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PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW IN THE REPUBLIKA SRPSKA IN LIGHT OF THE NEW 2024 EU DIRECTIVE**

ABSTRACT: The system of environmental criminal offenses in the Criminal Code of the Republika Srpska provides for several criminal offenses against the environment, in their basic or qualified forms, together with penalties for their perpetrators. Given the need for effective and comprehensive protection of the environment through criminal law either as a whole or of its individual elements, it is necessary to constantly update the existing statutory solutions in order to improve them, both from the perspective of the needs of a contemporary crime suppression policy and, even more so, because of the emergence of new and different forms of harm to or endangerment of the environment. This is also reinforced by the need to harmonize national criminal-law systems with relevant international standards. In this paper, the author analyzes the new solutions contained in the 2024 European Union Directive on the protection of the environment through criminal law from the perspective of their implementation in the criminal legislation of the Republika Srpska.

Keywords: environment, endangerment, criminal offense, directive, Republika Srpska

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1. INTRODUCTION

Environmental security is only one aspect of security, but an extremely important one, whether at the international, regional, or national level.¹ This is logical because the consequences caused by harm to or disturbance of the environment in general, or of individual eco-media, appear as expansive dangers that can endanger large areas of the earth's surface and everything found on them (in the form of soil, water, air, and plant and animal life).² All of this has led to agreement at the international level that numerous issues relevant to the legal regulation, improvement, and protection of the environment should be regulated through universal or regional, primarily European, international instruments.³

Among such international instruments of regional significance, which are particularly important for European criminal legislation,⁴ both of the Member States of the European Union and, even more so, of the states that are candidates for accession to this most important political, economic, and security-related regional organization, is the recently adopted Directive (EU)

¹ See: Joldžić, V., Jovašević, D. (2012). *Ekološko krivično pravo*. Belgrade: Institute for Criminological and Sociological Research, 87–109; Naess, A. (1973). *The shallow and the deep, long-range ecology movement*. A summary. *Inquiry: An Interdisciplinary Journal of Philosophy*, 16(1–4), 95–100; Watson, A. R. (1983). A Critique of Anti-Anthropocentric Biocentrism. *Environmental Ethics*, 5(3), 245–256; Keller, D. (1997). Gleaning Lessons from Deep Ecology. *Ethics and the Environment*, 2(2), 139–148; Norton, B. G. (1991). *Toward Unity Among Environmentalists*. Oxford University Press.

² See: Rozzi, R. (1999). The Reciprocal Links between Evolutionary – Ecological Sciences and Environmental Ethics. *BioScience*, 49(11), 911–921; May, R. (1999). Unanswered questions in ecology. *Philosophical Transactions of the Royal Society B*. 354(1392): 1951–1959; Rosenzweig, M. L. (2003). Reconciliation ecology and the future of species diversity. *Oryx*, 37(2), 194–205.

³ See: Schneider, D. D. (2001). The rise of the concept of scale in ecology. *BioScience*, 51(7), 545–553; Johnson, J. B., Omland, K. S. (2004). Model selection in ecology and evolution. *Trends in Ecology and Evolution*, 19(2), 101–108; Li, L. (2018). The Legislative model of Environmental Criminal Law in Germany and its reference to our country [J]. *Journal of law*, 33(11), 6, 64–70; Brack, D. (2002). Combatting international environmental crime. *Global Environmental Change*, 12(2), 143–147; Vollaard, B. (2017). Temporal displacement of environmental crime. Evidence from marine oil pollution. *Journal of Environmental Economics and Management*, 82, 168–180; White, R. (2003) Environmental Issues and the Criminological Imagination. *Theoretical Criminology*, 7(4), 483–506.

⁴ See: Papathanasiou, K. (2017). Environmental Criminal Law. A Vital Part of the Regulatory Framework. In: Mathis, K., Huber, B. (eds) *Environmental Law and Economics. Economic Analysis of Law in European Legal Scholarship*, vol. 4. Springer, Cham. 513–526; Haeri, H., Munoz-Pons, V., Touanassa, M. (2021). The specialization of environmental criminal justice. *A review of the law of environmental criminal justice: focus on 24 December 2020*. Dalloz, A., Brihi, S. (2022). *Environmental criminal law in the French legal framework*. Paris: Moncey Advocats.

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.⁵

This Directive introduces, to a significant extent, new solutions concerning the prescription of environmental criminal offenses, both in their basic forms and, even more so, in their qualified forms,⁶ with particular emphasis on the obligation to introduce a new criminalization of this kind under the name “ecocide,”⁷ as well as on establishing rules for determining the criminal liability of natural persons, but also of legal persons, for these environmental criminal offenses, together with a system of penalties and rules for imposing them in each specific case.⁸ This highlights the importance of international instruments⁹ adopted within the European Union, particularly from the perspective of the legislation of the Western Balkan states, that is, the states created by the dissolution of the SFRY at the end of the previous century. Given the specific features of the legal system in Bosnia and Herzegovina, the

⁵ 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.

⁶ See: Федоров, Н. (2024). Дикая природа нуждается в защите Об истории укрепления уголовного права в области защиты окружающей среды. *Экология и право*, 89(9), 4–9; Буйлов, О. П., Брусенцев, В. И. (2015). Общая характеристика экологических преступлений. классификация экологических преступлений. *Международный студенческий научный вестник*. 2015. № 2–3, 282–283.

⁷ See: Овчинников, А. (2024). Улики экоцида Как собирают данные для анализа экологического ущерба от полномасштабного вторжения России в Украину. *Экология и право*, 89(9), 14–19.

