

Addressing Water Pollution Crimes in Poland and Lithuania: Legal and Judicial Perspectives

Abstract

The United Nations' 2030 Agenda for Sustainable Development underscores the critical need to address water pollution, emphasising the importance of effective measures for its mitigation and prevention. In alignment with these global priorities, the European Union's Directive 2008/99/EC on the protection of the environment through criminal law established key principles for holding individuals and legal entities responsible for environmental harm, including water pollution. The Directive mandated the implementation of proportionate and dissuasive criminal penalties to deter environmentally harmful behaviour. Reflecting these standards, Polish and Lithuanian criminal law treat water pollution as a serious offence, recognizing its potential to cause significant environmental degradation. The new Directive 2024/1203 of the European Parliament and of the Council on the protection of the environment through criminal law, which has replaced Directive 2008/99/EC, strengthens the framework for imposing effective, proportionate, and dissuasive criminal penalties. Its provisions aim to ensure that the penalties correspond to the gravity of the offences. The authors analyse the provisions of the new Directive and examine ongoing concerns related to judicial leniency in handling environmental offences in cases concerning natural persons. They argue that, in light of both the UN's Agenda 2030 and evolving EU legislation, proportionate and consistent criminal penalties are essential to effectively combat environmental crimes, including water pollution.

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1 | Introduction

The UN's 2030 Agenda for Sustainable Development, hereafter referred to as the Agenda, embodies the global strategy for sustainable economic and social development while emphasizing the protection and management of essential natural resources.^[1] Central to the Agenda is the principle of sustainable development, which provides a guiding framework for integrating environmental considerations into legal systems. This principle reflects a commitment to ensuring that economic and social growth does not compromise environmental integrity, thereby aligning with the overarching goal of sustainable development established by the United Nations.^[2]

Recognizing the severe impact of water pollution, the Agenda prioritizes its prevention and reduction as one of the first Sustainable Development Goals (SDGs).^[3] By doing so, the UN highlights the essential role that water and sanitation play in eradicating poverty, promoting health, and fostering overall sustainable development. SDG 6, "Clean Water and Sanitation," focuses on the availability and sustainable management of water and sanitation for all. The Goal promotes the protection and restoration of water-dependent ecosystems, ensures the efficient use of water resources, and addresses critical issues such as water scarcity and pollution. It is also worth noting that water pollution may have direct implications for other SDGs, such as SDG 14, "Life Below Water," and SDG 15, "Life on Land," which focus on the conservation and sustainable use of oceans, seas, and

¹ Ryszard Paczuski, "Ochrona zasobów leczniczych środowiska Rzeczypospolitej Polskiej jako jedna z podstawowych form zarządzania ochroną środowiska przy respektowaniu zasady zrównoważonego rozwoju" *Białostockie Studia Prawnicze*, No. 18 (2015): 13-33.

² Bartosz Rakoczy, "Procesowy wymiar zasady zrównoważonego rozwoju" *Białostockie Studia Prawnicze*, No. 18 (2015): 18.

³ United Nations, Resolution No. A/RES/70/1 adopted by the General Assembly on 25 September 2015 Transforming our world: the 2030 Agenda for Sustainable Development.

the safety of dependent terrestrial ecosystems. The Agenda encourages all countries to work together to pursue the abovementioned goals.

In the EU, the 8th Environment Action Programme to 2030^[4], further on referred to as EAP, established the foundation for achieving the environmental SDGs set by the Agenda. Among the six thematic priority objectives covered by EAP is the pursuit of zero pollution, intending to create a toxic-free environment characterized by clean air, water, and soil. Other activities include the protection, preservation, and restoration of marine and terrestrial biodiversity, including inland waters both inside and outside protected areas (Article 2 EAP). According to the document, these priority objectives should be achieved through the effective, swift, and full implementation of existing environmental legislation and strategies (Article 3 EAP).

The cornerstone of water protection legislation in the EU is the Framework Directive 2000/60/EC^[5] for Community action in the field of water policy. This is the first systematic legal act to address multiple social and economic stressors affecting water quality and aquatic habitats simultaneously.^[6] The opening line of the document states that “water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.” The Framework Directive aims to prevent further deterioration of water resources and improve aquatic and dependent terrestrial ecosystems. Member States are obliged to protect their water sources along with the ecosystems, flora, and fauna that depend on them. This extended obligation also arises from other international agreements addressing global environmental issues.

