenses committed to the detriment of animals. The object of protection in these criminal offenses is the environment, that is, the right to a preserved, healthy, and safe environment as a universal and constitutionally guaranteed right of all citizens. The blanket nature of criminal-law provisions that provide protection requires knowledge and application of numerous regulations that regulate various eco-media, as well as a multi-sectoral approach when securing evidence, which makes criminal offenses against the environment particularly complex. The term “criminal offenses against the environment” can also include criminal offenses from other groups that primarily protect another object, but that indirectly have consequences for the environment, and which are referred to in legal theory as criminal offenses against the environment in a broader sense (Pollution of Drinking Water and Foodstuffs under Art. 258 of the Criminal Code, Causing General Danger under Art. 278 of the Criminal Code, Damage to Dams, Embankments, and Water Management Facilities under Art. 282 of the Criminal Code, Construction Without a Building Permit under Art. 219a of the Criminal Code)

Criminal offenses against the environment entail acts of commission or omission, that is, a combination of commission and omission, which violate the rules of environmental law, namely laws and a series of regulations protecting the environment, thereby causing a criminal-law relevant consequence with respect to the environment / an environmental good.¹⁴ All criminal offenses from this group fall within the jurisdiction of the basic court, with the most

¹³ Škulić, M., Čavoški, A., Trajković, D., Matić, M., Mrakić, V. (2011). *Priručnik za zaštitu životne sredine*. Belgrade: Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, 12.

¹⁴ Miljuš, I. (2023). Specijalizacija službenih aktera u postupku za krivična dela protiv životne sredine. *Zbornik radova sa međunarodne naučne konferencije „Raskršća međunarodnog krivičnog i krivičnog prava – Reforma pravosudnih zakona Republike Srbije“*. Palić, 408.

severe prescribed penalty being ten years of imprisonment. Namely, Articles 260 to 277 prescribe the following criminal offenses: *Environmental Pollution* (Art. 260); *Failure to Undertake Environmental Protection Measures* (Art. 261); *Unlawful Construction and Commissioning of Facilities and Installations that Pollute the Environment* (Art. 262); *Damage to Environmental Protection Facilities and Devices* (Art. 263); *Damage to the Environment* (Art. 264); *Destruction of, Damage to, Taking Abroad, and Bringing into Serbia a Protected Natural Good* (Art. 265); *Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances* (Art. 266); *Unlawful Construction of Nuclear Installations* (Art. 267); *Violation of the Right to Information on the State of the Environment* (Art. 268); *Killing and Abuse of Animals* (Art. 269); *Transmission of Contagious Diseases Among Animals and Plants* (Art. 270); *Negligent Provision of Veterinary Assistance* (Art. 271); *Production of Harmful Products for Treating Animals* (Art. 272); *Pollution of Livestock Fodder and Water* (Art. 273); *Forest Devastation* (Art. 274); *Timber Theft* (Art. 275); *Illegal Hunting* (Art. 276); *Illegal Fishing* (Art. 277). For the purposes of this paper, some of the most important and, in practice, most frequent criminal offenses will be addressed in greater detail.

3.1. Environmental Pollution (Art. 260 of the Criminal Code)

Environmental pollution is a blanket criminal offense whose protected object is air, water, and soil. It is prescribed as a result crime, and for its basic form to exist, pollution must occur to a greater extent or over a greater area. Since the terms “greater extent” and “greater area” are general concepts, the question arises in practice as to how such a degree of pollution is to be established in a specific case. In determining these imprecise terms, the limit values of permitted pollution of individual ecosystems, provided for by specific rule-books, should be used, and the term limit values should be understood as the highest permitted level of a polluting substance in nature, established on the basis of scientific knowledge, which must not be exceeded once it is reached.¹⁵

For this criminal offense, paragraph 3 prescribes an aggravated form of the criminal offense. Namely, paragraphs 3 and 4 prescribe a more severe criminal sanction if a consequence has occurred in the form of destruction of or damage to flora or fauna on a large scale, or environmental pollution to such an extent that its elimination requires a longer period of time or large costs. Regarding the concept of “destruction of or damage to flora or fauna on a large

¹⁵ Škulić, M., Čavoški, A., Trajković, D., Matić, M., Mrakić, V. (2011). *Priručnik za zaštitu životne sredine*. Belgrade: Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, 13.

scale, or environmental pollution to such an extent that its elimination requires a longer period of time or large costs,” the Supreme Court of Serbia initially determined in a 2002 ruling that such damage exists if it exceeds the amount of 4,000,000 dinars. However, given that these are values that cannot always be expressed in material terms, the Supreme Court, in its most recent legal opinions from 2006, omitted this criminal offense when determining monetary values as elements of certain criminal offenses, which means that, in practice, the extent of damage is determined through the necessary expert examinations, depending on the ecosystem that has been polluted.¹⁶ In any event, the answer as to what is considered a greater extent or a greater area, or the destruction of or damage to flora or fauna on a large scale, is determined by case law, and the limit values of permitted pollution in individual eco-media may serve as guidance. Paragraphs 2 and 4 prescribe the negligent form of this criminal offense, both in its basic form and in the qualified form under paragraph 3, where a more serious consequence occurs. Since, given the threatened penalty, a suspended sentence may also be imposed for this offense under paragraphs 1, 2, and 4, the legislator prescribed in paragraph 5 that, if a suspended sentence is imposed, the court may order the perpetrator to undertake, within a specified period, certain prescribed measures for the protection, preservation, and improvement of the environment, but this possibility is linked only to the intentional form of the criminal offense. It should be noted that the consequence of this criminal offense entails only pollution of eco-media and destruction of or damage to flora or fauna; therefore, if some other consequence occurs through the commission of this criminal offense (for example, impairment of a person’s health or bodily injury), there will be concurrence with other relevant criminal offenses.