⁸ See: Ding, X., Shahzad, M. (2022). Environmental administrative penalty, environmental disclosures, and the firm’s cash flow: evidence from manufacturing firms in China. *Environ Sci Pollut Res Int*. 29(24), 36674–36683; Ding, X., Qu, Y., Shahzad, M. (2019). The impact of environmental administrative penalties on the disclosure of environmental information. *Sustainability*, 11(20), 5820; Zhenghang, F., Zhenghang, F. (2022). Study on the legislative Mode of Environmental Criminal Law. *Academic Journal of Humanities & Social Sciences*, 5(17). Zhou, E. C. (2015). *Research on Environmental crime legislation*. Ocean University of China.

⁹ See: Knaut, S. (2005). Das deutsche Umweltstrafrecht. In: *Die Europäisierung des Umweltstrafrechts. Studien zum Wirtschaftsstrafrecht*, vol. 23. Centaurus Verlag & Media, Herbolzheim, 16–144; Fischer, M. (2011). Deutschlands Umweltstrafrecht unter Änderungsdruck der EU. *NuR* 33, 564–566; Schall, H. (1998). Systematische Übersicht der Rechtsprechung zum Umweltstrafrecht. *NSiZ-Rechtsprechungs-Report Strafrecht Year*, 3(12), 353–358; Kröger, D., Klauß, I. (2001). Umweltstrafrecht. In: *Umweltrecht. Recht – schnell erfaßt*. Springer, Berlin, Heidelberg, 337–358; Saliger, F. (2008). *Umweltstrafrecht. Academia Iuris: Lehrbücher der Rechtswissenschaft*. Heymann; Laufhütte, H., Möhrenschlager, M. (1989). Umweltstrafrecht in neuer Gestalt. *Zeitschrift für die gesamte Strafrechtswissenschaft*, 92(4), 912–972.

field of legal protection of the environment is regulated in all four criminal laws in somewhat different ways, taking into account the specific needs of the state as a whole and of its entities, as well as the Brčko District of BiH. In the law of the Republika Srpska, environmental criminal offenses are provided for in the special twenty-ninth chapter of the Criminal Code¹⁰ (hereinafter: CC RS), entitled “Criminal Offenses Against the Environment.” A distinction is made here between:¹¹ a) general environmental criminal offenses (which are directed against the environment as a whole) and b) special environmental criminal offenses (which are directed against individual eco-media).

2. SPECIFIC FEATURES OF THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW IN THE LAW OF THE REPUBLIKA SRPSKA

2.1. General Characteristics of Environmental Criminal Offenses

The CC RS, as amended through the end of 2024, provides for several criminal offenses, of which the elements of the basic, general, and fundamental environmental criminal offenses will be presented. Among the common characteristics of these criminal offenses, their object of protection primarily stands out. That object is the environment.

The environment is understood as the set of natural and created values whose complex mutual relations constitute the surroundings, that is, the space and conditions for human life. The environment defined in this way is always determined by its quality. Environmental quality represents the state of the environment, expressed through physical, chemical, biological, aesthetic, and other indicators. Within the environment understood in this way, a distinction is made between natural values, protected natural goods, public natural goods, geodiversity (geological diversity), biodiversity (biological diversity), etc.

The object of protection of these criminal offenses can be the environment as a whole or its individual forms or segments, such as¹² water, air, soil, flora, and fauna, which are contained in the lithosphere, pedosphere, hydrosphere, atmosphere, biosphere, and technosphere. Protected values understood

¹⁰ *Official Gazette of the Republika Srpska*, No. 64/2017, 104/2018, 15/2021, 89/2021, 73/2023, 9/2024, and 105/2024.

¹¹ Đorđević, Đ., Kolarić, D. (2020). *Krivično pravo. Posebni deo*. Belgrade: University of Criminal Investigation and Police Studies, 167.

¹² See: Bugarski, T. (2015). *Krivični postupak za dela protiv životne sredine. Collected Papers of the Faculty of Law in Novi Sad*, 49(4), 16–37.

in this way are the subject of regulation under domestic legislation, as well as under international regulations.

Numerous laws and bylaws regulate the field of the environment. The set of those regulations constitutes environmental law or the law of environmental regulation and protection. All domestic regulations are aligned with a series of international regulations in this field. Within international regulations, two types are distinguished. These are:¹³ a) regulations of a universal character, adopted within and under the auspices of the United Nations and its bodies, and b) regulations of a regional character, adopted by regional organizations such as the Council of Europe, the European Union, etc. In addition, numerous international organizations deal with various issues in the field of environmental protection, improvement, and preservation, such as the UN Commission on Sustainable Development, the UN Environment Programme, the UN Development Programme, the World Meteorological Organization, etc.

The environment (as a whole or its segments) is protected against all forms of pollution, which constitutes the introduction of polluting substances or energy into the environment caused by human activities or natural processes, and which has or can have harmful consequences for environmental quality and human health. The concept of pollution is distinct from the concept of environmental degradation. This is a process of deterioration of environmental quality that occurs through natural or human activity or as a consequence of the failure to take measures to eliminate the causes of deterioration of quality or damage to the environment, to natural values, or to values created by human labor. In legal theory, there are also views that define the object of protection of these criminal offenses as the right to a healthy environment, which is one of the fundamental, natural, and universal human rights.¹⁴

The Constitution of the Republika Srpska,¹⁵ as the basic and fundamental legal act, in its second part entitled "Human Rights and Freedoms," lists the system, or set, of guaranteed human rights and freedoms. Thus, in the first place (Article 10), it proclaims that citizens are equal in their freedoms, rights, and duties, are equal before the law, and enjoy the same legal protection regardless of race, sex, language, national affiliation, religion, social origin, birth, education, wealth, political or other belief, social position, or other

¹³ See: Pisarić, M. (2015). Pretpostavke za otkrivanje ekološkog kriminaliteta. *Collected Papers of the Faculty of Law in Novi Sad*, 49(2), 787–792.

