

*Mladen M. Milošević, Ph.D.**

University of Belgrade, Faculty of Security Studies

ORCID: 0000-0001-8978-3475

*Jovana M. Banović, Ph.D.**

University of Belgrade, Faculty of Security Studies

ORCID: 0009-0007-6324-487X

INTENTION AND SERIOUS NEGLIGENCE AS ELEMENTS OF CRIMINAL OFFENSES AGAINST THE ENVIRONMENT**

ABSTRACT: A healthy environment is the subject of continuous attention in almost all forms of human activity: from civic activism, through various development strategies, to legal regulation and the sanctioning of violations of the rights to healthy water, air, soil, flora, and fauna. Protection through criminal law is an important segment in this regard, ranging from “classic” environmental violations and endangerment, such as pollution, to those forms that take environmental crime to a “higher level” and make it profitable. One of the reasons contributing to this is the inefficiency of criminal justice mechanisms, as well as the ineffectiveness of penalties when they have been imposed. This was also one of the motives for adopting Directive 2024/1203 on the protection of the environment through criminal law. In addition, some of the key issues of

* e-mail: milosevic@fb.bg.ac.rs, Full Professor.

** e-mail: jovana.banovic@fb.bg.ac.rs, Assistant Professor.

*** The paper was received on September 12, 2025, and it was accepted for publication on December 22, 2025.

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

criminal law doctrine can be observed almost paradigmatically precisely through the example of environmental criminal offenses. This primarily refers to certain substantive-law dilemmas concerning the subjective elements of these criminal offenses; then the concept of liability of legal persons for criminal offenses, whose potential may be realized precisely in the field of environmental offenses; and also the limits and justification of a criminal law response in this area, especially with regard to its relationship with other measures, such as administrative, civil, and other penal-law measures. The Directive and international instruments mentioned above mainly use the notions of intention and serious negligence as subjective components of criminal offenses. This is a dominant feature of the Anglo-Saxon legal tradition, whose structure of the general concept of a criminal offense is somewhat different from the continental European one. Nevertheless, the subjective element is singled out as a separate element, whether through the so-called *mens rea* component or through the concept of culpability. Roughly speaking, intention and serious negligence, as subjective forms provided for by the Directive, would correspond to intent and negligence in domestic law. However, the assumption is that they overlap only in certain respects and that it is not justified to equate them too readily. At the same time, the Directive contains a provision referring to the interpretation of these elements under the rules of national law, which, with certain specific features, nevertheless relativizes this hypothesis. Accordingly, the focus of this paper will be on analyzing these subjective elements on the basis of environmental criminal offenses and the meaning of the terms prescribed by Directive 2024/1203. In addition, the paper seeks to examine the possibilities of implementing these provisions in domestic law, while also pointing to the capacity of the existing provisions of the Criminal Code in this area. Furthermore, an attempt will be made to formulate certain practical guidelines for understanding and applying the rules on intention and serious negligence, with a view to proving them more efficiently.

Keywords: environmental criminal offenses, intention, serious negligence, intent, negligence, Directive 2024/1203, environment

1. INTRODUCTORY CONSIDERATIONS

Environmental protection is one of the topics that receives considerable attention in everyday legal, political, anthropological, and other discourse. The focus of this paper will be on the legal dimension of criminal offenses against the environment, with particular reference to their subjective elements.

The immediate occasion for addressing this topic is the adoption of Directive (EU) 2024/1203 of the European Parliament and of the Council of

April 11, 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (hereinafter: Directive 24 or the Directive).¹ Member States should transpose the rules contained in this Directive into their legislation by May 21, 2026 (Article 28 of Directive 24). However, such obligations are also imposed on “candidate countries” for membership in the European Union (hereinafter: the EU). Specifically, Article 3 of the Directive now provides for 20 criminal offenses protecting the environment, instead of the previous nine. All of this was also reflected in the latest draft amendments to the Criminal Code presented in September 2025. Thus, the official explanatory statement and the reasons for the amendments to Articles 260, 262, 265, and 266 of the Criminal Code (hereinafter: CC)² and the addition of new Articles 260a to 260v, 262a, 265a, 266a to 266d, and 274a state as follows:

“... these interventions are based on the findings of an analysis of compliance with the requirements of Directive (EU) 2024/1203 on the protection of the environment through criminal law, which replaces and expands the content of Directive 2008/99/EC. Since Serbia’s Criminal Code was not fully aligned even with the earlier directive, it is now necessary to introduce a larger number of amendments, including the introduction of new criminal offenses and the clarification of existing ones, thereby expanding the range of criminalized acts and protected legal interests, harmonizing in detail the concepts and structure of criminal offenses, introducing aggravated forms with stricter penalties, as well as liability for offenses committed through negligence, in accordance with the highest standards of environmental protection in European law (...).”³

Although an individual analysis of the proposed criminal offenses is not the subject of this paper, it is worth mentioning that the need to redefine them had been pointed out earlier as well.⁴

¹ 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.

² Criminal Code, *Official Gazette of the RS*, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024.

³ Draft Law on Amendments to the Criminal Code – text of the regulation. Available at: <https://www.paragraf.rs/dnevne-vesti/120925/120925-vest9.html>.

⁴ Radisavljević, I., Banović, J. (2023). Nehatno lišenje života iz čl. 118. KZ. Teorija, praksa i osvrt na odgovornost pravnih lica. Zbornik radova Kopaoničke škole prirodnog prava „Slobodan Perović“, 151–168, 164, fn. 28. Until the proposed amendments are adopted, the current absence of a kind of “serious offenses against the environment” that would punish, for example, the occurrence of serious bodily injury, serious impairment of health, or the death of one or more persons may be addressed through the concurrence of

Directive 24, as well as a significant portion of international instruments, mainly use the notions of intention and serious negligence when explaining the subjective components of criminal offenses. This is a dominant feature of the Anglo-Saxon legal tradition, whose structure of the general concept of a criminal offense is somewhat different from the continental European one. Accordingly, the subjective element is singled out as a separate element, either through the so-called *mens rea* element or through the concept of culpability. Roughly speaking, intention and serious negligence, as subjective forms provided for by Directive 24, would correspond to intent and negligence in domestic law. However, this paper will examine the assumption that they overlap only in certain respects and point out why it is not justified to equate them too readily, without a more detailed analysis. Certainly, Directive 24 itself is not overly “pretentious” either, since it “leaves room” for the national legislature to interpret these concepts in accordance with national law and the relevant case law of the Court of Justice of the European Union, which nevertheless relativizes the preceding hypothesis.

At the very beginning, it should be emphasized that Directive 24 concerns environmental protection, that is, criminal offenses relating to the protection of the rights to healthy water, air, soil, flora, and fauna, the sanctioning of pollution, the suppression of illegal trade, etc., but not animal welfare in the narrow sense.⁵ The CC is clear in terms of its systematics, and the entire Chapter 24 may be regarded as containing environmental criminal offenses. However, ancillary legislation should not be neglected either. This paper will remain within the framework of what are called “classic” or “proper” environmental criminal offenses in the narrowest sense, which largely correspond to the unlawful conduct covered by Directive 24.⁶

After the first part, which contains introductory considerations, the second part will address the legal basis for the application of Directive 24 and

one of the criminal offenses against life and limb and the corresponding criminal offense from Chapter 24 of the CC. See also: DeliĆ, N. (2021). *Krivično pravo – posebni deo*. Belgrade: University of Belgrade, Faculty of Law, 289. In addition, Directive 24 itself, according to recital 30, emphasizes the possibility of applying the general provisions of national law on homicide and negligent homicide. Naturally, the application of rules on concurrence will depend on the circumstances of the specific case.