3.2. Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances (Article 266 of the Criminal Code)

The act of commission of the basic form of the criminal offense of Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances under Article 266 of the Criminal Code entails bringing radioactive or other hazardous substances or hazardous waste into Serbia, or transporting, processing, disposing of, collecting, or storing such substances or waste, contrary to regulations. Since the alternative acts

¹⁶ Škulić, M., Čavoški, A., Trajković, D., Matić, M., Mrakić, V. (2011). *Priručnik za zaštitu životne sredine*. Belgrade: Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, 13.

of commission of this criminal offense must be carried out contrary to regulations, this means that it is also of a blanket nature. Paragraph 2 prescribes a more severe penalty if the act of commission of this criminal offense is allowed or enabled by a person through abuse of their official position or authority. Both forms of the criminal offense may be committed only with intent, that is, the perpetrator must be aware that the substances are radioactive or hazardous substances or that the waste is hazardous waste. As with the criminal offense of Environmental Pollution, the legislator has prescribed a qualified form of this offense where it results in the destruction of flora or fauna on a large scale, or where environmental pollution occurs to such an extent that its elimination requires a longer period of time or large costs, as well as the possibility for the court to order the perpetrator to undertake certain prescribed protection measures within a specified period. The most severe penalty for this offense is prescribed in paragraph 5, for persons who organize the commission of the offense referred to in paragraph 1 of this Article, which means that at least two criminal offenses under paragraph 1 must have been committed that the perpetrator organized, while the perpetrator did not personally participate in their commission. In practice, this criminal offense is most often carried out through the act of storing hazardous waste contrary to regulations. In that regard, it is necessary first to establish that the waste is hazardous waste, and then that it is being stored contrary to regulations. In this regard, the Law on Waste Management, the Rulebook on Categories, Testing, and Classification of Waste,¹⁷ and the Rulebook on the Method of Storage, Packaging, and Labeling of Hazardous Waste are of particular importance.¹⁸ The concept of hazardous waste is defined in Article 5, paragraph 1, point 18 of the Law on Waste Management, which stipulates that hazardous waste is waste that, by its origin, composition, or concentration of hazardous substances, may pose a danger to the environment and human health and has at least one of the hazardous characteristics established by special regulations, including the packaging in which the hazardous waste was or is packaged. Hazardous waste is determined according to the characteristics of the waste that make it hazardous and the components of the waste on account of which the waste is considered hazardous, as defined in the lists of the Rulebook on Categories, Testing, and Classification of Waste. The provisions of the Rulebook on the Manner of Storage, Packaging, and Labeling of Hazardous Waste regulate the manner that ensures the lowest risk of endangering human life and health and the environment.

¹⁷ Rulebook on Categories, Testing and Classification of Waste, *Official Gazette of the RS*, No. 56/2010, 93/2019, 39/2021 and 65/2024.

¹⁸ Rulebook on the Method of Storage, Packaging and Labelling of Hazardous Waste, *Official Gazette of the RS*, No. 95/2024.

4. SENTENCING IN CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

Prescribing criminal offenses against the environment represents the strictest form of social response to conduct that crosses the boundary of administrative and misdemeanor liability and causes serious consequences for the environment. When prescribing criminal offenses against the environment, the legislator in the Republic of Serbia sought to ensure an adequate response through criminal law that would be both repressive and preventive, and the legislator's response in prescribing penalties is reflected in the penalty ranges prescribed for this type of criminal offense. The severity of the sentence itself depends on the circumstances, both general and special, under which the criminal offense against the environment was committed. Sentencing is carried out by applying the provisions of the Criminal Code, namely by applying the general rules on sentencing, which are prescribed in Articles 54–57 of the Criminal Code. In our theory, the concept of the individualization of the sentence is used. This concept can be understood in a broader and in a narrower sense. In the broader sense, individualization of the sentence represents the entire process that takes place from the selection of the penalty to its imposition, which means that it also includes sentencing. In the narrower sense, individualization is one of the principles on the basis of which sentencing is carried out, and it primarily entails becoming acquainted with the personality of the perpetrator.¹⁹ When it comes to criminal offenses against the environment and sentencing for these criminal offenses, it may be said that sentencing is based on a combination of general sentencing circumstances and special circumstances arising from the nature of these offenses and the specific features of environmental protection. Distinguishing between these two sets of criteria is of essential importance for understanding penal policy in this field.

4.1. General Sentencing Circumstances

The general rules on sentencing are prescribed in Article 54 of the Criminal Code and apply to all criminal offenses regardless of their type or consequences. The general rules constitute the basic framework for sentencing and include the degree of culpability of the perpetrator, the motive and reasons for which the offense was committed, the manner of commission of the criminal offense, the severity of the injury or consequences of the criminal

¹⁹ Stojanović, Z. (2022). *Komentar Krivičnog zakonika*, twelfth supplemented edition. Belgrade, 274.

offense, the personal characteristics of the perpetrator, the perpetrator's prior life and previous convictions, as well as the perpetrator's conduct after the commission of the criminal offense. When it comes to the degree of culpability of the perpetrator, accountability, intent, that is, negligence, as well as awareness of unlawfulness, these are components of culpability that may be graded. This sentencing criterion represents the perpetrator's internal attitude toward the criminal offense and its consequence. It is precisely this circumstance that allows for the individualization of the sentence. When determining the sentence, the court assesses circumstances concerning whether the perpetrator wanted the consequence to occur or accepted the consequence as possible, whether they acted with an increased degree of carelessness, and whether the motivation for committing the criminal offense was unlawful gain. In criminal offenses against the environment, the degree of culpability is of particular importance primarily because the consequences may be long-term, irreversible, and multilayered, while the perpetrators of this type of criminal offense are often legal persons with an increased duty of care, and in most cases, their motive is economic gain to the detriment of the public interest. All of the above indicates that the degree of culpability, as a general sentencing circumstance, represents a key instrument of fair individualization of the sentence, which allows the court to distinguish situations in which the harmful consequence is the result of intentional, consciously accepted risky conduct from those in which the harmful consequence occurred due to carelessness.

