

**JUDICIAL COOPERATION IN CRIMINAL MATTERS
IN EUROPEAN UNION**

**FIGHT AGAINST
ENVIRONMENTAL CRIMES**



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INTRODUCTION

International environmental crime represents a multi-billion dollar business and has significant detrimental impacts on peoples' lives and the environment. However, this area of crime receives relatively little attention. The seriousness of environmental crime is often underestimated because there is no direct victim. Whereas many other crimes involve the concept of risk of harm, that risk in environmental crimes can often be less evident at first sight but the harm is more pervasive. The effects of a single environmental offence may not appear significant but the cumulative environmental consequences of repeated violations over time can be considerable. Environmental offences may also have significant health implications.

Environmental law is mostly generated at international and European Union level, however state sovereignty is central during its application and enforcement. This represents an obstacle to the efficient protection of the environment, because the environment knows no boundaries. Therefore, fighting against environmental crime requires a tough judicial cooperation between States. This is why we are focusing on environmental crimes in this work.

In this paper, we are firstly outlining the legal structure and judicial cooperation at the international level overall. After that, we are focusing on Europe, more precisely the European Union (EU). Within this scope we are describing the present situation on the protection of the environment via criminal sanctions and the level of cooperation across nations. Finally, we are highlighting the main problems in the judicial cooperation for which we try to find solutions.

EVOLUTION OF INTERNATIONAL ENVIRONMENTAL LAW

Evolution of international environmental law can be treated in three stages. Before 1950s, there was a little number of agreements regarding international environmental law. We can mention the 1933 London Convention on Preservation of Fauna and Flora in Their Natural State (focused primarily on Africa), and the 1940 Washington Convention on Nature Protection and Wild Life Preservation (focused on the Western Hemisphere). From 1950 to 1972, the subjects of the international agreements were nuclear weapons and marine pollution and during this period multilateral conventions increased significantly. The modern international environmental law was created in 1972¹. After the Stockholm Conference on the Human Environment, it became possible to talk about the international environmental law as a distinct area of law². The Conference adopted the establishment of United Nations Environment Program and Stockholm

¹ ENGEL Kristen; D'AMATO Anthony, **International Environmental Law Anthology**, Anderson Publishing Co, 1996, p. 201.

² STEPHENS Tim, **The Role of International Courts and Tribunals in International Environmental Law**, Doctoral Thesis, 2005, University of Sydney, p.2.

Declaration, which brought fundamental principles such as that the states should not give environmental damages to other states³.

Since 1972, there has been a rapid rise in the international instruments on the protection of environment. The Stockholm Conference accelerated conclusion of new conventions. Apart from Stockholm Declaration, the United Nations made a decision to establish competent central bodies to handle not only the problem of environment protection but also the activity coordination in this area; which is called UNEP Program (*United Nations Environment Program*) and operates since 1973. In 1992, 178 countries met in the United Nations Conference on Environment and Development in Rio. The conference produced new principles and recommendations at national and international level. However, the Rio Declaration is regarded as advisory -soft law in other words- not hard and binding rules⁴. Although the international environmental law mainly consisted of general principles and soft law, some of its there are certain principles received broad acceptance by the international community⁵; such as the one not to harm the environment of other states or areas beyond frontiers of national jurisdiction.

In 1995 the Kyoto Protocol was accepted and came into force in 2005 as an additional protocol to the United Nations Framework Convention on Climate Change. The EU also signed and ratified the protocol⁶. The main difference of Kyoto from other instruments is that the protocol does not only recommend but requires the states to stabilize their Green House Gas emission⁷. Today, there are hundreds of international agreements on environment and their main concerns are the protection of biodiversity, atmosphere, seas, land and hazardous wastes.

Today, it is possible to say that the main objective of the international environmental law is the effective implementation of existent rules and enforcement of legal liability in order to reach an effective protection of the environment, and the criminal law provides more dissuasive rather than administrative effect or civil liability to reach this objective⁸. There are certain types of criminal provisions in international

³ <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>

Principle 21: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

⁴ WIRTH David. A., “**The Rio Declaration On Environment And Development: Two Steps Forward And One Back, Or Vice Versa?**”, *Georgia Law Review*, 29,1995, p. 602

⁵ STEPHENS, *ibid*, p.4

⁶ At European level a comprehensive package of policy measures to reduce greenhouse gas emissions has been initiated through the European Climate Change Programme (ECCP). The Directorate-General for Climate Action ("DG CLIMA") was established in February 2010, climate change being previously included in the remit of DG Environment of the European Commission. It leads international negotiations on climate, helps the EU to deal with the consequences of climate change and to meet its targets.

⁷ http://unfccc.int/kyoto_protocol/items/2830.php

⁸ AIMER Christian, GOESCHL Timo, **Environmental Crime and Punishment: Empirical Evidence from the German Penal Code**, *Land Economics*, Vol. 86, No. 4, 2010, p. 707-726.

agreements. These kind of provisions require parties to implement national legislation in order to criminalize the acts stated by the agreement and take appropriate measures for the punishment of these acts.

International Environmental Crime can be defined across five broad areas of offences, which have been recognised by bodies such as the G8, Interpol, EU, UN Environment programme and the UN Interregional Crime and Justice Research Institute. These are: Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of fauna and Flora (CITES); Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer; Dumping and illegal transport of various kinds of hazardous waste in contravention of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal; Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organisations (RMFOs); Illegal logging and trade in timber when timber is harvested, transported, bought or sold⁹. Existing conventions are dealing only with certain aspects of damage to the environment. At the 12th United Nations Congress on Crime Prevention and Criminal Justice (2010), the international community acknowledged the challenges posed by emerging forms of crime that have significant impact on the environment and called on Member States to study this issue and share best practices¹⁰.