⁵ For more on this, see: Bajović, V. (2024). *Krivičnopravna zaštita životinja u svetlu EU Direktive 2024/1203*. *Glasnik of the Bar Association of Vojvodina*, 96(4), 1104–1131, 1105.

⁶ For more on the division into proper environmental criminal offenses, improper environmental criminal offenses, and ancillary environmental criminal offenses, see: Batrićević, A. (2017). *Ekološka krivična dela i kriminalitet korporacija. Privredna krivična dela*. Belgrade: Institute of Criminological and Sociological Research, Institute of Comparative Law, 243–256, 244.

the key categories on which this analysis is based. This section also addresses the concept of so-called symbolic criminal law in the context of its *ultima ratio* character. The third, and at the same time central, part concerns the theoretical and practical understanding and positioning of the subjective elements – intention and serious negligence. The fourth part briefly addresses the blanket character of environmental criminal offenses, as well as the relationship between criminal law and other branches of law, such as civil and administrative law, in environmental protection. The fifth part constitutes the conclusion of the paper.

2. DIRECTIVE 2024/1203 OF APRIL 11, 2024

2.1. Basis for Application in Domestic Law

The hierarchy of legal acts of the European Union may be divided according to sources of primary and secondary law. Primary sources include the founding treaties of the EU, the Charter of Fundamental Rights of the EU, and the general principles of the Court of Justice of the EU. Secondary sources include regulations, directives, decisions, recommendations, and opinions. According to Article 288 of the Treaty on the Functioning of the EU (former Article 249 of the Treaty establishing the European Community) (hereinafter: the Lisbon Treaty),⁷ a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. By contrast, a regulation has general application, is binding in its entirety, and is directly applicable; a decision is binding in its entirety; while recommendations and opinions are not binding. From this definition, certain conclusions can be drawn about the legal nature of a directive, which, in brief, may be described as binding in principle and adaptable in detail.

However, taking into account the hierarchy of domestic legal acts, the question justifiably arises as to how EU law “interferes” with criminal law in particular. Namely, criminal law is a branch of public law and represents the most sensitive, but also the most repressive, means of regulating social relations within a state. In addition, it must satisfy the high standards imposed on it by the principle of legality, as well as guarantees in proceedings and in the use

⁷ Conference of the Representatives of the Governments of the Member States, Consolidated version of the Treaty on the Functioning of the European Union, OJ L. 326/47-326/390, 26 October 2012. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

of the monopoly on physical coercion reserved to the state concerned. It may therefore rightly be asked whether, and to what extent, the European legislature may, through directives, exert a binding influence on the sovereign right of states to adopt criminal law rules. The Court of Justice of the EU addressed this in Judgment C-176/03 of September 13, 2005, and, *inter alia*, found that a framework decision was not capable of obliging Member States to introduce criminal sanctions at the national level for offenses against the environment, but that the appropriate instrument for harmonizing sanctions was a directive on the protection of the environment through criminal law.⁸ However, following the relevant amendments, Article 83, paragraph 2 of the Lisbon Treaty provides a valid legal basis for the application of directives, including in the field of environmental protection,⁹ by providing that:

“... directives may establish minimum rules with regard to the definition of criminal offenses and sanctions in the area of criminal law if the approximation of laws and regulations of the Member States in this area proves essential to ensure the effective implementation of EU policy.”

Regardless of the specific nature of criminal law and its sensitivity to international influx and influence on domestic law, it is impossible to disregard the fact that harmonization contributes to reducing legal differences that could sometimes lead to strategic circumvention of legal rules in order to select an “easier jurisdiction.”¹⁰ In addition, Elholm and Colson note that the reasons for this “turn” toward a certain liberalization in the application of European rules may be seen in the fact that the EU was initially a community linked exclusively by economic interests, while its center of gravity subsequently shifted toward the idea of countering global security risks and protecting the interests

⁸ See Judgment of the Court (Grand Chamber), September 13, 2005, Case C-176/03, *Commission of the European Communities v. Council of the European Union*, paras. 25, 32, 47–51. See also: Balaž, E. (2024). *Pravna zabluda u kontekstu krivičnih dela protiv životne sredine*. *Glasnik of the Bar Association of Vojvodina*, 96(4), 1438–1451, 1441.

⁹ Article 83, paragraph 1 of the Lisbon Treaty prescribes the rule that directives may establish minimum rules concerning the definition of criminal offenses and sanctions for particularly serious forms of crime with a cross-border dimension. These are: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime, and organized crime. It is apparent that, under the wording of this provision, directives would not be an appropriate instrument for criminal offenses in other areas were it not for the previously cited paragraph 2.

¹⁰ Mpunga-Biayi, P. (2025). The European Union Environmental Crime Directive 2024: The construction of an autonomous legal framework for the repression of environmental crimes within the European Union. *Environmental Law Review*, 27(2), 135–144, 144.

of the EU.¹¹ Moreover, it seems that even the highest judicial instance in our country was not immune to this reasoning. Although the judgment did not concern a criminal law event, it is interesting to mention one position of the Supreme Court (of Cassation), according to which a directive is treated as a generally accepted rule of international law. Namely, the Court found that the applicant's allegations in the petition for review were unfounded, namely that:

“An EU Directive (...) cannot be directly applied before domestic courts. This is because the Directive (...) represents a generally accepted rule of international law which, pursuant to Article 16, paragraph 2 of the Constitution, is directly applicable. Accordingly, for generally accepted rules of international law to be applied, it is not necessary for the state to ratify them, as is the case with international treaties, which must be ratified in order to become part of the legal order and be directly applicable.”¹²

Although these are not comparable categories, it can be assumed that the adoption of a similar position, should it be placed before decision-makers in domestic practice, would be very bold when it comes to criminal law. Still, it should be noted that the CC takes into account “general legal principles recognized in international law” in the case of special conditions for criminal prosecution (Article 10, paragraph 3 of the CC), “generally accepted rules of international law” in the criminal offense of racial and other discrimination (Article 387 of the CC), as well as “rules of international law” in a series of criminal offenses against humanity and other values protected by international law. Certainly, all of this is clearly prescribed and in accordance with the *lex scripta* segment of the principle of legality, but it cannot be disregarded in the process of harmonization and the future shaping of criminal offenses with a pronounced international dimension.

Furthermore, legal theory emphasizes that harmonizing criminal law norms can contribute to the creation of moral cohesion and to the creation of a kind of collective, European identity precisely through the shaping of uniform rules provided for by directives. Certain areas are particularly singled out in this regard: environmental protection, trafficking in human beings, and racism. This refers to the concept of so-called symbolic criminal law. It is characterized by the “declarative nature of criminal law” – prescribing statutory descriptions as a consequence of a “security frenzy” with no practical impact on suppressing

¹¹ Elholm, T., Colson, R. (2016). The Symbolic Purpose of EU Criminal Law. Chapter published in: *EU Criminal Justice and the Challenges of Diversity: Legal Cultures in the Area of Freedom, Security and Justice*, Colson, R., Field, S. eds. Cambridge: Cambridge University Press, 48–64, 54.

