The Impact of International and European Law on the Development of Environmental Protection Through Criminal Law in Poland

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Abstract. *The issue of environmental protection through criminal law is primarily associated with the fight against the most serious attacks on the environment. The progressive degradation of natural ecosystems, which is an important consequence of the development of human civilisation, has shown that one of the most important challenges of modern man is to provide the environment with adequate and effective protection. It should be emphasized that although the main burden of such protection is implemented through administrative law and to a lesser degree through civil law instruments, the use of criminal law in environmental protection as an ultima ratio of this protection has proved to be absolutely necessary. Legal regulations regarding the criminal law protection of the environment in Poland have gone a long way in terms of development. It should be emphasized, however, that the shape and development of criminal law protection of the environment in Poland has been significantly influenced by European legislation, which was obviously related to Poland's accession to the European Union in 2004 and international law, in particular the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973 in Washington, DC, and the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which was opened for signature in Basel on March 22, 1989. The article presents the most important issues related to the impact of European and international law on the development of environmental protection through criminal law in Poland.*

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The issue of environmental protection through criminal law is primarily associated with the fight against the most serious attacks on the environment. The progressive degradation of natural ecosystems, which is an important consequence of the development of human civilisation, has shown that one of the most important challenges of modern man is to provide the environment with adequate and effective protection. It should be emphasized that although the main burden of such protection is implemented through administrative law instruments and to a lesser degree through civil law instruments, the use of criminal law in environmental protection as an *ultima ratio* of this protection has proved to be absolutely necessary.

Legal regulations regarding the criminal law protection of the environment in Poland have gone a long way in terms of development, the most important stages of which, however, became a fact as late as at the beginning of the 1950s.

In the 1950s and 1960s, the process of progressive deterioration of water quality could be observed in Poland. The legislator decided to counteract this phenomenon by introducing criminal law protection of waters in the Act of 31 January 1961 on the Protection of Waters Against Pollution (Dz.U. No. 5, item 33), which was soon

replaced by the Water Act of 30 May 1962 (Dz.U. No. 34, item 158). After twelve years of its operation, the law was replaced by another Water Act of 24 October 1974 (Dz.U. No. 38, item 230). These acts classified crimes, minor offences and administrative offences. The most severe criminal sanction provided for in Article 154 (1) of the Water Act of 1962 for harmful water pollution was imprisonment for up to 5 years and a fine. The characteristic features of this stage of the development of environmental protection through criminal law were the narrowing of the scope of liability for minor offences in favour of liability for crimes and the enrichment of the catalogue of minor offences which appeared also in new acts, providing for criminal liability only for minor offences.

The codification of criminal law of 1969 brought significant changes. Chapter XX of the Penal Code on offences against public safety in Article 140 introduced criminal liability for causing an event which imperils human life or health, or property of a considerable extent by creating pollution of water, air or land.

In the late 1970s two further acts were passed, which are of significance for the criminal law protection of natural resources of the environment: one on the Polish zone of sea fisheries of 17 December 1977 (Dz.U. No. 37, item 163) and the other on the continental shelf of the Polish People's Republic of 17 December 1977 (Dz.U. No. 37, item 164). They were supplemented by the amended Act of 21 May 1963 on Sea Fisheries (Dz.U. No. 22, item 115). Those acts introduced new types of crimes in response to illegal fishing by foreign fishing vessels in the Polish internal waters or in the territorial sea of Poland or in the Polish sea fisheries zone, as well as in response to the illegal use of the shelf resources.

The beginning of the 1980s brought further changes in the area of environmental protection through criminal law. On 31 January 1980, the Act on Environmental Protection and Development was passed (Dz.U. No. 3, item 6 as amended). It incorporated criminal provisions, introducing liability for three crimes:

1) causing pollution of water, air or land which may have endangered human life or health or caused significant damage to plant or animal life or the environment or serious economic damage (Article 107),
2) lack of care for protective devices (Article 108),
3) violation of the most essential provisions relating to the protection of agricultural land and forests (Article 109).

In the following years, further protection of the environment by means of penal instruments could be observed, consisting in extending the protection onto other elements of the environment. Nevertheless, what proved to be of particular importance for the development of environmental protection through criminal law was, first of all, the enactment of a new penal code in 1997, which entered into force on 1 September, 1998. This momentous event was preceded by several years of work of the Commission for the Criminal Law Reform, which initiated its activities in 1989. Its main task at that time was to prepare and then carry out a reform of criminal legislation, including the regulation of environmental protection issues through criminal law.