Environmental crime affects all of society. It can have detrimental consequences on the economies and security of a country. Environmental crime is one of the most profitable and fastest growing areas of international criminal activity, with increasing involvement of organized criminal networks¹¹. Whilst criminal sanctions may have a greater deterrent effect, this benefit would be lost if the chance of detection, and hence prosecution was negligible. This brings us to the necessity of international cooperation on protection of environment. In this respect, we would like to highlight the importance of cooperation across the states on criminal enforcement of the international environmental law.

⁹ http://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf

¹⁰ Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, 19 April 2010, A/CONF 213/18, para 14.

¹¹ According to the *International Crime Threat Assessment*, an estimated \$22-31 billion is made each year from illegal dumping of hazardous waste, smuggling of hazardous material and abuse of scarce natural resources. Estimating the scale of environmental crime is problematic. Interpol estimates that global wildlife crime is worth at least \$10 billion a year. The World Bank states that illegal logging costs developing countries \$15 billion in lost revenues and taxes. In the mid-1990s around 38,000 tonnes of CFCs were traded illegally every year – equivalent to 20% of global trade in CFCs and worth \$500 million. In 2006 up to 14,000 tonnes of CFCs were smuggled into developing countries. See online: <http://www.fas.org/irp/threat/pub45270index.html>

International Criminal Cooperation on Environmental Law

As mentioned above, international environmental law is not only to enforce civil or administrative liabilities, but also to impose criminal liability for protection of environment since the effects of environmental crimes are not only limited to the countries in which they are committed. Today it is difficult to talk about the existence of a real international criminal law of environment because even though the international law emphasizes on cooperation, it is also built on state sovereignty¹². However, there are certain international organisations and bodies, which play an important role to facilitate inter-state cooperation:

Interpol: Interpol is the largest international police organization with 188 members. Environmental crime is one of the biggest work areas of Interpol. In 2009 Environmental Crime Program was created within the organization in order to coordinate and facilitate international law enforcement and provide national agencies with necessary resources¹³. An international example that shows how the criminal organizations are largely involved in environmental crime is illegal logging of timber. According to World Bank estimations, the global market value of illegal logging is over 10 billion USD. This organized crime also affects the EU countries since it is estimated that 20% of the illegal timber traffic goes into the EU. According to World Wide Fund for Nature estimates, approximately 40% of the wood-based products imported into EU are originated from illegal logging.

Interpol also works in collaboration with United Nations of Environment Program (UNEP).

International Criminal Court (ICC): ICC is the first permanent, treaty based, international criminal court¹⁴. The court was established by The Statute of Rome, which came into force in 2002. As 2012, 121 states are parties to the statute. ICC does not replace national courts but it has a complementary character. The Rome Statute mentions environmental crimes, only in the context of war crimes. According to the article 8 (2) (b) (iv), the act of *“Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”* shall be a crime of war. Although this definition can allow international prosecution for environmental crimes in the context of war crimes, the complementary character of the ICC should not be forgotten. Trials can be brought to the ICC when a state is unwilling or unable to make the prosecution¹⁵.

In summary, we can say that the international environmental law has seen a significant development since the beginning of the 20th century. Its criminal enforcement is as important as the civil enforcement.

¹² MEGRET, Frederic, **The Problem of an International Criminal Law of the Environment**, , Columbia Journal of Environmental Law, July 2011, V.66, No:2, p 204

¹³ <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-crime>

¹⁴ <http://www.icc-cpi.int/Menus/ICC/About+the+Court/>

¹⁵ STEPHENS, p. 49

However, we should also emphasize that there is a significant need for the criminal cooperation on the protection of environment, which is more effective within the European Union.

DEVELOPMENT OF THE ENVIRONMENTAL CRIMES POLICY AND LEGAL BASIS WITHIN THE EUROPEAN UNION

The European environmental law and policy has grown significantly as a result of the increasing commitment of EU to play a global environmental role. The importance attached to the environment also affects EU's external relations. Environmental standards are getting more important in the negotiations of trade agreements the EU is conducting at a bilateral and multilateral level¹⁶. Currently, the EU has the most extensively developed body of regional rules of international environmental law. A quick historical review would explain this fast development. Although the word 'environment' was not mentioned in the treaties establishing the European Economic Community (EEC) in 1957, the EEC treaty was amended by the Single European Act, leading to the explicit reference to the environment and included "a policy in the sphere of the environment". But before then, the European Court of Justice (ECJ) had issued various judgments reassuring that environmental policy could be undertaken. For example the Court had held in 1974 that as one of the European Community's (EC) essential objectives, environmental protection might justify certain limitations on the free movement of goods¹⁷. Following the Treaty of Maastricht in 1993, the protection of the environment finally became one of the aims of the EC in article 2. Environmental policy is also covered within the Community pillar of the three 'pillars' of the EU¹⁸. The Treaty of Amsterdam came into force in 1997 and required sustainable development taken into account in all EU activities. It also made clear that the aim of integrating environmental protection requirements into the Community policies was to promote "sustainable development". Harmonization of the national environmental measures was deemed necessary in order not to disturb intra-community trade, to prevent unequal competition and to protect human health and the environment. In order to achieve this objective, hundreds of measures relating to the environment have been established, with an influence on almost all aspects of national environmental law.