¹² Judgment of the Supreme Court of Cassation, Prev 376/2020 of December 24, 2020.

crime; the “duplication” of existing criminal offenses – prescribing new criminal offenses even though the conduct covered by them can already be subsumed under existing offenses; the creation of “signaling legislation” – sending messages and signals to the public and the media that serious unlawful conduct is involved without any real reason; and “legislative bingeing” – the excessive enactment and transposition of new norms, leading to over-criminalization without any real need.¹³ What emerges as a kind of paradox is that the effort to strengthen the EU’s symbolic function, which is abstract by nature, stands in opposition to the requirements for pragmatic and effective measures contained in directives. This is especially so because the acceptance of European rules in national laws to date has been carried out predominantly for the purpose of combating crime, and not for any kind of “symbolic engineering.”¹⁴

In any event, although the protection of the environment through criminal law is undisputed and should follow the development of regulation within the EU, attention must be paid to whether adequate protection can be achieved through the use of existing mechanisms. This is, after all, consistent with the *ultima ratio* character of criminal law, which in this field is supplemented by the fragmentary nature of this branch of law. Moreover, Article 83, paragraph 2 of the Lisbon Treaty permits the use of directives only when this is truly necessary.¹⁵ In addition, globalization processes do not lead only to the creation of moral cohesion, but also to moral panic, and this too should be taken into account when implementing rules.¹⁶

2.2. Concepts and Legal Institutes

¹³ Elholm, T., Colson, R. (2016). The Symbolic Purpose of EU Criminal Law. Chapter published in: EU Criminal Justice and the Challenges of Diversity: Legal Cultures in the Area of Freedom, Security and Justice, Colson, R., Field, S. eds. Cambridge: Cambridge University Press, 50–53; Lukić, N. (2025). Nova Direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. Zbornik radova sa međunarodne naučne konferencije „Odnos međunarodnog krivičnog i nacionalnog krivičnog prava“, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade–Palić: Association for International Criminal Law, 327.

¹⁴ Elholm, T., Colson, R. (2016). The Symbolic Purpose of EU Criminal Law. Chapter published in: EU Criminal Justice and the Challenges of Diversity: Legal Cultures in the Area of Freedom, Security and Justice, Colson, R., Field, S. eds. Cambridge: Cambridge University Press, 55, 59.

¹⁵ Škulić, M. (2024). Krivično pravo i adekvatnost zaštite životne sredine – Međunarodni pravni standardi i materijalno krivično zakonodavstvo Srbije – usaglašenost ili ne?. Glasnik of the Bar Association of Vojvodina, 96(4), 1036–1069, 1037, 1066.

¹⁶ For more, see: Ilić, A. (2017). Tradicionalni teorijski pristup u objašnjenju moralne panike. Faculty of Security Studies Annual, 1, 295–312, 309.

As indicated in the introductory considerations, intention and serious negligence in Directive 24 have a different meaning than in domestic law. The latter concept is not even mentioned in criminal law regulations, but is primarily associated with categories of civil law.¹⁷ Nevertheless, it is not necessary to seek a pure analogy in national law (law is, after all, fluid, especially among different states and communities); it is sufficient to identify an appropriate standard of culpability (one that will contain enough general and specific characteristics to be usable).¹⁸ A more detailed analysis will be provided in the next chapter, and this section will merely define the relevant concepts in the context of Directive 24.

Recital 9 of the Preamble to Directive 24 provides that a criminal offense must be unlawful and that, where appropriate, a quantitative or qualitative threshold may be set that is necessary for such conduct to constitute a criminal offense. The basic form of culpability is intention, while Directive 24 provides that, in certain cases, the offense may be committed at least with serious negligence, which would constitute a lesser form. Furthermore, unlawful conduct that causes death or serious bodily injury to persons, substantial damage or a considerable risk of substantial damage to the environment, or is otherwise considered particularly harmful to the environment, is singled out. By their nature, these qualified forms should also exist when committed with serious negligence. Under Serbian law, these will be criminal offenses qualified by a graver consequence. Member States have been left the possibility of adopting or maintaining stricter rules in this respect. It is interesting that, in accordance with recital 14 of Directive 24, serious bodily injury is interpreted in the usual manner,¹⁹ so as to include a change in body function or cell structure that causes a temporary, chronic, or fatal disease, a malfunction of the body, or other deterioration of physical health, but excluding mental health.

Recital 10 of Directive 24, which concerns manifest breaches of substantive legal requirements, is relevant in the context of a possible exclusion of unlawfulness. Namely, conduct should be unlawful even if it is carried out

¹⁷ Banović, J. (2022). *Dvojna priroda nehata u krivičnom pravu*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law, 135.

¹⁸ Pigaroff, D., Robinson, D. (2016). A Commentary: Article 30. The Rome Statute of the International Criminal Court, 3rd edition, Triffterer, O., Ambos, K. eds. C. H. Beck-Hart-Nomos, 1111–1124, 1122–1123. In addition, trans-systemic linking of different legal traditions through international treaties, rules, practice, etc., reduces these differences in the substantive interpretation of legal institutes. Banović, J. (2022). *Dvojna priroda nehata u krivičnom pravu*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law, 238–239.

¹⁹ On the criminal offense of serious bodily harm, see: Milošević, M. (2022). *Krivično pravo – posebni deo: izabrane inkriminacije za studije nauka bezbednosti*. Belgrade: University of Belgrade – Faculty of Security Studies, 29–35.

under an authorization issued by a competent authority, if such authorization was obtained fraudulently or by corruption, extortion, or coercion. This will be discussed in somewhat greater detail later, when the relationship between criminal and administrative law is addressed.

Recitals 26 and 27 of Directive 24 are key for the topic of this paper because they determine the meaning of intention and serious negligence. Directive 24 provides that the notion of “intention” should be interpreted in accordance with national law, taking into account the relevant case law of the Court of Justice of the EU. Therefore, for the purposes of this Directive, “intention” may be understood as the intention to cause the death of another person, but it may also include a situation in which the offender, although not wishing to cause the death of a person, nevertheless accepts the likelihood of its occurrence, and acts or fails to act, thereby violating a particular obligation, which results in the death of a person. The same interpretation of the notion of “intention” applies where serious bodily injury is intentionally caused, or where substantial damage to the quality of air, water, or soil, or to an ecosystem, which is irreversible or long-lasting, is intentionally caused, or where the intentional destruction or substantial damage of animal or plant life occurs.

Furthermore, the notion of “serious negligence” should also be interpreted in accordance with national law, taking into account the relevant case law of the Court of Justice. This Directive does not require the introduction of the concept of “serious negligence” into national law for every constituent element of the criminal offense.²⁰

This has laid the groundwork for a closer analysis of intention and serious negligence in relation to criminal offenses against the environment.

3. INTENTION AND SERIOUS NEGLIGENCE – BETWEEN DIRECTIVE 2024/1203 AND SERBIAN CRIMINAL LAW

3.1. The Subjective Element in General (Culpability / Mens Rea / Mental Element)

When referring to intention and serious negligence, as a rule, this means the subjective element, which, depending on the legal system, is designated by

²⁰ Directive 24 further specifies that these are elements such as possession, sale or offering for sale, placing on the market, and similar elements. In such cases, it is possible for Member States to decide that the notion of “serious negligence” is relevant for elements of the criminal offense such as the protection status, “negligible quantity”, or the “likelihood” of the conduct to cause substantial damage. This approach is inherent in Anglo-Saxon law and will receive appropriate attention in the next section.

the concept of culpability, by the Latin expression for the mental state – *mens rea* – or descriptively as the mental element. This qualification is necessary because intent and negligence, as general counterparts to intention and serious negligence, also constitute elements of the criminal offense, in accordance with their dual function.