In Article 54 of the Criminal Code, the legislator in the Republic of Serbia also lists, as one of the circumstances affecting sentencing, the circumstances under which the offense was committed. These include the setting in which the criminal offense was committed, that is, the temporal, spatial, and situational conditions, the manner of conduct of the perpetrator, and the degree of organization and preparation for the commission of the criminal offense. In these criminal offenses, the manner of commission often has a decisive impact on the scope and severity of the consequence because it is precisely the use of technical means, the quantity of hazardous substances, and proximity to populated areas or protected natural goods that can dramatically increase the risk to human health and natural resources. When these circumstances are assessed in sentencing, they result in stricter sanctioning of perpetrators of these criminal offenses in situations where the perpetrator was aware of the increased risk, but nevertheless acted in a manner that could have led to an environmental disaster, such as, for example, discharging waste substances into a watercourse during a period of low water levels, depositing hazardous waste in the immediate vicinity of agricultural land, etc. In such cases, these circumstances are considered to indicate an increased degree of social dangerousness because the perpetrator not only acts contrary to regulations, but does so in a manner that significantly aggravates the consequence of their conduct.

The perpetrator's prior life and personal circumstances, as circumstances that the court takes into account when determining the sentence, are circumstances that enable an assessment of the perpetrator's personality and social dangerousness beyond the criminal offense itself. This individualization of the sentence makes it possible for the sentence not to be imposed exclusively as a response to the consequence that occurred, but also as a measure that should respond to the needs of special prevention in the specific case. By the perpetrator's prior life, the legislator meant their previous criminal conduct, possible prior convictions, habits, work engagement, family circumstances, material living conditions, as well as other circumstances indicating the perpetrator's integration into the social environment. A particularly important circumstance is the perpetrator's prior convictions; that is, the court will impose a stricter sanction on a perpetrator who has been previously convicted, especially if they have been convicted of the same or similar criminal offenses, because it is considered that the previously imposed criminal sanctions did not achieve their preventive purpose. Conversely, the absence of prior convictions, an orderly family life, and stable work engagement may be assessed as mitigating circumstances in sentencing, because they indicate that the criminal offense is an "isolated incident," and not an expression of a permanent criminal orientation. Bearing in mind that, in criminal offenses against the environment, responsible persons within legal persons appear as perpetrators in a large number of cases, and that a high level of professional responsibility and knowledge of regulations is expected of them, in the case of such perpetrators, a positive social status, a high level of education, and many years of experience in the relevant activity may be assessed as aggravating circumstances, because they may indicate that the perpetrator knowingly and with professional awareness of the consequences violated regulations in order to obtain economic gain. It is precisely these circumstances in sentencing that enable individualization of the sentence by considering the perpetrator as a person, in the context of the protection of the environment through criminal law.

When it comes to the perpetrator's conduct after the commission of the criminal offense as a circumstance affecting whether the sentence will be higher or lower, two groups may be distinguished. One group concerns mitigation of the consequences caused by the criminal offense, such as helping and apologizing to the victim, compensation for damage, and genuine remorse. In this regard, the law particularly emphasizes the importance of the attitude toward the victim of the criminal offense. The second group of circumstances includes those concerning the conduct of the perpetrator as the accused during the criminal proceedings (for example, denial, remorse, changing statements,

lying, influencing witnesses).²⁰ These circumstances allow the court to assess the degree of the perpetrator's sincere willingness to remedy the consequences of the criminal offense and the values violated by the offense. In assessing these circumstances, activities of the perpetrator that indicate assuming responsibility for the committed criminal offense are particularly significant, and these circumstances include voluntary reporting to the competent authorities, elimination or reduction of the damage caused, cooperation with prosecuting authorities, as well as expressed remorse and a critical attitude toward one's own conduct. An analysis of case law shows that such conduct is traditionally valued as a mitigating circumstance, that is, as a circumstance indicating the reduced social dangerousness of the perpetrator and the existence of potential for their resocialization. Conversely, avoiding responsibility, fleeing, concealing traces, influencing witnesses, and destroying evidence are considered expressions of persistence in criminal conduct, which leads to stricter sanctioning. In the field of criminal offenses against the environment, these circumstances become more important because of the nature of the consequences, which may be long-lasting, irreversible, and difficult to eliminate. For this reason, the perpetrator's conduct after the commission of the offense is particularly important, namely, whether the perpetrator undertook remediation measures, reported the environmental incident to the competent authorities, and cooperated in discovering the causes and scope of the damage. Active conduct by the perpetrator, accompanied by a desire to eliminate the harmful effects of their actions, indicates the perpetrator's awareness, and the court may assess such conduct as a significant mitigating circumstance. However, concealment, continuation of unlawful conduct, and lack of cooperation with the competent authorities increase the perpetrator's social dangerousness, which is why the court will assess such conduct as an aggravating circumstance.

4.2. Special Sentencing Circumstances

Bearing in mind the protected object in criminal offenses against the environment, the special circumstances that the court assesses when sentencing in criminal offenses against the environment are circumstances that go beyond the general framework prescribed in Article 54 of the Criminal Code. These circumstances are connected to the specific nature of these criminal offenses, the structure of their consequences, and the subjects who most commonly appear as perpetrators of this type of criminal offense. The assessment

²⁰ Stojanović, Z. (2022). *Komentar Krivičnog zakonika*, twelfth supplemented edition. Belgrade, 281.

of these special circumstances arises from the need to ensure a higher degree of protection of the public interest, natural resources, and human health when sanctioning environmental crime, because these criminal offenses have long-term, multilayered, and irreversible consequences.

4.2.1. Degree of Endangerment and Consequences for the Environment

Unlike many other criminal offenses, where the consequence of the criminal offense can be clearly determined quantitatively, in criminal offenses against the environment, the damage is often diffuse, spread across time and space, and its effects may sometimes become visible only after a longer period of time. Precisely because of this character of the consequence, when determining the sentence, the court gives special consideration to whether the criminal offense caused a lasting consequence for the environment, that is, for human life and health (permanent pollution of soil, water, or air, endangerment of biodiversity, destruction of protected species and spatial units). In criminal law relating to criminal offenses against the environment, the scope and duration of the consequence are key special circumstances that the court must take into account when determining the sentence. These circumstances are not merely formal; they reflect the essential social dangerousness of environmental offenses, because the damage is often not limited to short-term effects, but manifests itself in the long term, in depth, and across different aspects of the natural system. First, the scope of the consequence that occurred entails an assessment of the area and intensity of the damage. The court should determine whether the pollution is localized or has affected a greater area, whether only one environmental element has been impaired (for example, soil, a river), or whether multiple natural resources have been affected (groundwater, flora, fauna). The court must also assess whether existential biological values have been impaired, such as the endangerment of protected species or natural habitats, which additionally increases the severity of the criminal offense. The more widespread the scope of the damage, the greater the likelihood that the public interest and ecosystem balance have been impaired, which justifies a stricter penal policy. In addition, the duration of the consequences is equally important in the assessment of circumstances affecting sentencing. Unlike many classic offenses, the consequences of environmental pollution often cannot be completely eliminated within a short period of time. Toxic substances may remain in the ecosystem for years, and the natural processes of self-organization and restoration of ecosystems may last for decades. When determining the sentence, the court must assess how permanently the harmful consequences will persist, as well as whether the perpetrator took the long-term impact into