Building on these foundational principles of water protection, the EU further strengthened its commitment to addressing environmental harm through the adoption of Directive 2008/99/EC, which specifically targeted criminal offences related to pollution and other serious environmental violations.

⁴ Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030, OJ UE L 114/22, 12 April 2022.

⁵ Framework Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ UE L 327, 22 December 2000.

⁶ Stella Tsani, Phoebe Koundouri, Ebun Akinsete, “Resource management and sustainable development: A review of the European water policies in accordance with the United Nations’ Sustainable Development Goals” *Environmental Science & Policy*, No. 114 (2020): 571.

Directive 2008/99/EC⁷ set a common framework for addressing environmental crimes, including water pollution. As it was stated in the document,

Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law.

The Directive provided definitions of the most serious environmental infringements (Article 3), mandating the imposition of effective, proportionate, and dissuasive criminal penalties (Article 4), and the establishment of environmental criminal liability for legal entities (Article 6). Among the offences listed in Article 3 were those related to water safety and the protection of dependent ecosystems. The Directive devoted special attention to the issue of criminal penalties, emphasizing the need for adequate legal sanctioning. However, it did not explicitly specify the types and severity of the penalties and auxiliary measures, allowing Member States to retain a certain degree of discretion in this regard. According to Article 5, criminal penalties should have been effective, proportionate, and dissuasive.

Criminal penalties are effective when they deter individuals from engaging in illegal activities. At the same time, effective criminal sanctioning needn't be so severe that it becomes overly punitive. Its weight should match the seriousness of the offence. The penalties imposed should be neither too lenient nor too harsh given the circumstances of the case and the size of the damage inflicted. In the case of serious environmental infringements, the effectiveness of the law enforcement response also relates to the restoration of the affected environmental goods, which should be returned to the original or otherwise acceptable state. Thus, a compensatory payment should be considered as a constituent part of the law enforcement response to crime, including water pollution. Aligning with the Agenda, which emphasizes the protection and sustainable management of water resources (SDG 6), restorative justice should be routinely employed by the courts to uphold the principle of effectiveness in addressing environmental

⁷ Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law, OJ L 328/28, 6 December 2008.

crimes. This approach not only addresses the immediate harm caused by the crime of water pollution but also contributes to the broader goal of fostering sustainable ecosystems, ultimately supporting the interrelated targets of the Agenda. These principles are reflected in the new Directive 2024/1203^[8] of 11 April 2024 on the protection of the environment through criminal law, which emphasizes both the importance of deterrent penalties and the restoration of environmental harm as part of the enforcement strategy.

The paper aims to analyze the new Directive's provisions and examine ongoing concerns related to judicial leniency in handling environmental offences involving natural persons. The authors assume that there is a need for a more rational application of available sanctions, with the dual purpose of enhancing the deterrence effect and supporting restoration activities wherever possible. The paper employs a legal dogmatic method to present and analyze documents, regulatory acts, and EU reports on environmental protection, specifically focusing on water pollution in the EU, Poland, and Lithuania. The following sources were examined for this study:

1. The UN's 2030 Agenda for Sustainable Development and the 8th EU Environment Action Programme to 2030,
2. Directive 2024/1203 on the protection of the environment through criminal law replacing the Directive 2008/99/EC, and the Framework Water Directive 2000/60/EC,
3. Polish Penal Code of 1997^[9] and the Lithuanian Penal Code of 2000.^[10]

Additionally, relevant literature and a selection of the Polish case law concerning natural persons were analyzed. The authors chose to omit the issue of administrative sanctions for environmental infringements, as this topic has already been thoroughly explored in a number of publications.^[11]

⁸ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, OJ L, 2024/1203, 30 April 2024.

⁹ Penal Code of the Republic of Poland of 6 June 1997, consolidated text, Law Journal of 2024, item 17, as amended.

¹⁰ Penal Code of the Republic of Lithuania, approved by Law No VIII-1968 of 26 September 2000, Žin., 2000, No. 89-2741.

¹¹ See more: Wojciech Radecki, "Regulacje penalne w systemie prawa ochrony środowiska," [in:] *Zagadnienia systemowe prawa ochrony środowiska*, ed. Piotr Korzeniowski (Łódź: Uniwersytet Łódzki, 2015), 81-99; Denis Solodov, Elżbieta Zębek,

The authors focused on criminal cases concerning natural persons. Issues related to the liability of legal entities due to their profound complexity require a separate in-depth study and were not covered in detail in this paper.