Unlike Serbian law, which in Articles 25 and 26 of the CC defines the types (and degrees) of culpability through the concepts of intent and negligence, intention and serious negligence as such do not have any general international source. Exceptions exist only depending on sources of a more or less general character (for example, the Rome Statute or the Model Penal Code). Since Directive 24 is at the center of this analysis, the paper will rely on it when determining their meaning. Yet even the Directive, apart from introducing the criteria of likelihood, acceptance, and volition in the part concerning intention, is not particularly exhaustive. In defining serious negligence, it is even less so. In any case, further definition is left to the understanding characteristic of “national law or the case law of the Court of Justice of the EU.” This is very important to emphasize because this phrase almost has the significance of the phrase in Article 30 of the Rome Statute of the International Criminal Court, which reads: “unless otherwise provided,” and which, for example, opens the way to considering negligence within frameworks that can only exceptionally “tolerate” it.²¹ The authors are of the opinion that it is not necessary to make significant “cuts” in the distinction between culpability in its different manifestations and those that appear in other legal systems. The discussion will therefore essentially be limited to intent and negligence. After all, this was not disputed even by the Serbian legislature in the proposal for the aforementioned amendments to the CC.

3.2. A “Briefing” on Ecocide

Although recital 21 of Directive 24, speaking of the “catastrophic results” of the offenses described in Article 3 of the Directive, refers to a comparison with “ecocide,” this will not be the subject of more detailed consideration, except for the purpose of clarifying certain forms of culpability. It should not be overlooked, however, that certain elements of different definitions of

²¹ Banović, J. (2023). Tačke spajanja i razdvajanja srpskog i međunarodnog krivičnog prava na primeru čl. 30 Rimskog statuta. Zbornik radova sa međunarodne naučne konferencije „Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona Republike Srbije“, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade–Palić: Association for International Criminal Law and the Faculty of Law, University of Belgrade, 127–135, 130.

ecocide, especially where “likelihood” or “substantial likelihood” is discussed, may find their place among the elements of “ordinary” environmental offenses. Once again, culpability is considered one of the most contested segments.²²

In criticizing the definitions of ecocide formulated by certain expert groups (see fn. 22), Ambos pointed to several key shortcomings.²³ They can, to an extent, be understood as guidelines in interpreting forms of culpability in “regular” circumstances when criminal offenses against the environment are concerned. First of all, he stresses that the definition of culpability in the proposed ecocide offense is not consistent with international standards, nor is it aligned with Article 30 of the Rome Statute. Since it does not contain clear elements that would enable effective criminal prosecution, the absence of practical experience in shaping the definition is evident, because the subjective element thus formulated leads to the factual impossibility of proving culpability.²⁴ Specifically, he considers it impermissible to define ecocide as an endangerment offense and to base the jurisdiction of the International Criminal Court solely on the risk of harm occurring. An additional problem is proving the standard of a “substantial likelihood” that harm will occur. He further points out that it is not justified to equate carelessness with awareness of risk (recklessness) and accepting the possibility that harm will occur (*dolus eventualis*), because they are different institutes understood differently by different states. The situation is further complicated by the introduction of the term knowledge (that is, awareness of the certainty or near certainty of an outcome, which is not merely acceptance of risk) and wanton conduct (reckless conduct causing excessive harm – thus, a mixed and indeterminate criterion).

Ecocide should constitute a more serious criminal offense than other offenses against the environment. On the other hand, its intention is qualitatively different from that in genocide. Since the idea is ecocide as an

²² For an overview of forms of culpability in attempts to define ecocide by the expert working group from the University of California, Los Angeles (UCLA) and the foundation that formed the Independent Expert Panel, see: Škundrić, A. (2023). *Ekocid u međunarodnom krivičnom pravu*. Zbornik radova sa međunarodne naučne konferencije „Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona Republike Srbije“, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade–Palić: Association for International Criminal Law and the Faculty of Law, University of Belgrade, 443–458, 451–455.

²³ Ambos, K. (2021). Protecting the Environment through International Criminal Law?. Available at: <https://www.ejiltalk.org/protecting-the-environment-through-international-criminal-law/>.

²⁴ On this definition with commentary: Stop Ecocide Foundation (2021). Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core text. Available at: <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>.

international criminal offense, it would not be justified to lower the required threshold of culpability and allow punishment for negligence (although Robinson speaks of “simple” negligence) or, alternatively, to allow strict liability regardless of culpability. It is therefore necessary to approach it “holistically”: with respect for the principle of culpability, but also for the specific features of international criminal offenses.²⁵

In brief, prescribing ecocide within the Rome Statute would mean reexamining culpability, that is, the mental element under Article 30 in the context of this criminal offense, but, because of its nature, also considering the establishment of liability of legal persons for criminal offenses.

3.3. Intention and Serious Negligence

The Directive uses the term intention, which may be understood as a form of culpability corresponding to intent (*umišljaj*) in Serbian criminal law. Although this wording may cause some uncertainty from the perspective of Serbian terminology, the term should not be understood as denoting the subjective element of the definition of a criminal offense in the sense of special intention, which would imply only direct intent. The Directive uses the term serious negligence, which corresponds to negligence (*nehat*) as the relevant degree of culpability in Serbian law, but not negligence of any kind; rather, a “serious” form of negligence. For the purposes of domestic law, it can be concluded that direct intent and *dolus eventualis* can be considered, while, given the somewhat less determinate notion of negligence set out in the Directive, it cannot be determined with certainty whether conscious negligence, unconscious negligence, or both are relevant. In addition, it is impossible to disregard some “intermediate form,” connected with the likelihood of the consequence occurring, which lies between the two basic types of culpability. However, Directive 24 leaves interpretation “to the discretion” of states, in accordance with national law. Although the Directive is not sufficiently clear in this respect,²⁶ this nevertheless seems to be a good solution because requiring literal implementation of the culpability standards prescribed by European documents would most likely create major legislative problems.

Starting from the premise that a sharp distinction cannot be made between types of intent and negligence within the notions of intention and serious negligence as defined by Directive 24, these elements will be analyzed

²⁵ Robinson, D. (2022). Ecocide – Puzzles and Possibilities. *Journal of International Criminal Justice*, 20, 313–347, 329.