With regard to the scope of the concept of environmental protection, which in turn was to determine the scope of the new chapter on environmental offences, the Commission took the view that the new Penal Code should cover only those offences which were related to environmental protection as referred to in the

acts on environmental protection and development, on nature protection and on nuclear law. In this way, the penal provisions which had previously been included in the aforementioned acts were transferred to Chapter XXII of the new Penal Code.

The adoption of the new Penal Code caused the protection of the environment and its resources to be given a broad legal basis in the Polish criminal law in the form of a separate chapter (XXII) entiled "Offences Against the Environment", the provisions of which were clearly divided into two thematic blocks: protection against pollution and other harm and nature protection.[1]

It should be emphasized, however, that the shape and development of criminal law protection of the environment in Poland has been significantly influenced by European legislation, which was obviously related to Poland's accession to the European Union in 2004 and international law, in particular the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973 in Washington, DC, and the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which was opened for signature in Basel on March 22, 1989.

In order to ensure adequate and effective protection of the environment, it was necessary, first of all, to define the very concept of 'environment' in order to clearly indicate the subject and scope of such protection. This is particularly important under criminal law, where the statutory characteristics of criminal acts must be precisely defined.

Thus, it is worth mentioning that European (EU) legislation, despite paying considerable attention to the issues of environmental protection, has not defined the concept yet. Although it is possible to point to various directives concerning environmental protection[2], it was only their comprehensive analysis that made it possible to finally conclude that the concept of the natural environment consists of the following, mutually interacting elements: man, animals, plants, soil and its bottom layer, water, air, climate, biotopes and all ecological systems, ambience and landscape, peace and quiet, natural fragrances and cultural heritage.[3]

In international law, the definition of the environment appeared in 1969 in a report by Secretary-General U. Thant entitled: 'Man and His Environment', in which he defined the environment as the physical and biological environment of man, whether it is the natural environment or the environment resulting from his activities. In turn, the Stockholm Conference of the United Nations, held in June 1972, supplemented and clarified the definition of the environment, including natural elements such as the earth and its resources, air, water, fauna and flora, as well as elements created by man, such as working and living conditions, education,

[1] *See more:* Radecki W, Ochrona środowiska w polskim prawie karnym, Monitor Prawniczy No. 12/1997 and No. 1/1998.

[2] The first directive taking into account environmental protection was the Council Directive No. 67/548 of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ of EC No. L196 of 16 August 1967), repeatedly amended, which includes in the environment: water, air and soil, interaction between them and with living organisms.

[3] Tkaczyński J, Prawo i polityka ochrony środowiska naturalnego Unii Europejskiej, Warsaw 2009, pp.20–21.

hygiene and health. There is no doubt that the legal scope of environmental protection depended on the definition of the environment adopted at that time.[4]

Criminal law protection of the environment began to take shape and develop in the international arena only after the above mentioned events, when the awareness of what constitutes a threat to the environment and the importance of its protection also in the criminal law aspect were raised. Therefore, it can be stated that it was at that time that environmental protection through criminal law became a challenge for international criminal law.

The debate on the role of criminal law in environmental protection took place in particular at the congresses of the International Criminal Law Association in Hamburg in 1979 and Rio de Janeiro in 1994. The resolution adopted at the congress in Hamburg indicated that administrative and civil protection measures are of primary importance in preventing environmental risks and that criminal law is designed to ensure their implementation. In this way, the subsidiary role of criminal law in environmental protection was emphasized, while at the Rio de Janeiro congress, a decision was made to strengthen the role of criminal law, drawing attention to the necessity of identifying features of environmental crime and the necessity of introducing criminal liability of legal persons and other collective entities for such crimes. The adopted resolution pointed up that the minimum requirement that should be placed on the national legislation is to recognize as criminal offences such acts or omissions that cause serious damage to the environment or acts or omissions that violate established environmental standards and pose a real and direct threat to the environment.[5]

The above-mentioned congresses showed that the role of criminal law in environmental protection, although mostly auxiliary in character, must be clear and significant in case of the most serious attacks against the environment, when it should go beyond the standard protection framework set by administrative or civil norms.[6]

As regards the scope of environmental protection through criminal law defined by international law, one should mention two areas: protection of endangered species of fauna and flora and protection against waste and other pollution. They were reflected in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on 3 March 1973 in Washington DC[7], and in the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, opened for signature at Basel on 22 March 1989[8], whereby their signatories were expressly required to introduce appropriate criminal-law protection instruments.[9] However, under international law the protection of the environment through criminal law is an exception to the generally accepted

[4] Declaration on the Human Environment, [in:] Wybór dokumentów do nauki prawa międzynarodowego, Kocot K, Wolfke K (Eds), Warsaw 1976, p. 581 and the following.