2 | Crime of Water Pollution

In legal doctrine, environmental crimes are divided into two categories:

1. withdrawal crimes, where resources are removed from the environment, and
2. pollution crimes, where harmful substances are introduced into the environment.^[12]

Given the unique characteristics and properties of water, legislative measures for environmental protection primarily focus on safeguarding it against pollution.

At the national level, ensuring water safety involves a combination of administrative and economic measures that promote effective water management practices. When pollution results in significant environmental damage, legal consequences must include criminal penalties, as was outlined in Directive 2008/99/EC and repeated in the new Directive 2024/1203. Following Directive 2008/99/EC (Article 5) and Directive 2024/1203 (Article 5), criminal penalties should be proportionate and dissuasive.

In Poland, recent amendments to environmental criminal law, specifically through the Law of 22 July 2022,^[13] aimed at combating environmental crime, have introduced harsher penalties for water, air, and soil pollution. The amendments include, among other things, an increase in penalties for aggravated water, air, or soil pollution with harmful substances or ionizing

“Environmental Criminal Enforcement in Poland and Russia: Meeting Current challenges” *Utrecht Law Review*, No. 1 (2020): 140-150.

¹² Eelis Paukku, “Environmental crime in a welfare state – a case study on the prosecution of environmental crimes in Finland 2015-2020” *International Journal of Comparative and Applied Criminal Justice*, No. 1 (2022): 3-27.

¹³ Law of July 22, 2022, on amending certain acts to counteract environmental crimes, *Journal of Laws* 2022, item 1726.

radiation. The elevated penalties also apply to illegal storage, disposal, processing, recovery, disposal, and transportation of waste that may threaten human life or health or cause a decline in the quality of water, air, or soil, or harm to plant and animal life. The amendments also provide that in the event of a conviction for an intentional environmental crime, the court shall impose, and in the case of a conviction for an unintentional environmental crime, the court may impose a compensatory payment ranging from 10,000 to 10,000,000 PLN to the National Fund for Environmental Protection and Water Management (the amended Article 47 PPC), which equals 2,300 and 2,300,000 EUR respectively. Before the amendment, this measure was facultative and if applied the payment was often directed for other purposes, which were not directly related to the natural environment and its protection.^[14]

In Poland, environmental crimes related to water safety are outlined in Chapter 22 of the Polish Penal Code of 1997 (PPC), which addresses various environmental offences. These include the large-scale destruction of plant or animal life (Article 181 PPC), considerable pollution of water, air, or soil (Article 182 PPC), improper handling of harmful waste (Article 183 PPC), and inappropriate storage of nuclear materials or sources of ionizing radiation (Article 184 PPC). Furthermore, improper maintenance or use of equipment designed to prevent environmental contamination, including protection against radiation (Article 186 PPC), the destruction or degradation of protected natural areas (Article 187 PPC), and the unlawful construction or expansion of facilities posing environmental threats (Article 188 PPC) are also criminalized. The range of criminal penalties includes fines, restrictions on personal freedom, imprisonment, alongside compensatory payments. For instance, under Article 182 PPC, water, air, or ground pollution is punishable by imprisonment ranging from 6 months to 8 years (§ 1). If pollution results from improper operation of an industrial facility, the term of imprisonment increases to 10 years (§ 3). The perpetrator may also face a fine of €2,200 to €220,000, reflecting the gravity of the offence and the associated public safety risks.

Similarly, Lithuanian criminal law governs environmental crimes, including water pollution, under Chapter 38 of the Lithuanian Penal Code (LPC). Article 270 § 1 LPC deals with cases where such violations endanger human life or health or cause significant harm to natural resources,

¹⁴ Rafał Fic, "Nowelizacja Kodeksu karnego w celu przeciwdziałania przestępczości środowiskowej – problemy wybrane" *Prokuratura i Prawo*, No. 12 (2023): 74-75.

including air, soil, water, fauna, or flora. Penalties vary from fines to arrest or imprisonment for up to 3 years. Fines in Lithuania depend on the severity of the offence. For minor offences, fines range from 50 to 2,000 units of the Minimum Standard of Living Index (MSL), which is equivalent to 2,450 EUR to 98,000 EUR. For more serious offences, fines can reach between 100 and 4,000 MSL, amounting to 4,900 EUR and 196,000 EUR respectively.