Human right treaties such as the European Convention on Human Rights¹⁹ (ECHR) make no explicit reference to the environment, or they do so only in relatively narrow terms focused on human health²⁰. But,

¹⁶ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0312&language=EN> **Human rights, social and environmental standards in International Trade agreements, European Parliament resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements**

¹⁷ Case 240/83, Procureur de la République v. Association de Défense des Brûleurs d'Huiles Usagées [1985] E.C.R. 531.

¹⁸ The others were Common Foreign and Security Policy, and Police and Judicial Cooperation. We should notice that the Treaty of Lisbon abolished this three pillar system.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950. **Although members of the European Union are party to the European Convention on Human Rights, the EU is not. However, the article 6 of the Lisbon Treaty brought legal obligation for accession of EU and the ECHR made possible the accession of EU with its article**

the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters²¹, whose preamble not only recalls Principle 1 of the Stockholm Declaration²² and recognizes that “adequate protection of the environment is essential to human well being and the enjoyment of basic human rights, including the right to life itself”, but also asserts that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.” And the EC is a Party to the Aarhus Convention since May 2005.

As a result of the increasing focus on environmental protection throughout the European Community, the importance of criminal law has been growing as well. The following section covers some of the legislations in this regard.

European Union Legislation on Environmental Crimes

Some of the initiatives that can be considered as an approximation to legislation are as follows²³:

The recommendations of the XV. Convention of the IAPL of September 1994, Rio de Janeiro: IAPL(International Association of Penal Law) recommended to use criminal law where appropriate in order to ensure the protection of the environment in the fifteenth international congress of penal law²⁴. This decision was made considering the Council of Europe Resolution 77(28) on the Contribution of Criminal Law to the Protection of the Environment, Recommendation 88(18) on the Liability of Enterprises for Offences, Resolution No.1 of the European Ministers of Justice adopted at their Conference in Istanbul in 1990 and the United Nations General Assembly Resolution No. 45/121 of 1990 adopting the Resolution on the protection of the environment through criminal law.

The Convention on the protection of the environment through criminal law: The Convention deals with questions related to jurisdiction, sanctions and other measures, corporate liability and certain procedural issues; finally it sets out principles of international co-operation, taking into account other

59. The negotiations between the Council of Europe and EU continue at the moment. Accession of EU will submit the Union’s legal system to external judicial control regarding protection of human rights.

²⁰ See, e.g., International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), Art. 12 (Dec. 16, 1966); European Social Charter art. 11, Oct. 18, 1961, E.T.S. No. 035, 529 U.N.T.S. 89 (1961); Additional Protocol to the American Convention on Human Rights art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 156; Convention on the Rights of the Child, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp, U.N. Doc. A/44/49 (Nov. 20, 1989).

²¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, UN Doc. ECE/CEP/43, 38 I.L.M. 517.

²² 40 years ago at the United Nations Conference on the Human Environment held in Stockholm, the international community declared: “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.” This grand statement have provided the basis for subsequent elaboration of a human right to environmental quality.

²³ HEINE Günter & RINGELMANN Christopher **Approximation of European Criminal Legislation**, Environmental Crime in Europe, 2004,199-215.

²⁴ Resolutions of the Congresses of the International Association of Penal Law, (1926-2004).

relevant instruments. The Convention aims for a better protection of the environment by using the solution of last resort, the criminal law, for deterring and preventing conduct which is most harmful to it. To this end, the Convention seeks to harmonise national legislation in the particular field of environmental offences. It creates obligations for contracting States to introduce, if necessary, new elements or to modify existing criminal law provisions, on the understanding that the harmonisation of legislation in this area also enhances international co-operation. This Convention has been adopted by the European Council in Strasbourg on 4th of November 1998. Thereby this very important international act aimed to establish effective unique grounds for criminal – legal protection of environment within the European territory and unify basic responsibilities of natural legal persons for any eventual commission of these criminal offences. All the countries that have signed this Convention are required to undertake actions and certain activities. These activities are of the dubious character: national and international level. Within the national level this convention establishes the foundation to anticipate certain behaviours, criminal offences and description of criminal sanctions against the perpetrators within the criminal legislation. Within the international level this reflects commitment and perfection of the rules in legal-international cooperation amongst the countries against the criminal activities that might harm the environment in the region and wider. The convention was ratified by only Estonia and did not enter into force.

Tampere European Council Conclusions: The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. There, it asked efforts be made to agree on common definitions, incriminations and sanctions which should be focused in the first instance on a limited number of sectors of particular relevance amongst them environmental crime²⁵. Political signals provided by the European Council, Council of the EU and European Commission that the Union would develop policy in relation to environmental crime [Action plan of the Council and Commission on Implementation the provisions of the Amsterdam Treaty on an area of freedom, security and justice (OJ 1999 C 19/1)].

The Framework decision and the Draft Directive on Protection of Environment through Criminal Law: After failure of Convention on the Protection of the Environment by Criminal Law, Denmark took initiative and proposed a framework decision on the protection of environment by criminal law²⁶. Pursuant to the proposal, the Council adopted a Draft Framework Decision on the protection of the environment through criminal law and the European Commission also adopted a Draft Directive on the protection of the environment through criminal law in March 2001. The Draft Directive was based on former

²⁵ **Tampere European Council 15 and 16 October 1999 Presidency Conclusions**, art. 48