[5] Łyżwa R, Karnoprawna ochrona środowiska w Polsce. Lublin, 2012, p.181.

[6] *Ibid.*, p.181.

[7] The Polish text of the Convention is to be found in the Annex to Dz.U. of 1991, No. 27, item 112.

[8] The Polish text of the Convention is to be found in the Annex to Dz.U. of 1995, No. 19, item 88.

[9] *Ibid*, p. 182.

principle according to which the environment is protected by instruments other than penal measures.[10]

It should be noted that the conventions in question played an important role in the development of criminal-law environmental protection in Poland as regards the above mentioned areas.

Criminal regulations in response to the provisions of the Washington Convention were first introduced into the Polish legal system by the Animal Protection Act of 21 August 1997, whose Article 36 defined the offence of keeping, trafficking in and transporting animals, their parts and derivative products, subject to restrictions under international agreements the Republic of Poland is a party to which, across the state border without a required permit. After the entry into force of the Nature Conservation Act of 16 October 1991, criminal provisions defining crimes (Articles 54–57) and minor offences (Articles 58 and 59) were introduced. Still, those regulations only covered native species of fauna and flora, which was a clear failure on the part of Poland to comply with international obligations resulting from the ratification of the Washington Convention. Such a state of affairs did not change even after the Penal Code had been amended, as although Articles 54–57 of the Nature Conservation Act lost their validity following the entry into force of Articles 181, 187 and 188 of the Penal Code, the criminal-law protection of plants and animals provided for in the new Chapter XXII of the Penal Code continued to cover only native Polish species of fauna and flora.[11]

The amendments to the Nature Conservation Act of 7 December 2000 introduced fundamental changes, which involved the deletion of Article 26 and paragraphs 2–4 of Article 36 of the Animal Protection Act. Those were replaced by new legal provisions — Article 27d and 26e of the Nature Protection Act, which covered species subject to international protection. At that time, the most important of the new regulations was Article 27d(1), which criminalised the cross-border transportation of plants or animals, their parts and derivative products subject to restrictions under international agreements signed by the Republic of Poland, without an authorisation by the minister in charge of the environment. There was also an amendment to Article 58 relating to a minor offence, which, in its amended form, involved a violation of prohibitions or restrictions in force in protected areas in relation to plants and animals subject to species protection established by the relevant authority and in relation to natural habitats.

Thanks to the Washington Convention, in the binding Act of 16 April 2004 on nature conservation[12], infringements of provisions concerning species threatened with extinction were again raised to the rank of a crime (Article 128 of the Act).

The Basel Convention, on the other hand, has had a significant impact on waste management and related criminal law environmental protection. On 27 June 1997, the Act on Waste was passed[13], introducing liability for criminal offences (Articles 46–48), minor offences (Articles 49–56) and administrative offences (Articles 37–40). However, the legislator showed some inconsistency in that Article 46 of the Act,

[10] *Ibid*, p. 182.

[11] Radecki W, Przestępstwa konwencyjne przeciwko środowisku. *Prokuratura i Prawo*, 2001, Vol. 4, p. 30.

[12] Dz. U. of 2018, item 1614.

[13] Dz. U. of 2018, item 992.

which typifies a crime, repeated in principle the solutions included in Article 183, paragraph 1 of the Penal Code. Moreover, it should be noted that Polish solutions were not adjusted to the Basel Convention ratified by Poland, which obliged to punish not only illegal import of waste from abroad to the country, but also its illegal export from the country. The crime under Article 183 § 2 of the Penal Code provided for criminal liability only for illegal import of such waste to Poland. In turn, the Waste Act adopted criminalisation in both directions, distinguishing unlawful import or export of hazardous (Article 47 of the Act) and non-hazardous waste (Article 48 of the Act). It took 10 years to adapt the provisions of the Penal Code to the aforementioned Basel Convention. The relevant amendment to the provision of Article 183 of the Penal Code took place only on 12 July 2007 pursuant to Article 37 of the Act of 29 June 2007 on International Shipments of Waste (Journal of Laws of 2018, item 296, 1479, 1592), which resulted in a situation in which Poland finally fully adapted its internal legislation to the requirements of the Convention in question. Pursuant to this Act, the provision of Article 183 of the Penal Code was amended accordingly by introducing in § 4 the criminalisation of unlawful import or export of waste from abroad.