account when committing the offense. However, the court must also consider whether restoration is possible and to what extent the perpetrator can participate in the restoration of nature. In cases where restoration is realistic and, after the commission of the criminal offense, the perpetrator has invested funds or work in restoration (for example, cleaning contaminated soil, removing hazardous substances, re-vegetation), that fact may significantly adjust sentencing toward mitigation. Conversely, where restoration is impossible or only partially possible, as in cases of deep chemical contamination or destroyed natural habitats, courts may decide to impose a stricter sentence, because the risk to natural values and the public interest is permanent. This special circumstance also has social and ecological implications: long-term pollution may endanger water quality, the health of the local population, agricultural production, and the survival of biological diversity. Therefore, when determining the sentence, the court cannot ignore this broad social impact; that is, a sentence that does not reflect the scope and duration of the damage does not fulfill its preventive function and does not provide an adequate response to the risks that the perpetrator poses to the community and to nature. From a legal standpoint, this approach is aligned with the aim of the protection of the environment through criminal law, where the sentence serves not only as a repressive measure, but also as a means of conveying a public message: that negligent or intentional endangerment of natural resources will not be punished only because of immediate damage, but also because of its long-term consequences. When it comes to case law, specific examples of criminal proceedings in Serbia that clearly and thoroughly assess the scope and duration of environmental damage in sentencing are relatively rare. One significant judgment of the Supreme Court, Kzz. No. 259/2014,²¹ refers to the criminal offense of Environmental Pollution, but in its reasoning, the court deals more with procedural and qualification issues and less with a detailed ecological assessment of long-term damage. In addition, rare academic analyses indicate that the “public interest of the environment” is often insufficiently operationally integrated into the criminal-law practice of the Republic of Serbia when determining the sentence, which is why there are calls for clear criteria for assessing the scope and duration of consequences. Therefore, courts should develop a practice that will systematically and transparently take into account the natural and ecological aspects of the offense, which means that environmental expert examinations should include an assessment of long-term effects, restoration, and remediation costs, and that this should form part of the reasoning in the sentencing decision. In addition, it would be useful for case law to systematically assess

²¹ See: Judgment of the Supreme Court of Cassation, Kzz. No. 259/2014 of April 29, 2014.

the possibility or impossibility of remediating the damage caused. In cases where restoration of nature is impossible or realistically limited, such as deep soil contamination, destroyed habitats, or disturbances of biological balance, that fact must become a pronounced aggravating circumstance. Conversely, where the perpetrator actively participates in remediation, voluntarily reports the incident, or finances protective measures, such a response may justify more lenient sanctioning, but only on the condition that the damage has been eliminated to the greatest extent possible. At the normative level, amendments to legislative solutions could also be considered in order to explicitly emphasize the role of long-term ecological consequences as a special aggravating circumstance. This would also be in line with European standards and EU law, which place particular emphasis on the significance of long-term ecological consequences. By introducing these reform steps, the protection of the environment through criminal law would not only be a repressive mechanism for imposing punishment for a past offense, but also an instrument of prevention, restoration, and preservation of natural resources for future generations. In this way, penal policy would be harmonized with the actual complexity of ecological processes and with the need to respond to criminal offenses against the environment fairly, consistently, and responsibly. Only in this way will the criminal-law response to environmental criminal conduct be truly effective: not only by punishing, but also by encouraging restoration and responsibility toward the environment.

4.2.2. Subject of the Commission of a Criminal Offense Against the Environment – Liability of Natural or Legal Persons

Criminal offenses against the environment are characterized by a specific structure and specific characteristics of perpetrators, since they are most often committed in the context of economic activities, technological processes, and organizational management of resources. Therefore, in analyzing these offenses, it is necessary to consider in particular the subjects responsible for their commission, both natural persons and legal persons, which have an increasingly prominent role in contemporary criminal law.

Natural persons are subjects of criminal liability, and in criminal offenses against the environment, liability is most often established in relation to the individual who directly undertook the act of commission or had a duty to prevent the occurrence of damage. This group includes: persons who directly undertake the unlawful act, such as workers or technicians who carry out prohibited discharge of polluting substances, illegal logging, or disposal of hazardous waste; responsible persons within a legal person, that is, persons who, within the organizational structure, have decision-making and

supervisory authority, such as directors, plant managers, technical managers, or environmental protection services. Criminal liability of natural persons is based on culpability, in the form of intent or negligence, with environmental criminal offenses often being committed by negligence, due to failures in supervision or failure to undertake mandatory protection measures. Situations in which the unlawful condition is the result of a systemic omission are particularly complex, because the liability of individual persons must be determined more precisely through an analysis of the position, authority, and duties of each individual within the work process.