²⁶ **Analysis by Ludwig Kramer, of the decision the ECJ in the Case C-176/03 (2005) on Council Framework Decision 2003/80/JHA of 27 January 2003**, *Journal of Environmental Law*, 2006, Vol. 18 No: 2 p. 277-288

article 175 of the EC Treaty²⁷, the former first pillar while the Draft Framework Decision was based on the former third pillar. The framework decisions stated certain environmental offences for which the member states have to prescribe criminal penalties. The Framework Decision also laid down certain minimum standards for the criminal penalties and the liability of legal persons. But the Draft Directive brought liability for breach of environmental legislation of the Community, annexed to the Directive, instead of defining the offences. Existence of two proposals with the same objective but with different legal basis contributed to an inter-institutional conflict. The council adopted the Framework Decision on 27 January 2003 and the Commission brought legal action for annulment of the Framework Decision before the ECJ²⁸ and the Court annulled the Framework Decision²⁹. According to the Court, the legal basis for a Community measure is chosen regarding its aim and the aim of the Framework Decision is the protection of environment, falling under the scope of the first pillar. Although the community has not general competence in criminal matters, it may require member states to impose effective, dissuasive and proportionate criminal penalties where necessary to assure effectiveness community law, as the environmental policy in the case³⁰. The Court stated that the articles of the framework Decision could have been properly adopted on the basis of Article 175 EC.

Framework Decision and Directive on Ship-Source Pollution: A year after the sinking of the oil tanker *Prestige*, The Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship source pollution³¹ was adopted on 12 July 2005 and the Directive on Ship source Pollution and on the Introduction of Penalties for Infringements³² was adopted on 7 September 2005. These two instruments should be evaluated together because the Community Legislator did not include specific criminalization provisions in the Directive and decided to implement the criminal sanctions in a third pillar instrument, the Framework decision mentioned above. To highlight the difference and correlation between these two instruments, we should state that the Directive indicates that the infringements should be penalized by effective, proportionate and dissuasive sanctions but the Framework decision included specific requirements, such as type of sanctions³³. The Commission brought annulment action also for this Framework Decision and the Court annulled it on 23 October 2007³⁴. The Court held that the aim of the framework decision is the environmental protection of marines and based on the same argument on community competence in its decision 176/03, which is mentioned above and ruled that the “*determination*

²⁷ Article 192 of TFEU

²⁸ MULLIER, Eléonore, **The Emergence of Criminal Competence to Enforce Ec Environmental Law: Directive 2008/99 in the context of the Case Law of the European Court of Justice**, Cambridge Student Law Review, 2010

²⁹ Case C-176/03, 13 September 2005

³⁰ Paragraph 48 of the Decision.

³¹ 2005/667/JHA.

³² 2005/35/EC

³³ ROBÍNSON, Martin Hedemann, **The EU and Environmental Crime: The Impact of the ECJ's Judgment on Framework Decision 2005/667 on Ship Source Pollution**, Journal of Environmental Law, 20:2, 2008 p. 280-293

of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence" and annulled the decision. Although the decision was annulled, the victory of Commission is seen partial because the competence of the community was confirmed and limited at the same time³⁵. With annulment, the Directive remained incomplete. Later, in 2009, this incompleteness is finished by the Directive 2009/123 amending the ship-source pollution directive. The Directive 2009/123 brought specific infringements and provisions concerning the liability of legal persons and stated that the member states shall take necessary measures to punish these acts.

The Directive 2008/99 on Protection of Environment through Criminal Law: The first version of this directive was the draft Directive of Commission in 2001, mentioned above. However, the directive goes further than its draft *version*³⁶. The Directive stipulates the criminal offences in two parts, in the first part, it states that the infringement of the legislation listed in the annex A of the Directive, the legislation adopted pursuant to Euratom Treaty, the acts of member states that gives effect to the these community legislations shall be defined as criminal offences. In the second part, the directive also brings specific 9 offences. Therefore, when a member state implements the directive, it will criminalize in its national law, the breaches off all EC environmental legislation covered in the annex of the directive, even if this state did not transpose this legislation. Looking at the sanctions, we can say that the directive doesn't determine type or severity of the penalties, under the influence of ECJ's ship source pollution judgment. Instead, it uses the effective, proportionate and dissuasive criminal penalties" formulation of the Court. The directive doesn't bring obligation of implementing criminal liability for legal persons.

After discussing with the European Union's legislation on environmental crimes, we will now look into the related judicial cooperation among EU.

COOPERATION WITHIN THE EU

Environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health. The most known areas of environmental crime are the illegal emission or discharge of substances into air, water or soil, the illegal trade in wildlife, illegal trade in ozone-depleting substances and the illegal shipment or dumping of waste. Environmental crimes provide for very high profits for perpetrators and relatively low risks of detection. Driven by perceptions of low risk and high profit, indications have emerged of this criminal activity attracting the grater interest of organised crime groups. That is why very often, environmental crimes have a cross border aspect For example, the revenues

³⁴ Decision C-440/05

³⁵ Mullier, *ibid*

³⁶ Mullier, *ibid*.

generated by trafficking in endangered species are estimated at 18 to 26 billion euros per year and the EU represents the foremost destination market in the world. While some groups are importing endangered species from China to the EU; within the EU, organised crime groups are exploiting legitimate business structures to facilitate the importation and retail of specimens among the Member States. Also, illicit waste trafficking is often facilitated by cooperation with legitimate business. From the Southern hub, toxic waste is trafficked to South East Europe and Western Balkans (Romania, Hungary and Albania), also to other Member States. In 2008, the Italian government recalled from sale the mozzarella cheese linked to cancer-causing dioxin contamination. It is believed the cause is toxic waste, illegally dumped by criminals on agricultural land used for pasture in the region of Campania³⁷. The Naples mafia - known as the Camorra- is heavily involved in waste disposal, particularly the dumping and burning of industrial waste in the Campania countryside, police say³⁸. It can be seen that environmental crimes can be mafia-type structure related and affect our health. Environmental crime is a serious and growing problem that needs to be tackled at European level.

