

EUFJE Conference 2015

Protection of the environment through criminal law: the implementation and application of the Eco-crime Directive in the EU Member States

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Finnish report

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1/ Who can be held criminally liable in your country?

a/ Natural persons only or natural as well as legal persons?

In the latter case: does their criminal liability extent to all types of crimes or only to very specific crimes?

Also: under which circumstances can they be held criminally liable? In particular: is there a precondition requiring a conviction or particular result of a criminal proceeding against a natural person? Are the hypotheses mentioned in art. 6.1 and 6.2 of the Eco-crime Directive covered?

b/ What about persons inciting, aiding and abetting the actual perpetrators of a crime?

a) Natural persons may be held liable for criminal actions of all kinds, even when acting on behalf of a legal person, eg., their employer. (Finnish Criminal Code 5:8§)3. A legal person may be held liable for a crime committed or allowed to be committed by a natural person acting on behalf of the legal person (FCC, Chapter 9). Punishment will be a fine or imprisonment for a natural person, a community fine for the legal person. Simultaneous liability (for the same action) for both a natural person and a legal person is possible. Liability of a natural person is not a prerequisite for the liability of a legal person.

Legal persons may be held liable for a crime only, when specifically provided for that category of crime. Thus, in natural resource crime (hunting, fishing, logging etc., FCC Chapter 48A), a legal person may be held liable for severe illegal hunting (FCC 48A:6a§) but not, eg., for illegal logging, which typically is committed by or on behalf of a legal person.

b) inciting, abetting or aiding in environmental crime are criminal offences (FCC 5:5§

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³An unofficial English translation of the Finnish Criminal Code (39/1889 with later amendments) is available at <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>

and 6§).

2/ *Are the Art. 3 offences criminal offences in your country?*

Do you know about gaps in the transposition of Art. 3 of the directive (e.g.: not always serious negligence criminalized, one of the Art. 3 offences only partially transposed)?

The implementation of Art 3c) may be more lenient than the Directive itself. The Directive in Art 3c) seems to criminalize certain transports of refuse as such, while the corresponding Finnish provision criminalizes only transports having harmful effect on the environment or on human health or constituting a risk of such effects.

3/ *How were the Art. 3 offences implemented?*

- a/ Only in the criminal code, only as parts of environmental laws or combining both ways?
- b/ Did the legislator choose for a “copy paste” or not?
- c/ All but one of the Art. 3 offences are defined by specific circumstances, notably specific results or risks of results that need to be fulfilled:
 - Four conducts need to be considered a criminal offence if “[causing] or (...) likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants” (art. 3.a, 3.b, 3.d and 3.e)
 - Four other conducts need only to be considered a criminal offence when involving a *non-negligible quantity / a non-negligible impact* (art. 3.c, 3.f, 3.g) or causing a “*significant*” deterioration.

Are those requirements present in your law? Or were they dropped when the legislator implemented the directive?

How do you feel as a judge about them? Would they hamper you when conducting a criminal case or could you rather easily cope with them?

Art. 3 is implemented through several pieces of Finnish legislation, mostly through the Finnish Criminal Code (19.12.1889/39, Chapter 48 on Environmental Crime amended 9.8.2013/600):

- *3a) on emissions causing health hazard or serious damage to nature is implemented by FCC 48:1§ 1). Additionally, the Finnish Shipping Environment Protection Act (29.12.2009/1672) bans discharge of oil or oil-contaminated bilge water into the sea. Border Control authorities may arrest a ship and/or impose a penalty fee and/or an oil discharge fee on the owner or operator.*
- *3b) and c) on handling of waste are implemented by FCC 48:1§ 3).*
- *3d) on hazardous production is implemented by FCC 48:1§ 2)*
- *3e) on radiative (nuclear) substances is covered by FCC 34:4§ criminalizing actions in breach of the Nuclear Energy Act (11.12.1987, amended), FCC 44:10§ criminalizing the use of nuclear energy in breach of a permit and FCC 48:1-4§§*

criminalizing emissions in breach of legal or permit provisions.