The liability of legal persons for criminal offenses against the environment in the legal system of Serbia is based on the Law on the Liability of Legal Persons for Criminal Offenses.²² This model of liability makes it possible, in addition to the natural person as the perpetrator of the criminal offense, to sanction the organization in whose name the criminal offense was committed, which is extremely important, bearing in mind that significant environmental incidents are most often the consequence of decisions, policies, and omissions within corporate governance. A legal person may be liable where: the criminal offense was committed in its name, for its benefit, or on its behalf; the offense resulted from a failure of supervision or control; the organization obtained a benefit or the offense was enabled by insufficient control; and where the legal person did not undertake the prescribed environmental protection measures, although it was obligated and able to undertake them. This legal framework makes it possible to bring into criminal proceedings subjects with significant economic power and the potential to endanger the environment on a large scale. Sanctions for legal persons include fines, prohibition of the performance of activities, confiscation of pecuniary gain, and other measures aimed at having a preventive effect and encouraging organizations to introduce stricter environmental protection systems. Establishing criminal liability of legal persons for offenses against the environment represents one of the most complex segments of contemporary criminal proceedings. Unlike the classic model of individual liability, where it is necessary to prove the psychological attitude of the perpetrator toward the offense, in the case of a legal person, proof is directed toward an analysis of the internal organizational structure, the risk management system, and the manner in which the legal person implemented its statutory obligations in the field of environmental protection. The basic question is not “who personally wanted the consequence,” but whether the offense is the result of corporate will, a failure in management, or a lack of appropriate supervision. The complexity of proof arises from the fact that the act

²² Law on the Liability of Legal Entities for Criminal Offences, *Official Gazette of the RS*, No. 97/2008.

of commission is always directly carried out by a natural person – a worker, technician, plant manager, or director – while the legal person is held liable on the basis of the act of an authorized representative or as a consequence of an omission in the organization. For that reason, particular importance is given to evidence indicating the decision-making structure, the system for controlling waste and emissions, internal acts, records on risks, internal reports on irregularities, and documentation on technical maintenance of installations. It is precisely in these documents that it is most often revealed whether the legal person undertook all prescribed and reasonably expected measures to prevent harm to the environment. A particularly specific situation exists where the direct perpetrator acted contrary to the internal rules of the legal person. In such cases, case law emphasizes that the legal person may be liable if omissions in organization, supervision, or training of workers enabled or facilitated the commission of the offense. In other words, a legal person cannot avoid liability merely by invoking formal regulations; rather, the actual effectiveness of the measures implemented is examined. In this way, the criminal-law mechanism requires the legal person not only to prescribe, but also to effectively implement an environmental protection system. Another important aspect concerns proving the causal link between the omission of the legal person and the consequence that occurred. In criminal offenses against the environment, consequences are often complex, delayed in time, or conditioned by several different factors (technical, natural, or human). For this reason, experts in the fields of ecology, chemistry, toxicology, and occupational safety are included in evidentiary proceedings, analyzing the degree of damage, contamination, the mechanism of its occurrence, and the conditions under which the harmful event could have been prevented. In practice, courts accept that, for liability to exist, it is sufficient to prove that the omission of the legal person significantly contributed to the danger or damage, even if it was not the sole cause. Viewed as a whole, proving the liability of legal persons in criminal offenses against the environment requires an approach that goes beyond the traditional model of individual culpability. This is necessary because the most serious forms of environmental endangerment arise precisely as a consequence of systemic omissions within organizations. Therefore, the criminal liability of legal persons appears as a mechanism that encourages the establishment of effective environmental management systems, the integration of sustainable development standards into business processes, and the prevention of offenses that may have long-term and irreparable consequences for ecosystems.

In practice, the criminal liability of natural and legal persons is not mutually exclusive, but often appears simultaneously and in parallel. Thus, for the same event, criminal prosecution may be brought against: the natural person who directly committed the offense, the responsible person within the legal

person, and the legal person itself, if the statutory conditions are met. This multilayered liability has a significant preventive role, because it encourages corporate structures to establish effective mechanisms of internal supervision, risk assessment, control of waste flows, and application of technological standards of environmental protection.

The introduction of criminal liability of legal persons into the legal system of the Republic of Serbia has significantly contributed to strengthening environmental penal policy. Therefore, a criminal-law response directed exclusively at natural persons would not be able to encompass the real cause of the offense or achieve the full preventive effect. By sanctioning legal persons, the legislator sends a clear message that environmental protection must be integrated into all levels of corporate governance and that economic gain cannot justify disregard for environmental standards. This is in line with European law and international trends, which recognize the role of legal persons as key actors in the commission of criminal offenses against the environment.

5. INTERNATIONAL ENVIRONMENTAL CONVENTIONS

International environmental conventions are of great importance in contemporary international law, environmental preservation, and sustainable development. They enable states to jointly face problems that no state can resolve on its own. The Republic of Serbia has ratified a number of international conventions in the field of environmental rights, thereby undertaking to apply them directly, that is, to harmonize its laws in order to fully apply the provisions of those conventions. The most significant conventions in the field of environmental rights are the Aarhus Convention, the Basel Convention, the Rotterdam Convention, and the Stockholm Convention, and for the purposes of this paper, it is also important to mention Directive (EU) 2024/1203.

5.1. The Aarhus Convention

The Convention of the United Nations Economic Commission for Europe (UNECE) on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter: the Aarhus Convention)²³ was adopted on June 25, 1998, in the Danish city of Aarhus, at the Fourth Ministerial Conference “Environment for Europe.”

²³ UNECE, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998, United Nations, Treaty Series, vol. 2161.

The Republic of Serbia ratified the Aarhus Convention in 2009 by the Law Ratifying the Aarhus Convention, by which it was incorporated into the legal system, after which it adopted a Strategy²⁴ for its implementation with the aim of ensuring a process that would enable feasible, effective, and gradual fulfillment of the requirements of the Aarhus Convention, bearing in mind all the specific features of the conditions in the Republic of Serbia.

The three basic pillars on which this Convention rests are: 1) the right of access to information on the environment; 2) the right of public participation in decision-making; 3) access to justice in environmental matters.

Article 74 of the Constitution of the Republic of Serbia guarantees the right to a healthy environment and the right of citizens to timely and complete information about its condition. In this way, the Republic of Serbia, through a provision of its highest legal act, supports the “pillars” of the Aarhus Convention, while the most important laws relating to the application of the principles of the Aarhus Convention in the Republic of Serbia are, first of all, the Law on Free Access to Information of Public Importance²⁵ and the Law on Environmental Impact Assessment. The Republic of Serbia has also established institutional support mechanisms, the so-called “Aarhus Centers of Serbia,” whose task is to promote the application of the Convention, facilitate access to information, public participation, and provide support to citizens in legal proceedings. The Centers also deal with the issue of disaster risk reduction, especially flood risks. Namely, Serbia has a network of five Aarhus Centers, the first of which was established in 2010 in Kragujevac, while the centers in Novi Sad and Subotica were opened in 2011, in Niš in 2012, and in Belgrade in 2015.