The Treaties establishing the European Communities³⁹ originally did not contain provisions regarding Police and Judicial Cooperation in Criminal Matters. But later on, the free movement of European citizens but also of the criminals has been facilitated by setting up the common market by the Member States in order to achieve the intentions of the Communities, and by progressive elimination of border controls within the EU. Numerous safety risks have arisen. The problem of cross-border crime has been one of the big issues, amongst them environmental crime. As we mentioned above, significant parts of environmental crimes are committed in organized form and with a trans-boundary character. Contrary to which, cooperation is indispensable. The increasing concern of EU with control of transnational criminal activities led to progressive legal and institutional developments within the EU, achieving greater judicial cooperation in criminal matters. In this part, these developments and their contribution to protection of environment will be investigated.

Mutual Legal Assistance in Criminal Matters

On 29 May 2000, the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters between Member States. Pursuant to the Convention the requested Member State must comply with the formalities and procedures indicated by the requesting Member State. The purpose of this Convention is to encourage and modernise cooperation between judicial, police and customs authorities. As with extradition, mutual assistance issues formed a key part of the mutual recognition agenda.

³⁷ <http://news.bbc.co.uk/2/hi/7318391.stm>

³⁸ <http://www.reuters.com/article/2008/03/21/us-italy-mozzarella-idUSL2165847820080321>

³⁹ The Treaty signed in 1951 setting up the European Coal and Steel Community and the two Treaties signed in 1957 in Rome, setting up the European Economic Community and the European Atomic Energy Community.

Mutual Recognition of Judicial Decisions in Criminal Matters and Approximation of National Laws

The Treaty of Amsterdam, which came into force on 1 May 1999, changed the approach to judicial cooperation. The Treaty lays out as its objective the creation of an area of freedom, security and justice. With the advent of internal market and Schengen, the borders have been taken down for goods and services but also criminals within the EU while borders still remained for criminal justice. The idea behind the Treaty of Amsterdam was that judicial decisions, including decisions at stage before trials would become immediately recognised and made enforceable in other member states. At the Cardiff European Council in June 1998, the UK presidency suggested that the Council should begin to look at principles of mutual recognition. In 1999, in Tampere Milestones, it was decided that the principle of mutual recognition of judicial decisions should become the corner stone of judicial cooperation within the EU⁴⁰. The principle of mutual recognition was confirmed in the Hague Program and also in Stockholm Program. The principle of mutual recognition and approximation of national laws display similarities as well as differences. Both aim to overcome difficulties created by differences between national judicial systems. If harmonization can be achieved, it will be easier for states to recognise each other's decision. However, mutual recognition does not necessarily require approximation of national laws. The aim of harmonization is regarded like to eliminate differences while these differences are recognized under the principle of mutual recognition⁴¹. Regarding the protection of the environment in member states, criminal law plays a very different legal protection of the environment⁴². IMPEL Network (**the European Union Network for the Implementation and Enforcement of Environmental Law**) report on criminal enforcement of environmental law in the EU shows there is a lack of harmonization between member states' environmental criminal laws. While the Directive 2008/99, which is mentioned above, aims to enhance the approximation of environmental criminal law, implementation deficit exists among member states. For example, European Commission is referring Cyprus to the Court of Justice of the European Union for failing to take measures to ensure implementation of the Directive 2008/99.

It should be noticed that the emergence of mutual recognition as the “cornerstone” of judicial cooperation in criminal matters has not had the effect of silencing calls for a greater degree of approximation of the substantive and procedural laws of Member States in the criminal justice sphere⁴³.

⁴⁰ NILSSON, Hans, G, **From Classical Judicial Cooperation to Mutual Recognition**, International Review of Penal Law, Vol. 77, 2007, p. 53-58

⁴¹ FICHERA, M., **The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?**, 2009, 15 European Law Journal, 70, 77

⁴² HEINE, Gunter, RINGELMANN, Cristoph, **Approximation of European Criminal Legislation, Environmental Crime in Europe**, 2004, p.199-214

⁴³ Compare with Article 82 of TFEU

The first measure to be adopted to promote mutual recognition was the European Arrest Warrant (EAW). The Council Framework Decision of 13 June 2002 replaced the pre-existing instruments on extradition by EAW. According to the Framework Decision, if an environmental crime is punishable in the issuing member state by at least 3 year custodial sentence, member state shall, without verification of the double criminality, surrender on receipt of a EAW. The statistical information illustrates the importance of EAW in facilitating quicker surrender of fugitives. In 2009, a total of 15.827 EAWs were issued by all member states, while the number was 14.196 in 2008. The number of persons traced or arrested as a result of the EAW amounted to 4.431 in 2009, compared to 2.919 in 2008⁴⁴. EAW has also a facilitating effect on environmental crimes. For example, in 2007, a EAW was used to bring an Irishman back to the UK to face prosecution for a number of serious waste crimes⁴⁵. The European Arrest Warrant is not the only example of mutual recognition in criminal matters. Other instruments on mutual recognition include the framework decisions on the execution in the EU of Orders Freezing Property or Evidence, on the Application of the Principle of Mutual Recognition to Judgments in Criminal Matters imposing Custodial Sentences or Measures Involving Deprivation of Liberty for the Purpose of their Enforcement in the EU and on Confiscation of Crime Related Proceeds, Instrumentalities and Properties. One of the most prominent mutual recognition instruments is the European Evidence Warrant (EEW). The EEW is a judicial decision issued by a competent authority of a member state with a view to obtaining objects, documents and data which are already available in another member state.