²⁶ Working Group on the National Criminalisation of Ecocide (2025). *Manual for a National Criminalisation of Ecocide*. 1–35, 18–19.

together. Judging by the draft proposal of the CC, our legislature has not departed from the spirit of domestic law and understands both intent and negligence within the meaning of Articles 25 and 26 of the CC. Comparing intention and serious negligence within these frameworks may have certain practical significance, although the share of criminal offenses against the environment (with the exception of Timber Theft, Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances, and Killing and Abuse of Animals) is almost negligible.²⁷ This should not be too surprising, since some of the more serious environmental criminal offenses are committed by legal persons rather than natural persons, while the liability of legal persons for criminal offenses has still not taken root in our case law. It is worth noting that some environmental crime cases have contributed precisely to uncovering the criminal activities of corporations.²⁸ All of this depends not only on a sound normative framework, but also on the competence of state authorities, as well as other bodies involved in detecting and proving criminal offenses.²⁹

Intention, understood as a type of culpability, exists if there is conscious pollution of an ecosystem (for example, by waste disposal) or in the case of conscious acceptance of risk (for example, putting a plant into operation without safety measures),³⁰ or acceptance of the likelihood that a legally prohibited consequence will occur.³¹ It should be noted that, in countries of the Anglo-Saxon tradition, “knowledge of risks” and foresight of the likely outcome

²⁷ Thus, in 2024, one person was convicted for the criminal offense of Environmental Pollution, four persons for the criminal offense of Failure to Undertake Environmental Protection Measures, and five persons for the criminal offense of Damage to the Environment. A prison sentence was imposed in one case, while the remaining proceedings ended with suspended sentences. Statistical Office of the Republic of Serbia (2025). *Punoletni učinioci krivičnih dela*, 2024. Available at: <https://publikacije.stat.gov.rs/G2025/Pdf/G20251190.pdf>

²⁸ Milošević, M. (2012). *Odgovornost pravnih lica za krivična dela*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law, 21.

²⁹ Banović, B. (2017). *Kompetentnost subjekata otkrivanja i gonjenja u funkciji efikasnog suzbijanja privrednih krivičnih dela*. *Privredna krivična dela*, Stevanović, I., Čolović, V. eds. Belgrade: Institute of Criminological and Sociological Research / Institute of Comparative Law, 167–185, 169.

³⁰ Mpunga-Biayi, P. (2025). The European Union Environmental Crime Directive 2024: The construction of an autonomous legal framework for the repression of environmental crimes within the European Union. *Environmental Law Review*, 27(2), 141.

³¹ Working Group on the National Criminalisation of Ecocide (2025). *Manual for a National Criminalisation of Ecocide*. 1–35, 17. As mentioned earlier, the criterion of “likelihood” of a certain quality would not be justified in the context of ecocide, but it may be a useful criterion when forming culpability in “ordinary” environmental criminal offenses within the meaning of the provisions of Directive 24.

may be problematic in the context of distinguishing recklessness from *dolus eventualis*, as well as direct and indirect intent. The distinction between recklessness and *dolus eventualis* meanders between awareness of the existence of risk (awareness that the realization of the objective elements of a criminal offense entails a risk) and awareness of accepting the risk, that is, between theories of acceptance/approval on the one hand and probability/possibility on the other.³² These reflections become even more complex when negligence, that is, its upper boundary, is introduced “into the equation,” along with the category of “willful blindness,”³³ which, because of the conscious avoidance of knowledge of relevant circumstances, may be described as “outwardly negligent, but inwardly intentional.”

When referring to the manifestations of criminal offenses against the environment, the statutory description may be met where:

“...on the basis of a medical expert examination it is concluded that, when working with waste lead substances that have a particularly pronounced toxic effect, pollution may occur affecting other unidentified individuals as well, and that certain workers who did not directly perform tasks involving the sorting and cutting of waste batteries, such as truck drivers and workers operating forklifts, had increased concentrations of lead in their blood (...).”³⁴

Certain authors rightly emphasize that perpetrators of environmental criminal offenses rarely intend to cause harm to the environment. Their conduct is mostly aimed at acquiring profit.³⁵ This raises the question as to what, in that case, should be covered by culpability. Should it cover all elements or only some of them (such as those which Directive 24, for example, mentions when defining serious negligence in recital 27)? In other words, can the consequence be attributed to intention, that is, to intent, while the legal classification as an environmental criminal offense remains? It seems that the

³² For an overview of theoretical views, see: Banović, J. (2022). *Dvojna priroda nehata u krivičnom pravu*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law, 120–121.

³³ Pigaroff, D., Robinson, D. (2016). A Commentary: Article 30. The Rome Statute of the International Criminal Court, 3rd edition, Triffterer, O., Ambos, K. eds. C. H. Beck-Hart-Nomos, 1124.

³⁴ Judgment of the Supreme Court of Cassation, Kzz 259/2014 of April 29, 2014. This proceeding was conducted against several persons for several criminal offenses, namely: Serious Offenses Against the General Safety of People and Property, Abuse of Official Position, Abuse of Position By a Responsible Person, and Environmental Pollution. With respect to the criminal offense of Environmental Pollution, a judgment dismissing the charges was rendered because the limitation period had expired.

³⁵ Working Group on the National Criminalisation of Ecocide (2025). Manual for a National Criminalisation of Ecocide, 16; Robinson, D. (2022). Ecocide – Puzzles and Possibilities. *Journal of International Criminal Justice*, 20, 329.

criteria of Directive 24, as well as interpretations within national law (which the Directive refers to), would be satisfied by the standard of assessing culpability according to general rules when basic forms are concerned, and by applying the rules on criminal offenses qualified by a graver consequence when more serious forms are concerned. If the graver consequence (serious bodily injury or death) were caused with intent, the rules on concurrence of criminal offenses would apply. Such a solution, together with proportionate and dissuasive penalties, would be in line with the intention of the drafters of the Directive expressed in recital 30:

“The criminal law of all Member States includes provisions on homicide, whether committed intentionally (authors’ note: with intent) or with serious negligence (authors’ note: through negligence). Member States should be able to have recourse to those general provisions, including provisions on aggravating circumstances, when transposing the provisions in this Directive that relate to criminal offenses that cause the death of a person, regardless of whether they were committed with intent or through negligence.”

Serious negligence, in turn, would be shown by an industrial operator who fails to install safety mechanisms or by a company that does not comply with regulations on hazardous waste management, resulting in the occurrence of harm.³⁶ Therefore, it can be concluded that a lack of due care, accompanied by a failure to take appropriate precautionary measures when carrying out a “risky environmental activity,” together with the occurrence of harm of a certain scale, may lead to negligent liability of the perpetrator. Because of the duty from which culpability derives, this will, as a rule, involve unconscious negligence, since the perpetrator’s attitude toward legal interests is assessed on the basis of the requirements imposed by the legal order. However, in some areas of social activity characterized by heightened risk, awareness of those risks, that is, the duty to possess such awareness, is also pronounced. This is, after all, a tendency of contemporary criminal law, which in this way protects a public good such as, *inter alia*, a healthy environment. This includes the conscious undertaking of an unjustified risk. Still, perpetrators acting with unconscious negligence also take risks, and their liability is built around the fact that they were unjustifiably unaware of the risk despite having a corresponding duty.³⁷ In sentencing, the distinction between conscious and unconscious negligence has no greater practical significance because these two

³⁶ Mpunga-Biayi, P. (2025). The European Union Environmental Crime Directive 2024: The construction of an autonomous legal framework for the repression of environmental crimes within the European Union. *Environmental Law Review*, 27(2), 143.

³⁷ Banović, J. (2022). *Dvojna priroda nehata u krivičnom pravu*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law, 107, 110–111.

types do not stand in a relationship of a more serious and a less serious type. The upper boundary of negligence in the relationship between conscious negligence and *dolus eventualis* is a different matter. Some of the criteria by which the content of due care could be determined include the investment of reasonable efforts to prevent harm to the environment or human health, that is, taking appropriate measures to prevent the occurrence of a concrete danger.³⁸

When referring to the typology of punishable conduct, it can generally be concluded that, even under Directive 24, it does not depart from the general structure: a criminal offense consists of certain constituent elements in relation to which intention must exist or, where applicable, serious negligence.³⁹

Finally, intention and serious negligence, as subjective forms provided for by the Directive, would generally correspond to domestic intent and negligence. They overlap in certain respects, but it is not justified to put an equal sign between them. However, the Directive contains a provision referring to the interpretation of these elements under the rules of national law, which, with certain specific features, nevertheless justifies their transposition through the typical intentional and negligent forms recognized in our law. Such a solution may invite certain, mostly theoretical, criticisms, but it seems that in this case, “done is better than perfect.”