Ratification by Poland of the two international conventions mentioned above meant that they became part of the Polish legal system in the area of environmental protection under criminal law and confirmed through the regulations contained therein the legitimacy of the adopted thesis, according to which criminal law plays a very important role in environmental protection, by criminalising the most dangerous attacks that are directed against the environment and at the same time constitutes the *ultima ratio* of this protection, which the Polish legislator became aware of. In order to protect endangered species of fauna and flora and prevent illegal transnational movements of waste, the Polish legislator applied instruments of a penal nature, as only such instruments were deemed essential and necessary to ensure proper and effective protection of the environment.

Taking European law into account on the other hand, it must be stated that environmental protection has been and remains one of the fundamental objectives of the European Union. Article 2 of the Treaty establishing the European Community (EC) states that it was for the Community to promote 'a high level of protection and improvement of the quality of the environment', and Article 3(1)(l) EC provided for the establishment of an appropriate environmental policy to that end. The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Journal of Laws No. 203, item 1569) in Article 2 (3) provided for Union actions for the sustainable development of Europe, which, apart from, among others, sustainable economic development, was to be based on a high level of protection and improvement of the quality of the natural environment. However, the Treaty repealed the aforementioned Article 3.

It should be emphasised that, in principle, criminal law provisions, like criminal procedural rules, do not fall within the competence of the Union, but the European (Union) legislature may require the Member States to adopt such criminal law provisions as it deems necessary in order to ensure that environmental rules are fully effective.[14]

For a long time, however, the European Union did not have any legal regulations concerning the protection of the environment through criminal law. The inspiration

[14] Judgment of the ECJ of 13 September 2005, C-176/03, ECR I-07879.

for the adoption of the relevant legislation in this respect was the 1998 Council of Europe Convention on the Protection of the Environment by Criminal Law Instruments. In 2000, Denmark and the Commission of the European Communities took the initiative to adopt the relevant regulations.

Following the adoption of the Convention on the Protection of the Environment through Criminal Law by the Council of Europe in 1998, the Tampere European Council of October 1999 called for, inter alia, efforts to establish common definitions of environmental offences and related sanctions.

In February 2000, at the request of Denmark, the Council of the European Union proposed a draft Framework Decision pursuant to Articles 31 and 34(2)(b) of the EU Treaty on the fight against serious environmental crime (CNS/2000/0801).

In its opinion of July 2000, the European Parliament drew attention to the need to harmonise criminal sanctions at Community level. On 28 September 2000 the Council adopted the Framework Decision proposed by Denmark. On 13 March 2001, the Council adopted a proposal for a Directive (COD/2001/0076) on the protection of the environment through criminal law. The aim of the draft Directive was to ensure more effective application and stricter compliance with Community law on the protection of the environment by defining a minimum set of offences. It provided for an obligation on Member States to make the offences listed therein that have been committed intentionally or at least by gross negligence punishable and to penalize complicity, aiding, or abetting by means of "effective, proportionate and dissuasive criminal penalties", including imprisonment. It also provided for other types of sanctions, including fines and criminal measures, for both natural and legal persons. The Commission chose Article 175(1) of the EC Treaty as its legal basis on the grounds that it ensures better protection of the environment than the Council Framework Decision.[15]

On 9 April 2002 The European Parliament expressed its views both on the draft directive and on the draft framework decision. It shared the approach proposed by the Commission concerning the scope of Community competence and called on the Council to make the framework decision an instrument supplementing the directive in order to introduce only aspects of judicial cooperation in the field of the protection of the environment through criminal law and to refrain from issuing a framework decision before the adoption of the draft directive.

In July 2001, the Commission announced that it would bring an action before the European Court of Justice for annulment if the Council should adopt the framework decision. It justified that criminal liability cases for failure to comply with Community law fall within the competence of the Community.

A dispute therefore arose between the Commission of the European Communities and the Council of the European Union on the basis of an indication of the appropriate legal basis for the obligation of the Member States to introduce such provisions. It resulted from the fact that on 27 January 2003 the Council of the European Union adopted Framework Decision No. 2003/80/JHA on the protection of the environment through criminal law, based on the provisions of Article 29,

[15] Nassauer H, Working Paper on the protection of the environment through criminal law, p.1. *Electronic source:* http://eur-lex.europa.eu/, *accessed:* 23.08.2018.

Article 31(1)(e) and Article 34(2) of the Treaty on European Union relating to police and judicial cooperation in criminal matters.