Role of Specialized Bodies

The role of specialized bodies becomes crucial in promoting judicial cooperation in criminal matters. These bodies aim to simplify mutual assistance in criminal matters by allowing law enforcement authorities to contact each other directly instead of going through diplomatic channels. One of them is The European Judicial Network (EJN). The EJN was the first practical structured mechanism of judicial co-operation to become truly operational. The network was created by the Joint Action 98/428 JHA of 29 June 1998. New legal basis entered into force, respectively the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. EJN is a network of national contact points for the facilitation of judicial co-operation in criminal matters. For example, the issuing authorities can transmit EAW through the EJN if they wish (Framework Decision on EAW Art. 10).

⁴⁴**Report From the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** http://ec.europa.eu/justice/policies/criminal/extradition/docs/com_2011_175_en.pdf

⁴⁵ <http://www.mrw.co.uk/ea-uses-european-warrant-to-bag-irish-waste-crimesuspect/3003611.article>

Another relevant organisation is Eurojust. Established in 2002 by Council decision⁴⁶, Eurojust is a body of the European Union with legal personality. It consists of judges, prosecutors or police officers of Member States who jointly form the College of Eurojust. Its main goal is the enhancement of the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organized crime amongst them environmental crime. Environmental crime within Eurojust covers all kind of pollution related to criminal offences and that is suspected to be organized crime with a cross border implication. Nevertheless the activity of Eurojust with regard to environmental crime is not abundant. The prominent decision of Eurojust referring to the environmental crime is the Prestige case (Case Nr.27/FR/2003) the extensive oil pollution in the Bay of Biscay, affecting large areas of the French and Spanish coastline, due to the sinking of the tanker Prestige. In the Prestige case, Eurojust asked the French and Spanish competent judicial authorities to accept that the Spanish judicial authorities were better placed to take over and prosecute the case in Spain. Spanish and French authorities agreed to follow the Eurojust decision and to cooperate together on the issue⁴⁷. As this example illustrates, Eurojust is resolving jurisdictional conflicts between Member States and co-ordinating criminal investigations.

The European Police Office (Europol) is the EU law enforcement organization handling criminal intelligence and its aim is to improve the cooperation between Member States working with the competent authorities of Member States responsible for preventing and combating serious international organized crime⁴⁸ amongst them environmental crime. Europol releases every year a report on the EU Organised Crime providing an updated snapshot on the different organised crime groups growing and developing across Europe. Among the crime categories and in particular among the crimes against the natural environment, the 2006 report mentioned the illicit trafficking of illegal waste like cases of illegal waste disposal, especially hazardous waste and illegal trade in protected and threatened species.

The Situation after Lisbon Treaty

The Treaty of Lisbon states that one of the Union's objectives is to work for the sustainable development of Europe based, in particular, on a high level of protection and improvement of the quality of the environment. With the Treaty of Lisbon, combating climate change on an international level becomes a specific objective of EU environmental policy. Although the scope of competence relating to crimes and sanctions seems to be limited compared to the ECJ's interpretation in the two cases (Ship-Source Pollution Case and Environmental Crime Case), the Lisbon Treaty confers on the Union expanded clear criminal law

⁴⁶ 2002/187/JHA of 28 February 2002.

⁴⁷ <http://www.envirosecurity.org/actionguide/view.php?r=220&m=organisations>

⁴⁸ NUNZI Alfredo, **European Police Office-EUROPOL**, International Review of Penal Law, Vol. 77, 1st and 2nd trimestres 2006, p.285-293, p. 285.

competence empowering to establish minimum rules on sanctions without necessitating that member states adopt proportionate, effective and dissuasive penalties. Instead of empowering the Union with criminal competence to reach objectives and policies, the new Treaty delimits competence with exhaustive list of crimes on the grounds of seriousness, cross-border dimensions, impact or the requirement to combat on a trans-border basis, amongst them organised crime, so environmental organized crime. This categorical list of types of crimes can be broadened by unanimous decision by the Council. Also; “If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.”, which can be the case for environmental crimes.

In the last part, we propose some solutions addressing the problems to the judicial cooperation related to environmental crimes within EU.

PROBLEMS AND SOLUTIONS

Discrepancies and gaps between EU and national legislation and harmonisation of laws

A serious problem in the cooperation for environmental crimes in EU is existence of discrepancies and gaps between EU and national legislation on this issue. First of all many countries have hesitation in bringing criminal charges in such cases, especially for crimes committed only by negligence or recklessness. Thus in many case effective regulations stipulating dissuasive penalties do not exist. Hence criminal cooperation and involvement of EU institutions are limited with the legal mentality of a member state⁴⁹. This problem facilitates the development of organized crime in this sector⁵⁰. Due to the fact that national legislations remain insufficient to penalise effectively all kind of environmental crimes, implementation of a Comprehensive EU environmental criminal legislation is inevitable. Additionally, there should be not only definitions of offences, but also types and levels for criminal penalties against environmental crimes, in the directives for protection of environment through criminal law, as a step further to the Directives 2005/35 and 2008/99, which is possible under Lisbon Treaty.