- *3f-h) on protected species and protected areas is implemented by the Finnish Nature Conservation Act 58§ (20.12.1996/1096) and FCC 48:5§*
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- *3i) on ozone by FCA 48:1§ 2) and 3).*

As evident from the above, implementation does not copy the Directive. By Finnish legislation, acts unlawful or in breach of a permit, which cause, or may cause, certain harmful consequences are criminalized. These are defined as polluting the environment, causing other harmful effects in the environment or causing hazard to human health. This means that an action that may lead to pollution or human health hazard may be considered criminal, even though, in the specific case, actual harmful effects have not been demonstrated. By the Directive Art. 3, harmful effects of the action are a prerequisite in all categories of crime except 3c). The punishment for the criminal act depends on the severity of the consequences. By FCA 48:2§ and 3§, acts causing severe damage to human health or to the environment are to be punished by imprisonment for at least 4 months and maximally six years. For less severe consequences, the punishment is a fine or up to six months of imprisonment.

4/ What about the availability of criminal sanctions to punish environmental offences?

a/ Do the principal criminal sanctions include fines as well as imprisonment?

What are the legal minimum (if applicable in your national system) and maximum levels of fines and prison sentences?

What impact does it have on sanction levels if the crime is committed by an organized criminal group?

b/ Is forfeiture of illegal benefits possible?

c/ Can criminal judges also impose remedial sanctions, for instance order the removal of waste, the closure of an illegal facility?

As described above, environmental crime may be sanctioned by a fine or by imprisonment. For natural persons, fines are set as "day fines" proportional to the disposable income of the convict. The "day fine" unit is about 1.5% of the disposable monthly income, and for a single crime, the fine may be set as 1 - 120 units. For legal persons, the community fine may be from 850 - 850 000 euros (FCC 9:5§, amended 9.11.2001/971).

The Court may decide that illegal benefits from (environmental) crime be forfeited to the State. Assessing the value of illegal benefits is difficult. In court judgments on environmental crime, both fines and forfeited benefits are set rather low, as illustrated by the court case examples below.

Remedial sanctions - closure of a facility, remediation of environmental damage - cannot be imposed as part of the criminal proceedings. Instead, remediation measures can be imposed on the operator in an administrative proceeding.

5/ What about the actual use of criminal sanctions to punish environmental offences?

a/ Are environmental offences brought to criminal courts? Does this happen rather often or only exceptionally? What kind of cases reach the court?

b/ What are the penalties inflicted to convicted offenders?

- Is imprisonment used and, if yes, also without probation? If so, what is the length of the inflicted prison sentences? Please indicate to which category of offences under Article 3 your reply refers.
- How high are the fines that are imposed in practice? Is forfeiture of illegal benefits used as an additional monetary sanction?
- Do criminal courts also impose remedial sanctions?

c/ What is, to your opinion, the main reason why environmental offences would not reach a criminal court? Not enough inspections? Practical difficulties to prosecute environmental offences successfully (e.g. lack of training or specialization, lack of time, lack of financial resources, difficulties of proof, unclear criminal law) ? Is there a tradition to rather sanction such offences with administrative sanctions? Or are environmental rules simply not, or nearly not, enforced?

The statistical information in this part of the answer is drawn from the 2014 Report by the Finnish Environmental Crime Monitoring group⁴.

In 2014, some 170 cases of severe criminal impairment of the environment (FCC 48:1§) and some 50 cases of Nature protection crimes (FCC 48:5§) were recorded by the Finnish Police, Customs and Border Control authorities. 141 instances of environmental crime were submitted to the prosecutors. First instance Courts (Käräjäoikeus) resolved 128 environmental crime cases and judged the defendant guilty in 92 cases.