In both countries, legislative frameworks aim to ensure that penalties for environmental crimes are proportional to the severity of the offence, with a focus on deterrence and restitution. This approach aligned with the now superseded Directive 2008/99/EC. Nonetheless, despite the full implementation of Directive 2008/99/EC across EU member states, there remains room for improvement. Several key areas, such as the collection of statistical data, clearer interpretation of the Directive's terminology, the relationship between criminal and administrative sanctions, and the standardization of criminal penalties across Member States, still require refinement.^[15]

In Poland, the 2015 country report highlighted that the implementation of Directive 2008/99/EC did not lead to a significant increase in prosecutions or the application of more severe penalties. The report described Polish environmental law as fragmented, with a complex division of responsibilities among various state actors, complicating the investigation and prosecution of environmental crimes. Additionally, a lack of interest from prosecutors and law enforcement in pursuing environmental crimes, along with lenient court rulings – such as probation sentences – was identified as a challenge. On a positive note, Poland received a commendation for its efforts in combating marine pollution and utilizing administrative sanctions in environmental protection.^[16] Similarly, in Lithuania, judicial

¹⁵ Commission Staff working document, Evaluation of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, SWD/2020/0260 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0260>. [accessed: 6.10.2023].

¹⁶ EFFACE, Fighting Environmental Crime in Poland: A Country Report, 2015. https://www.ecologic.eu/sites/default/files/publication/2015/efface_fighting_environmental_crime_in_poland.pdf. [accessed: 6.10.2023].

leniency toward environmental crimes has been emphasized in legal doctrine^[17] and the country's evaluation report.^[18]

In response to ongoing issues such as low detection rates and weak sanctions, which incentivize offenders to engage in environmental crimes, the European Commission proposed the adoption of a new directive in 2022. The proposal aimed to address gaps in enforcement by clarifying key terms used in Directive 2008/99/EC, updating the list of environmental crimes, harmonizing sanctions across Member States, and improving the collection of statistical data.^[19] One of the recommendations in the proposal included the introduction of minimum levels for criminal penalties and the expansion of ancillary sanctions. According to the proposal, for legal entities, there should be such measures as environmental restoration, fines, exclusion from access to public funding, and the withdrawal of permits. The proposal placed particular emphasis on environmental crimes that severely degrade water quality. For crimes resulting in or likely to cause human death or serious injury, the proposal recommended a maximum prison sentence of at least 10 years. For legal entities, the penalties outlined in the proposal were equally stringent. They included fines, mandatory environmental restoration within a specific timeframe, exclusion from public benefits and funding, revocation of permits, and the closure of establishments involved in the commission of the offence.^[20]

The new Directive 2024/1203 was published in the EU's Official Journal on 30 April 2024 and came into force on the twentieth day following its publication. It consists of 29 Articles and the Preamble section with

¹⁷ Tomas Girdenis, "Environmental crime: Lithuanian criminal policy in the context of European regulation," [in:] *Law and Sustainability: Perspectives for Lithuania and Beyond*, ed. Alessio Bartolacelli, Dovile Sagatienė (Kraków: Mykolas Romeris University, 2023): 257-273.

¹⁸ Evaluation Report on the eighth round of mutual evaluations "The Practical Implementation and Operation of European Policies on Preventing and Combating Environmental Crime," Report on Lithuania, 23 September 2019. <https://data.consilium.europa.eu/doc/document/ST-10080-2019-REV-1/en/pdf>. [accessed: 11.10.2024]; Ruling by the Criminal Cases Division of the Lithuanian Supreme Court, dated 3 March 2015, case no. 2K-155-693/2015. Court Practice, 2015, 43, 433-439; Ruling by the Criminal Cases Division of the Lithuanian Supreme Court, dated 14 January 2014, case no. 2K-96/2014. Court Practice, 2014, 41, 540-552.

¹⁹ Revision of Directive 2008/99/EC Protection of the environment through criminal law, 2023. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733555/EPRS_BRI\(2022\)733555_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733555/EPRS_BRI(2022)733555_EN.pdf). [accessed: 6.10.2023].

²⁰ Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762 final.

75 numbered points. For comparison, the superseded Directive included 10 Articles and a Preamble with 16 points. The significant increase in both the number of Articles and preamble points might suggest that the new Directive is far more detailed and comprehensive, potentially reflecting the evolution of EU regulations and the expanse of the scope of the environmental legislation.