Jurisdiction Problems

Most of environmental crime cases attribute supranational character. Thus such crime concerns more than one national legislation system. For supranational cases domestic law will often be inadequate to

⁴⁹ OCTA 2011 “*EU ORGANISED CRIME THREAT ASSESSMENT*” by *EUROPOL*, <http://www.statewatch.org/news/2005/oct/europol-org-crim-public.pdf>

⁵⁰ 2005 EU Organised Crime Report, Council Of The European Union, Brussels, 17 November 2005 13788/1/05, Rev 1, p. 24, <https://www.europol.europa.eu/sites/default/files/publications/euorganisedcrimereport2005.pdf>

prosecute a responsible party for many reasons. For example, in Erika case, the vessel was owned by a Maltese company, was chartered by a Panamanian subsidiary of Total, controlled by two Liberian corporations whose shareholder was Italian and had been certified as seaworthy by an Italian shipping classification society. And the damage to land was caused in France. In this case four states could have jurisdiction: (i) France (ii) Malta (as flag state of the Erika) (iii) Liberia (iv) Italy⁵¹. Although the French authorities, as the country facing the main damage, were keen to prosecute the related society, French legal system concluded that the case remains out of the French Jurisdiction. Because the loss of the vessel occurred outside France's territorial waters, and the flag state of the Erika was Malta. But any prosecution can't be initiated in Malta, unless the Maltese owners can be found. Before the classic principle of freedom of the High Seas⁵², the flag state has the exclusive jurisdiction. The only exception is for the international crime of piracy. The piracy can be prosecuted by all states. In fact, environmental crimes are much more harmless and can even change the destiny of all humanity. If the flag state remains silent, initiating a prosecution is very difficult and is subject to some conditions. Therefore, there should be rules of universal jurisdiction on trans-bounder environmental crimes.

Protection of Environment within the scope of Human Rights

In Rome Treaty, the human rights were not mentioned. The main purpose of the Communities was economical⁵³. However, The Charter of Fundamental Rights of the European Union was signed in 2000 and brought fundamental human rights in Union Law. Lisbon Treaty made the charter a part of EU law. The article 37 mentions environmental protection as a fundamental right⁵⁴. The protection of environment has also been mentioned in the European Human Rights Court decisions, under scope of article 8 of the ECHR. In Lopez Ostra v. Spain decision (1994), the Court rules that "*Naturally, severe environmental pollution may affect individuals' wellbeing and prevent them enjoying their homes in such a way as to affect their private and family life adversely, without however seriously endangering their health*".⁵⁵ There is not a mentioned right to environment in ECHR but as the Court states, if the individuals are affected by the pollution or noise, it might constitute a breach of article 8⁵⁶. However, in Ivan Atanasov v. Bulgaria decision (2010), the Court noted that Article 8 is not engaged every time there is environmental deterioration. Rather, Article 8 only comes into play when "there is a direct and immediate link between the impugned situation and the

⁵¹ David Hart QC, **The Erika disaster – why we need an international environmental court**, April 8, 2012 <http://ukhumanrightsblog.com/2012/04/08/the-erika-disaster-why-we-need-an-international-environmental-court/>

⁵² United Nations Convention on the Law of the Sea pt. VII, Dec. 10, 1982, U.N.T.S. 397 [UNCLOS].

⁵³ RYLAND, Diane, **The Evolution of Environmental Human Rights in Europe**, 2005, Managerial Law, Vol. 47, Iss:3 pp. 117-125

⁵⁴ *Article 37: A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.*

⁵⁵ See also ECtHR Decisions, Taşkın v. Turkey, 10 November 2004; Dubetska and Others v. Ukraine, 10 February 2011.

⁵⁶ RYLAND, *ibid*.

applicant's home or private or family life"(para 66). Moreover, in the case *Öneryıldız v. Turkey* (2004), the Court examined the protection of environment in the context of Right to Life and condemned the inaction of the state as a violation of article 2 of the Convention. The Court stated that the state was under obligation of to take necessary, concrete and sufficient measures to protect people living near to the waste zone where a coal gas explosion killed people⁵⁷. To show the importance attributed by the Court to the environmental pollution we can also mention the *Mangouras v. Spain* case. In this case the Court dismissed Mr. Mangouras (master of the tanker *Prestige*)'s claim of violation of ECHR, Article 5 upon the Spanish trial judge's order a payment of a bond of 3 million euros. The majority of the Grand Chamber stressed the exceptional circumstances of this case that involved significant environmental pollution and held that it was appropriate for the domestic courts to take into account the seriousness of the alleged offences and the scale of the penalties at stake, even though the bail that was set was beyond the capacity of the accused to pay by himself.

Therefore, protection of environment is not only being considered as an obligation of the states, but also a fundamental human right. In fact environmental issues such as climate change, air pollution, and water pollution are vital as much as other fundamental human rights. Furthermore such offence does not threaten only one person, it concern all human kind. That's why for some writes, the offenses against the environment could fit into the existing categories of crimes against humanity as well⁵⁸. So, we can say that the right to clean environment should be regulated under national law as a fundamental human right and EU legislation should create a harmonization for this purpose.

Expanding the Competence of European Public Prosecutor

The absence of any real inspection power at the EU level is one reason for a failure to achieve adequate implementation of Community environmental law. Article 86 of the TFEU allows establishment of a European Public Prosecutor's Office (EPPO). The paragraph 4 allows expanding the competence of the EPPO to serious cross-border crimes. Domestic investigation authorities may not be capable of fully investigating the magnitude of global harms to the environment and of determining the dimensions of the transnational threat to ecological system. Therefore, serious and cross-border environmental crimes can be included in the competence of EPPO. Thus, there will be a central investigation institution for serious and cross-border environmental crimes in Europe.