5.2. The Basel Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (hereinafter: the Basel Convention)²⁶ is an international treaty drawn up on March 22, 1989, in Basel, Switzerland, which entered into force in 1992. This treaty was designed with the aim of reducing the movement of hazardous waste between states, and especially of preventing the transfer of hazardous waste from developed countries to developing

²⁴ Strategy for the Implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters – Aarhus Convention, *Official Gazette of the RS*, No. 103/2011.

²⁵ Law on Free Access to Information of Public Importance, *Official Gazette of the RS*, No. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021.

²⁶ United Nations, *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, March 22, 1989, Treaty Series, vol. 1673.

countries, and to provide that the transboundary movement of waste from the state of generation to any other state should be permitted only when carried out under conditions that do not endanger human health and the environment, and under conditions that are not contrary to the provisions of this Convention. Each contracting state is obligated to designate a contact person and a competent authority responsible for the implementation of the Basel Convention.

The Republic of Serbia ratified the Basel Convention by law in 1999. The competent authority of the Republic of Serbia in the implementation of the Basel Convention and the fulfillment of international obligations undertaken by its ratification, as well as in the exchange of information with the Secretariat of the Convention, is the Ministry of Environmental Protection – Department for Transboundary Movement of Waste.²⁷ Although the Republic of Serbia has formally and legally harmonized its legislation with the Basel Convention, actual implementation shows that there is a gap between theory and practice, primarily due to problems of a technical and capacity-related nature. For example, there is a large number of non-sanitary, so-called “wild” landfills where waste is not controlled at all, is not recorded, or where control does not function adequately. Namely, according to the data of the Open Data Portal of the Republic of Serbia,²⁸ there are currently 845 non-sanitary landfills in the Republic of Serbia, of which 131 are inactive, while there are only 12 sanitary landfills. This indicates a low level of control over the waste that is disposed of, that is, that despite the existence of laws and formal procedures, a large portion of hazardous waste in Serbia may end up in illegal landfills, remain unsorted and without effective control, which seriously diminishes the effectiveness of Basel protection as well.

5.3. The Rotterdam Convention

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (hereinafter: the Rotterdam Convention) is an international agreement adopted on September 10, 1998, in Rotterdam, which entered into force on February 24, 2004. The objective of this Convention is to promote shared responsibility and cooperative efforts among contracting parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by

²⁷ <https://www.ekologija.gov.rs/dozvole-obrasci/upravljanje-otpadom/prekogranicno-kretanje-otpada-i-notifikacioni-postupak> accessed on November 21, 2025.

²⁸ <https://data.gov.rs/sr/datasets/deponije-sanitarne-nesanitarne-i-divlje/> accessed on November 26, 2025.

facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export, and by disseminating those decisions to other contracting parties (Article 1 of the Rotterdam Convention). In 2009, the Republic of Serbia ratified the Rotterdam Convention by law.²⁹ This law is applied through the Law on Chemicals³⁰ and the Law on Biocidal Products.³¹

5.4. The Stockholm Convention

The Stockholm Convention on Persistent Organic Pollutants is an international treaty adopted in 2001 in Stockholm (hereinafter: the Stockholm Convention), and it entered into force on May 17, 2004. Already in its introductory provisions, the protection of human health and the environment from persistent organic pollutants is defined as the objective of this Convention. Namely, the signatories to the Convention undertake to adopt the legal and administrative measures necessary to eliminate or strictly restrict the use and production of persistent organic pollutants – chemicals (POPs) that persist in the environment for a long time, accumulate in living organisms, are transported over long distances, and may cause serious consequences for human health and ecosystems.

Implementation of the Stockholm Convention requires global cooperation and coordination among the signatory states.

6. THE EUROPEAN DIRECTIVE ON ENVIRONMENTAL CRIME FROM 2024

The European Directive on environmental crime from 2024³² was adopted on April 11, 2024, and entered into force on May 20, 2024 (hereinafter: Directive (EU) 2024/1203). Directive (EU) 2024/1203 seeks to align, that is, harmonize the law concerning criminal offenses against the environment

²⁹ Law on the Ratification of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, as amended, *Official Gazette of the RS – International Treaties*, No. 38/2009.

³⁰ Law on Chemicals, *Official Gazette of the RS*, No. 36/2009, 88/2010, 92/2011, 93/2012 and 25/2015.

³¹ Law on Biocidal Products, *Official Gazette of the RS*, No. 109/2021.

³² European Union: Council of the European Union, *Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC*, PE/82/2023/REV/1 OJ L, 2024/1203, 30 April 2024.

and establishes common standards for criminal offenses and penalties for them. Directive (EU) 2024/1203 represents a significant step forward in the European Union's fight against environmental crime, expanding the list of criminal offenses against the environment and strengthening the mechanism of sanctions and their enforcement. Namely, in Article 3, the Directive provides for a total of 20 criminal offenses.

Member States have undertaken to harmonize their national legislation with the Directive by May 21, 2026. In addition to introducing new criminal offenses and prescribing qualified forms of those criminal offenses, Directive (EU) 2024/1203 specifies the type and level of criminal sanctions, and, for legal persons, introduces the possibility of a penalty whose amount is determined according to the company's total worldwide turnover, and not only the revenue generated within the borders of the state where the criminal offense was committed, as well as a series of other measures aimed at environmental protection.³³ Given that the Republic of Serbia is in the process of accession to the EU, as a candidate country, it is expected to harmonize its legislation with the EU *acquis*.³⁴

7. PROBLEMS AND CHALLENGES IN PROVING THE COMMISSION OF CRIMINAL OFFENSES AGAINST THE ENVIRONMENT, WITH PROPOSALS FOR IMPROVING THE LEGAL FRAMEWORK AND PRACTICE

Criminal offenses against the environment are of such a nature that there is a danger of the rapid loss of evidence that cannot be secured at a later stage or that will be modified to such an extent that it will no longer be possible to use it as evidence in proceedings (for example, if a river is polluted, it is necessary for the police to arrive at the scene as soon as possible in order to conduct an on-site investigation, but also for experts from the Institute of Public Health or another competent institution to arrive and properly take a water sample,

³³ Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije „Izazovi međunarodnog krivičnog prava i krivičnog prava – tom 2“*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Udruženje za međunarodno krivično pravo, 342.