In the preamble to the Decision, the Council noted the Union's concerns about the increase in the number of environmental offences and their consequences, which are increasingly extending beyond the borders of the States in which they are committed. It was also underlined that the cross-border nature of the offences constitutes a serious threat to the environment facing all Member States and that they should therefore take concerted action to combat them by means of criminal law instruments. It was also pointed out that criminal liability for environmental offences should be borne by both natural and legal persons. In addition, the need to adopt such legal measures that will make extradition procedures not an effective barrier to penalize perpetrators of environmental offences was stressed.

Article 1 provides a definition, relevant from the point of view of criminal liability, of 'unlawful', meaning 'breaching the law, an administrative regulation or a decision taken by a competent authority, including those giving effect to binding provisions of Community law designed to protect the environment'. It should be added that, of the seven types of offences described in the following article, as many as six used the term 'unlawful'.

Article 2 contains a catalogue of seven environmental offences which should be included in the national legislation of all Member States.

However, the Decision did not impose on Member States the adoption of specific types of penalties for environmental offences. According to Article 5(1), they were to be effective, proportionate and dissuasive. For serious cases, which, however, the Decision did not specify in detail, custodial sentences with the possibility of extradition of the offender were to be taken into account. Paragraph 2 also provided for the possibility of imposing penalties in the form of a ban on activities requiring a licence, establishment, management or operation of a business or foundation.[16]

In turn, Article 6 of the Decision provided for the criminal liability of legal persons (corporations) and required Member States to adopt the relevant provisions in this respect in such a way that legal persons can be held liable for environmental offences, whether intentional or not, when committed for the benefit of the corporation by any person in a leading position in its structure, acting either individually or as part of its body based on:

(a) a right to represent the legal person, or

(b) a right to take decisions on behalf of the legal person, or

(c) a right to exercise control within the legal person,

Furthermore, a legal person was to be held liable where the lack of supervision or control by a natural person with managerial status, acting on behalf of the legal person, made an environmental crime possible for the benefit of that legal person by another person under its authority. Liability of the legal person did not exclude criminal proceedings against natural persons who are perpetrators, accessories or instigators of the offences referred to above.

The Decision required that sanctions on legal persons should also be effective, proportionate and dissuasive, including fines or other penalties and punitive measures such as temporary or permanent disqualification from the

[16] Łyżwa R, Karnoprawna…, pp.153–154.

practice of commercial or industrial activities or judicial winding-up. It required Member States to adopt the relevant provisions transposing the provisions of the Decision into their national law by 27 January 2005.

On 15 April 2003 as previously announced, the Commission referred the Council to the European Court of Justice under Article 35(6) of the EU Treaty and challenged its choice of legal basis for the Decision.

When the Commission of the European Communities brought an action before the European Court of Justice on 15 April 2003 against the Council of the European Union for annulment of Council Framework Decision 2003/80/JHA of 27 January 2003, it stated that, although it unreservedly supports the objectives defined in the Framework Decision, it contested the legal basis chosen, in particular Articles 29, 31(1)(e) and 34(2)(b) of the EU Treaty. It was apparent from the statement of reasons in the application that, under Articles 174 to 176 of the EC Treaty, the protection of the environment is a Community obligation. Furthermore, it is the Community's duty to oblige the Member States to lay down criminal penalties if, in its view, compliance with Community law can be guaranteed only by such provisions.

Following an action brought before the European Court of Justice by the Commission of the European Communities against Council Framework Decision 2003/80/JHA at the request of the judges of the Court, the legal opinion on the dispute was delivered on 26 May 2005 by the Advocate General Damascus Ruiz Jarab Colomera.

He pointed out that the dispute in question raises a question of major importance concerning the competence of the Community, since if it is considered that the protection of the environment in the European Union requires concerted action by criminalising the most serious infringements, it must be determined whether the adoption of the necessary harmonisation measures falls within the third pillar for which, under Article 34(1)(b) EU in conjunction with Article 31(1)(e) EU, the Council of the European Union has competence, or within the first pillar for the purposes of Article 175 EC, the Community has competence. It is also relevant to the resolution of the dispute whether the protection of the environment, which is a Community competence, requires any protection under criminal law at all. He noted that the states use penal codes as an ultima ratio for environmental protection. In order to achieve a high level of protection and to improve the quality of life (Article 2 EC), Community law must be able to have recourse to criminal sanctions in certain cases where they constitute the only "effective, proportionate and dissuasive" answer. It noted that there was a consensus in the doctrine that ecosystems should be recognised as a legal good of particular importance, the protection of which appears necessary for the very existence of man. It also stressed that, with regard to the protection of the environment in case of behaviour which causes serious damage to it, that mechanism must be of a punitive nature, but that it is for the Member States, in their opinion, to choose the penalty that will prevent damage to the environment and ensure respect for Community law.[17]

In the final stage of his deliberations, the Advocate General concluded that it was for the Community to choose the type of criminal sanction as a response to serious environmental offences and thus considered that the Commission's complaint was well founded.