¹⁴ See: Jovašević, D. (2011). *Sistem ekoloških krivičnih dela*. Niš: Faculty of Law, 78–91.

¹⁵ *Official Gazette of the Republika Srpska*, No. 21/1992, 28/1994, 8/1996, 13/1996, 15/1996, 16/1996, 21/1996, 21/2002, 26/2002, 30/2002, 31/2002, 69/2002, 31/2003, 98/2003, 115/2005, 117/2005, 48/2011, and 73/2019.

personal characteristic. This is followed by individually enumerated personal rights and freedoms.

The Constitution of the Republika Srpska expressly guarantees the right to a healthy environment (Article 35). According to this constitutional postulate, “everyone has the right to a healthy environment.”¹⁶ Related to this is the rule according to which every person, in accordance with the law, is obliged to protect and improve the environment within their means. Also connected with this important personal human right is the right to healthcare (Article 37). Namely, the Constitution of the Republika Srpska establishes that everyone has the right to health, that is, healthcare, and healthcare thus appears as a guaranteed right, in accordance with the law.

The right to a healthy environment is also protected indirectly, albeit in a specific manner, in two additional constitutional provisions. These are:¹⁷

a) citizens have the right to publicly express opinions on the work of state and other bodies and organizations, to submit petitions, complaints, and proposals to them regarding various matters of importance for life, including matters related to the state of the environment or to its endangerment, and to receive a proper, complete, and truthful response to those matters (Article 32). It is expressly prohibited for any person to be held liable or to suffer other harmful consequences because of a publicly expressed opinion on the work of state bodies or views presented in a petition, complaint, or proposal, unless that person, in such a situation, thereby committed a criminal offense prescribed by law; and

b) citizens have the right to participate in the conduct of public affairs and to be admitted to public service under equal conditions (Article 33).

Finally, the Constitution establishes (Article 64) that the Republika Srpska protects and encourages:¹⁸ a) the rational use of natural resources for the purpose of protecting and improving quality of life and protecting and restoring the environment in the general interest, b) the preservation and enrichment of historical, cultural, and artistic heritage, c) scientific research, d) savings in all its forms, particularly savings directed toward economic activities and the purchase of apartments, e) cooperatives and cooperative activity, f) crafts, and g) physical culture and sports.

Human health also appears indirectly as an object of protection of environmental criminal offenses, namely the health of an indeterminate number of

¹⁶ See: Kunić, P., Karan, S. (2012). *Ustavno pravo*. Banja Luka: Pan-European University “Apeiron,” 67–81.

¹⁷ See: Marković, G. (2021). *Ustavno pravo*. East Sarajevo: Faculty of Law, 98–107.

¹⁸ See: Kuzmanović, R. (2011). *Ustavno pravo*. Banja Luka: Faculty of Law, 89–92.

people.¹⁹ Health is the psychophysical state of a human being in which there is harmonious functioning of all organs and processes that make them capable of normal life, work, and social productivity. Technical and technological development and civilizational progress in general, together with industrialization and the use of enormous, diverse, and often dangerous sources of energy, raw materials, and dangerous devices, lead to the endangerment of the life and health of all people who find themselves in a particular area, that is, within the zone of operation of an expansive environmental danger.

These criminal offenses are most often defined by a blanket disposition.²⁰ This means that their act of commission consists of any activity, by act or omission, that departs from environmental regulations, that is, that violates regulations in the field of environmental law (as a special branch of administrative law). This means that, in order to complete the content and elements of the statutory definition of these criminal offenses, it is necessary to analyze other non-criminal-law regulations in order to determine which conduct is permitted and which is prohibited.

Within environmental criminal offenses, a distinction is made between: a) proper or pure environmental criminal offenses (environmental criminal offenses in the narrower sense), which are criminal offenses systematized in the CC RS in the group of criminal offenses against the environment, and b) improper or relative environmental criminal offenses (environmental criminal offenses in the broader sense), which are criminal offenses provided for in other groups of criminal offenses within the CC RS or in ancillary, supplementary, or auxiliary criminal legislation. They are indirectly directed against the environment, but alongside this value, other social values appear as the predominant, primary, or prevalent object of protection, and it is precisely according to the significance of those values that these offenses are systematized into other groups of criminal offenses, such as, for example, offenses against human health, offenses against the general safety of persons or property, etc.

The consequence of environmental criminal offenses is defined as:²¹ a) endangerment of the environment and b) endangerment of human health. In some criminal offenses, this danger is abstract, while in others it is concrete. Concrete, immediate, proximate, and real danger is danger that has actually or

¹⁹ Pavišić, B., Grozdanić, V., Veić, P. (2007). *Komentar Kaznenog zakona*. Zagreb: *Narodne novine*, 591.

²⁰ Turković, K., Novoselec, P., Grozdanić, V., Kurtović Mišić, A., Derenčinović, D., Bojanić, I., ... Maršavelski, A. (2013). *Komentar Kaznenog zakona*. Zagreb: *Narodne novine*, 263.