³⁴ For more on the compliance of Directive (EU) 2024/1203 with the Criminal Code of the Republic of Serbia, see: Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije „Izazovi međunarodnog krivičnog prava i krivičnog prava – tom 2“*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Udruženje za međunarodno krivično pravo, 323–344.

which would be subject to expert examination at a later stage of the proceedings and serve as evidence before the court. Any delay in sampling creates the danger that the polluted water, depending on the speed of the river flow, will no longer be capable of being sampled, and despite the existence of a consequence caused by the pollution, such as, for example, the death of river fish, without an adequate water sample it will not be possible to establish a causal link between the pollution of the water itself and the cause of the fish deaths).

Because of this urgency, it is necessary that all actors possess specialized knowledge in the field of environmental protection. In that regard, as of February 2022, groups for combating environmental crime and environmental protection have been formed within each regional police administration. In addition, within the Ministry of the Interior of the Republic of Serbia, within the Police Directorate, the Criminal Police Administration, the Service for Combating Crime, a Department for Combating Environmental Crime has been established, which cooperates with all regional administrations and the already mentioned groups, so that problems of environmental crime are covered and addressed not only horizontally, but also vertically, that is, the performance results of the newly formed groups are monitored.³⁵ Within the public prosecution organization, public prosecutors are designated by the annual plan and program as contact points for environmental safety and endangered wild species, and they primarily act in these cases and primarily attend specialist training and professional gatherings on the topic of environmental protection, that is, on the topic of protection of endangered wild species.

Precisely because of the “urgent character” of securing and collecting evidence, it is necessary for the public prosecutor’s office to have already established cooperation and a planned dynamic of action in relation to these criminal offenses, that is, depending on the eco-medium that has been polluted, for both local and national environmental protection inspectors and the public prosecutor to know in advance which institution must be contacted for the expert taking of samples, and for there to be a pre-established map of expert institutions, institutes, or laboratories to which such samples are sent for expert examination at an earlier stage of the proceedings, without delay. If the public prosecutor is unprepared in the sense that they do not know who is competent to perform sampling, and only after being informed of the criminal offense begins to learn who could adequately perform it and to check the availability of those experts, there is a serious risk of losing evidentiary material, bearing in mind that urgency is often measured in hours.

³⁵ Đorđević, Đ. (2025). Stanje ekološkog kriminala u Pčinjskom okrugu. *Zbornik radova sa međunarodne naučne konferencije „Izazovi međunarodnog krivičnog prava i krivičnog prava – tom 2”*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Udruženje za međunarodno krivično pravo, 552.

8. CRIMINAL OFFENSES AGAINST THE ENVIRONMENT IN THE PRACTICE OF THE BASIC PUBLIC PROSECUTOR'S OFFICE IN NOVI PAZAR

An inspection of the records of the Basic Public Prosecutor's Office in Novi Pazar shows that, in practice, only one criminal offense dominates out of the eighteen criminal offenses against the environment, namely the criminal offense of Timber Theft under Article 275 of the Criminal Code.

Table 1.

Criminal offense	2020	2021	2022	2023	2024
Environmental Pollution	0	0	4	17	2
Failure to Undertake Environmental Protection Measures	0	0	0	0	0
Unlawful Construction and Commissioning of Facilities and Installations that Pollute the Environment	0	0	0	1	0
Damage to Environmental Protection Facilities and Devices	0	0	0	0	0
Damage to the Environment	0	0	0	0	2
Destruction of, Damage to, Taking Abroad, and Bringing into Serbia a Protected Natural Good	0	0	0	0	0
Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances	0	0	0	1	9
Unlawful Construction of Nuclear Installations	0	0	0	0	0
Violation of the Right to Information on the State of the Environment	0	0	0	0	0
Killing and Abuse of Animals	1	0	0	0	2
Transmission of Contagious Diseases Among Animals and Plants	0	17	0	0	0
Negligent Provision of Veterinary Assistance	0	0	0	0	0
Production of Harmful Products for Treating Animals	0	0	0	0	0
Pollution of Livestock Fodder and Water	0	0	0	0	0
Forest Devastation	0	0	0	0	0
Timber Theft	34	30	46	22	17
Illegal Hunting	1	0	0	0	0
Illegal Fishing	1	0	0	1	3

Table 1 shows the cases formed in the Basic Public Prosecutor's Office in Novi Pazar between 2020 and 2024 concerning criminal complaints for criminal offenses from Chapter XXIV. A major disproportion is noticeable, in the sense that, of the total number of criminal complaints filed for this group of criminal offenses, 48.5 % were filed for the criminal offense of Timber Theft, while 10 criminal offenses do not appear in practice at all. As can be seen by the years presented, this trend of primarily filing criminal complaints for the criminal offense of Timber Theft is present throughout the entire period shown, although it may be observed that after 2022, when groups for combating environmental crime and environmental protection were formed within each regional police administration, that is, Departments for Combating Environmental Crime, criminal complaints began to be filed for the criminal offense of Environmental Pollution and the criminal offense of Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances, which indicates an important step forward in a more effective fight against environmental crime. Nevertheless, it may be concluded that the criminal offense primarily prosecuted is one where the consequence appears as pecuniary damage to an individual, while other criminal offenses against the environment that have the public good as their protected object, and where an individual does not appear as the injured party, virtually do not exist. Unfortunately, this does not mean that such criminal offenses truly do not occur in practice, but only that the protected object, as an independent good, the environment as such, has essentially not been understood.