[17] *Ibid.*, *Electronic source:* http://eur-lex.europa.eu/, *accessed:* 15.06.2019.

The European Parliament supported the Commission's complaint. The Council, however, was supported by Denmark, Germany, Greece, Ireland, the Netherlands, Portugal, Finland, Sweden, Spain and the United Kingdom.

The Council and the Member States intervening in this case (with the exception of the Netherlands) argued that, at the current stage of development of law, the Community does not have the competence to oblige the Member States to impose criminal penalties on the conduct referred to in the Framework Decision.

In the Court's view, Articles 174 to 176 EC constituted, in principle, the framework within which community environmental policy must be implemented. Moreover, the Court points out that, according to settled case-law, the choice of legal basis for a community measure must be based on objective factors which are capable of being reviewed before the courts. These include in particular, in accordance with settled case-law of the Court of Justice, the purpose and content of a legislative act[18]. It also stated that, in view of the objective pursued and the content of Articles 1 to 7 of the Framework Decision, they could only be effectively adopted on the basis of Article 175 EC. Consequently, the Framework Decision, in breach of the powers conferred on the Community by Article 175 EC, is in its entirety incompatible with Article 175 EC because of its indivisibility.

After hearing the case and the opinion of the Advocate General of 26 May 2005, the Grand Chamber of the Court gave judgment on 13 September 2005 in Case C-176/03. The Court annulled Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law. The situation therefore required further action to ensure that the environment was adequately protected by criminal law instruments and, although the decision ceased to apply, the legal solutions adopted by it were useful for the European Parliament and the Council's preparation of the relevant directive on the subject.

Intensive work has led to the issue on 19 November 2008 by the European Parliament and the Council the Directive No. 2008/99/EC on the protection of the environment through criminal law (Dz. Urz. L 328, 6 December 2008, pp. 28–37). It was also possible, to a large extent, thanks to the aforementioned judgment of the Court of Justice, which allowed for the regulation of penal issues on the basis of Article 175 EC.

The preamble indicates that the Community was concerned about the increase in environmental crime and its consequences, which are increasingly of a cross-border nature and therefore required an appropriate criminal law response. It was noted that existing sanctioning regimes had not been sufficient to ensure full compliance with environmental legislation and that compliance with them should therefore be strengthened by the availability of appropriate criminal sanctions as a sign of public condemnation. It also stressed that common rules on criminal offences will enable effective methods of conducting criminal proceedings and mutual cooperation between Member States.

It was stressed that the Directive obliges Member States to introduce into their national legislation criminal sanctions for serious infringements of Community law relating to the protection of the environment, irrespective of the existing regime of administrative and civil liability. The possibility for Member States to adopt or maintain

[18] *See:* judgment of 11 June 1991 in Case C 300/89 Commission v Council, referred to as 'Dioxyde de titane' ECR I 2867, and of 19 September 2002 in Case C 336/00 Huber ECR I 7699.

more stringent criminal law environmental protection measures than under the directive was also pointed out, provided that they are compatible with the EC Treaty.

The Directive stipulates that, in order to be able to assess its effectiveness, Member States must provide the Commission with information on its implementation.

It has been noted that the objective of this Directive to provide for more effective protection of the environment, given the scope and effects of this Directive, can only be achieved at Community level and not by individual Member States.

The Directive consisted of ten articles and two annexes.

In each article the following are specified: subject matter (Article 1), definitions (Article 2), offences (Article 3), incitement and aiding and abetting (Article 4), sanctions (Article 5), liability of legal persons (Article 6), sanctions against legal persons (Article 7), transposition (Article 8), entry into force (Article 9) and addressees (Article 10).

The definition of 'unlawful' must be considered relevant for the purposes of criminal liability in the meaning of infringement of:

1) acts adopted pursuant to the EC Treaty listed in Annex A to the Directive[19],
2) acts adopted pursuant to the Treaty establishing the European Atomic Energy Community ('EUROATOM') of 25 March 1957 and listed in Annex B to the Directive[20],
3) laws or administrative provisions of a Member State; or a decision taken by the competent authority of a Member State implementing Community legislation in the form of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Dz. Urz. L 206 of 22 July 1992, p.7), Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Dz. Urz. L 103 of 25 April 1979, p.1) and Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (Dz. Urz. UE L 1997.61 as amended).