²¹ See: Mališ Sazdovska, M. (2006). Posebne istražne radnje u suzbijanju ekološkog kriminaliteta. *Pravni život*, (9), 1041–1049.

immediately arisen for the life, bodily integrity, and health of another person, or for the environment. This means that the possibility of harm to these goods was certain and proximate, but nevertheless had not yet occurred in the specific case. This danger is an element of the statutory definition of the criminal offense and must be proved in criminal proceedings in the specific case. Abstract or general danger, on the other hand, is danger that could have arisen for the protected good as a result of the act of commission, but nevertheless did not arise in the specific case. By undertaking the act of commission, the consequence in the form of abstract danger to the protected good is deemed to have occurred. It does not constitute an element of the statutory definition of the criminal offense, so its occurrence does not need to be proved. For a criminal offense involving abstract danger to exist, it is sufficient that the act of commission was undertaken, because it is considered that abstract danger was thereby caused.²²

Finally, some environmental criminal offenses have a consequence in the form of harm to the protected good: pollution of the environment as a whole or of its individual parts, namely air, water, or soil; destruction of animal or plant life; death of a large number of animals or fish; death of animals; or other substantial damage.

A larger number of environmental criminal offenses can be committed by any person, while only in some of them can the perpetrator be a specific person, namely, an official or responsible person. With respect to culpability, these criminal offenses can be committed with intent or through negligence.

2.2. Environmental Pollution

Environmental Pollution (Article 370 of the CC RS) is the first basic, general environmental criminal offense in the law of the Republika Srpska and consists of polluting air, soil, or water to a greater extent or over a greater area contrary to regulations on the protection, preservation, and improvement of the environment.²³ Environmental pollution is understood as the introduction of polluting substances or energy into the environment caused by human activity or natural processes that have or can have harmful consequences for environmental quality and human health.

²² See: Vuletić, I. (2023). Osvrt na ekocentrični model zaštite okoliša u hrvatskom kaznenom pravu – deset godina nakon pristupanja EU. *Glasnik of the Bar Association of Vojvodina*, 95(4), 1292–1304.

²³ Jovašević, D., Mitrović, L.J., Ikanović, V. (2021). *Komentar Krivičnog zakonika Republike Srpske*. Banja Luka: Službeni glasnik, 746–747.

The object of protection in this offense is the environment (air, soil, or water) that surrounds human beings. Protection of the human environment means preserving nature and its elements, namely water, air, soil, flora, and fauna, from poisoning, pollution, or destruction. In legal theory, views can be found according to which the object of protection of this offense is the human right to a healthy environment, which constitutes one of the fundamental human rights.

The act of commission of this environmental offense is defined by a result-based disposition. It is any act or omission capable of causing the consequence of the offense, namely, pollution of air, soil, or water. It can be carried out through various activities: releasing poisonous or asphyxiating gases into the atmosphere in large quantities; discharging poisonous, polluted, or waste water, or other harmful substances into water, a watercourse, a lake, or onto soil. For this offense to exist, it is also necessary that the act of commission be undertaken:²⁴ a) in a particular manner, namely contrary to regulations on the protection, preservation, and improvement of the environment, and therefore unlawfully; and b) in such a way that pollution of air, soil, or water is caused to a greater extent or over a greater area. This indicates that the offense requires a more serious consequence, namely, actual harm. Until this harm occurs, the perpetrator's act is not considered a criminal offense, but rather an environmental misdemeanor. Whether pollution has occurred "to a greater extent" or "over a greater area" is a factual question resolved by the court in the specific case.

The offense can be committed by any person, and, with respect to culpability, both intent and negligence are possible. For its intentional commission, a penalty of imprisonment for a term of six months to three years is prescribed, while for the negligent form of the offense, imprisonment for up to two years is prescribed.

An aggravated form of the criminal offense (Article 370) exists if, as a result of the act of commission, the following occurred:²⁵ a) harm in the form of destruction or substantial damage to forest or other plant communities and their habitats over a greater area, and b) environmental pollution to such an extent that the health of humans or animals is endangered. This is an offense qualified by a graver consequence that must be the result of the perpetrator's negligence.²⁶ The graver consequences must be in a causal rela-

²⁴ See: Delić, N. (2021). *Krivično pravo. Posebni deo*. Belgrade: Faculty of Law, 286–289.

²⁵ Dorđević, Đ., Kolarić, D. (2020). *Krivično pravo. Posebni deo*. Belgrade: University of Criminal Investigation and Police Studies, 167.

²⁶ See: Babić, M., Marković, I. (2007). *Krivično pravo. Posebni deo*. Banja Luka: Faculty of Law, 340–342.

tionship with the act of commission of the basic offense. If the basic offense was committed with intent, a penalty of imprisonment for a term of one to five years is prescribed for its aggravated form. If the basic offense was committed through negligence, a penalty of imprisonment for a term of six months to three years is prescribed for the aggravated offense with a negligently caused graver consequence.

2.3. Pollution of the Environment with Waste Materials

The second general environmental criminal offense in the CC RS is entitled “Pollution of the Environment with Waste Materials” (Article 371). This offense²⁷ consists of processing, disposing of, discarding, collecting, storing, importing, exporting, or transporting, contrary to regulations, waste, nuclear material, another radioactive substance, or a hazardous substance, or intermediating in the undertaking of the stated acts, or acting in a manner that can endanger the quality of air, soil, water, or forests for a longer period or to a substantial extent, or that can endanger plants or animals to a substantial extent or over a greater area, or that can endanger human life or health. In this offense as well, the object of protection is the environment, while the object of attack is defined in multiple ways as: a) waste, b) nuclear material, c) other radioactive substances, and d) hazardous substances.