The new Directive outlines various criminal offences related to actions that cause or are likely to cause significant harm to water quality, ecosystems, and public health (Article 3). The document expands the list of criminal offences from nine to twenty compared to the superseded Directive 2008/99/EC. Concerning water protection, the list of recognized criminal acts includes

1. crimes that result in direct harm to water quality (intentional discharge, emission, or introduction of materials, substances, or ionizing radiation into air, soil, or water if it causes or is likely to cause death or serious injury to individuals or substantial damage to the quality of air, soil, or water, or harm to ecosystems, animals, or plants),
2. placing harmful products on the market (introducing products that, when used on a larger scale, lead to harmful discharges into air, soil, or water if it violates environmental protections),
3. manufacturing and use of certain substances (manufacture, placing on the market, or use of substances that can cause serious harm or death, especially if they are restricted or prohibited by existing EU regulations),
4. development without permissions (conducting development projects without necessary permissions that cause harm to water quality or ecosystems),
5. improper waste management (collection, transport, or treatment of hazardous waste or waste of non-negligible quantities that results in significant harm to water quality or ecosystems if it involves as well as the shipment of waste that is non-negligible in quantity, whether in a single shipment or multiple linked shipments if it threatens water quality),
6. ship-source pollution (discharging pollutants from ships in protected marine areas),

7. operations involving dangerous activities (improper operating or closing facilities where dangerous substances are used leading to severe damage to water quality or ecosystems),
8. mercury pollution (manufacture, use, storage, import or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products in non-compliance with the existing requirements that causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality water, or substantial damage to an ecosystem, animals or plant),
9. illegal abstraction of the water surface or groundwater (unauthorized abstraction of water that causes substantial ecological damage).

It is worth noting that the new list of water-related offences is more detailed and focused on the direct harm to water quality. While both old and new directives share the same common goal of preventing environmental harm, Directive 2024/1203 places greater emphasis on comprehensive regulatory mechanisms, expanding the scope of recognised offences and clarifying legal responsibilities for Member States in protecting water resources. Among new provisions is the obligation of Member States to ensure that those recognised criminal offences will constitute qualified criminal offences if such conduct causes

the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.

This provision is particularly aimed at addressing intentional acts that lead to significant environmental degradation, thereby strengthening the legal framework surrounding water resource protection and emphasizing the responsibility of Member States to uphold these standards.

Directive 2024/1203 establishes specific criteria for assessing environmental damage, causation and quantity assessment addressing a critical gap in the previous framework. Under Directive 2008/99/EC, Member States approached damage assessment and other relevant issues such as causation in varied and somewhat inconsistent ways, as was shown in national evaluation reports, which might lead to ambiguity and confusion regarding the investigative methodology and judicial response. In Poland,

the lack of clarity hindered effective law enforcement of environmental infringements, which was recognised in the country's evaluation report and legal doctrine^[21]. By providing standardized criteria, the new Directive aims to streamline the investigative process, ensuring that all Member States effectively identify, evaluate, and respond to environmental harm, including the one to water quality. This clarity should facilitate compliance and enhance the ability of authorised state actors to take timely and appropriate actions against those responsible for environmental damage.

Regarding the severity of criminal penalties in light of the new Directive, the existing criminal law provisions in Poland partially comply with the new requirements. In particular, Directive 2024/1203 outlines maximum imprisonment terms based on the severity of offences. In case of environmental offences causing death, the imprisonment term, according to the document, should be at least 10 years. Meanwhile, the amended provisions of the Polish Penal Code (Article 185) provide for imprisonment of up to 20 years, which, undoubtedly, exceeds the Directive's requirement. In the case of less serious water-related offences, there is non-compliance, since the Directive requires a minimum term of imprisonment of 5 years while in Polish criminal law, the minimum term is 3 months. For legal entities as environmental offenders, Directive 2024/1203 requires the application of criminal and non-criminal fines, specifying the maximum level of such fines, and additional obligations and subject to a withdrawal of permits and other protective (natural environment) measures. Polish law, as of today, does not contain such provisions. Other axillary measures applied to natural persons, such as obligatory compensatory payment, are well within the requirements of the new Directive.

In addition, Directive 2024/1203 specifies aggravating (Article 8) and mitigating (Article 9) circumstances concerning environmental criminal offences. Eight factors can increase the severity of penalties for environmental offences. These include significant environmental destruction, involvement in organized crime, the use of false documentation, offences by public officials, prior convictions, financial gains, evidence tampering, and crimes committed in protected areas. Conversely, two key mitigating factors are introduced: the offender's voluntary restoration of the environment and the provision of helpful information to authorities before the

²¹ Denis Solodov, Elżbieta Zębek, "Unlawful prosecution in the case regarding the destruction of a forest ecosystem" *Revista Brasileira de Direito Processual Penal*, No. 2 (2022): 653-677.

investigation. These provisions aim to enhance accountability and encourage proactive behaviour in environmental protection, introducing a more uniform approach to environmental crimes in Member States.