4. THE RELATIONSHIP BETWEEN CRIMINAL LAW AND OTHER BRANCHES OF LAW IN ENVIRONMENTAL PROTECTION

Criminal offenses against the environment are partly blanket in character.⁴⁰ This means that, in order to determine the constituent elements, it is necessary to consult a broad range of regulations to establish what “violation of environmental protection regulations” actually entails.⁴¹ In Serbian law, a large number of acts may come into consideration, such as the Law on Environmental Protection, the Law on Nature Protection, the Law on Game and Hunting, the Law on Fisheries, the Law on Animal Welfare, the Law on

³⁸ Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?. *Journal of Environmental Law*, 36(3), 323–342, 340.

³⁹ Mpunga-Biayi, P. (2025). The European Union Environmental Crime Directive 2024: The construction of an autonomous legal framework for the repression of environmental crimes within the European Union. *Environmental Law Review*, 27(2), 136.

⁴⁰ Delić, N. (2021). *Krivično pravo – posebni deo*. Belgrade: University of Belgrade, Faculty of Law, 287.

⁴¹ A similar view is also expressed in foreign legal scholarship: Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law? *Journal of Environmental Law*, 36(3), 333.

Environmental Impact Assessment, the Law on Waste Management, the Law on Air Protection, and a series of other sectoral regulations. Domestic case law also takes this position, explaining that:

“... for the criminal offense at issue (Environmental Pollution) to exist, it is necessary that the pollution occurred through violation of a blanket provision relating to regulations on the protection, preservation, and improvement of the environment, but in the factual description of the offense contained in the amended submission of the injured party acting as prosecutor, the defendants were not charged with having violated any blanket regulation by carrying out the alleged acts.”⁴²

Although it is necessary and desirable to know what the violation of regulations consists of, referring to numerous international and national acts alike may be problematic for determining the constituent elements of criminal offenses.⁴³ This affects compliance with the principle of legality and, consequently, legal certainty and the right to a fair trial.

Not every pollution, under the conditions provided by relevant regulations, is a criminal offense. This is understandable given the nature of industrial activity. Nevertheless, certain deviations are sanctioned by “less invasive” means, such as civil and administrative law mechanisms. Thus, for example, in the field of civil law, one mechanism is an action for the elimination of the danger of harm to the health of an indeterminate number of persons. In one domestic court proceeding, such an action followed after requests to initiate extraordinary inspection supervision, as an administrative law measure, were not granted despite a major exceedance of the maximum permitted sulfur dioxide emissions.⁴⁴

⁴² Decision of the Appellate Court in Belgrade, Kž2 No. 3337/13 of September 24, 2013.

⁴³ Atanasova, D., Krasteva, N. (2025). Environmental Protection and the New Safeguards Provided in Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law. *Environment. Technology. Resources*. Rezekne, Latvia Proceedings of the 16th International Scientific and Practical Conference, V, 37–41, 41.

⁴⁴ RERI Legal Team (2024). *Zaštita životne sredine pravnim sredstvima – Pravna analiza sudskog postupka koji je RERI pokrenuo protiv Elektroprivrede Srbije zbog ugrožavanja zdravlja ljudi*. Belgrade: Renewables and Environmental Regulatory Institute, 1–31. Available at: <https://eri.org.rs/wp-content/uploads/2024/04/Pravna-analiza-sudskog-postupka-RERI-vs-EPS.pdf>. The Court found that the conditions under Article 156 of the Law on Obligations were met for removing a source of danger posing a risk of substantial damage to an indeterminate number of persons, as well as for an order to refrain from an activity that causes disturbance or a risk of damage, if the occurrence of such disturbance or damage cannot be prevented by appropriate measures. By granting the claim, the Higher Court in Belgrade prohibited EPS, in calendar years 2023, 2024, 2025, 2026, and 2027,

Furthermore, with regard to compensation for damage, the Appellate Court in Belgrade established the defendant's liability for material damage caused to the plaintiff by applying Articles 173 and 174, in connection with Article 154, paragraph 2 of the Law on Obligations, and held as follows:

“Metal processing, sandblasting, and painting constitute an activity that creates an increased risk of damage to the surroundings in the form of pollution, especially because it was carried out in an urban zone, and therefore (...) the damage arose in connection with a dangerous activity for which the defendant, as its organizer, is liable under the principle of strict liability within the meaning of Articles 173 and 174 of the Law on Obligations. The defendant's activity during the period in dispute (metal processing, sandblasting, and painting) caused environmental pollution that led to the sudden death of bees, while fruit and vegetable crops on the plaintiff's plot were no longer fit for human consumption; therefore, the first-instance court correctly concluded that the plaintiff was entitled to compensation for material damage (...).”⁴⁵

The accessory nature of criminal law is perhaps best reflected in its relationship with administrative-law measures. Moreover, recital 4 of Directive 24 itself provides that complementarity between criminal and administrative law is crucial to preventing unlawful conduct that damages the environment and deterring such conduct. Before the adoption of the Directive, criminal liability was almost entirely dependent on administrative law and existed almost at the level of a mere violation of regulations, so it was not easy to subsume particular conduct under the umbrella of one or the other branch of law.⁴⁶ This legal situation was further complicated by the fact that both criminal and administrative law are branches of public law, while in the conduct of business activity, administrative obligations are not always established for the benefit of the state.⁴⁷ Furthermore, Marković vividly problematizes what he calls the “administrative jungle” of numerous regulations that must be consulted when determining pollution limit values, as well as properly identifying the provision that was actually violated.⁴⁸

Now, however, Article 3 of Directive 24 provides, *inter alia*, that:

from emitting the pollutant sulfur dioxide into the air from its thermal power plants in excess of the total maximum annual sulfur dioxide emissions for all plants under the NERP.

⁴⁵ Judgment of the Appellate Court in Belgrade, Gž 7658/2018 of June 26, 2019.

⁴⁶ Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law? *Journal of Environmental Law*, 36(3), 324–325.

⁴⁷ *Ibid.*, 326.

⁴⁸ Marković, I. (2022). Characteristics of Environmental Crimes as Challenges for their Detection and Proving. *Thematic Conference Proceedings of International Significance / Contemporary Challenges in Detecting and Proving Crime. Archibald Reiss Days*, 12, 113–128, 121.

“... such conduct (authors’ note: which fulfills the statutory description of a criminal offense) shall be unlawful even where it is carried out under an authorization issued by a competent authority of a Member State if such authorization was obtained fraudulently or by corruption, extortion, or coercion, or if such authorization is in manifest breach of relevant substantive legal requirements.”

The existence or absence of administrative approval, that is, a permit, may have certain implications in terms of whether the elements of a criminal offense have been fulfilled and, under certain conditions, may exclude the criminal offense at the level of statutory definition or unlawfulness.⁴⁹ Without entering into deeper theoretical dilemmas, it is important to begin with a clear distinction between administrative violations and criminal offenses.⁵⁰ Specifically, this means that the existence of a permit to carry out a particular activity that may affect the environment in some way does not also constitute a “permit for any kind of pollution or violation of human rights.”⁵¹ If a criminal offense is committed, because, for example, pollution occurs to a greater extent, the fact that the polluter has a permit would, logically, not constitute a justification.