The act of commission of this environmental offense is defined in multiple alternative ways:²⁸ a) processing, meaning altering or modifying an object; b) disposal, meaning transporting away or removing the object from the place where it was located; c) discarding, meaning leaving the object in some hidden place; d) collection, meaning obtaining the object in any way; e) storage, meaning direct or indirect factual or possessory control; f) import, meaning bringing the object into the country; g) export, meaning taking the object out of the country; h) transport, meaning carrying the object by any means of transport in land, water, or air traffic; i) intermediation, meaning assisting or facilitating the undertaking of one of the stated acts, where assistance is not a form of complicity but an independent act of commission; and j) acting in another manner, meaning undertaking any unlawful activity.²⁹

²⁷ See: Petrović, B., Jovašević, D., Ferhatović, A. (2016). *Krivično pravo* 2. Sarajevo: Faculty of Law, 396–398.

²⁸ See: Jovašević, D., Mitrović, V., Ikanović, V. (2017). *Krivično pravo. Posebni deo*. Banja Luka: Pan-European University Apeiron, 316–318.

²⁹ See: Lazarević, L.J., Vučković, B., Vučković, V. (2004). *Komentar Krivičnog zakonika*. Cetinje: Obod, 734–737.

For this environmental offense to exist, the act of commission must be undertaken:³⁰ a) in a specific manner, namely contrary to regulations and therefore unlawfully, which points to the blanket character of the offense; b) in relation to a specific object, namely waste, nuclear material, other radioactive substances, and hazardous substances; and c) in such a way that a consequence occurs in the form of endangering: 1) the quality of air, soil, water, or forests for a longer period (for an extended time) or to a substantial extent (on a larger scale), 2) plants or animals to a substantial extent or over a greater area, and 3) human life or health.

The offense can also be committed by any person, and, with respect to culpability, both intent and negligence are possible. For intentional commission of the offense, a penalty of imprisonment for a term of one to five years is prescribed, while for the negligent form of the offense, a penalty of imprisonment for a term of six months to three years is prescribed.

The environmental criminal offense under Article 371 appears in two aggravated, qualified forms.³¹

The first aggravated form of the offense, for which a penalty of imprisonment for a term of two to eight years is prescribed, is committed by a person who, by abusing their official position or authority, authorizes (contrary to regulations) the undertaking of the following acts: processing, disposal, discarding, collection, storage, import, export, or transport of waste, nuclear material, another radioactive substance, or a hazardous substance, or intermediation in the undertaking of the stated acts, or acting in another manner. Here, in fact, assistance in the form of enabling or facilitating constitutes an independent act of commission, and not a form of complicity, undertaken by: a) a specific person and b) in a specific manner, namely by abusing official position or authority.

The second aggravated form of the offense exists if, as a result of the act of commission, a grave consequence in the form of harm occurred, namely: a) destruction of animal or plant life on a large scale, and b) environmental pollution to such an extent that a danger to human life or health has thereby been created.

For intentional commission of the basic offense with a graver negligent consequence, a penalty of imprisonment for a term of two to ten years is prescribed, and for the negligent offense, a penalty of imprisonment for a term of one to five years is prescribed.

³⁰ See: Jovašević, D., Miladinović Stefanović D. (2023). *Krivično pravo. Posebni deo*. Niš: Faculty of Law, 309–314.

³¹ See: Petrović, B., Ferhatović, A., Jovašević, D. (2024). *Krivično pravo. Posebni dio*. Sarajevo: Faculty of Law, 153–156.

3. INTERNATIONAL STANDARDS OF ENVIRONMENTAL PROTECTION IN EUROPEAN UNION LAW

Among the numerous international standards of universal or regional character that establish the foundations of the protection of the environment through criminal law relevant to the law of Bosnia and Herzegovina, the aforementioned European instrument adopted in 2024 within the European Union stands out. This is 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. It establishes minimum rules concerning the definition of criminal offenses and sanctions in order to protect the environment more effectively, on the one hand, and concerning measures to prevent and combat criminal offenses against the environment (environmental criminal offenses), on the other, as well as to ensure the effective implementation of European Union law in the field of the environment. At the outset, this Directive (Article 2) defines the most important concepts relevant to the protection of the environment through criminal law. These are:

a) “ecosystem” (point c), which means a dynamic complex of plant, animal, fungi, and microorganism communities and their non-living environment interacting as a functional unit, and includes habitat types, habitats of species, and species populations;

b) “habitat within a protected site” (point b), which means any habitat of a species for which an area is classified as a special protection area pursuant to Directive 2009/147/EC of the European Parliament and of the Council of November 30, 2009 on the conservation of wild birds (Article 4, paragraphs 1 and 2), or any natural habitat or habitat of a species for which a site is designated as a special area of conservation in accordance with Directive 92/43/EEC of May 21, 1992 on the conservation of natural habitats and of wild fauna and flora (Article 4, paragraphs 2 and 4), or for which a site is listed as a site of Community importance; and

c) “legal person” (point a), which means any legal entity having such status under the applicable national law, except for states or public bodies exercising State authority and public international organizations. The Directive thereby points to the need for strengthened protection of the environment through criminal law, precisely against various unlawful activities of legal persons, especially as embodied in multinational companies.