It is worth mentioning that Directive 2024/1203, similar to the superseded one, does not exclude the possibility of the conditional postponement of imprisonment (probation sentencing) as well as the termination of criminal proceedings, which is frequently used by courts in environmental crime cases. It can be assumed that these legal measures if applied reasonably and proportionally to the circumstances of the case, would not be contrary to the Directive. Nonetheless, if such measures are misused or applied too extensively, these practices may undermine the Directive's objectives and have effects contrary to its intent.

3 | Case Law

It should be noted that the examples from Polish case law regarding water pollution criminal violations discussed below pertain to the period before the new Directive came into force. It can be expected that under the new legal framework, given the successful implementation of the new provisions, the law enforcement and judicial response to this type of crime may and should change. The new Directive may serve as a reference point while evaluating the adequacy of the penalties and other measures applied by the court.

The analysis of selected published case law in Poland, reveals a tendency of Polish courts to exercise judicial leniency despite the availability of severe criminal penalties. This pattern was formally recognised in the 2015 country report, which highlighted that, although the legal framework allows for stringent sanctions, the penalties imposed by courts often fall short of what might be expected given the gravity of the offences. This lenience, which frequently results in probation or lighter sentences, undermines the potential deterrent effect of the legal system and complicates efforts to combat environmental crimes effectively. In addition, some cases have highlighted difficulties in establishing relevant facts and accurately estimating the environmental damage caused by the offences.

In one case related to aggravated water pollution,^[22] the defendant was accused of failure to maintain proper condition of technical reservoirs which contained environmentally harmful substances. This led to their discharge into a nearby lake, causing a significant decline in water quality, degradation of local ecosystems and substantial damage to the animal world.

The defendant's negligence was initially recognized as a crime under Article 182 § 1 PPC in conjunction with Article 186 § 1 and Article 11 § 2 PPC, which is punishable by imprisonment from 6 months to 8 years. However, if the defendant acts negligently (§ 2), the punishment may include fines, restrictions of freedom, or imprisonment for up to 3 years. Article 186 § 1 PPC pertains to the failure to maintain environmental protection devices in a proper condition. These devices are subject to specific technical standards in terms of their efficiency and the ability to achieve appropriate operating parameters. The term "protective device" refers to any type of device that protects air, water, or land from pollution. The crime is punishable by a fine, the restriction of freedom, or imprisonment from 3 months to 5 years. If there was negligence, the penalties include a fine or the restriction of freedom (§ 3). So, in the given case, the court was allowed to apply a penalty fine, the restriction of freedom, or imprisonment from 3 months to 5 years.

In this case, the court found that the defendant's actions had fulfilled constitutive elements of the crime defined in Article 182 § 2 PPC, in conjunction with Articles 186 § 3 and Article 11 § 2 PPC. According to the court judgement, the defendant was obligated to maintain reservoirs under his control in proper condition. The fact that there was a lake nearby created the risk that any leak of environmentally harmful substances would contaminate water on a large scale. Given that, due care should have been taken to monitor the condition of the tanks. Based on the experts' opinions, it was determined that the leakage led to water pollution that significantly lowered the quality of the water, causing severe damage to the animal world. Nonetheless, the court stated that the circumstances of the leakage indicated the lack of criminal intent on behalf of the defendant. Given the lack of social harm and the defendant's intent, the court applied Article 66 § 1, 2 and Article 67 § 1 PPC, conditionally discontinuing criminal proceedings with a probationary period of 3 years. The court also ordered the defendant to pay a reimbursement payment of 6,500 EUR to the Crime

²² Judgement of the District Court in Torun of 5 July 2021, case no. II K 198/19.

Victims Aid Fund, though such a payment should serve environmental protection and restoration goals.^[23]

Here are excerpts from a few other cases concerning harm to water resources from various periods. These cases illustrate judicial responses to environmental crimes, demonstrating notable leniency.