With regard to proceedings before the Administrative Court, an example will be cited of a judgment in which it was established that:

“The allegations in the complaint that, due to the existence of a poultry farm near their farmsteads, the plaintiffs would suffer harmful consequences affecting their environment are unfounded, because in the (...) contested decision it was decided that the project holder is obliged to ensure the implementation of a program for continuous monitoring of air quality, noise, wastewater, the quality and total quantity of biocompost, and waste handling in accordance with the applicable regulations defined in Chapter 9, ‘Program for Monitoring Environmental Impact’, and to submit the data obtained through monitoring to the Environmental Protection Agency, the City Administration for Environmental Protection of the City of Novi Sad, and the City Administration for Inspection Affairs, Environmental Protection Inspection Division. Therefore, the plaintiffs will be able to protect their

⁴⁹ Vuković, I. (2021). *Krivično pravo – Opšti deo*. Belgrade: University of Belgrade – Faculty of Law, 186–187.

⁵⁰ Atanasova, D., Krasteva, N. (2025). Environmental Protection and the New Safeguards Provided in Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law. *Environment. Technology. Resources*. Rezekne, Latvia Proceedings of the 16th International Scientific and Practical Conference, V, 39.

⁵¹ Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law? *Journal of Environmental Law*, 36(3), 340.

rights and interests in the future, if necessary, by addressing the competent environmental protection inspections (...).”⁵²

When it comes to the provisions of the Law on General Administrative Procedure⁵³ in the context of its relationship with criminal law and a possible dispute along the permit-criminal offense line, Article 107, paragraph 3 provides that the authority is obliged to suspend proceedings if the preliminary question concerns the existence of a criminal offense. In addition, Article 183 of the same law allows the second-instance or supervisory authority, upon a party’s request or *ex officio*, to annul a final decision in whole or in part, *inter alia*: if it was issued in a matter falling within judicial jurisdiction or in a matter that is not decided in administrative proceedings; then, if its enforcement could cause a criminal offense; or if it was issued as a consequence of coercion, extortion, blackmail, pressure, or other unlawful actions. On the basis of this summary overview of administrative regulations as well, the normative boundaries of different unlawful forms of conduct can be observed.

In principle, any violation of regulations without consequences reflected at least in the occurrence of a concrete danger would be considered in the field of administrative law. Accordingly, it may be concluded that the threshold for activating criminal justice mechanisms is, as a rule, the occurrence of more substantial harm to the environment or harm to human health, as well as the existence of a causal link between the act and these consequences, together with the minimum required level of culpability.

Comparing the legal response on the basis of the three branches of law, Faure considers administrative sanctions suitable for regulating economic activities and strengthening the obligation to comply with standards under threat of a fine or revoking permits; he sees civil sanctions as legal protection through compensation to injured parties; while, with respect to criminal sanctions, he emphasizes their repressive characteristics and sees their deterrent function in the imposition of prison sentences or fines.⁵⁴

It seems that the Directive has resolved certain disputed issues concerning the jurisdiction of different state authorities, given the nature of unlawful acts. Certainly, the full scope of protection is achieved through the complementary application of the rules of several branches of law. Thus, after proceedings have been concluded, a wide variety of sanctions may come into consideration: penalties, exclusion from public procurement procedures,

⁵² Judgment of the Administrative Court, 3 U. 15891/10 (2009) of January 19, 2012.

⁵³ Law on General Administrative Procedure, *Official Gazette of the RS*, No. 18/2016, 95/2018 – authentic interpretation, and 2/2023 – decision of the Constitutional Court.

⁵⁴ Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law? *Journal of Environmental Law*, 36(3), 137.

revocation of a permit, prohibition on conducting an activity, confiscation of property, publication of data on convicted persons, etc.⁵⁵

5. CONCLUSION

Several branches of law provide legal protection to the environment. Civil law does so in the field of compensation, administrative law in the field of violations of environmental regulation, and criminal law in suppressing the most serious consequences affecting both the environment and human life and health. One legal mechanism does not exclude another, and they should therefore be viewed as complementary. This is expected given the number and variety of ways in which the environment can be endangered. Some are more serious, some less so, and, depending on the circumstances of the particular case, the appropriate level of protection must be “determined.”

The criminal law response is also supported by Directive 2024/1203 on the protection of the environment through criminal law. This paper focused on the Directive’s solutions concerning intention and serious negligence, and on understanding these institutes within the framework of domestic law. These are subjective elements of criminal offenses, that is, forms of culpability. Concepts named in this way are characteristic of countries of the Anglo-Saxon legal tradition; they have similarities with the domestic understanding of intent and negligence, but they cannot be fully equated with them. Nevertheless, although the rules contained in directives are binding, they do not have to be literally transposed into the relevant legal system. Their purpose lies in normative shaping that produces useful effects, which in this case means effective protection of the environment through criminal law. Therefore, for understanding and later applying the rules on intention and serious negligence under the Directive, their interpretation in national law and in the case law of the Court of Justice of the EU is also important. In addition, the latest (although still unadopted) proposal for amendments to the CC also covers criminal offenses against the environment, and the Serbian legislature opted to align intention and serious negligence with intent and negligence. For all these reasons, it seems, there were grounds to attempt, to the greatest extent possible, to analyze intention and serious negligence through the prism of intent and negligence within the meaning of Articles 25 and 26 of the CC, while also

⁵⁵ Atanasova, D., Krasteva, N. (2025). Environmental Protection and the New Safeguards Provided in Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law. *Environment. Technology. Resources*. Rezekne, Latvia Proceedings of the 16th International Scientific and Practical Conference, V, 40.

introducing into the explanation of their content certain views advocated in Anglo-American legal thought, in line with the *mens rea* element of the criminal offense in that tradition.

In principle, it could be concluded that, under intention, the Directive understands direct intent and *dolus eventualis* through the will to engage in conduct prohibited by regulations, or through acceptance of such conduct, while it also introduces the criterion of the likelihood of the consequence occurring. This latter condition requires consideration of the relationship between the lower boundary of intent and the upper boundary of negligence, and therefore necessarily introduces the category of conscious or unconscious disregard of risk into the entire construction. Furthermore, a negligent perpetrator is subject to the requirement that they were “obliged to be cautious,” that is, to invest reasonable efforts to prevent harm to the environment or human health, or the occurrence of a concrete danger. At the same time, it should always be borne in mind that there is room for a criminal law response only when other instruments are powerless to respond to such conduct. Sometimes the appropriate sanction will be a measure of administrative law (revocation of a permit, a fine, exclusion from public procurement procedures, etc.), sometimes of civil law (compensation for damage in civil proceedings), and sometimes the negative impact on the environment will be so significant that it requires the harshest, criminal law response (imprisonment, confiscation of property, a fine). Accordingly, it is necessary to establish that unlawful conduct occurred, that a legally prohibited consequence resulted from it, and that a causal link exists between these elements. Examples will often include conduct outside permitted limits, conduct outside the regulatory system, substantial harm to the environment, life, and human health, and, of course, culpable conduct, that is, the perpetrator’s psychological relationship to the environmental offense. The element of culpability can often be decisive in determining whether the matter concerns a criminal offense or another, lesser violation. In addition, more frequent application of the rules on the liability of legal persons for criminal offenses would strengthen the existing methods of protection.