3.1. System of International Environmental Criminal Offenses

The Directive (Article 3) provides the concept of an environmental criminal offense, that is, a criminal offense against the environment. This criminal offense is defined by two basic, constitutive “formal” elements. These are: a) the form of culpability of the perpetrator and b) the unlawfulness of the act. First, any intentional conduct, or conduct committed with “serious negligence,” is considered a criminal offense against the environment. Second, for a criminal offense to exist, the conduct of the perpetrator must be “unlawful,” that is, contrary to law, because it violates international or domestic, national, or internal regulations on the protection, preservation, or improvement of the environment as a whole or of one of its individual elements, such as air, water, soil, or plant or animal life.

For the purposes of this Directive, the perpetrator’s conduct is unlawful if it breaches: a) European Union law that contributes to the pursuit of one of the objectives of the policy of this regional European organization in the field of the environment; or b) a law or other regulation of a Member State, or a decision adopted by a competent state authority of a Member State, which implements European Union law within national borders. Such conduct is unlawful even if it is carried out on the basis of an authorization issued by a competent state authority, provided that the authorization was obtained unlawfully: a) by committing a criminal offense prescribed by law, namely fraud, corruption, extortion, or coercion; or b) if such authorization is in manifest breach of the relevant substantive legal requirements.

The Directive (Article 3, paragraph 2) prescribes a number of environmental criminal offenses whose descriptions, content, elements of the statutory definition, and characteristics should serve as a model for national criminal legislation in updating individual offenses (either by introducing new criminal offenses or new forms of manifestation of existing criminal offenses) in the system of the protection of the environment through criminal law.

The first environmental criminal offense, according to the provisions of the Directive, is any conduct of the perpetrator that is unlawful and intentional and is undertaken through the following activities as part of the act of commission: the discharge, emission, or introduction of a quantity of materials or substances, energy, or ionizing radiation into air, soil, or water, which causes or is likely to cause the death of, or serious injury to, any person, or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants. The criminal offense in this form is defined by a so-called “result-based disposition.” This means that, for this offense to exist, a precisely prescribed grave consequence must occur to the life or bodily

integrity of a person, or “substantial” (greater, more extensive) damage to the ecosystem as a whole or to its individual segments must occur.

The second environmental criminal offense is the unlawful and intentional placing of certain products on the market, thereby breaching a prohibition or another requirement aimed at protecting the environment. For this offense to exist, the product (as the object of the act) must be one whose use on a larger scale or use by several users, regardless of their number, results in the discharge, emission, or introduction of a quantity of materials or substances, energy, or ionizing radiation into air, soil, or water. This offense is characterized by the type of consequence, which appears as causing, or the likelihood of causing, the death of, or serious injury to, any person, or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

The third environmental criminal offense recognized by the Directive is the unlawful and intentional undertaking of activities such as: 1) the manufacture, placing or making available on the market, export, or use of substances, whether on their own, in mixtures, or in articles, including their incorporation into other articles, where such conduct causes or is likely to cause the death of, or serious injury to, another person, substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants; and 2) the manufacture, use, storage, import, or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products, where such conduct is not in accordance with the requirements set out in Regulation (EU) 2017/852 of the European Parliament and of the Council, provided that it causes or is likely to cause the death of, or serious bodily injury to, any person, substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

Criminal offenses connected with intentional conduct (listed in the Directive) can lead to catastrophic consequences, such as widespread pollution, industrial accidents with serious effects on the environment, or large-scale forest fires. If such criminal offenses cause the destruction of, or widespread and substantial damage that is either irreversible or long-lasting to, an ecosystem of considerable size or considerable environmental value, or to a habitat within a protected site, or cause widespread and substantial damage that is either irreversible or long-lasting to the quality of air, soil, or water, such offenses leading to major catastrophic consequences should be prescribed as qualified criminal offenses under the term “Ecocide” or a similar term, and should be punished with stricter sanctions than those applicable in the case of other basic forms of criminal offenses against the environment.³²

³² Petković, G. (2012). Ekocid – pravni i moralni aspekt. *Pravni život*, (9), 583–598.

If, under the Directive, the unlawful and intentional conduct of a perpetrator (a natural or legal person) constitutes a criminal offense only if it concerns a non-negligible quantity, corresponding to the exceeding of a regulatory threshold, value, or other mandatory parameter, then, in assessing whether that threshold, value, or other parameter has been exceeded, account should be taken, *inter alia*, of the hazardousness and toxicity of the materials or substances, because the more hazardous or toxic the material or substance is, the sooner that threshold, value, or other parameter will be reached and, in the case of particularly hazardous and toxic substances or materials, even a very small quantity can cause substantial damage to the environment or human health (Article 3, paragraph 3).

Such grave consequences arising from unlawful activities undertaken by natural persons and especially by legal persons point to the existence and legal qualification of the most serious environmental criminal offense, namely ecocide. In this regard, the Directive (Article 3, paragraph 6) provides criteria for defining “substantial” damage, such as: a) the baseline condition of the affected environment, b) whether the damage caused is long-lasting, medium-term, or short-term, c) the extent of the damage caused, and d) the reversibility of the damage caused.

The determination of damage caused to: a) the quality of air, soil, or the quality or status of water, or b) an ecosystem, animals, or plants (Article 3, paragraph 7), as a result of the act of commission of an environmental criminal offense, is assessed depending on certain elements, among which the Directive lists: a) whether the perpetrator’s conduct relates to an activity which is considered to be risky or dangerous for the environment or human health, and requires an authorization which was not obtained or complied with; b) the extent to which a regulatory threshold, value, or other mandatory parameter set out in European Union law, in national law, or in the authorization issued for the relevant activity has been exceeded; and c) whether the material or substance is classified as “dangerous” or is otherwise listed as harmful to the environment or to human health.