In the case concerning storage and improper disposal of hazardous waste (a crime under Article 183 PPC), the offenders were accused of storing and disposing of waste from a printing facility (paints, varnishes, adhesives) without the required permit on unpaved ground and directly into the soil, which posed a threat to human life and health or could significantly degrade the quality of water and soil as well as reduce the quality of groundwater. The court sentenced the perpetrators each to 1 year of imprisonment with a probation period of 3 years, as well as a fine of 150 daily rates with one daily rate set at 20 PLN, totalling 3,000 PLN or approximately 700 EUR.^[24]

In the case concerning illegal waste disposal (a crime under Article 183 PPC), the waste disposed of in the area of the former brick factory posed a threat to the environment, as it could create risks to human life or health, cause a significant deterioration in the quality of water, air, and soil, or result in considerable damage to the plant or animal world. The court sentenced the perpetrator to a fine of 200 daily rates (each valued at 50 PLN, so overall around 2300 EUR) and a supplementary payment of 2,000 PLN (around 470 EUR) to the National Fund for Environmental Protection and Water Management.^[25]

In the case concerning the distortion of the lake shoreline (a crime under Article 181 PPC), the issue involved altering the lake's shoreline by placing gravel and removing reeds within the coastal belt, which destroyed natural habitats in the Protected Landscape Area and Natura 2000 bird protection area. The court conditionally suspended the execution of the defendant's deprivation of liberty for 2 years, ordering the defendant to pay 3,000 PLN (approximately 680 euros) as a supplementary payment to the National Environmental Protection and Water Management Fund.^[26]

²³ Sebastian Sikorski, „Rola i organizacja Narodowego oraz wojewódzkich funduszy ochrony środowiska i gospodarki wodnej” *Białostockie Studia Prawnicze*, No. 18 (2015): 147-165.

²⁴ Judgment of the District Court in Bełchatów, 18 May 2023, case no. II K 789/22.

²⁵ Judgment of the District Court in Prudnik, II Criminal Division, 7 August 2018, case no. II K 272/17.

²⁶ Judgment of the District Court in Szczytno, June 27, 2012, case no. II K 394/11; Elżbieta Zębek, Denis Solodov, “Environmental Forensic Examinations in Poland:

In some cases, courts strived for a more balanced approach to sentencing, one that considers the severity of the offense, and the degree of harm caused to ecosystems. That was the case concerned illegal waste storage (a crime under Article 183 PPC). Waste was stored in conditions that could threaten human life or health or cause pollution of water and soil leading to significant environmental damage. The court sentenced the defendant to 2 years of imprisonment, imposed a ban on conducting business activities related to waste management for 10 years, and applied a supplementary payment of 10,000 PLN to the National Environmental Protection and Water Management Fund, which is around 2300 EUR.^[27] In this case, the court's sentencing reflects a balanced approach by addressing both the punitive and preventative aspects of environmental crime. The two-year imprisonment emphasizes the seriousness of illegal waste storage and its potential to harm the environment and human health. Meanwhile, the 10-year ban on conducting waste management activities serves as a deterrent, preventing the defendant from engaging in similar practices in the future. Additionally, the supplementary payment to the National Environmental Protection and Water Management Fund, not only holds the offender accountable but also supports efforts to mitigate environmental damage. This judgment highlights how courts can tailor sentences to both punish and promote environmental protection.

4 | Discussion

Environmental crimes, particularly those involving water pollution, are increasingly being recognized as serious offences that demand more stringent legal measures. The evolving legislative frameworks at both national and EU levels reflect growing concern over environmental degradation and the need for effective deterrence.

One of the most important developments at the EU level is the introduction of Directive 2024/1203, which expands the scope of recognized

A Case Study" *Journal for European Environmental & Planning Law*, No. 18 (2021): 103-123.

²⁷ Judgment of the District Court in Tarnowskie Góry, 31 October 2019, case no. II K 129/19.

environmental crimes and introduces minimum levels for criminal penalties. This marks a move towards harmonizing sanctions across EU Member States, addressing disparities in how environmental crimes are prosecuted and penalized. The expanded list of offences in the new directive, especially those related to water pollution, represents a more comprehensive approach to environmental protection, with greater emphasis on preventive and restorative measures. However, despite the progress made through the new Directive, significant challenges remain in ensuring uniform application across Member States. For example, Poland's current minimum imprisonment terms for certain water-related offences fall short of the new directive's requirements. Similarly, "non-compliance" in terms of sanctions for legal entities, as well as the "inconsistent collection of data" on environmental crime, highlight the need for further standardization and transparency.