The number of environmental crime cases is, as it seems, low. Reasons for the low number may be:

- *lack of resources in administrative authorities. Criminal proceeding against an operator will tie down personnel for a long time, maybe years. Also, after many administrative reforms, the regional environmental authorities are subordinate to other regional interests, such as economical development, and resources have been cut.*
- *administrative tradition: traditionally, with a very strong administration, even serious breaches of environmental legislation or permit conditions have been remedied through administrative measures rather than criminal proceedings.*
- *lack of resources and skill in police and prosecutors. Investigating officers have not been specifically trained to handle environmental crime. Investigation of environmental crime may require very special knowledge not readily available, as shown by the CITES case below.*
- *lack of skill and perspective in judges. Like policemen and prosecutors, court judges have not been specifically trained in environmental legislation. Specialisation is low and Court practice is for judges to participate in all kinds of cases.*

4. Report dated 15.5.2015, available in Finnish at http://www.tulli.fi/fi/nostot/ajankohtaista_tullissa/ymparistorikoskatsaus_2014.pdf

- general opinion (of judges and many others). To a judge trained in criminal procedure, environmental crime may seem second rate, diffuse and professionally little rewarding .

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.

Typical environmental crime cases reported to the police and brought before a prosecutor are:

- unlawful disposal of waste, especially construction and demolition waste
- breach of environmental permit emission limits
- unlawful extraction of soil and gravel
- unlawful shore dredging
- killing of protected animals
- destroying nests of Siberian flying squirrel in logging operations

Examples:

1. Upon request from the Indian Interpol in 2011, Finnish Criminal police investigated several Finnish companies allegedly importing and selling Pearl Hen feathers (*Gallus sonneratii*) for fishing tackle. It was found that feathers of the Pearl Hen were traded over the Internet and in fishing equipment stores. A police search in cooperation with environmental authorities and Helsinki University yielded evidence of trading in several protected species such as Pearl hen, brown and black bear, ice bear and wolf. In court proceedings in 2012, the persons responsible for illegal trade were found guilty and fines were imposed. Illegal profits were forfeited.
2. On a surveillance flight in 2011, Finnish Border Control observed a Panama-flagged ship discharging oil in the Gulf of Finland. Samples from the oil spill (10 m wide, 37 km long) were analyzed and, upon request, Russian authorities sampled the ship's oil in port. On the return, the ship was denied further passage under a penalty fine of 17 112 euros, imposed by the Border Guard. The ship was allowed to continue after having provided for a bank security covering the penalty fine.

In administrative proceedings, Border Control imposed an oil discharge fee of 17 112 euros on the owner of the ship. The Marine Court (division of Helsinki 1st instance Court) dismissed the ship owner's and the ship operator's appeals against arresting the ship and imposing a fine or fee. The Appeals Court in Helsinki dismissed appeals against the decision.

3. A concrete manufacturing plant had dumped waste concrete on the ground, in breach of the permit provision that waste concrete be dumped in a water proof basin. As a consequence, the level of chromium in ground water had risen. The area was used for municipal water supply and the nearest pumping well was only 300 metres away. The Court of first instance as well as the Appeals Court found that the plant had polluted the soil and ground water and violated the stipulations of the

company's environmental permit. Five employees of the company were sentenced to pay fines of 4 000, 2 760, 3 180, 13 800 and 2 240 euros and the company to pay a company fine of 15 000 euros. (Turku Appeals Court R 12/988, 17.6.2013)