Finally, when assessing whether damage as the consequence of an environmental criminal offense is “negligible” or “non-negligible” (Article 3, paragraph 8), the Directive takes into account one or more elements: a) the number of items concerned, b) the extent to which a regulatory threshold, value, or other mandatory parameter set out in European Union law or in national law has been exceeded, c) the conservation status of the fauna or flora species concerned, and d) the cost of restoration of the environment, where it is feasible to assess that cost.

3.2. Special Forms of Liability for Environmental Criminal Offenses

The Directive (Article 4, paragraph 1) expressly prescribes complicity (collective intentional participation by several persons in the joint commission of one or more criminal offenses) as a punishable offense. This applies in particular to: a) inciting and instigating (intentionally inducing another person to commit a specific environmental criminal offense), and b) aiding and abetting, enabling, or facilitating (by creating conditions or prerequisites) another person in committing a specific environmental criminal offense.

As a special form of criminal liability for environmental offenses (Article 4, paragraph 2), the Directive prescribes liability for attempt (the intentional commencement of the commission of an environmental criminal offense without causing a consequence for the environment in the specific case). This means that attempt is equated with a completed criminal offense.

For the commission (or attempted commission) of one of the criminal offenses prescribed by the Directive in its basic or qualified form (paragraph 3), or for a contribution as an accomplice in its commission, different penalties are prescribed depending on the capacity of the perpetrator. These are: a) penalties for natural persons (Article 5), and b) penalties for legal persons (Article 7), in the event that their criminal liability is established (within the meaning of Article 6).

For natural persons as perpetrators of environmental criminal offenses (Article 5), the Directive imposes an obligation on Member States to take the necessary measures to ensure that environmental criminal offenses are punishable by “effective, proportionate, and dissuasive criminal penalties.” In this regard, the Directive sets “penalty ranges” for prescribing imprisonment: 1) for the commission of a criminal offense that has caused the death of a person, imprisonment of at least 10 years, or, for inciting or aiding and abetting its commission where the death of a person has been caused, imprisonment of at least five years; and 2) for a criminal offense that has caused: a) the destruction of, or widespread and substantial damage that is either irreversible or long-lasting to, an ecosystem of considerable size or considerable environmental value, or to a habitat within a protected site, or b) widespread and substantial damage that is either irreversible or long-lasting to the quality of air, soil, or water, for the direct perpetrator, imprisonment of at least eight years, or, for inciting or aiding and abetting its commission, imprisonment of at least three years.

In addition to imprisonment as the principal penalty, a natural person as the perpetrator of environmental criminal offenses (according to the content, description, or characteristics prescribed by the Directive) can also be subject

to additional (supplementary, accessory) criminal or non-criminal penalties or measures, including: 1) an obligation to: a) restore the environment (return to the previous state, restitution) within a specified period if the damage is reversible, or b) pay compensation for the damage to the environment if the damage is irreversible or the offender is not in a capacity to carry out such restoration; 2) fines proportionate to the gravity of the conduct and to the individual, financial, and other circumstances of the natural person concerned, and determined, where appropriate, taking due account of the gravity and duration of the damage caused to the environment and of the financial benefits generated from the offense; 3) exclusion from access to public funding, including tender procedures, grants, concessions, and licenses; 4) disqualification from holding, within a legal person, a leading position of the same type used for committing the offense; 5) withdrawal of permits and authorizations to pursue activities that resulted in the relevant criminal offense; 6) temporary bans on running for public office; or 7) where there is a public interest, following a case-by-case assessment, publication of all or part of the judicial decision that relates to the criminal offense committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional cases.

However, in addition to natural persons, legal persons also appear as perpetrators (or accomplices) of environmental criminal offenses. The Directive therefore devotes particular attention to the rules for determining the criminal liability of legal persons (Article 6). In this regard, legal persons are considered perpetrators of environmental criminal offenses: 1) if such a criminal offense was committed for the benefit of those legal persons, and 2) if the criminal offense was committed by a person who has a leading position within the legal person concerned, whether acting individually or as part of an organ of that legal person, based on: a) a power of representation of the legal person, b) an authority to take decisions on behalf of the legal person, or c) an authority to exercise control within the legal person.

In practical terms, this concerns the strict liability of the legal person, based on the “lack of supervision or control by a responsible person within the competence of the legal person, who made possible the commission of the specific environmental criminal offense,” and for the benefit of that legal person (paragraph 2). It is expressly provided that the criminal liability of legal persons does not preclude the conduct of criminal proceedings against natural persons who were direct perpetrators, instigators, or aiders in the commission of a specific environmental criminal offense.

According to the Directive, a legal person as the perpetrator of environmental criminal offenses (Article 3) can be subject to “effective, proportionate, and dissuasive criminal or non-criminal penalties or measures” (Article 7,

paragraph 1), with a fine being the primary one. In addition to a fine, as the principal and basic type of criminal sanction and as a measure of social response against perpetrators of criminal offenses, the Directive allows the possibility of imposing additional, supplementary criminal or non-criminal sanctions or measures (paragraph 2): 1) an obligation to: a) restore the environment within a given period if the damage is reversible, or b) pay compensation for the damage to the environment if the damage is irreversible or the offender is not in a capacity to carry out such restoration; 2) exclusion from entitlement to public benefits or aid; 3) exclusion from access to public funding, including tender procedures, grants, concessions, and licenses; 4) temporary or permanent disqualification from the practice of business activities; 5) withdrawal of permits and authorizations to pursue activities that resulted in the relevant criminal offense; 6) placing under judicial supervision; 7) judicial winding-up; 8) closure of establishments used for committing the offense; 9) an obligation to establish due diligence schemes for enhancing compliance with environmental standards; and 10) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offense committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