A sound regulatory framework is an important prerequisite for lawful conduct by state authorities. Their proper application achieves the real purpose of normative acts. That is why the true effects are best reflected in practice. In all of this, the possibilities offered by positive law must be kept in mind. Still, sometimes even all of that is not enough, and a synergy of different expert approaches, both theoretical and practical, contributes to a better clarification of individual institutes, such as, indeed, intention and serious negligence.

BIBLIOGRAPHY

- Ambos, K. (2021). Protecting the Environment through International Criminal Law?. Available at: <https://www.ejiltalk.org/protecting-the-environment-through-international-criminal-law/>.
- Atanasova, D., Krasteva, N. (2025). Environmental Protection and the New Safeguards Provided in Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law. *Environment. Technology. Resources*. Rezekne, Latvia Proceedings of the 16th International Scientific and Practical Conference, V, 37–41.
- Bajović, V. (2024). Krivičnopravna zaštita životinja u svetlu EU Direktive 2024/1203. *Glasnik of the Bar Association of Vojvodina*, 96(4), 1104–1131.
- Balaž, E. (2024). Pravna zablude u kontekstu krivičnih dela protiv životne sredine. *Glasnik of the Bar Association of Vojvodina*, 96(4), 1438–1451.
- Banović, B. (2017). Kompetentnost subjekata otkrivanja i gonjenja u funkciji efikasnog suzbijanja privrednih krivičnih dela. *Privredna krivična dela*, Stevanović, I., Čolović, V. eds. Belgrade: Institute of Criminological and Sociological Research / Institute of Comparative Law, 167–185.
- Banović, J. (2022). Dvojna priroda nehata u krivičnom pravu. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law.
- Banović, J. (2023). Tačke spajanja i razdvajanja srpskog i međunarodnog krivičnog prava na primeru čl. 30 Rimskog statuta. *Zbornik radova sa međunarodne naučne konferencije „Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona Republike Srbije“*, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade–Palić: Association for International Criminal Law and the Faculty of Law, University of Belgrade, 127–135.
- Batrićević, A. (2017). Ekološka krivična dela i kriminalitet korporacija. *Privredna krivična dela*. Belgrade: Institute of Criminological and Sociological Research, Institute of Comparative Law, 243–256.
- Delić, N. (2021). Krivično pravo – posebni deo. Belgrade: University of Belgrade, Faculty of Law.
- Elholm, T., Colson, R. (2016). The Symbolic Purpose of EU Criminal Law. Chapter published in: *EU Criminal Justice and the Challenges of Diversity: Legal Cultures in the Area of Freedom, Security and Justice*, Colson, R., Field, S. eds. Cambridge: Cambridge University Press, 48–64.
- Ilić, A. (2017). Tradicionalni teorijski pristup u objašnjenju moralne panike. *Faculty of Security Studies Annual*, 1, 295–312.
- Lukić, N. (2025). Nova Direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije „Odnos međunarodnog krivičnog i nacionalnog krivičnog prava“*, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade/Palić: Association for International Criminal Law, 323–344.

- Faure, M. G. (2024). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law? *Journal of Environmental Law*, 36(3), 323–342.
- Marković, I. (2022). Characteristics of Environmental Crimes as Challenges for their Detection and Proving. *Thematic Conference Proceedings of International Significance / Contemporary Challenges in Detecting and Proving Crime*. Archibald Reiss Days, 12, 113–128.
- Milošević, M. (2012). *Odgovornost pravnih lica za krivična dela*. Doctoral dissertation. Belgrade: University of Belgrade, Faculty of Law.
- Milošević, M. (2022). *Krivično pravo – posebni deo: izabrane inkriminacije za studije nauka bezbednosti*. Belgrade: University of Belgrade – Faculty of Security Studies.
- Mpunga-Biayi, P. (2025). The European Union Environmental Crime Directive 2024: The construction of an autonomous legal framework for the repression of environmental crimes within the European Union. *Environmental Law Review*, 27(2), 135–144.
- Pigaroff, D., Robinson, D. (2016). A Commentary: Article 30. The Rome Statute of the International Criminal Court, 3rd edition, Triffterer, O., Ambos, K. eds. C. H. Beck-Hart-Nomos, 1111–1124.
- RERI Legal Team (2024). *Zaštita životne sredine pravnim sredstvima – Pravna analiza sudskog postupka koji je RERI pokrenuo protiv Elektroprivrede Srbije zbog ugrožavanja zdravlja ljudi*. Belgrade: Renewables and Environmental Regulatory Institute, 1–31. Available at: <https://reri.org.rs/wp-content/uploads/2024/04/Pravna-analiza-sudskog-postupka-RERI-vs-EPS.pdf>.
- Radisavljević, I., Banović, J. (2023). Nehatno lišenje života iz čl. 118. KZ. Teorija, praksa i osvrt na odgovornost pravnih lica. *Zbornik radova Kopaoničke škole prirodnog prava „Slobodan Perović“*, 151–168.
- Statistical Office of the Republic of Serbia (2025). *Punoletni učinioци krivičnih dela, 2024*. Available at: <https://publikacije.stat.gov.rs/G2025/Pdf/G20251190.pdf>.
- Robinson, D. (2022). *Ecocide – Puzzles and Possibilities*. *Journal of International Criminal Justice*, 20, 313–347.
- Stop Ecocide Foundation (2021). *Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core text*. Available at: <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>.
- Škulić, M. (2024). *Krivično pravo i adekvatnost zaštite životne sredine – Međunarodni pravni standardi i materijalno krivično zakonodavstvo Srbije – usaglašenost ili ne?*. *Glasnik of the Bar Association of Vojvodina*, 96(4), 1036–1069.
- Škundrić, A. (2023). *Ekocid u međunarodnom krivičnom pravu*. *Zbornik radova sa međunarodne naučne konferencije „Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona Republike Srbije“*, Škulić, M., Miljuš, I., Škundrić, A. eds. Belgrade/Palić: Association for International Criminal Law and the Faculty of Law, University of Belgrade, 443–458.

Vuković, I. (2021). *Krivično pravo – Opšti deo*. Belgrade: University of Belgrade – Faculty of Law.

Working Group on the National Criminalisation of Ecocide (2025). *Manual for a National Criminalisation of Ecocide*. 1–35.

Legal Acts

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.

Draft Law on Amendments to the Criminal Code – text of the regulation. Available at: <https://www.paragraf.rs/dnevne-vesti/120925/120925-vest9.html>

Criminal Code, *Official Gazette of the RS*, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024.

Conference of the Representatives of the Governments of the Member States, Consolidated version of the Treaty on the Functioning of the European Union, OJ L. 326/47-326/390, 26 October 2012. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

Law on General Administrative Procedure, *Official Gazette of the RS*, No. 18/2016, 95/2018 – authentic interpretation, and 2/2023 – decision of the Constitutional Court.

Case Law

Judgment of the Court (Grand Chamber), September 13, 2005, Case C-176/03, Commission of the European Communities v. Council of the European Union.

Judgment of the Supreme Court of Cassation, Prev 376/2020, of December 24, 2020.

Judgment of the Supreme Court of Cassation, Kzz 259/2014, of April 29, 2014.

Decision of the Appellate Court in Belgrade, Kž2 No. 3337/13, of September 24, 2013.