4. *The owner of forest land had logged a forest area, thereby destroying nesting and resting places of the Siberian flying squirrel (*Pteromys volans*). The occurrence of flying squirrel had earlier been assessed as probable in the area and the owner had neglected to confirm the assessment. The prosecutor charged breach of Nature Conservation provisions and demanded that illegal profit be forfeited. The Court found the evidence for nests or resting places of the flying squirrel insufficient and dismissed the charges. (Etelä-Savo First Instance Court R 15/77, 9.7.2015)*
5. *A gravel pit company had extracted gravel in excess of permit stipulations and neglected to close and remediate the pit although obliged to do so by Court order. The responsible operator was sentenced to 60 days of prison on probation and the company to pay a company fine of 15 000 euro. The company was found guilty of unlawfully extracting some 120 000 m³ of gravel, but illegal benefits were not forfeited because of the large amount of gravel required for the remediation of the pit. (Etelä-Pohjanmaa Court of First Instance R 11/2072, 15.3.2012, Vaasa Court of Appeal R 12/481, 22.5.2013)*
6. *A farmer had kept cattle in excess of permit regulations, disposed of manure and waste water unlawfully and neglected the proper care of his livestock. Because of this, agricultural subsidies to the farm had been cut by the authorities and the farmer had been ordered to comply with regulations under a 30 000 euro penalty fee. The First Instance Court found the farmer guilty and sentenced him to 50 days of prison on probation and to forfeit benefits of 30 000 euro to the State. The Appeals Court judged that, as the penalty fee had been imposed for partly the same offence, he could not be punished (*ne bis in idem*). For offences committed after the penalty fee was imposed, the Appeals Court maintained and raised the sentence of imprisonment to 60 days on probation. (Turku Appeals Court R 13/1088, 22.10.2014)*

6/ As to structure of prosecuting environmental crime

Are prosecution and/or court procedure for environmental crimes concentrated on specialized prosecution offices/ courts or specialized sections within prosecution offices/courts?

*Environmental crime cases are resolved by ordinary first instance courts (*Käräjäoikeus*). Appeals in crime cases are made to the regional Appeals Court. Judges and court referendaries are not specialized but take on any case brought before them.*

Prosecutors form an independent organization consisting of the Office of the Prosecutor General and eleven regional Prosecutor's offices. Prosecutors are not exclusively specialized in environmental crime, but there is a group of key prosecutors for environmental crime. The five members of the group are expected (and allowed) to use 20%

of their working time on environmental crime cases.

7/ What about the availability of administrative sanctions to punish environmental offences?

By ‘administrative sanction’ we mean sanctions imposed by an administrative body, an administration.

a/ Is it possible in your country to punish environmental offences by administrative fines?

If so,

- *could they be applied alongside criminal sanctions or only instead of them and at which point in the procedure has a decision to be made which “route” to follow;*
- *what are the legal minimum and maximum of those administrative fines;*
- *which are the administrative bodies who can inflict such fines?*

b/ Which administrations can impose remedial sanctions to end environmental offences and remediate to the damages they caused?

And which are the remedial sanctions they can impose? Can they give remedial orders? Can they themselves clean-up the damages and oblige the offender to pay the bill? Can they order to stop an illegal conduct? Can they suspend permits until the cause of the pollution of offence was remediated? ...

As evident from the oil spill example above, the Border Control may, under the Shipping Environment Protection Act impose a penalty fine on ships breaching the ban on oil emissions, arrest the ship and also, impose an oil spill fee. Also, under the Waste Act (17.6.2011/646), an administrative penalty fee of 500-500 000 euros may be imposed.

Under the EPA (27.6.2014/527) and the Water Rights Act (27.5.2011/587), the regional environmental authority may order an operator to cease unlawful operation and to remedy environmental damage. The authority may impose a threat of closing the facility or remedying damage at the operator's expense and may also impose a penalty fine in order to force the operator to comply.

8/ What about the actual use of administrative sanctions against environmental offences?

a/ Are environmental offences sanctioned by administrative authorities? Does this happen rather often or only exceptionally? In what kind of cases?

b/ What are the administrative sanctions that are used in practice?

Is fining used? How high are the fines that are imposed in practice?

Are remedial sanctions used frequently, are rather seldom? Are they effective?

Administrative sanctions are more frequent than criminal proceedings. Typical instances are illegal operation without a permit or breach of permit conditions. Sanctions imposed are obligation to cease operation and/or to remediate damage. In case of non-compliance, the administrative order may be strengthened by a penalty fee. The division between non-binding recommendations from the supervising authority and formal administrative

orders is vague and statistical data on the frequency of either are lacking. As long as the supervising authority has sufficient resources, both informal advice and administrative sanctions seem effective.