A fine is imposed on a legal person as the perpetrator of environmental criminal offenses (Article 3) in proportion (a proportionate fine) to: a) the gravity of the criminal offense committed (the degree or intensity of the “wrongfulness”), and b) the individual, financial, and other circumstances of the legal person concerned. Individual Member States take the necessary measures to ensure that the maximum level of such fines is not less than (paragraph 3): a) 5 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offense was committed, or in the business year preceding that of the decision to impose the fine, or an amount corresponding to EUR 40,000,000; and b) for a criminal offense that caused serious consequences for the quality of the environment as a whole or for its eco-media, 3 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offense was committed, or in the business year preceding that of the decision to impose the fine, or an amount corresponding to EUR 24,000,000.

4. CONCLUSION

The upcoming reform of the CC RS would, in line with the Directive on the protection of the environment through criminal law and the replacement of the previously adopted directives of similar content, 2008/99/EC and 2009/123/EC, supplement the characteristics, content, and statutory elements of the basic, primary, and most important “general” environmental criminal offenses, while the most significant novelty would be the introduction of a new and most serious environmental criminal offense, in fact, its sub-qualified form, under the term “Ecocide.” This would raise the protection of the environment through criminal law to a qualitatively higher and more effective level. In fact, this concerns the prescription of new blanket criminalizations of environmental criminal offenses, and especially of the criminal offense of “Ecocide,” as an intentional criminal offense of endangerment whose statutory elements are fulfilled by any person who, contrary to regulations, undertakes acts with knowledge that there is a substantial likelihood that serious damage to the environment, which is widespread or long-lasting, will occur as a result of those acts.

The criminal offense in question would, in fact, represent “the most serious peacetime criminal offense against the environment,” since the Criminal Law of Bosnia and Herzegovina,³³ within the criminal offenses against humanity and values protected by international law (Chapter Seventeen), provides for a special criminal offense entitled “War Crimes Against Civilians” (Article 173). This international criminalization provides for, inter alia, a criminal offense against the environment through a breach of the rules of international law during war, occupation, or armed conflict, where the perpetrator launches an attack with knowledge that such an attack will cause severe, long-term, and extensive damage to the natural environment that would clearly be disproportionate to the concrete and direct overall military advantage anticipated. Within the meaning of this offense, which could be punishable by imprisonment for a term of at least five years or by life imprisonment, the concept of the environment would include “the earth, biosphere, cryosphere, lithosphere, hydrosphere, and atmosphere, as well as outer space.”

These novelties in the system of the protection of the environment through criminal law in the law of the Republika Srpska, would emphasize both the protection of human beings as the primary concern (the anthropocentric model), the protection of flora, that is, plant life, and fauna, that is,

³³ *Official Gazette of Bosnia and Herzegovina*, No. 3/2003, 32/2003, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 32/2007, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023, and 47/2023.

animal life (the biocentric model), and the protection of the environment as a whole (the ecocentric model). In this system, criminal offenses against the environment would, as a rule, constitute criminal offenses of endangerment of protected goods, values, or interests. However, if such endangerment of the environment, as a result of the unlawful activity undertaken within the meaning of the legally prescribed act of commission, leads to harm (serious bodily injury, death, substantial damage, or a major accident), the perpetrator would be punished by a more severe penalty than the one prescribed for the basic, fundamental form of the criminal offense.

Such reformed criminal legislation would represent a new and further step toward harmonizing the criminal legislation of the Republika Srpska with the proclaimed objectives of environmental protection, both at the national level and at the level of the European Union. This is supported by the recently completed legislative procedure for the adoption of Directive (EU) 2024/1203, which was published in the Official Journal of the European Union on April 30, 2024, with a transposition deadline of May 21, 2026.

This regional European instrument contains minimum rules concerning the definitions of environmental criminal offenses and the system of sanctions (for natural and legal persons as their perpetrators) in order to protect the environment as a whole, as well as individual eco-media, more effectively, and also concerning the application of measures for preventing and combating criminal offenses against the environment and for more effective implementation of European Union law in the field of the environment (European Union environmental law). This Directive was adopted precisely with the aim of regulating, improving, and harmonizing, in a uniform manner, the system of the protection of the environment through criminal law of the Member States of this regional organization, as well as the states that are candidates for accession to this organization, which would enable effective and efficient criminal prosecution of the perpetrators of environmental criminal offenses.

In this way, judicial cooperation in criminal matters concerning criminal offenses against the environment, which frequently display an international and transnational character, would admittedly be facilitated indirectly. Ultimately, these new statutory solutions would enable more effective sanctioning of the perpetrators of environmental criminal offenses, both natural and legal persons, precisely by those penalties that have an “effective, proportionate, and dissuasive character.”

The implementation of the provisions of the Directive represents only a step toward the successful completion of negotiations at the level of the Council of Europe with the aim of adopting a Convention on the Protection of the Environment through Criminal Law, which, once negotiations have been completed, would be opened for signature both by the Member States

of the Council and by the Member States of the European Union itself. In this way, the recent adoption of regulation in the field of environmental protection by means of criminal law through the secondary legislation of the European Union, as well as the indicated development of convention law through negotiations on a new Council of Europe instrument, would fully ensure that the international instruments and European regulations binding Bosnia and Herzegovina are implemented effectively and to a high standard, that is, transposed into national legislation in a timely manner and in the manner required by the international instruments in question.

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