With regard to sanctions for criminal offenses against the environment, from the sample years presented in Table 1, it was established that in 45 % of cases deferred prosecution was applied, in 29.5 % a warning measure was imposed, in 15.5 % a fine was imposed as the principal penalty, in 1.6 % imprisonment with electronic monitoring was imposed, and in 0.8 % an effective prison sentence was imposed. From the above, it may be concluded that courts primarily resort to deferred prosecution, which the legislator has unquestionably enabled, bearing in mind that in the largest number of cases a penalty of up to five years has been prescribed; however, the question arises as to the achievement of the purpose of punishment, that is, the achievement of general and special prevention in relation to the perpetrator and other persons, through such outcomes of criminal proceedings for criminal offenses against the environment.

9. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE FIELD OF ECOLOGY

The case law of the European Court of Human Rights in the field of ecology has been developing for several decades. Although the European Convention on Human Rights itself (hereinafter: the Convention)³⁶ does not explicitly contain a “right to a healthy environment,” the European Court of Human Rights has, through the interpretation of other rights under the Convention, developed rich case law that today represents the basis of environmental law in Europe. One of the most significant judgments of the European Court of Human Rights (hereinafter: the Court) is *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*,³⁷ in which the Court, on the basis of Article 8 of the Convention, established a positive obligation of Contracting States to protect individuals from the serious adverse effects of climate change. Namely, the proceedings were initiated on the basis of an application by the Association (whose members include more than 2,000 older women, most of whom are over the age of 70) and four individual applications by women over the age of 80, members of the Association, who complained of various failures by the Swiss authorities to mitigate climate change – and in particular the effect of global warming – which negatively affected the lives, living conditions, and health of the individual applicants and the members of the applicant Association. The Court recognized the association’s active procedural standing, while the individual members of the association (individuals) were not granted victim status unless they were personally affected by a specific measure (Article 34 of the Convention).³⁸ The Court found that, although climate change is undoubtedly a global phenomenon that states should address at the global level, each state has its own share of responsibility to take measures to combat climate change and that the taking of those measures is determined by the state’s own capacities, and not by any specific act (or omission) of any other state. What

³⁶ Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, Protocol No. 6 concerning the abolition of the death penalty, Protocol No. 7, Protocol No. 12, and Protocol No. 13 concerning the abolition of the death penalty in all circumstances, *Official Gazette of SCG – International Treaties*, No. 9/2003, 5/2005 and 7/2005 – corr., and *Official Gazette of the RS – International Treaties*, No. 12/2010 and 10/2015.

³⁷ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, (App. no. 53600/20), 9. 4. 2024.

³⁸ Auner, A. B. (2024). Legal standing and victim status of individuals and associations after the ‘KlimaSeniorinnen’ case. *Review paper Series: Law and Politics*, 22(2), 146.

is important, and sufficient for the existence of state responsibility, is that the reasonable measures that the domestic authorities failed to take could have had real prospects of changing the outcome or mitigating the harm. The Court found that Switzerland had failed to introduce appropriate laws and had failed to implement appropriate and sufficient measures for achieving the goals of combating climate change, in accordance with its international obligations. On April 9, 2024 (App. no. 53600/20), the Court held that Switzerland had violated the provisions of the Convention because it had failed to take appropriate measures to protect its citizens from the consequences of climate change. The judgment was delivered on the basis of Articles 8 (right to respect for private and family life) and 6 (right of access to a court/fair trial) of the Convention. The Court assessed that states have a positive obligation to take measures that will mitigate the impact of climate change, especially on vulnerable groups of citizens (in the specific case, older women). This case is considered a turning point in the sense that, for the first time, the Court directly linked climate change and international human rights protection, thereby opening the space for future actions against states for failure to act in relation to protecting the population from the harmful impact of climate change. In this way, environmental protection acquired the rank of a human rights issue and an obligation of the state toward its citizens.

10. CONCLUSION

Criminal offenses against the environment, primarily starting from their structure, consequences, and other specific features connected to this type of criminal offense, require a special approach. Namely, unlike classic offenses, criminal offenses against the environment in the largest number of cases cause long-term, widespread, and often irreversible damage that affects not only an individual or the local community, but entire ecosystems and the health of present and future generations. Precisely because of the above, sentencing a perpetrator of criminal offenses against the environment cannot be a simple mechanical application of the general sentencing rules, but must represent a careful, expert, and well-founded analysis of the general and special circumstances that arise in this type of criminal offense. Courts and public prosecutor's offices must, in each individual case, assess the scope and duration of the consequence, the degree of impairment of natural resources, the possibility or impossibility of remediation of the damage that occurred, as well as the motive and degree of culpability of the perpetrator. Of particular importance is the assessment of whether the perpetrator acted in order to obtain economic gain to the detriment of the public interest, whether they undertook measures

to eliminate the damage, and whether they cooperated with the competent authorities. In environmental crime, the role of legal persons is dominant, as their activities, organizational omissions, or intentional activities may lead to pollution on a large scale. Therefore, establishing their liability under the Law on the Liability of Legal Persons for Criminal Offenses represents a positive step toward improving the preventive function of criminal law and strengthening corporate awareness of the need to comply with environmental standards. An analysis of the practice of the Basic Public Prosecutor's Office in Novi Pazar shows that environmental criminal offenses are still insufficiently prosecuted, which indicates the need to strengthen institutional capacities through better intersectoral cooperation and a faster response in the stage of securing evidence. The urgent character of criminal offenses against the environment requires that the public prosecutor's office, the police, and inspection services act in a coordinated manner, with clearly defined procedures and the availability of expert laboratories capable of securing relevant evidence. Harmonization of domestic legislation and practice with European standards represents an important step toward effective environmental protection. However, the formal existence of norms is not sufficient; rather, their consistent application is necessary, which will ensure uniform case law, and it is particularly necessary to conduct continuous education of all actors in the system. In conclusion, sentencing for criminal offenses against the environment must be strict, fair, and directed toward the specific features of environmental crime. Only a sentence that reflects the actual severity of the environmental consequence, the degree of culpability, and the social dangerousness of the perpetrator can achieve its preventive role and contribute to the protection of the public interest. Only in this way does the system of criminal law become an effective instrument for the preservation of natural resources, protection of human health, and ensuring a sustainable future for generations to come.

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