Article 3, which is crucial for the whole directive, indicates the catalogue of offences that should be included in the national legislation of all Member States, listing the following:

a) dumping, emission or introduction of such quantities of substances or ionising radiation into air, soil or water as to cause or threaten to cause death or serious injury to any person or substantial damage to air quality, the quality of soil or the quality of water, or to animals or plants;
b) collection, transport, recovery or disposal of waste, including supervision of such operations and the subsequent handling of waste disposal sites, including activities carried out subsequently as a dealer or broker (waste

[19] *E.g.* Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles, Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles.

[20] Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources, Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel.

management), which cause or are likely to cause death or serious injury to any person or substantial damage to air quality, the quality of soil or the quality of water, or to animals or plants;

c) a shipment of waste, where that activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is carried out in significant quantities, whether in a single shipment or in several shipments which prove to be linked;
d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
e) production, processing, handling, use, possession, storage, transport, import, export and disposal of nuclear materials or other hazardous radioactive substances which cause or are likely to cause death or serious injury to any person or substantial damage to air quality, the quality of soil or the quality of water, or to animals or plants;
f) killing, destruction, possession or misappropriation of specimens of protected wild fauna and flora species, except where the conduct concerns a negligible number of such specimens and has a negligible impact on the conservation status of the species;
g) trade in specimens of protected species of wild fauna or flora, or parts or derivatives thereof, except where such conduct involves a negligible number of such specimens and has a negligible impact on the conservation status of the species;
h) any conduct that causes significant damage to the natural habitat in the protected area;
i) production, import, export, placing on the market or use of ozone-depleting substances.

In Article 5 on sanctions, the Directive provided that Member States shall take the necessary measures to ensure that the offences referred to above are punishable by effective, proportionate and dissuasive criminal penalties. However, it was not decided to indicate the type of penalties, their lower or upper limits, leaving it to the Member States themselves to adopt specific measures in this respect.

Article 6 contains regulations concerning the liability of legal persons. According to the Directive, Member States have to ensure that legal persons can be held liable for the offences referred to in Articles 3 and 4 of the Directive if they are committed for their benefit by a person who has a leading position within the legal person, acting either individually or as part of an organ of the 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 structures of the legal person.

Member States are also required to provide that legal persons may be held liable where the lack of supervision or control by the person referred to above has made possible the commission of an offence for the benefit of the legal person by a person under its authority. Furthermore, liability of legal persons is considered to be

independent of the liability of natural persons who are perpetrators, accessories or instigators of environmental offences.

As in the case of criminal liability of natural persons, the Directive did not specify which particular criminal penalties should be imposed on legal persons, but left it to the Member States. The Directive only requires that they be effective, proportionate and dissuasive.

In addition, it imposed certain transposition requirements on Member States by setting a deadline of 26 December 2010 for them to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive. Member States are also required to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive, together with a table showing the correlation between those provisions and this Directive.

Thanks to it, Member States, including Poland, were obliged to introduce into national legal systems the regulations specified in the Directive, which were to ensure appropriate harmonisation of criminal law at the EU level. The Directive appreciated the importance of criminal law as an instrument of protection necessary to ensure full compliance with Community legislation on environmental protection. It was even pointed out that the protection measures applied so far (administrative and civil) proved to be insufficient to ensure full compliance with environmental protection regulations. It was rightly pointed out that common rules on criminal offences will enable effective methods of conducting criminal proceedings and mutual cooperation between Member States to be used.

The directive does not mention the subsidiary role of criminal law in protecting the environment, but rather its irreplaceable role, particularly in combating cross-border environmental crime or organised crime. It must be acknowledged, however, that the scope of environmental protection, which goes beyond the most serious cases of attacks against the environment, is still the domain of nonpenal protection instruments.

This directive would certainly not have been adopted if it had not been for the phenomenon of ever-increasing crime against the environment in the European Union and the conviction that only appropriate harmonisation of criminal law can contribute to combating it effectively.

Poland implemented the legal regulations contained in the Directive, which was reflected in the criminal provisions of the current Chapter XXII of the Penal Code.

Emphasizing the role of European law in the field of formation and development of criminal and legal environmental protection in Poland, it should also be recalled that the Act of 30 July 2004 on international trade in waste[21], which defined the institutional and organisational framework for the performance of tasks in the field of international trade in waste resulting from:

1) Council Regulation (EEC) No 259/93 of 1 February 1993 on supervision and control of shipments of waste within, into and out of the European Community (Dz. Urz. EC L 30 of 06.02.1993);
2) Council Regulation No 1420/99/EC of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste (Dz. Urz. EC L 166 of 01.07.1999);

[21] Dz.U., No. 191, item 1956.

3) Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 does not apply (Dz. Urz. EC L 185 of 17.07.1999).

The Act provided for criminal liability for offences (Article 19(1) and (2)) and minor offences (Article 20(1)).

On 29 July 2005, the Act on Waste Electrical and Electronic Equipment was passed (Dz.U. No 180, item 1495, as amended), amended in 2008 and implementing the provisions of Directive 2002/96/EC of 27 January 2003 on waste electrical and electronic equipment (Dz. Urz. EU L 37 of 13 February 2003, p.34 and L 345 of 31 December 2003, p. 106). It provides for criminal liability only for minor offences (Articles 70–78).

The development of criminal and legal protection of the environment in Poland is to a large extent connected with the implementation of European and international law acts into the national legal system. Taking into account the cross-border nature of environmental crime, the process related to the creation of criminal regulations aimed at ensuring effective protection of the environment is dynamic and must constitute an adequate response to undesirable acts of human interference in the environment, violating the principles of sustainable development, the essence of which comes down to the fact that contemporary man leaves the resources of the environment for the next generations in a state at least not deteriorated.

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Streszczenie. *Problematyka ochrony środowiska poprzez prawo karne jest związana przede wszystkim ze zwalczaniem najpoważniejszych zamachów na środowisko. Postępująca degradacja naturalnych ekosystemów, będąca istotną konsekwencją rozwoju cywilizacyjnego człowieka pokazała, że jednym z najważniejszych wyzwań współczesnego człowieka stało się zapewnienie środowisku właściwej i efektywnej ochrony. Należy podkreślić, że co prawda główny ciężar takiej ochrony jest realizowany za pomocą instrumentów administracyjnoprawnych i w mniejszym stopniu cywilnoprawnych, to jednak zastosowanie prawa karnego w ochronie środowiska, jako ultima ratio tej ochrony, okazało się wręcz niezbędne. Regulacje prawne dotyczące ochrony środowiska w prawie karnym w Polsce przeszły długą drogę rozwoju. Warto jednak podkreślić, iż na kształt i rozwój karnoprawnej ochrony środowiska w Polsce w istotny sposób wpłynęło ustawodawstwo europejskie, co miało niezparzeczalnie związek z przystąpieniem Polski do Unii Europejskiej w 2004 r. oraz prawo międzynarodowe, zwłaszcza zaś Konwencja o międzynarodowym handlu dzikimi zwierzętami i roślinami gatunków zagrożonych wyginięciem sporządzona 3 marca 1973 r. w Waszyngtonie oraz Konwencja o kontroli transgranicznego przemieszczania i usuwania odpadów niebezpiecznych sporządzona w Bazylei w dniu 22 marca 1989 r. W artykule przedstawiono najważniejsze kwestie związane z wpływem prawa europejskiego i międzynarodowego na rozwój prawa ochrony środowiska w Polsce za pomocą prawa karnego.*

Резюме. *Вопросы, касающиеся охраны окружающей среды в рамках уголовного права связаны, прежде всего, с пресечением наиболее серьезных посягательств на окружающую среду. Постепенная деградация природных экосистем, являющаяся серьезным последствием для развития человеческой цивилизации, свидетельствует о том, что одной из важнейших задач современного человека становится обеспечение надлежащей и эффективной охраны окружающей среды. Следует подчеркнуть, что, хотя основная нагрузка по такой защите возлагается на инструменты административного и правового характера и в меньшей степени — на инструменты гражданского права, применение уголовного права в сфере охраны окружающей среды, как ultima ratio такой защиты оказалось необходимым. Правовые нормы по охране окружающей среды в уголовном законодательстве Польши прошли долгий путь развития. Поэтому стоит подчеркнуть, что на формирование и развитие уголовно-правовой защиты окружающей среды в Польше значительное влияние оказали нормы европейского права, что тесно связано со вступлением Польши в Европейский Союз в 2004 году, а также нормы международного права, в частности положения Конвенции о международной торговле видами дикой фауны и флоры, находящимися под угрозой исчезновения, принятой 3 марта 1973 года в Вашингтоне и Конвенции о контроле за трансграничной перевозкой опасных отходов и их удалением, принятой 22 марта 1989 года в Базеле. В статье рассматриваются важнейшие вопросы, связанные с влиянием европейского и международного права на развитие законодательства в области охраны окружающей среды в Польше с помощью уголовного права.*