Recent amendments in Polish criminal law, mark a significant shift towards harsher penalties for environmental offences, particularly those involving aggravated water pollution. These changes align with the principles outlined in both the superseded Directive 2008/99/EC and Directive 2024/1203, which emphasize the need for "proportionate and dissuasive" penalties. The provisions of the Polish Penal Code as well as the Lithuanian Penal Code mirror the EU's increased focus on creating a robust legal deterrent against environmental harm. However, a key challenge remains in the "effective enforcement" of these laws, as highlighted by the lack of significant increases in prosecutions or harsher penalties following the implementation of Directive 2008/99/EC. While the elevation of penalties under the new law addresses the gravity of environmental crimes, there remains concern over judicial leniency, as observed in both Poland and Lithuania. Despite stricter legislative frameworks, probation sentencing, and other lenient rulings might undermine the dissuasive intent of the law. The conditional postponement of imprisonment and probation sentencing permitted under both the old and new directives may provide a loophole that can be exploited, particularly if these measures are applied disproportionately. This highlights the need for judicial training and reform to ensure that law enforcement agencies and criminal courts consistently apply penalties that reflect the severity of environmental damage. Following Directive 2024/1203,

Member States should provide training appropriate to the functions of those in charge of detecting, investigating, prosecuting or adjudicating

environmental crime [...] Member States should also consider assigning specialised investigation units, prosecutors and judges to deal with environmental criminal cases. General criminal courts could provide for specialised chambers of judges (point 61).

Additionally, the new Directive's provisions for mitigating circumstances encourage offenders to actively engage in environmental restoration and provide cooperation during investigations. This not only aids in the practical recovery of the environment but also promotes proactive behaviour among those responsible for pollution. In this context, voluntary actions that demonstrate a commitment to repair the damage should be incentivized, though not at the expense of undermining the seriousness of the offence.

One of the key elements of environmental crime sentencing is the consideration of the offender's intent and the preventive measures taken. The introduction of compensatory payments to the National Environmental Protection and Water Management Fund in Poland reflects a restorative justice approach. This is especially relevant when offenders take steps to mitigate or remediate environmental harm voluntarily. However, the scope of these payments and their application must be monitored to ensure they directly contribute to environmental restoration, as intended, rather than being directed toward unrelated purposes, as seen in earlier judicial practice.

5 | Conclusions

The 2030 UN Agenda emphasizes the importance of safeguarding water resources for current and future generations, recognizing the critical role of prevention in tackling water pollution. Prevention, achieved through stringent environmental regulations and vigilant supervision, serves as the first line of defence against environmental degradation. However, prevention alone is not enough—effective prosecution of serious environmental offences and adequate judicial response are essential to upholding the principles of the Agenda.

The effective prosecution of environmental crimes is a complex process involving timely responses, thorough investigations, and the use of

expert evidence to ensure that cases are adequately presented before courts. In addition, criminal penalties and related auxiliary measures, as outlined in Article 5 of Directive 2024/1203, must be proportionate and dissuasive to deter both repeat and potential new offenders. The effectiveness of criminal penalties hinges on their inevitability and severity. Inadequate judicial response to environmental crimes undermines the rule of law, fails to protect public health, and reduces the deterrent effect necessary to prevent future offences. A key element is ensuring that sanctions reflect the seriousness of the environmental harm caused, particularly when dealing with water pollution, which poses significant risks to public health and dependent ecosystems. The recent developments in EU legislation, including Directive 2024/1203, demonstrate a shift toward harmonizing penalties across Member States, ensuring that environmental criminal offences are addressed appropriately. However, challenges remain in enforcing these laws effectively, especially given the judicial leniency and fragmented legal frameworks observed in a number of EU countries.

In addition to penal sanctions, environmental restoration and remediation play a critical role in addressing the long-term consequences of environmental crimes. Restoration initiatives, such as habitat restoration, water quality improvement, and soil remediation, are essential to repairing the damage caused by pollution and ensuring the sustainability of ecosystems. These efforts align with the restorative justice approach, emphasizing not only the need to hold offenders accountable but also to rehabilitate damaged ecosystems. Incorporating environmental restoration into the response to water pollution demonstrates a commitment to healing the natural world, fulfilling the broader objectives of the 2030 UN Agenda.

Ultimately, a comprehensive approach that combines prevention, effective prosecution, harsh penalties, and active environmental restoration is essential to protecting water resources. This multi-faceted strategy will not only deter future offences but also contribute to the sustainability and well-being of present and future generations. In doing so, we uphold the core principles of the 2030 UN Agenda and promote a balanced and resilient approach to environmental protection.

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