⁵⁷ DANIEL Garcia San Jose, *La Protection de l'Environnement et la Convention Européenne des Droits de l'Homme*, Editions du Conseil de L'Europe, 2005. For another interpretation of right to environment by the Court in the context of right to life: *Budayeva and Others v. Russia*, 2008.

⁵⁸ MEGRET, 2011, p.207; see also: BASSIOUNI, M. Cherif, *Crimes Against Humanity: The Case for a Specialized Convention*, 9 WASH. U. GLOB. STUD. L. REV. 575 (2010), INGLEHART Ronald, *Public Support for Environmental Protection: Objective Problems and Subjective Values in 43 Societies*, 28 POL. SCI. & POL. 57 (1995).

Establishment of European Environmental Criminal Court

The creation of a “European Environmental Criminal Court” was proposed by the International Academy for Environmental Sciences (Venice)⁵⁹. In fact, the establishment of “European Environmental Criminal Court” would be more effective to fight against environmental crimes. But do we really need establishment of a separate court?⁶⁰ Although a significant integration process continues, currently, the EU has not an autonomous criminal justice system on its own. The EU aims to establish an area of freedom, security and justice through cooperation and coordination by abolishing the borders between autonomous criminal justice systems of the Member States. But, with the entering into force of the Lisbon Treaty, it appears that a sui generis supranational criminal justice system has been emerging gradually within the EU law. With the “communitarisation” of judicial review Court of Justice of the EU has the power to ruling on infringement proceedings in criminal law; judicial remedies became applicable to the criminal field, in order that compensation have been established even to persons affected by non-applied EU criminal legislation. Hence the implementation of EU environmental criminal legislation will be under the judicial control of Court of Justice. With better implementation of environmental legislation and realisation of mutual recognition principle there would be no need of a separate criminal court. But, with the Lisbon Treaty, there will be expansion of EU action in criminal matters and increased production of substantive criminal law which may necessitate increased interpretation by the Court of Justice, so there would be a need of “criminal section” within Court of Justice which might be specialised on environmental crimes legislation.

Increasing Awareness

The lack of public awareness is one of the major problems. In fact, the public awareness the most important factor for efficient international cooperation on the subject for two reasons. First of all, in initiating an investigation public awareness have a very essential role. In many cases complaint of citizens could provide early intervention of entitled authorities in order to aggravation of harmless effect of such offence. Secondly public awareness could prevent such crimes. In scope of protection of environment, although the statistics shows that the public's general level of environmental concern is increasing and close to half of the population indicates to be "very worried" about climate change, air pollution, and water pollution⁶¹, these

⁵⁹ **Proposal Of Two Historical Reforms: An International Environmental Criminal Court (Iecc), An European Environmental Criminal Court**, ABRAMI, Antonino, GRUNERT, Freddy, Hearing at International Academy of Environmental Sciences, Venice, 2009.

⁶⁰ See also parliamentary questions and answers on international environmental criminal court:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2007-3803+0+DOC+XML+V0//EN>
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2009-1548+0+DOC+XML+V0//EN>

⁶¹ <http://www.eea.europa.eu/data-and-maps/indicators/public-awareness-and-behaviour-1>

statistic remains in word. In reality people do not want to change lifestyle often requires sacrifices of comfort⁶².

Training and Exchange of Information and cooperation Between National Judges and Enforcement Bodies

The laws alone would not be sufficient. There is also a need for common standards, a sharing of best practices and greater coordination on enforcement. There is a lack of knowledge of environmental criminal law amongst the public, lawyers and even judges. National judges and enforcement bodies play a key role in the implementation of EU environmental law⁶³. The Communication from the Commission - A Europe of Results - Applying Community Law – (COM (2007) 502 final) and the Communication on implementing European Community Environmental Law (COM (2008) 773 final) highlighted the crucial role of national courts and national judges. The EU should emphasize on training of judges and enforcement bodies concerning the EU environmental criminal law.

⁶² 74 % went by car or by air for their last holidays; 54 % owned a car; 59 % did not care about saving hot water. <http://www.eea.europa.eu/data-and-maps/indicators/public-awareness-and-behaviour-1>

⁶³ We can also mention the Bangalore Principles of Judicial Conduct which state that “A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.”

CONCLUSION

This paper summarizes our work regarding international judicial cooperation in environmental crimes: The main focus of this study has been the judicial cooperation at the EU level after providing a general overview of the international framework. As per our findings, the criminal law plays a critical role in protecting the environment both at international and EU level because of its deterrent nature. Since environmental crimes have mostly organized and trans-border character, there is a significant need for a well functioning judicial cooperation between states during the implementation of criminal law in order to fight against these crimes effectively.

Based on the investigations during this work, it is possible to conclude that the EU has a more developed system in terms of the judicial cooperation in environmental crimes compared to other international examples. Within the EU, there are several legal directives that govern the environmental crimes as well as various instruments and bodies that facilitate the judicial cooperation in these crimes. However, the member states still need a better harmonization of laws and acceptance of the principle of 'mutual recognition'. Certainly, Lisbon Treaty improves this situation significantly.

In Judicial area, it is never easy to align the theory with practice. Here the issue is primarily caused by the implementation challenges of the EU legislation. The lack of willingness to prosecute on environmental crimes and limited related knowledge of some judges and enforcement bodies are observed to be the key problems. This paper tries to offer solutions to these problems via increasing the power of the Court of Justice and the European Prosecutor Office as well as increasing public awareness, by providing training to relevant authorities like judges or enforcement bodies.

We recognize that this is only an initial study on a very important and potentially very complicated subject, however we studied our findings thoroughly and compiled some suggestions in this paper in order to provide valuable background for the further research and development work in this area.

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